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NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) presents its compliments to the Delegations of OSCE participating States and, in accordance with paragraph 7 of the 1991 Moscow Document, has the honour to herewith transmit the observations of the mission of experts established under the Moscow Mechanism, invoked by 45 OSCE participating States following bilateral consultations with Ukraine, together with a description of action Ukraine has taken or intends to take upon it.

ODIHR avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.

Warsaw, 28 April 2023



To the
Delegations of the OSCE participating States
Vienna

*Corr.1 due to change of distribution status, text remains unchanged

REPORT ON VIOLATIONS AND ABUSES OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW, WAR CRIMES AND CRIMES AGAINST HUMANITY, RELATED TO THE FORCIBLE TRANSFER AND/OR DEPORTATION OF UKRAINIAN CHILDREN TO THE RUSSIAN FEDERATION

by Prof. Veronika Bilkova, Dr. Cecilie Hellestveit and Dr. Elīna Šteinerte

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Annex 3: Response from the Permanent Representative of Ukraine to the International Organizations in Vienna

I. GENERAL OBSERVATIONS AND EXECUTIVE SUMMARY

On 30 March 2023, the delegations of 45 participating States of the Organization for Security and Co-operation in Europe (OSCE), after consultation with Ukraine, invoked the Moscow Mechanism under paragraph 8 of the Moscow Document. They requested that the Office of Democratic Institutions and Human Rights (ODIHR) enquire with Ukraine whether it would invite a mission of experts to “*address the Deportation of Children amidst Human Rights Violations and Humanitarian Impacts of Russia’s war of aggression against Ukraine*”. Following on this inquiry, Ukraine established, on 4 April 2023, a mission composed of three experts – Prof. Veronika Bílková (Czech Republic), Dr. Cecilie Hellestveit (Norway) and Dr. Elīna Šteinerte (Latvia).

The mandate of the Mission was to “*to build upon previous findings and establish the facts and circumstances surrounding possible contraventions of relevant OSCE commitments, violations and abuses of human rights, and violations of international humanitarian law and international human rights law, as well as possible cases of war crimes and crimes against humanity, associated with or resulting from the forcible transfer of children within parts of Ukraine’s territory temporarily controlled or occupied by Russia and/or their deportation to the Russian Federation; and to collect, consolidate, and analyze this information with a view to offer recommendations, as well as provide the information to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction*”.

The Mission built on the reports produced by the two earlier Missions of experts established under the Moscow Mechanism in March and May 2022. When drafting its report, the Mission used several methods of fact-finding and it relied on various sources, mainly written materials, including submissions that came via a special email channel established for these purposes by ODIHR; online and in-person interviews with representatives of international organizations and of NGOs, human rights defenders, academics, members of legal profession and journalists; and interviews with victims and witnesses. The three experts also undertook a visit to Kyiv, where they met representatives of Ukrainian State organs and representatives of civil society, including legal professionals and journalists.

The Mission established that a large number of Ukrainian children have been, since 24 February 2022 and even prior to this date, displaced from the territory of Ukraine to the temporarily occupied territories and to the territory of the Russian Federation. While the exact numbers remain uncertain, the fact of a large-scale displacement of Ukrainian children is not disputed by either Ukraine and/or Russia. In this report, primary focus has been placed on orphans and on unaccompanied children, since those constitute the most vulnerable groups among displaced children. The Mission has established the three most commonly indicated grounds for the organized displacement of these children as: (1) the evacuation for security reasons, (2) the transfer for the purpose of adoption or foster care, and (3) temporary stays in so-called recreation camps.

While in the temporarily occupied territories or in the Russian Federation, Ukrainian children are placed in institutions or in Russian families – the forms of the placement include adoption, which has been applied mainly to children from Crimea (at least since 2015) or custody, guardianship or foster families which seem more common for other Ukrainian children (mainly since 24 February 2022). Whatever the form of placement, Ukrainian children find themselves in an entirely Russian environment, including language, customs and religion and are exposed to pro-Russian information campaign often amounting to targeted re-education as well as being involved in military education. The Russian Federation does not take any steps to actively promote the return of Ukrainian children. Rather, it creates various obstacles for families seeking to get their children back. To date, neither this Mission nor the Ukrainian authorities

have been able to establish even a list of the children concerned, let alone their whereabouts, despite having approached the Russian authorities with such requests.

The Mission reviewed the reported evacuations and forced displacements of Ukrainian children at the hands of the Russian occupying power in light of applicable International Humanitarian Law (IHL). The Russian Federation is obliged, in her capacity as belligerent and occupying power, to respect the applicable rule of IHL under which children enjoy protections pertaining to the “civilian population”, “protected persons”, family-members and finally the special protections dedicated to children.

The Mission found that while certain cases of evacuations of children were in line with Russia’s duties under IHL, other practices of non-consensual evacuations, transfers and prolonged displacement of Ukrainian children constitute violations of IHL, and in certain cases amount to grave breaches of the Geneva Convention IV (GCIV) and war crimes, notably violation of the prohibition on forcible transfer or deportation under Article 49 of the GCIV.

The Mission also found that non-justified prolonged stay or unfounded logistical hurdles violate the duty to facilitate reunification and contravene the principles embodied within the GCIV that family unity is to be protected and respected. Further, the Mission is of the opinion that Russia’s relocalization of Ukrainian children to the temporarily occupied territories or Russian territory, combined with the belligerent powers, disregard the duty to establish compulsory mechanisms under the GCIV to track these children, to communicate their whereabouts and facilitate their repatriation or reunification with their families, is a violation of the Geneva Conventions (GCs) that exacerbates the gravity of other violations.

Moreover, the Mission concludes that the exposure of unaccompanied children to adoption or similar measures of assimilation is incompatible with the GCIV. Altering the nationality of Ukrainian children is a violation of Article 50(2) of the GCIV. It also contravenes the principles embodied within the GCIV that family unity is to be protected and respected. Facilitating re-education and permanent integration into Russian families serves to confirm that the displaced Ukrainian children are indeed the victims of deportation in the sense of Article 49 of the GCIV.

The Mission concluded that numerous and overlapping violations of the rights of the children deported to the Russian Federation have taken place. Not only has the Russian Federation manifestly violated the best interests of these children repeatedly, it has also denied their right to identity, family, their right to unite with their family as well as violated their rights to education, access to information, right to rest, leisure, play, recreation and participation in cultural life and arts as well as the right to thought, conscience and religion, right to health, and the right to liberty and security. These are ongoing violations of Articles 3, 8, 9, 10, 12, 14, 17, 20, 21, 24, 28, 29, 31 and 37 (b) of the UN Convention on the Rights of the Child (UNCRC). The cumulative effects of these multiple violations also give rise to very serious concerns that the rights of these children to be free from torture and ill-treatment and other inhuman or degrading treatment or punishment (Article 37 (a) of the UNCRC) have been violated. The Mission moreover concluded that the practice of the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation may amount to a crime against humanity of “*deportation or forcible transfer of population*”.

The Mission recalls that IHL, International Human Rights Law (IHRL) and International Criminal Law (ICL) impose various obligations on States. Those encompass the obligation to respect and to ensure respect for IHL; the obligation to respect, protect and fulfil human rights; and the obligation to prevent, repress, investigate and prosecute war crimes and crimes against humanity. Such obligations apply not only to the Parties to the conflict (IHL) or to the territorial State (IHRL, ICL) but also, in one form or another, to third States. It is for the international community as a whole to ensure that IHL, IHRL and ICL are respected.

There are no specific accountability mechanisms under IHL. *The International Fact-Finding Commission* could be activated and protecting powers could be designated but these institutions have been rarely, if ever, put in use in the recent decades. It is thus largely left to the ICRC, in its role of a substitute to protecting powers as well as in its autonomous role, to take steps, albeit confidential ones, to ensure respect for IHL rules. Under IHRL, conversely, various political as well as quasi-judicial and, even, judicial bodies exist that monitor the compliance by States with their obligations stemming from IHRL and/or consider individual or inter-State complaints alleging violations of IHRL. Such bodies include the Human Rights Council (HRC), the UN Human Rights Committees, or the ECtHR. Most of these bodies have been already actively seized with the situation of Ukraine and some have even considered, albeit so far with limited outcomes, the forcible transfer and/or deportation of Ukrainian children. Finally, under ICL, both national courts in Ukraine and in other countries and the International Criminal Court (ICC) have started investigating allegations of war crimes and/or crimes against humanity, including allegations related to the forcible transfer and/or deportation of Ukrainian children.

In light of these conclusions, the Mission formulated several recommendations, addressed to the Russian Federation, to Ukraine and to other States and international organizations.

II. INTRODUCTION AND MANDATE

On 30 March 2023, the delegations of 45 OSCE participating States (Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, the United Kingdom, and the United States of America), after the consultation with Ukraine, invoked the Moscow Mechanism under paragraph 8 of the Moscow Document. They requested that ODIHR enquire with Ukraine whether it would invite a mission of experts to “*address the Deportation of Children amidst Human Rights Violations and Humanitarian Impacts of Russia’s war of aggression against Ukraine*”. Following on this inquiry, Ukraine established, on 4 April 2023, a mission composed of three experts selected from the list of experts available under the Moscow Mechanism. The appointed experts were Prof. Veronika Bílková (Czech Republic), Dr. Cecilie Hellestveit (Norway) and Dr. Elīna Šteinerte (Latvia).

The mandate of the Mission was to “*to build upon previous findings and establish the facts and circumstances surrounding possible contraventions of relevant OSCE commitments, violations and abuses of human rights, and violations of international humanitarian law and international human rights law, as well as possible cases of war crimes and crimes against humanity, associated with or resulting from the forcible transfer of children within parts of Ukraine’s territory temporarily controlled or occupied by Russia and/or their deportation to the Russian Federation; and to collect, consolidate, and analyze this information with a view to offer recommendations, as well as provide the information to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction*”.

By virtue of paragraph 7 of the Moscow Document, the Mission of experts had three weeks to complete the mandate. It therefore delivered its report on 25 April 2023. During the drafting of the report, the Mission was supported administratively and logistically by ODIHR. The experts wish to underline that, in line with the rules of the Moscow Mechanism, ODIHR did not in any way interfere with the substantive work of the Mission, which operated in a fully independent, neutral, and impartial way.

The Mission built on the reports produced by the previous two Missions of experts established under the Moscow Mechanism in March and May 2022.¹ These reports provide a comprehensive overview of possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law, as well as possible cases of war crimes and crimes against humanity, that occurred during the first four months of the full-fledged armed conflict between the Russian Federation and Ukraine (24 February 2022 – 25 June 2023). While the First Report only addressed the deportations of civilians in general, not focusing specifically on children (Section IV.E.5.F and Section V.D.8), the Second Report already noted that more than 210,000 children, both accompanied and unaccompanied, might have been relocated by Russia during the conflict according to the Ukrainian sources, though this figure and the whereabouts of these children could not be verified (Section IV.A.5.F).

The Report of the UN Independent International Commission of Inquiry on Ukraine (IICIU),² published on 15 March 2023, contains an even more detailed section of forced transfers and deportations of children (section IV.D). The Commission found evidence suggesting that a large number of children had been deported from Ukraine to the Russian Federation and that legal and policy measures had been taken by Russia to grant Russian citizenship to some of these children and to facilitate their placement in foster families. The Commission concluded that *“the situations /.../ concerning the transfer and deportation of children, within Ukraine and to the Russian Federation respectively, violate international humanitarian law, and amount to a war crime”*.³ On 28 March 2023, the UN Human Rights Council extended the mandate of the Commission for a further period of one year,⁴ emphasising *inter alia* *“the importance of investigating and documenting violations and abuses of the rights of the child and violations of international humanitarian law, including forcible transfers and deportation, by relevant mechanisms, including the Commission of Inquiry”*.⁵

On 17 March 2023, the International Criminal Court (ICC) announced that it had issued warrants of arrest for the president of the Russian Federation, Mr. Vladimir V. Putin, and the Commissioner for Children Rights under the President of the Russian Federation, Ms. Maria A. Lvova-Belova.⁶ Both are allegedly responsible for two war crimes, namely the unlawful deportation of population (children) under Articles 8(2)(a)(vii) of the Rome Statute of the ICC and the unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation under Article 8(2)(b)(viii) of the Statute. At the time of the submission of this report, no further details on the arrest warrant were available and no further formal steps seem to have been taken by the ICC in the investigation of the situation in Ukraine.

¹ Wolfgang Benedek, Veronika Bilková, Marco Sassòli, *Report on Violations of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022*, OSCE, Vienna, 13 April 2022 (OSCE Moscow Mechanism Report I); and Veronika Bilková, Laura Guercio, Vasilka Sancin, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine (1 April – 25 June 2022)*, OSCE, Vienna, 14 July 2022 (OSCE Moscow Mechanism Report II).

² UN Doc. A/HRC/52/62, *Report of the Independent International Commission of Inquiry on Ukraine*, 15 March 2023 (IICIU Report).

³ *Ibidem*, para 102.

⁴ UN Doc. A/HRC/51/L.41/Rev.1, *Situation of human rights in Ukraine stemming from the Russian aggression*, 29 March 2023, para 18.

⁵ *Ibidem*, para 17.

⁶ Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, *ICC Press Release*, 17 March 2023.

III. SCOPE OF THE MANDATE AND METHODOLOGY

A. SCOPE OF THE MANDATE

The Mission was mandated to examine “*the forcible transfer of children within parts of Ukraine’s territory temporarily controlled or occupied by Russia and/or their deportation to the Russian Federation*”. The phenomenon under consideration determined the material, personal, territorial, and temporal scope of the mandate.

Ratione materiae, the Mission focused on instances of non-voluntary displacement (forcible transfer and/or deportation) of children from areas in which they are lawfully present to other areas either within the territory of the same State or across the borders to the territory of another State. The displacement is considered as non-voluntary when: a) the persons concerned, or their legal guardians, do not consent to it or when the original consent is subsequently withdrawn, or b) when the displacement takes place without grounds permitted under international law. Non-voluntary displacement always involves an element of coercion, but this element does not necessarily imply the use of physical or other force. Rather, the emphasis is placed on “*the absence of genuine choice /.../ in /.../ displacement*”.⁷ It is irrelevant whether the displacement is meant to be permanent or temporary in nature.

Ratione personae, the Mission was tasked to concentrate on forcible transfer and/or deportation of children. In line with the definition contained in the UN Convention on the Rights of the Child (CRC), a child is understood to mean “*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*” (Article 1). The same age limit is enshrined in the Family Code of Ukraine (Article 6).⁸ The Mission’s primary focus lies on unaccompanied children and on orphans. The categories are defined here in accordance with the definitions proposed in the 2004 *Inter-agency Guiding Principles on Unaccompanied and Separated Children*.⁹ The term “unaccompanied children” includes “*children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so*”.¹⁰ The term “orphans” stands for “*children, both of whose parents are known to be dead*”.¹¹ The focus on these two categories of children is motivated by their special vulnerability and should in no way be interpreted as suggesting that other categories of children, mainly those accompanied by their parent(s) or other relative(s), have not been subject to forcible transfer and/or deportation within the current conflict in Ukraine as well.

Ratione territoriae, the Mission dealt with forcible transfer of children which originated in the territory of Ukraine, within the internationally recognized borders of this country. The Mission took account of the UN General Assembly Resolution 68/262 of 27 March 2014,¹² which underscored that “*the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol*”¹³ and called upon States, international organizations and specialized agencies not to recognize any alteration of

⁷ ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, Judgement, 24 March 2016, para 489.

⁸ “*Семейный кодекс Российской Федерации*” от 29 декабря 1995 г. № 223-ФЗ.

⁹ *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, ICRC, 2004. The document was produced by the Inter-agency Working Group on Unaccompanied and Separated Children, set up in 1995, which brought together representatives of the International Committee of the Red Cross (ICRC), the International Rescue Committee (IRC), Save the Children UK (SCUK), the United Nations Children’s Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR) and World Vision International (WVI).

¹⁰ *Ibidem*, p. 13.

¹¹ *Ibidem*, p. 13.

¹² UN Doc. A/RES/68/262, *Territorial integrity of Ukraine*, 1 April 2014.

¹³ *Ibidem*, para 5.

the status of those regions.¹⁴ It also took account of the UN General Assembly Resolution ES-11/4 of 12 October 2022,¹⁵ which embraced the same approach with respect to the Donetsk, Luhansk, Kherson or Zaporizhzhia regions of Ukraine. The Mission notes that the mandate required it to look both into the forcible transfer of children within parts of Ukraine's territory temporarily controlled or occupied by Russia and into the deportation of children to the Russian Federation. In line with its mandate, the Mission thus considered events that, while originating in the territory of Ukraine, had partly taken place in the territory of the Russian Federation.

Ratione temporis, the Mission included all instances of forcible transfer and/or deportation of children within Ukraine or to the Russian Federation that it was able to identify. It was clearly established that these instances had not been limited to the period following the open act of aggression by the Russian Federation against Ukraine on 24 February 2022 but that some of them had occurred prior to this date, in 2014-2022. The report was finalised by 23 April 2023 and any events taking place after this date thus could not be reflected in the report.

B. METHODOLOGY

When drafting this report, the Mission used several different methods of fact-finding, and it relied on various sources.

First, the Mission collected numerous written materials. These materials encompassed legal instruments adopted at the international level, legal acts enacted within individual States, especially Ukraine and the Russian Federation, as well as resolutions adopted by international bodies and statements issued by States. The Mission also took note of reports issued by international and regional organizations, non-governmental organizations (NGOs), expert bodies and scholars; media reports; and scholarly texts. The reports included, without being limited to, the OSCE Moscow Mechanism Reports I and II, the report of the IICIU, the reports published regularly by the UN Human Rights Monitoring Mission in Ukraine (UNHRMMU)¹⁶ and the report issued by the Council of Europe Commissioner for Human Rights.¹⁷ The Mission also received valuable submissions through a special email channel established for these purposes by ODIHR.

Secondly, the Mission conducted over 25 online or in-person interviews, primarily with representatives of international organizations and of NGOs and with human rights defenders, representatives of the legal profession, journalists, academics, several victims and witnesses.

Thirdly, on 14-20 April 2023, the three experts undertook a visit to Kyiv. During this visit, the Mission carried out further in-person interviews with representatives of Ukrainian authorities, including the Commissioner of the President of Ukraine for Children's Rights, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Ministry of Social Policy of Ukraine, the National Council of Television and Radio Broadcasting of Ukraine, the Office of the Prosecutor General of Ukraine, the Office of the Representative of the President of Ukraine in the Autonomous Republic of Crimea, and the Ukrainian Parliament Commissioner for Human Rights. The Mission also held numerous meetings with representatives of international community and with representatives of civil society, including human rights defenders, lawyers and journalists. The experts would like to thank the Ukrainian authorities and ODIHR for the assistance in the organization of the visit.

¹⁴ *Ibidem*, para 6.

¹⁵ UN Doc. A/RES/ES-11/4, *Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations*, 13 October 2022.

¹⁶ OHCHR, *Report on the Human Rights Situation in Ukraine (1 February 2022-31 July 2023)*, 27 September 2023 (OHCHR Report I); OHCHR, *Report on the Human Rights Situation in Ukraine (1 August 2022-31 January 2023)*, 24 March 2023 (OHCHR Report II).

¹⁷ Council of Europe Commissioner for Human Rights, *Urgent action needed to reunite Ukrainian children transferred to Russia and Russian-occupied territories with their families*, 6 March 2023 (CoE Report).

In its fact-finding activities, the Mission was guided by the commitment to safeguarding the safety and well-being of the interlocutors and above all, it adhered to the “do no harm” principle. The Mission did not interview persons unless they explicitly agreed to be interviewed and it refrained, upon an extensive consideration, from interviewing children under the age of 14. All interviews took place in safe places or over secure online platforms and the notes from these interviews were not made accessible to any external actors. The notes will be destroyed after the completion of the mandate.

The Mission applied the “reasonable grounds to believe” standard of proof in its assessment of the factual and legal aspects of the phenomenon under consideration.¹⁸ This standard was found to be met when at least two credible primary sources, independently of each other, confirmed the veracity of certain facts or pieces of information. The Mission actively sought to verify all the data used in this report. When this was not possible or when different sources provided different data, this is indicated in the report. The references to the relevant sources of information are also provided, with the limits stated above, in the report.

The “reasonable grounds to believe” standard is less strict than the criminal standard of proof “beyond reasonable doubt”. The latter standard is met when the inference drawn is the only reasonable inference that can be drawn from the evidence presented.¹⁹ However, especially noting the allocated time frame and the instruments and means at the disposal of the Mission, it was impossible to meet this higher standard. The report therefore refrains from making any allegations related to criminal responsibility of concrete individuals. This is also entirely appropriate since the questions related to such responsibility are considered in parallel proceedings by the ICC and by regional and national courts to which this report, in this particular area, defers.

Two days after its establishment, the Mission sent a letter to the Permanent Representative of Ukraine to International Organizations in Vienna, Mr. Yevhenii Tsymbaliuk, and to the Permanent Representative of the Russian Federation to the OSCE in Vienna, Mr. Alexander Lukashevich, inviting the two countries which are the most directly concerned by the mandate of the Mission to cooperate and to share all the relevant information at the disposal of their respective national authorities. The letters also contained a concrete list of institutions that the Mission sought to hold direct meetings with. The Mission regrets to note that whereas the former letter brought about an active cooperation from the side of various Ukrainian authorities, the latter letter remained unanswered. Consequently, when ascertaining the position of the Russian Federation on the issues considered under the mandate, the Mission had to rely on publicly available sources, especially the statements by the representatives of the Russian Federation, their posts in social media (Telegram) and Russian media. The two letters, together with the reply from the Permanent Representative of Ukraine to International Organizations in Vienna, are attached to this report (see Annex I and Annex II).

When discharging its mandate, the Mission was faced with various challenges. The most serious among them was the limited time frame of the mandate and limited resources placed at the disposal of the Mission. These two factors were compounded by the large amount of disinformation and fake news that exist in the public space. To overcome this latter challenge, the Mission adopted a very careful approach to verifying the available information and it adhered strictly to the “reasonable grounds to believe” standard of evidence indicated above.

¹⁸ This standard is used extensively in international instruments for various purposes, see for instance Article 58 of the ICC Statute or Article 12 of the UN CAT.

¹⁹ See ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeals Chamber, 22 March 2006, para 219. See also Article 66(3) of the ICC Statute.

C. APPLICABLE INTERNATIONAL LEGAL STANDARDS

The Mission was tasked to establish the facts and circumstances surrounding “*possible contraventions of relevant OSCE commitments, violations and abuses of human rights, and violations of international humanitarian law and international human rights law, as well as possible cases of war crimes and crimes against humanity*” that are associated with or resulting from the forcible transfer of children within parts of Ukraine’s territory temporarily controlled or occupied by Russia and/or their deportation to the Russian Federation. The applicable legal standards thus encompass: a) relevant OCE commitments, b) international humanitarian law (IHL), c) international human rights law (IHRL), and d) regulation of war crimes and crimes against humanity under international criminal law (ICL).

These four sets of standards are not mutually separated but, rather, show important overlaps and interconnections. The same act, for instance a forcible transfer of a child, can at the same time constitute a violation of all these standards, giving rise both to the responsibility of the State to which the act is attributable, and to individual criminal responsibility of concrete individuals who ordered or carried out this act. As indicated above, this report does not seek to identify such individuals and its analysis related to the last set of standards is thus limited to establishing acts which are likely to constitute war crimes or crimes against humanity on the condition the responsible individuals can be found through criminal proceedings.

1. OSCE COMMITMENTS

The OSCE and, previously, the CSCE participating States have, under the human dimension, repeatedly confirmed the importance of the protection of children and have restated the main legal standard of this protection stemming from IHL, IHRL and ICL.²⁰ Ukraine and the Russian Federation have both committed themselves to these standards.

In the 1990 Copenhagen Document, participant States decided to “*to accord particular attention to the recognition of the rights of the child, his civil rights and his individual freedoms, his economic, social and cultural rights, and his right to special protection against all forms of violence and exploitation*”.²¹ In the 1999 Istanbul Summit Declaration, they committed themselves to “*actively promote children’s rights and interests, especially in conflict and post-conflict situations*”.²² Over the years, the participating States have also reconfirmed “*the right to the protection of private and family life*”²³ and have also recognized that “*everyone has the right to nationality and no one should be deprived of his/her nationality arbitrarily*”.²⁴

2. INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) is a branch of public international law which applies specifically in the context of armed conflicts, seeking to limit the humanitarian and other effects of such conflicts. IHL applies both in international and non-international armed conflicts and it binds all (State or non-state) parties to such conflicts. IHL consists of two main branches: the Geneva Law and the Hague Law.

The **Geneva Law** protects victims of war, i.e., those who are not, or no longer, taking part in hostilities and find themselves in the hand of the other party to the conflict (wounded, sick, shipwrecked, prisoners of war, alien civilians in the territory of another party to the conflict, civilians in the occupied territories, etc.). The Geneva Law is regulated by four Geneva

²⁰ See *OSCE Human Dimension Commitments, Vol. I Thematic Compilation, 3rd Edition, Vol. II. Chronological Compilation, Vol. III*, OSCE-ODIHR, Warsaw, 2012.

²¹ CSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 1990, para 13.

²² OSCE, *Istanbul Document*, 1999, para 28.

²³ CSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE*, 1991, para 24.

²⁴ CSCE, *Helsinki Document: The Challenges of Change*, 1992, para 55; OSCE, *Istanbul Charter for European Security*, 1999, para 19.

Conventions (1949) and three Protocols Additional to these Conventions (1977, 2005). The Russian Federation and Ukraine are State parties to all these instruments. The most fundamental rules of the Geneva Law are considered part of customary international law.²⁵

The **Hague Law** restricts means and methods of warfare, i.e., it indicates which military tactics and which weapons may be used by the parties to the conflict on the battlefield and which persons and objects may be lawfully targeted. The Hague Law is regulated by the Hague Conventions (1899, 1907) and by many other, more specific treaties. The Russian Federation and Ukraine are State parties to some of these treaties. Again, some rules of the Hague Law are considered part of customary international law.

In IHL, the 1949 *Geneva Convention IV relative to the Protection of Civilian Persons in Time of War* (GC) and the 1977 *Additional Protocol I to the GC, Relating to the Protection of Victims of International Armed Conflicts* (API), are applicable to the protection of children in armed conflicts. These instruments also contain rules related to the forcible transfer and/or deportation of civilians. The most important provisions are: Article 24 of the GCIV (Measures relating to child welfare – General protection of populations against certain consequences of war), Article 49 of the GCIV (Deportations, transfers, evacuations – Occupied territories), Article 50 of the GCIV (children – Occupied territories), Article 77 of the API (Protection of children – Treatment of persons in the power of a Party to the conflict), and Article 78 of the API (Evacuation of children – Treatment of persons in the power of a Party to the conflict). These rules are also considered customary in nature and neither the Russian Federation nor Ukraine have expressed any reservations with respect to them. A detailed analysis of these provisions as well as the consideration of their relevance for the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation will be provided in Section V of this report.

3. INTERNATIONAL HUMAN RIGHTS LAW

International human rights law (IHRL) encompasses a set of rules, through which States have committed themselves to respect, protect and fulfil human rights of all individuals on their territory or under their jurisdiction. The main sources of IHRL are universal and regional treaties, though the most fundamental rules of IHRL make part of customary international law. IHRL applies both in times of peace and in times of armed conflict, where the guarantees granted by non-absolute human rights may be temporary suspended (derogation).

Children, as any individuals, are protected by general human rights instruments, especially the *International Covenant on Civil and Political Rights* (1966, ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (1966, ICESCR) and the *European Convention on Human Rights* (1950, ECHR). The two covenants moreover both contain a specific provision on the protection of children – Article 24 of the ICCPR and Article 10(3) of the ICESCR. Ukraine and the Russian Federation are State parties to the two Covenants. Ukraine is also a State party to the ECHR. The Russian Federation ceased to be a State party to the ECHR on 16 September 2022.²⁶

Furthermore, children's rights are protected by the UN Convention on Rights of the Child (CRC, 1989), which is binding upon both Ukraine and the Russian Federation. The two countries have also ratified the two substantive Optional Protocols to the CRC, on the involvement of children in armed conflict (2000) and on the sale of children, child prostitution and child pornography (2000). Ukraine, in addition, has ratified the optional protocol to the CRC on a communication procedure (2014).

²⁵ Jean-Marie Henckaerts, Louise Doswald-Beck (Eds.), *Customary International Humanitarian Law, Volume I: Rules, Volume II: Practice*, Cambridge University Press, Cambridge, 2005.

²⁶ *Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe*, 23 March 2022, para 7.

The other legal instruments of relevance for the mandate encompass: the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, CAT), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987, ECAT), the International Convention for the Protection of All Persons from Enforced Disappearance (2010, ICPPED) and the Hague Convention on the Civil Aspects of International Child Abduction (1980). Ukraine and the Russian Federation are State parties to all these instruments.

4. INTERNATIONAL CRIMINAL LAW

Unlike the OSCE commitments, IHL and IHRL, which regulate the acts of States or other collective entities, international criminal law (ICL) deals with the acts of individuals. More specifically, it imposes on all individuals the obligation to refrain from committing any of the four crimes under international law and establishes individual criminal responsibility for the commission of such crimes. These crimes are: (1) the crime of aggression, (2) the crime of genocide, (3) crimes against humanity, and (4) war crimes. Noting that the mandate of the Mission refers specifically to crimes against humanity and war crimes, this report therefore limits its attention to these two crimes.

The definitions of crimes against humanity and war crimes are contained in the Rome Statute of the ICC (1998, as amended in 2010 and 2017) and reflect the rules of customary international law. Neither the Russian Federation, nor Ukraine are State parties to the Rome Statute. Yet, on 9 April 2014 and 8 September 2015, respectively, Ukraine, by means of two declarations made under Article 12(3) of the Rome Statute, accepted the jurisdiction of the ICC with respect to crimes against humanity and war crimes, committed on its territory from 21 November 2013 to 22 February 2014 and from 20 February 2014 onwards, respectively.²⁷ It is important to highlight that crimes against humanity and war crimes are not mutually exclusive categories and a single act can therefore meet the qualification of both of them.

Crimes against humanity are violent acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.²⁸ One example of such violent acts consists in “deportation or forcible transfer of population”,²⁹ defined as “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”.³⁰ While children are not specifically mentioned, it is obvious that they fall under the term “persons” mentioned in the definition. All States have, under customary international law, the obligation to prevent and punish crimes against humanity.³¹ Neither Ukraine nor the Russian Federation have included crimes against humanity as a specific category of crimes into their respective criminal codes.

War crimes are violations of the most fundamental rules of IHL. These are grave breaches of the Geneva Law, as well as other serious violations of the laws and customs of war, especially qualified violations of the Hague Law. Children-specific is the war crime of “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities”,³² which however has no direct implications for the present Mission. Therefore, the report primarily examines two war crimes – the crime of “unlawful

²⁷ See the Declaration by Ukraine lodged under Article 12(3) of the ICC Statute, 8 September 2015, <https://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf>.

²⁸ Article 7 of the Rome Statute of the ICC.

²⁹ Article 7(1)(d) of the Rome Statute of the ICC.

³⁰ Article 7(2)(d) of the Rome Statute of the ICC.

³¹ *Draft articles on Prevention and Punishment of Crimes Against Humanity*, in UN Doc. A/74/10, *Report of the International Law Commission on the work of its Seventy-first session*, Official Records of the General Assembly, Seventy-first session, Supplement No. 10, August 2019, pp. 11-21.

³² Article 8(2)(c)(xxvi) of the Rome Statute of the ICC.

deportation or transfer or unlawful confinement”,³³ and the crime consisting in “*the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory*”.³⁴

5. OTHER INTERNATIONAL LEGAL STANDARDS

In addition to the legal standards explicitly indicated in the mandate, certain other international legal standards are of relevance for this report. This is mainly the case of the resolutions by the UN Security Council on children and armed conflicts and the reports issued by the Special Representatives of the UN Secretary-General for Children and Armed Conflicts.

While the discussions concerning the protection of children during armed conflict have been part of the UN discourse for decades, the UN Security Council started to discuss the protection of children in armed conflicts in the late 1990s.³⁵ Since then, it has adopted several resolutions on this issue, which however mainly deal with the recruitment of children into armed forces (child soldiers). Yet, in 2015, the Security Council adopted **Resolution 2225**, in which it expressed its grave concern over “*the abduction of children in situations of armed conflict*”,³⁶ recognized that abductions occur in a variety of settings and further recognized that “*abduction often precedes or follows other abuses and violations of applicable international law against children*”.³⁷ The resolution primarily responded to the abductions of children by non-state actors, yet it is also applicable to non-voluntary displacement of children by States.

In 1996, a comprehensive *study* on the *Impact of Armed Conflict on Children* was drafted by Ms. Graça Machel, an expert appointed by the UN Secretary General pursuant to the UN General Assembly Resolution 48/157 of 20 December 1993.³⁸ The study contains a special section dealing with “children in flight”, i.e., those who have become refugees or internally displaced persons due to causes related to an armed conflict. The study stresses the vulnerability of such children, especially of those who are left unaccompanied. It lists the conditions under which children may be lawfully evacuated during armed conflict and recalls that all decisions concerning a child that are taken with respect to his/her evacuation “*must be based on the best interests of the child and take her or his opinions into account*”.³⁹ Finally, the study provides an overview of legal standard applicable in times of armed conflict to children, including those that protect them against various forms of mistreatment.

Following the publication of this study, the UN General Assembly established, in 1997, the mandate of the Special Representative of the Secretary-General for Children⁴⁰ requesting it to “*assess progress achieved, steps taken and difficulties encountered in strengthening the protection of children in situations of armed conflict*”⁴¹ and to “*foster international cooperation to ensure respect for children's rights in these situations*”.⁴² It also asked the Special Representative to present reports on its work on an annual basis. In one of these reports, issued in 2004, the Special Representative identifies six most serious violations against children committed in the context of armed conflicts, noting abduction of children as one of them.⁴³ This violation especially highlighted also in the report issued in 2015,⁴⁴ which was at the origin of

³³ Article 8(2)(b)(vii) of the Rome Statute of the ICC.

³⁴ Article 8(2)(c)(viii) of the Rome Statute of the ICC.

³⁵ See, for instance, UN Doc. S/RES/1261(1999), *Children in Armed Conflicts*, 30 August 1999.

³⁶ UN Doc. S/RES/2225 (2015), *Children and Armed Conflict*, 18 June 2015, para 12 of the preamble.

³⁷ *Ibidem*.

³⁸ UN Doc. A/51/306, *Impact of armed conflict on children*, 26 August 1996.

³⁹ *Ibidem*, para 76.

⁴⁰ UN Doc. A/RES/51/77, *The rights of the child*, 20 February 1997.

⁴¹ *Ibidem*, para 36(a).

⁴² *Ibidem*, para 36(d).

⁴³ UN Doc. A/59/695–S/2005/72, *Children and armed conflict*, 9 February 2005, para 68.

⁴⁴ UN Doc. A/69/926–S/2015/409, *Children and armed conflict*, 5 June 2015.

the UN Security Council Resolution 2225 (2015) mentioned above. Again, while the prime focus was on abduction by non-state actors, the mandate is not limited to this context. So far, Ukraine does not feature on the children in armed conflict agenda of the Special Representative. Yet, it is listed among other situations deserving attention.⁴⁵

IV. OVERVIEW OF THE FACTUAL SITUATION

Ukraine and the Russian Federation concur in that a large number of Ukrainian children have been, over the past months or years, relocated from their homes either to the Ukrainian regions under the temporary occupation of the Russian Federation or to the territory of the Russian Federation. This fact is therefore well established and uncontested. The two countries however differ in the exact number of such children as well as in the information they provide about the grounds for their relocation, their status during the relocation, their treatment and the possibility of their return to Ukraine.

A. UNCERTAINTY ABOUT THE NUMBER OF UKRAINIAN CHILDREN SUBJECT TO FORCIBLE TRANSFER AND/OR DEPORTATION

The information about the number of Ukrainian children who have been subject to forcible transfer and/or deportation varies considerably from one source to another. This is to a large extent due to the fact that these sources do not always concentrate on the same category(ies) of children or indeed mix the various categories. The lack of details about how the specific numbers have been reached and the extent to which these have been verified and how, as well as the absence and/or inaccessibility of lists of children included in these numbers also contribute to the uncertainty, as does the generally challenging context of armed conflict which often precludes precise data collection.

The Russian Federation indicated, in an interview to TASS by a representative of an unspecified law enforcement agency, that from February 2022 to February 2023, over 5.3 million persons, including 738,000 children, arrived in the territory of the Russian Federation from the territory of Ukraine.⁴⁶ No further details are provided and it is not clear whether the figure only includes children who crossed the internationally recognized borders between Ukraine or Russia or whether it also includes children who moved, or were transferred, to the temporarily occupied regions of Ukraine – that the Russian Federation nowadays considers part of its own territory – as well. It is however clear that the figure is not limited to children who were transferred without parents or other legal guardians.

The Commissioner for Human Rights of the Ukrainian Verkhovna Rada Dmytro Mr. Lubinets considers the figure provided by the Russian Federation as exaggerated, suggesting instead that the number of children could amount to some 150,000.⁴⁷ Mr. Lubinets refers to children “*illegally exported*” from the territory of Ukraine. In the meeting with the experts, Mr. Lubinets confirmed that this number relates to all children who would have been displaced to the territory of the Russian Federation, in the internationally recognized borders of this country, and not solely to children displaced without parents or other legal guardians. The Commissioner of the President of Ukraine for Children’s Rights, Ms. Daria Gerasymchuk, estimates that “*we may be talking about several hundred thousand kidnapped children, i.e., 200-300 thousands*”.⁴⁸

⁴⁵ See Office of the Special Representative of the Secretary-General for Children, Where we work, available at: <https://childrenandarmedconflict.un.org/where-we-work/>

⁴⁶ За год с Украины и из Донбасса на территорию РФ прибыло 5,3 млн беженцев, ТАСС, 20 февраля 2023.

⁴⁷ Кількість незаконно вивезених у росію українських дітей може сягати 150 тисяч, Укрінформ, 17. 2. 2023

⁴⁸ У Офісі Президента заявили, що у росії створили понад 70 таборів для "перевиховання" депортованих дітей з України, Рубрика, 23 квітня 2023.

The National Information Bureau (NIB) of Ukraine for Prisoners of War, Forcibly Deported and Missing Persons, established by the Cabinet of Ministers of Ukraine in March 2022,⁴⁹ provides and regularly updates the figure for Ukrainian children who have been “deported” (депортовані).⁵⁰ This figure shall correspond to “officially verified children on the territory of the Russian Federation”.⁵¹ During the visit to Kyiv, the Ukrainian authorities explained to the experts that the verification takes place through repeated checks of the data related to missing children and their whereabouts by several institutions (the NIB, the office of the Prosecutor General, the National Policy, etc.). It is however not completely clear whether the figure includes those children who have been displaced to the Russian Federation with their parents or other legal guardians, or whether it is limited to orphans and unaccompanied children. By 22 April 2023, the number of deported children amounted to 19,393 deported children. The figure provided (at the relevant time) by the NIB has been quoted in the ІСІU report,⁵² in statements by international organizations and by States⁵³ and in the media. The NIB also indicates the number of “returned” children (повернуті) – the figure stood at 361 by 23 April 2023. The Mission was not in a position to verify these figures.

B. CATEGORIES OF UKRAINIAN CHILDREN SUBJECT TO FORCIBLE TRANSFER AND/OR DEPORTATION

The Mission has established that within the personal scope of its mandate as indicated above, there are two main categories of children.

The first one encompasses *orphans*, i.e., children who no longer have parents, either because their parents are dead, or because they are unknown, or because they have legally abandoned the child. Children may become orphans for reasons unrelated to the current conflict or because of the death of their parents in the course of this conflict. Orphans often find themselves, on a temporary or permanent basis, in institutions. They may also be placed, upon the decision of the competent authority, in child custody and guardianship (опіка та піклування над дітьми),⁵⁴ in foster families (приймна сім'я)⁵⁵ or in foster homes (дитячий будинок сімейного типу).⁵⁶ If orphans get adopted (усиновлення), they no longer count as orphans, as there is a new legal link established between them and their adoptive parents.⁵⁷

The second category consists of *unaccompanied children*, i.e., children who have parent(s) but have been separated from them for various reasons that may be, but do not need to be, related to the current conflict. The category is internally very diverse. It includes children placed, for up to 3, maximum 6 months, under “patronage”⁵⁸ (патронат над дітьми) in situations where their families struggle with difficult life circumstances, children left by their parents with other

⁴⁹ Cabinet of Ministers of Ukraine, Disposal No. 228-R, *On the definition of a state-owned enterprise that performs the functions of the National Information Bureau*, 17 March 2022 (Кабінет Міністрів України, Розпорядження від 17 березня 2022 р. № 228-р, Про визначення державного підприємства, яке виконує функції Національного інформаційного бюро).

⁵⁰ Deported, *Children of War*, available at: <https://childrenofwar.gov.ua/en/> By the Resolution of the Cabinet of Ministers of Ukraine on “Some issues of protection of persons, including children, deported or forcibly displaced in connection with the armed aggression of the Russian Federation against Ukraine”, adopted on 18 April 2023, the database run by the NIB should become the only official database of deported persons and it should contain information both on adult persons and on children.

⁵¹ *Ibidem*.

⁵² ІСІU Report, *op. cit.*, para 95.

⁵³ We are strongest when we act together, *European Parliament (President)*, 23 March 2023; Von der Leyen pledges to help return Ukrainian children, *EU Observer*, 24 March 2023.

⁵⁴ See Section 19 of the Family Code of Ukraine.

⁵⁵ See Section 20¹ of the Family Code of Ukraine.

⁵⁶ See Section 20² of the Family Code of Ukraine.

⁵⁷ See Section 18 of the Family Code of Ukraine.

⁵⁸ See Section 20 of the Family Code of Ukraine.

family members (for instance when parents work abroad or when a father is recruited into the army and the mother is absent), and children forcibly separated from their parents in the course of the current conflict (for example children whose parents have not passed through filtration or children who have been sent by their parents to the so-called recreation camps but whose returned has been delayed).

According to the data available for 2020, the total size of the child population of Ukraine amounted to 7,579,700 children. Of those, there were 23,000 orphaned children and 47,229 children deprived of parental care. There were 6,000 minors available for adoption.⁵⁹ The official estimates moreover indicated that by 24 February 2022, there were more than 105,000 children living in Ukraine in some 700 orphanages, boarding schools and other institutions.⁶⁰ More than a half of the children population of Ukraine has been displaced within Ukraine or across the borders since the start of the full-scale invasion by the Russian Federation.⁶¹ As indicated above, the number of those displaced to the temporarily occupied territories or to the territory of the Russian Federation remains disputed but both the Russian Federation and Ukraine indicate figures amounting to hundreds of thousands of children, including however both children with and without their parents or other legal guardians.

C. MOST COMMONLY ALLEGED GROUNDS FOR THE TRANSFER OF CHILDREN FROM UKRAINE

The Mission has established that there are three most commonly indicated grounds for the transfer of children from the territory of Ukraine to the territory of temporarily occupied territory or of the Russian Federation. These are the evacuation for security reasons, the transfer for the purpose of adoption or foster care, and the temporary stay in the so-called recreation camps. Quite often, several grounds are put forward at the same time and/or the purpose of the transfer may change over time (e.g., children are sent to the camps but then are not returned back on account of the security situation in their home region). The lawfulness of the alleged grounds for transfer is assessed in the next sections of this report. This section focuses on the factual aspects of the transfer of children justified by the indicated grounds.

1. EVACUATION FOR SECURITY REASONS

The evacuation for security reasons was suggested as the legal ground for the large-scale transfers of civilian population, including children, which took place from the territories of the so-called Donetsk and Luhansk People's Republics (DPR, LPR) in the week preceding the Russian Federation's attack on Ukraine of 24 February 2022. As reported by the Russian sources, one of the very first installations to be fully evacuated from the territory of the so-called DPR to the territory of the Russian Federation (Rostov na Donu) was the Donetsk Boarding School No. 1 hosting some 225 orphans.⁶² By 20 February 2022, the regional authorities in the Rostov region reported that more than 2,904 children from the territory of the so-called DPR and LPR – most likely both with and without their parents or other legal guardians – had arrived to the Rostov region, amounting to 40% of the total number of evacuated civilian population.⁶³ On the same day, the Ministry of Emergency Situations of the Russian Federation reported that around 53,000 evacuees from the so-called DPR and LPR had arrived to Russian territory.⁶⁴ Were the percentage of children indicated for the Rostov region also applicable here, the total number of Ukrainian children moved to the Russian Federation would reach some 21,000. At the Arria-formula meeting convened by Russia in New York on

⁵⁹ Анна Запотоцька, Скільки в Україні сиріт: статистика, *24 Канал*, 10 червня 2020.

⁶⁰ Emptying Ukraine's Orphanages, *Reuters*, 9 September 2022.

⁶¹ More than half of Ukraine's children displaced after one month of war, *UNICEF*, 24 March 2022

⁶² Евакуацію из ДНР начали с детей-сирот из школы-интерната в Донецке, *Интерфакс*, 18 февраля 2022.

⁶³ В Ростовской области подсчитали количество прибывших из Донбасса детей, *Lenta.ru*, 20 февраля 2022.

⁶⁴ Названо число эвакуированных в Россию жителей Донбасса, *Lenta.ru*, 20 февраля 2022.

4 April 2023, the so-called ombudsman of the so-called DPR, Ms. Daria Morozova, specified that prior to 24 February 2022, in addition to children displaced with their parents, 71 children from children's homes, more than 760 orphans and children left without parental care and more than 160 pupils of children's social centres had been evacuated from the territory of the so-called DPR.⁶⁵

Since the 24 February 2022, the Russian Federation has repeatedly organized transfers of the civilian population, including children, from the Ukrainian territories where active hostilities were taking place or were expected to take place, to Russia.⁶⁶ The evacuation for security reasons has been provided as the main legal ground for such transfers. Thus, e.g., on 18 June 2022, the Inter-Departmental Coordinating Headquarters of the Russian Federation for Humanitarian Response stated that “over the past 24 hours, without the participation of the Ukrainian side, 29,733 people, including 3,502 children, have been evacuated to the territory of the Russian Federation from dangerous regions of Ukraine and the Donbass republics, and in total since the beginning of the special military operation - 1 936,911 people, of which 307,423 are children”.⁶⁷ From March-May 2022, large-scale transfers of the civilian population, including children, took place from the region of Mariupol,⁶⁸ followed by more limited transfers from the region from August-November 2022.⁶⁹

The need to evacuate civilians, including children, for security reasons has also been indicated as the main reason for the transfers taking place upon the withdrawal of the Russian armed forces and occupation administration from certain temporarily occupied territories. For instance, on 8 October 2022, the so-called deputy head of the Russian occupation administration in the temporarily occupied Kherson region, Mr. Kiril Stremousov indicated that the administration had decided to start the evacuation of families with children to the territory of the occupied Crimea and of Russia (Rostov and Krasnodar regions).⁷⁰ On 21 October 2022, Mr. Stremousov specified that among those transferred to the occupied Crimea were 40 children from an orphanage in Kherson.⁷¹ One of the facilities to be evacuated from the Kherson region, in several steps, was the home for disabled children in Oleshki (Олешківський дитячий будинок-інтернат). Some 80 disabled children from this institution were brought to Crimea (Simferopol) and to Russia (Krasnodar).⁷² Similar transfers have taken place prior to and during the withdrawal of Russian military forces and occupation administration from other Ukrainian regions, such as Zaporizhzhia and Mykolaiv. One of the most recent examples is the evacuation of children from the town of Enerhodar in the Zaporizhzhia region to the temporarily occupied region of Crimea, which started in mid-April 2023.⁷³

Security reasons are also indicated as the most common ground for the transfer from their home areas of children whose parents have been killed in the current conflict, who have lost their

⁶⁵ Омбудсмен считает, что РФ приняла исчерпывающие меры для безопасности эвакуированных детей, *Tass.ru*, 5 апреля 2023.

⁶⁶ Human Rights Watch, “*We Must Provide a Family, Not Rebuild Orphanages*” *The Consequences of Russia’s Invasion of Ukraine for Children in Ukrainian Residential Institutions*, 13 March 2023, available at: <https://www.hrw.org/report/2023/03/13/we-must-provide-family-not-rebuild-orphanages/consequences-russias-invasion> (HRW Report I).

⁶⁷ Заявление Межведомственного координационного штаба Российской Федерации по гуманитарному реагированию, 18 июня 2022, available at: <https://telegra.ph/Zayavlenie-Mezhvedomstvennogo-koordinacionnogo-shtaba-Rossijskoj-Federacii-po-gumanitarnomu-reagirovaniyu-ot-18-iyunya-2022-g-06-18>

⁶⁸ Из Мариуполя за сутки эвакуировали 408 человек, *РИА Новости*, 9 мая 2022.

⁶⁹ Ольга Ульянова, 3 Харківщини на територію РФ незаконно вивезли 179 дітей, *Суспільне*, 28 грудня 2022.

⁷⁰ В Херсонской области решили начать эвакуацию детей с родителями, *Красная Весна*, 8 октября 2022.

⁷¹ Детей-сирот из Дома малютки в Херсоне эвакуировали в Крым - власти, *Интерфакс*, 21 октября 2022.

⁷² Andriy Ermak, *Telegram Post*, 23 October 2022, available at: <https://t.me/ermaka2022/1512>; and a submission by the International Partnership for Human Rights, on file with the authors. By 23 April 2023, most of these children had been either picked up by their parents or transferred back to the Kherson region (to Skadovsk).

⁷³ Occupiers carry out forced “evacuation” of children from Enerhodar, *Mind*, 16 April 2023.

parents in the course of the conflict or whose parents or (legal or other) guardians have been detained during the so-called filtration. Thus, the HRW reports that on 18 March 2022, a volunteer accompanying a group of 17 children aged 2-17 years from a residential healthcare facility in Mariupol was detained at a checkpoint run by the occupation administration of the so-called DPR and separated from the children, whose whereabouts remain uncertain.⁷⁴

2. TRANSFER FOR THE PURPOSE OF ADOPTION OR FOSTER CARE

Children have also been transferred from the territory of Ukraine to the territory of the Russian Federation for the purpose of adoption or foster care. This is especially the case of children from Crimea, which the Russian Federation has considered to be part of its territory since the unlawful annexation of the region in 2014 and where the Russian legislation on family matters has been applied since.⁷⁵ This legislation makes it possible for citizens from any part of the Russian Federation to adopt orphaned children from Crimea, since those children are now considered to have Russian citizenship.

Already in October 2014, the Russian occupation administration in Crimea joined the initiative called “Trains of Hope” (Поезд надежды). According to the information published by the so-called Ministry of Education, Science and Youth of the Republic of Crimea, in the framework of this initiative, *“families who came from other regions of the Russian Federation /.../ get acquainted with orphans and children left without parental care, with the aim of further placing them in their families. It is also planned to work on the creation of video profiles for children of this category for posting videos in the media and on a specialized website to draw attention to Crimean children for the possibility of being placed in families of citizens of the Russian Federation”*.⁷⁶ During the meeting with the Representative of the President of Ukraine in the Autonomous Republic of Crimea, the Mission received the information suggesting that more than 1,000 children might have been thus displaced from Crimea to various parts of the Russian Federation within the “Trains of Hope” initiative.

After 24 February 2022, the Russian Federation started implementing other means to facilitate adoption of and the provision of foster care for children from the so-called DPR and LPR (then recognized as independent States by the Russian Federation). Since these procedures mainly concerned children who had been evacuated to the territory of the Russian Federation in the context described above, they will be discussed in subsection C (the situation of children during the transfer). It is however important to add here that since the unlawful annexation of the four Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporizhzhia in October 2022, orphaned children from those regions have been in the same position as orphaned children from Crimea. Perceived to be Russian citizens, they can be adopted by Russian families from any parts of Russia. And indeed, the webportal [Усыновите.ру](https://usynovite.ru),⁷⁷ which contains a database of children from various regions of the Russian Federation who are available for adoption (усыновление) or foster care (опека – попечительство), also includes data on children from the unlawfully annexed regions of Ukraine.⁷⁸ The Mission has not come across any figures suggesting how many children from the Ukrainian regions other than Crimea might have been transferred to the territory of the Russian Federation for the purposes of adoption or foster care.

⁷⁴ Human Rights Watch, “*We Had No Choice*” “Filtration” and the Crime of Forcibly Transferring Ukrainian Civilians to Russia, 1 September 2022, p. 73, available at: <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians> (HRW Report II).

⁷⁵ See Закон Республики Крым от 1 сентября 2014 г. № 62-ЗРК “Об организации деятельности органов опеки и попечительства в Республике Крым”.

⁷⁶ Крым присоединился к всероссийской акции «Поезд надежды», Министерство образования, науки и молодежи Республики Крым, 16 октября 2014.

⁷⁷ Available at: <https://usynovite.ru/>

⁷⁸ At the time of the submission of this report, only children from Crimea could effectively be found through the database available on the website; the search for children from other Ukrainian regions (Donetsk, Luhansk, Kherson and Zaporizhzhia) has not rendered any results.

3. TEMPORARY STAYS IN THE SO-CALLED RECREATION CAMPS

There is on the contrary quite a lot of evidence confirming that a large number of Ukrainian children have been transferred to the temporarily occupied territory (Crimea) or to the territory of the Russian Federation for the purpose of temporary stays in the so-called recreation camps. The Yale Report I indicates that the number of such children might have reached 6,000.⁷⁹ The same report also suggests that the Ukrainian children have been placed in at least 43 facilities all across the Russian territory, some as far as Siberia and the Eastern Pacific coast.⁸⁰ Finally, the report notes that various categories of children – children with parents or clear familial guardianship, orphaned children, children in institutions, as well as children whose custody is unclear or uncertain due to wartime circumstances – have been transferred to the so-called recreation camps.⁸¹ That Ukrainian children have been sent to such camps in Crimea or in the Russian Federation has also been confirmed by Russian sources. These sources also show that the practice of sending Ukrainian children to the so-called recreation camps in Russia started already after the unlawful annexation of Crimea,⁸² though there are no reports about the reluctance to send them back at those times.

The situation has significantly changed since 24 February 2022, when offers to send children to the so-called recreation camps in Crimea and Russia (and also to Belarus⁸³) have been made to families and facilities from the so-called DPR and LPR as well as from any Ukrainian territories that found themselves, for a shorter or longer period, under the effective control of the Russian Federation. Not only have such offers been often difficult to decline owing both to the harsh living conditions under occupation and the pressure by the Russian or pro-Russian organs. Some of the children have moreover been retained in the camps much longer than originally planned, allegedly due to the security situation in their home region. There are reports of children being moved among various camps, without the consent of (and the information being sent to) their parents or legal guardians.⁸⁴

In April 2023, the Commissioner for Children Rights under the President of the RF, Ms. Lvova-Belova informed in her Telegram posts that “*since October 2022, more than 2.5 thousand children have returned to their families from holiday camps, despite the difficulties that have arisen*”.⁸⁵ She also noted that these were children from the Kherson, Kherson and Zaporizhzhia regions whom their parents “*sent voluntarily at the end of the summer – in the fall of 2022, including to take them out from under shelling. After a while, they were separated by the front line - and it became difficult to pick up the children. Fathers of draft age were not released by the authorities of Ukraine, mothers could not always go on the road, because there was no one to leave other children with or they were too small, someone moved. Not everyone was able to find a trusted person who could come for the child*”.⁸⁶ According to Ms. Lvova-Belova, all children from the three regions had returned home by mid-April 2023.⁸⁷ The Mission was not in a position to verify this information or to obtain more specific figures about the Ukrainian children (from the three regions or from other parts of Ukraine, including those unlawfully

⁷⁹ Yale School of Public Health, *Russia’s systematic program for the re-education & adoption of Ukraine’s children*, 14 February 2023, available at: <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data> (Yale Report I), p. 4.

⁸⁰ *Ibidem*, p. 5.

⁸¹ *Ibidem*, p. 4.

⁸² Для участия в оборонно-спортивном лагере «Гвардеец» в Нижний Новгород приехали подростки из Крыма, *Официальный сайт полномочного представителя Президента Российской Федерации в Приволжском федеральном округе*, 29 мая 2015, available at: <http://pfo.gov.ru/press/events/87972/>

⁸³ Как украинские дети отдыхают в лагерях Беларуси, *Союз Россия-Беларусь*, 17 августа 2022.

⁸⁴ See A submission to the Moscow Mechanism on the issue of forcible deportation of children in Ukraine, *The Reckoning Project (TRP)*, April 2023 (on file with the authors).

⁸⁵ Maria Lvova-Belova, *Telegram Post*, 14 April 2023, available at: <https://t.me/malvovabelova/1321>

⁸⁶ Maria Lvova-Belova, *Telegram Post*, 4 April 2023, available at: <https://t.me/malvovabelova/1282>

⁸⁷ Maria Lvova-Belova, *Telegram Post*, 14 April 2023, available at: <https://t.me/malvovabelova/1321>

annexed by Russia) who were sent to the so-called recreation camps and have still not been returned to their families.

A certain variation to the temporary stay in the so-called recreation camps is the transfer of Ukrainian children to the temporarily occupied territories or to the Russian Federation allegedly for medical or rehabilitation purposes. For instance, it was reported that on 6 October 2022, children from three schools in Kherson (schools No. 30, 41 and 52) were transferred by the Russian occupying authorities to Crimea for “rehabilitation”.⁸⁸

D. STATUS OF THE UKRAINIAN CHILDREN DURING THE FORCIBLE TRANSFER OR DEPORTATION

The information received from witnesses and collected by expert bodies and by NGOs suggests that during forcible transfer or deportation, Ukrainian children are either placed in certain institutions (children’s homes, the so-called recreation camps, etc.) or in Russian families (foster families or adoptive families). There is no exact data available as to the number or the proportion of children subject to these different types of placements. The Mission received reports indicating that Ukrainian children were often repeatedly moved from one place to another and from one form of placement to another, during their stay in Russia.⁸⁹

The Family Code of the Russian Federation⁹⁰ distinguishes three forms of *family placement* of children deprived of parental care (формы семейного устройства детей, оставшихся без попечения родителей). These are adoption (усыновление, удочерение), foster family (приёмная семья) and custody and guardianship (опека и попечительство).⁹¹ Children may also be placed under supervision in educational organizations, medical organizations or organizations providing social services.⁹² All these forms may be used “*in cases of death of parents, deprivation of their parental rights, restriction of their parental rights, recognition of parents as incapacitated, illness of parents, prolonged absence of parents, and evasion of parents from raising children or from protecting their rights and interests /.../*”.⁹³ In addition, around 30 regions of the Russian Federation have introduced legislation on “patronage”,⁹⁴ which is a temporary form of placement of children in need of special State care.

The adoption is considered “*a priority form of placement of children left without parental care*”.⁹⁵ It is carried out based on a judicial decision and it may entail the change of the name, surname and the date and place of birth of the child. It is guided by the principle of secrecy, due to which there is not, and there cannot be, any database of adopted children.⁹⁶ Unlike some of the other forms of family placement, adoption is not remunerated but some regions provide a one-off allowance paid from local budgets to adoptive families, the amount of which can reach

⁸⁸ Окупаційна влада Херсонщини вивозить дітей з тимчасово окупованої території області, *Суспільне*, 11 жовтня 2022.

⁸⁹ A submission, *The Reckoning Project (TRP)*, *op. cit.*; a submission by the International Partnership for Human Rights, on file with authors.

⁹⁰ Семейный кодекс Российской Федерации от 29 декабря 1995 г. № 223-ФЗ.

⁹¹ See Sections 19-21 of the Family Code of the Russian Federation. See also Федеральный закон от 24 апреля 2008 г. № 48-ФЗ “Об опеке и попечительстве”.

⁹² See Section 22 of the Family Code of the Russian Federation.

⁹³ Article 121(1) of the Family Code of the Russian Federation.

⁹⁴ See, for instance, Закон г. Москвы от 14 апреля 2010 г. № 12 “Об организации опеки, попечительства и патронажа в городе Москве”, статья 12 (Патронатное воспитание).

⁹⁵ Article 124(1) of the Family Code of the Russian Federation.

⁹⁶ See also Постановление Правительства РФ от 29 марта 2000 г. № 275 “Правила передачи детей на усыновление (удочерение) и осуществления контроля за условиями их жизни и воспитания в семьях усыновителей на территории Российской Федерации”.

up to 300,000 roubles.⁹⁷ Similarly to these other forms, adoption regulated by the Russian Family Code only concerns children with the Russian citizenship.

As indicated in the previous subsection, the first Ukrainian children deprived of parental care for whom the intention to have as many of them as possible adopted by citizens of the Russian Federation was announced, were, already in 2014-2015, children from the unlawfully occupied Crimea (*inter alia* within the “Trains of Hope” initiative). Since 24 February 2022, this intention has been gradually extended to other Ukrainian children.

On 9 March 2022, during the meeting with Ms. Lvova-Belova, the president of the Russian Federation Mr. Vladimir Putin indicated that there was a need to find a way to place orphaned children from the so-called DPR and LPR (then recognized by Russia as independent States) in Russian families, even if they do not have Russian citizenship. He called for a change in the legislation, noting that “*these are extraordinary circumstances, and it seems to me that we need to think not about bureaucratic delays, but about the interests of children*”.⁹⁸ By that time, many orphans from Ukraine were already in the territory of the Russian Federation due to the large-scale evacuations carried out in the so-called DPR and LPR prior to the full-fledged invasion of Ukraine. Following on her meeting with Mr. Putin, Ms. Lvova-Belova announced that legislative work as well as negotiations with the organs of the so-called DPR and LPR were underway to make the placement of children in Russian families possible.⁹⁹ Two contact groups were established to prepare drafts of bilateral agreements with the so-called DPR and LPR concerning adoption and custody and guardianship.¹⁰⁰

Soon after, however, the Russian Federation decided to proceed by revising its own legislation, more specifically the legal acts related to the **admission to the citizenship** of the Russian Federation. This area is regulated by the *Federal Law No. 62-FZ on the Citizenship of the Russian Federation*,¹⁰¹ adopted in 2002. Article 14 of this law regulates the procedure of the admission to the citizenship of the Russian Federation in a simplified manner (Прием в гражданство Российской Федерации в упрощенном порядке).

Already in 2019, two Presidential Decrees were adopted – the Presidential Decree No. 183 *On determining for humanitarian purposes the categories of persons entitled to apply for citizenship of the Russian Federation in a simplified manner*¹⁰² and the Presidential Decree No. 187 *On certain categories of foreign citizens and stateless persons who have the right to apply for admission to the citizenship of the Russian Federation in a simplified manner*.¹⁰³ The first decree made the simplified procedure available to “*persons permanently residing in the territories of certain districts of Donetsk and Luhansk regions of Ukraine*”,¹⁰⁴ the second decree made it available to various categories of the citizens of Ukraine.

On 20 May 2022, President Putin issued the Presidential Decree No. 330 of 20 May 2022, which extended the simplified procedure to “*orphans and children left without parental care /.../ who are citizens of the Donetsk People's Republic, the Luhansk People's Republic or*

⁹⁷ See, for instance, Закон Краснодарского края от 29 декабря 2008 г. № 1662-КЗ “О единовременном денежном пособии гражданам, усыновившим (удочерившим) ребенка (детей) в Краснодарском крае”.

⁹⁸ Путин призвал разрешить размещать сирот из Донбасса в российские семьи, *Известия*, 9 марта 2022.

⁹⁹ Maria Lvova-Belova, *Telegram Post*, 11 March 2022, available at: <https://t.me/malvovabelova/14>.

¹⁰⁰ «Задача экстраординарная»: в РФ готовят поправки для усыновления детей из Донбасса, *Известия*, 5 мая 2022.

¹⁰¹ Федеральный закон от 31 мая 2002 г. № 62-ФЗ “О гражданстве Российской Федерации”.

¹⁰² Указ Президента РФ от 24 апреля 2019 г. № 183 “Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке”.

¹⁰³ Указ Президента РФ от 29 апреля 2019 г. № 187 “Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке”.

¹⁰⁴ Указ Президента РФ № 183, *op. cit.*, para 1.

Ukraine, temporarily staying, permanently or temporarily residing on the territory of the Russian Federation".¹⁰⁵ The Decree made it possible for guardians of such children or heads of the institutions where they are staying to apply for Russian citizenship on behalf of these children. Once this citizenship is granted, there is no formal legal impediment in the Russian law to the placement of such children in Russian families (in one of the three forms of placement indicated above). As Ms. Lvova-Belova herself noted in her Telegram statement posted in July 2022, "now that the children have become Russian citizens, temporary custody can become permanent".¹⁰⁶

In October 2022, when the Ukrainian regions of Donetsk, Luhansk, Kharkov and Zaporizhzhia were unlawfully annexed by the Russian Federation, persons residing in the territory of those regions were granted Russian citizenship. On 26 November 2022, President Putin adopted the Decree No. 951, specifying *inter alia* the procedure for applying for recognition of a child under the age of 14 as a citizen of the Russian Federation as well as the procedure of relinquishing the citizenship of Ukraine.¹⁰⁷ The latter procedure has been further regulated, and simplified, by the *Federal Law On the peculiarities of the legal status of citizens of the Russian Federation who have citizenship of Ukraine* adopted on 18 March 2023.¹⁰⁸ Under Article 1(2) of this law, the renunciation of the Ukrainian citizenship for children under 14 years takes place based on the application by their parents or other legal guardians, including representatives of institutions where they are placed, without them being able to influence this procedure.

All these revisions of the legislation of the Russian Federation on citizenship, having taken place over the past four years, and especially since May 2022, have significantly eased changing of the citizenship of orphaned or unaccompanied Ukrainian children who find themselves in the territory of the Russian Federation or in the Ukrainian territories unlawfully annexed or temporarily control by Russian forces. Children themselves, especially those under 14 years old, have virtually no say in the whole process and the same is true for their parents or other (original) legal guardians in cases, where children are separated from them. The change of the citizenship makes orphaned and unaccompanied children available for adoption or one of the other forms of family placement of children deprived of parental care foreseen in the Family Code of the Russian Federation. The Russian sources report that there is a great interest among Russian families in having children from Ukraine placed with them.¹⁰⁹ The Mission was informed that such families had to undergo special (patriotic) courses and that there were financial incentives provided from regional and local budgets.¹¹⁰

The Mission was not in the position to obtain exact data as to the number of Ukrainian children whose citizenship had been changed and who had been placed in Russian families. On 26 October 2022, Ms. Lvova-Belova announced that by then, almost 350 orphaned children from Donbas had been placed in foster families (приемные семьи) in 16 regions of the Russian Federation.¹¹¹ Other sources however report that these children have been formally adopted

¹⁰⁵ Указ Президента РФ от 30 мая 2022 г. № 330 "О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019 г. № 183 "Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке" и Указ Президента Российской Федерации от 29 апреля 2019 г. № 187 "Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке".

¹⁰⁶ Telegram, 5. 7. 2022, available at: <https://t.me/malvovabelova/331>

¹⁰⁷ Указ Президента Российской Федерации от от 26 декабря 2022 г. № 951 "О некоторых вопросах приобретения гражданства Российской Федерации".

¹⁰⁸ Федеральный закон от 18 марта 2023 г. № 62-ФЗ "Об особенностях правового положения граждан Российской Федерации, имеющих гражданство Украины".

¹⁰⁹ В России 1200 семей готовы принять детей-сирот из Донбасса, *РИА Новости*, 14 мая 2022.

¹¹⁰ Семьям, принявшим детей с Донбасса, окажут материальную помощь, *Волга Ньос*, 12 октября 2022

¹¹¹ Семья России приняли почти 350 сирот из Донбасса, заявила Львова-Белова, *РИА Новости*, 26 октября 2022.

(усыновление).¹¹² In fact, Ms. Lvova-Belova herself stated that she had adopted (усыновила) a 15-year old boy from Mariupol.¹¹³ Yet, on 4 April 2023, she stated that using the term adoption (усыновление) with respect to children from Ukraine was incorrect, as “*this form of family arrangement was not applied to this group of children*”.¹¹⁴ Ukrainian children, including her own “son” from Mariupol, would be allegedly placed under custody and guardianship (опека и попечительство) or in foster families (приёмная семья). Due to the secrecy of adoption, there are no official data that would allow to verify this information. However, since the other forms of family placement do not require judicial decision, as formal adoption does, the Mission finds it plausible that with respect to children transferred to the Russian Federation in the recent months, those other forms would be favoured.

The Mission received information suggesting that during their stay in the temporarily occupied territories and, especially, in the territory of the Russian Federation, Ukrainian children are exposed to pro-Russian information campaigns often amounting to targeted re-education.¹¹⁵ Not only do they attend Russian schools where teaching takes place according to the Russian curricula, but they also have to manifest pro-Russian feelings, for instance by singing the anthem of the Russian Federation.¹¹⁶

E. RETURN OF UKRAINIAN CHILDREN

According to the Ukrainian NIB, only 361 out of the total number of 19,393 “deported” children were “returned” to Ukraine by 23 April 2023. The details of those returns are not publicly available, but they seem to result from a “joint operation” involving Ukrainian authorities (the NIB, the Office of the Prosecutor General, secret services, etc.), civil society organizations from Ukraine and/or other countries, volunteers from Ukraine and/or Russia as well as, and mainly, parents, other relatives, or other legal guardians of the relevant children.

Reports by NGOs and statements by victims and witnesses consistently confirm that the Russian Federation is not actively seeking relatives of Ukrainian children who have been transferred to the temporarily occupied territories or to the territory of the Russian Federation or indeed providing any assistance to those parents or other relatives and/or legal guardians who are seeking to reunite with their children. Rather conversely, Russia seems to make it difficult for Ukrainian families, as well as Ukrainian authorities, to locate the transferred Ukrainian children by *inter alia* not having any lists of such children, repeatedly moving children from one place to another or using the Russian form of names for Ukrainian children (e.g., Russian “Дмитрий” instead of Ukrainian “Дмытро”) in official communication. The reports and statements also suggest that families which are successful in locating their children and seek to return them back to Ukraine, encounter numerous obstacles as they have to personally travel to the place where their children are, they need to bring numerous documents, the handing over of the children and the departure of the family is often delayed on various grounds, etc.

The reports and statements contradict the claim by Ms. Lvova-Belova that “*Russia has never prevented and will not prevent the children from returning to their relatives*”¹¹⁷ and that Russian institutions, including her own office, have actively assisted Ukrainian families to find and reunite with children from whom they had been separated for reasons related to the conflict.

¹¹² Россияне усыновили уже 350 детей-сирот из Донбасса, *РИА Новости-Крым*, 26 октября 2022.

¹¹³ Детский омбудсмен Львова-Белова рассказала Путину, как усыновила ребенка из Мариуполя, *МК.Ru*, 16 февраля 2023.

¹¹⁴ Maria Lvova-Belova, *Telegram Post*, 4 April 2023, <https://t.me/malvovabelova/1280>

¹¹⁵ Yale Report I, *op. cit.*, pp. 14-15.

¹¹⁶ Украинских детей избивали в России и заставляли отречься от родителей, *Gazeta.ua*, 10 апреля 2023. See also Анастасія Воробйова, Марія Суляліна, «Кримський сценарій»: як Російська Федерація знищує українську ідентичність дітей на окупованих територіях, *Центр громадянської просвіти «Альменда»*, Київ, 2023.

¹¹⁷ В Крыму и Краснодарском крае 89 украинских детей ждут воссоединения с родителями, *Pancu*, 10 марта 2023 г.

V. ALLEGED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

Children belong to the most vulnerable sections of the civilian population suffering devastating inhuman miseries as a result of armed conflict. IHL therefore provides a set of absolute and non-derogable rules to protect children trapped by armed conflict. The provisions are stipulated in the four Geneva Conventions of 1949, which are universally ratified, and their Additional Protocols (APs) of 1977. Twenty-five provisions in these instruments prescribe special protection for children, in addition to provisions applicable irrespective of age. The purpose of these rules is to protect children from the scourges and scars of war, to shield their families from the scare and grief of loss, and to guard each belligerent party to the armed conflict and their populations against the unbearable prospect of losing their future generations, either to the war itself or to the enemy belligerent.

A. SCOPE OF APPLICATION OF IHL FOR THE PURPOSE OF DISPLACEMENT OF CHILDREN

Determining when IHL applies requires an assessment of the factual situation on the ground. The internal qualification of the situation by the parties to the conflict and the label they attach to it do not have any effect on its qualification under IHL, which relies solely on objective criteria. As the separation of *jus ad bellum* and *jus in bello* dictates, the fact that the factual situation is the result of a violation of the rules of the UN-Charter, does not influence the question of applicability of IHL. An international armed conflict (IAC) under common article 2 of the GCs is triggered when there is armed violence between the armed forces of two or more States.¹¹⁸ As both Russia and Ukraine are States, the armed conflict between them is governed by IHL of international armed conflicts.¹¹⁹ Applicability of IHL under common article 2 entails immediate *de jure* application of all four Conventions, AP 1 and all other rules of IHL applicable to such situations present in other treaties or declaratory of international custom.

The mandate of the Mission has been to examine practices of organized relocation of children both before and after the onset of the full-scale Russian invasion of 24 February 2022. Applicability of the relevant rules of IHL must therefore be divided into *two temporal phases*. Phase I extends from 2014 until 23 February 2022, and phase II starts with the full-scale Russian invasion on 24 February 2022.

1. THE SITUATION PRIOR TO 24 FEBRUARY 2022

Applicability of IHL to the situation in Crimea dates back to 2014. From the night of 26-27 February 2014, armed and mostly uniformed individuals, whom the Russian Federation later acknowledged to be its military personnel, together with locally-resident militia members, progressively took control of the Crimean Peninsula without the consent of the Ukrainian Government.¹²⁰ On 18 March 2014, the Russian Federation announced the formal incorporation of Crimea into Russian territory. The GCIV and API apply to the Russian Federation's military occupation of Crimea, as with all cases of partial or total occupation of a foreign State's territory, "*even if the said occupation meets with no armed resistance*" and "*even if the state of war is not recognized by one of them*".¹²¹

Under IHL, "*territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been*

¹¹⁸ ICRC, Commentary to GC III relative to the Treatment of Prisoners of War, 2020, paras 243-245.

¹¹⁹ Common Article 2(1) of the four Geneva Conventions.

¹²⁰ For a review of Russian military presence in Crimea from 2014, see ECtHR, *Ukraine v. Russia (re Crimea)*, Application no. 20958/14, Decision (GC), 16 December 2020, paras 305-349.

¹²¹ GC, Common Article 2.

*established and can be exercised.*¹²² Russia has continued to exercise effective control over the territory of Crimea since 2014.¹²³ The law of military occupation therefore continues to apply after 18 March 2014 to the extent that the situation within the territory of Crimea and Sevastopol factually amounts to an on-going state of occupation.¹²⁴ Following the full-scale invasion of Ukraine by Russian forces in 2022, the situation in Crimea is consumed by the larger armed conflict between Russia and Ukraine for the purpose of IHL, and Crimea is considered territory occupied by the belligerent power Russia.¹²⁵

In the Ukrainian oblasts of Luhansk and Donetsk, direct military engagement between the respective armed forces of the Russian Federation and Ukraine in the form of reported shelling and detention of adversary military personnel by both States, also indicates the existence of an international armed conflict from at least 14 July 2014.¹²⁶ The implications for IHL of the Russian military involvement with the so-called DPR and LPR from 2014 are unsettled and not relevant for the question at hand.¹²⁷

2. THE SITUATION SINCE 24 FEBRUARY 2022

Russia's full-scale invasion of Ukraine on 24 February 2022 triggered application of IHL of IAC, as it applies to "*all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them*".¹²⁸ When the factual situation corresponds to the objective criteria of armed conflict, IHL is automatically triggered and the entire body of IHL applies to the relationship between the belligerent parties and their inhabitants.¹²⁹

A party to an armed conflict is not in a position to "opt out" of the provisions of the GCIV due to a conviction by the State party that the territory in question does not pertain to the enemy belligerent State. Neither is a State party to the GCs permitted to ignore these rules because the State intends to offer the local population citizen-rights under its own constitution, commonly presented as "better protection".¹³⁰

The territorial scope of application of IHL extends to the entire territory of both belligerent States, Russia and Ukraine, even though hostilities have thus far mostly been limited to Ukrainian territory.¹³¹ For example, IHL also applies in the far eastern Russian city of Vladivostok, to the extent that effects of the armed conflict materialize there or persons protected by the IHL in relation to the armed conflict are present. Territorial distance to the

¹²² Hague Convention (IV) of 1907, respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 42.

¹²³ ICC, *Report of the ICC on Preliminary Examination Activities*, 2016, paras 155 to 158. OSCE/ODIHR, *Human Rights Assessment in Ukraine*, The Hague/Warsaw, 12 May 2014, para 21; OSCE High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, 17 September 2015; UN HCHR, *Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)*, dated 25 September 2017, covering the period from 22 February 2014 to 12 September 2017, paras 42-45.

¹²⁴ ICC, *Report of the ICC on Preliminary Examination Activities*, 2016, paras 155 to 158.

¹²⁵ GC, Common Article 2; Hague IV, Article 42.

¹²⁶ ICC, *Report of the ICC on Preliminary Examination Activities*, 2016, para 169. ECtHR, *Ukraine and the Netherlands v. Russia*, Applications nos. 8019/16, 43800/14 and 28525/20, Decision, 30 November 2022, para. 652; ICC, *Report of the ICC on Preliminary Examination Activities*, 2020, para 281.

¹²⁷ The prohibition of deportation and forcible transfer in IAC is mirrored in a corresponding prohibition in NIAC, codified in APII, Article 17. See also ICRC Customary rules 129 and 130.

¹²⁸ GC, Common Article 2 (1).

¹²⁹ GCIV, Article 6; API, Article 3; Pictet Commentary GCIV, *op. cit.*, p. 48.

¹³⁰ A State may only opt out of these obligations by denouncing the GCIV. This must be done according to the procedures in GCIV, Article 158, and will come into force only one year after denunciation. For the purpose of the rules applicable to the forced transfer or deportation of children, denunciation will make little difference, as these obligations also are declaratory of customary international humanitarian law, from which no denunciation can be made, see inter alia ICRC customary rules 129 and 130, ICC Statute Articles 8(2)(a)(vii) and 8(2)(b)(viii).

¹³¹ GCIV, Article 6; API, Article 1(3).

active war-theatre does not fade protections of IHL for persons or objects protected. Ukrainian children brought to Russia in relation to the armed conflict are protected by IHL in the entire territory of the Russian Federation.

The personal scope of application of IHL covers all persons affected by the armed conflict on the territory of the belligerent States, while the temporal scope of application of IHL is the duration of the armed conflict or military occupation.¹³² However, a person who has gained protective status under IHL, for example prisoner of war, protected person or child protected by IHL, will retain the protective status until his or her situation is regularized again. This may extend beyond the end of the armed conflict and beyond the territories of the belligerent States. The general principle is expressed in API: “*persons shall continue to benefit from the relevant provisions of the Conventions and Protocols until their final release, repatriation or re-establishment*”.¹³³ In the case of POW-status, protection under IHL will end upon repatriation or final release.¹³⁴ For children moved for reasons linked to the conflict, protection under IHL will remain until repatriation or return to their area of origin, while for children separated from their families for reasons linked to the conflict, the special protection under IHL will end only upon reunification with their families.¹³⁵

The temporal scope of application may also extend to moments prior to the onset of hostilities. IHL obligations to take precautions in attack or defence and to evacuate civilians, may precede the use of military force and apply also to planned or imminent military operations.¹³⁶ Organized movement of the civilian population including children in the days immediately preceding the military assault on 24 February 2022 may fall under the scope of application of IHL, provided it was linked to the hostilities that erupted with Russia’s full-scale invasion on Ukraine on 24 February 2022.

3. TERRITORY OCCUPIED BY RUSSIAN FORCES

In the areas of Ukraine under effective control by Russian military forces, rules of belligerent occupation apply in the relationship between the occupying forces and the local population. A territory is considered occupied when it is “*actually placed under the authority of the hostile army*”.¹³⁷ In order to determine the meaning of *authority*, an effective control test based on customary international law consists of three cumulative elements: (1) the armed forces of a foreign State are physically present without the consent of the sovereign government in place at the time of the invasion; (2) the sovereign is unable to exercise its authority due to the presence of foreign forces; and (3) the occupying forces impose their own authority over the territory.¹³⁸ These criteria are cumulative. Therefore, as soon as one of them ceases to be present, the situation will not amount to occupation in the sense of IHL, with applicability *in toto* of the provisions of belligerent occupation. It is clear that the Russian full-scale invasion of Ukraine expanded the territories in Ukraine under complete occupation by Russia.

However, the protections in the GCs bestowed on the civilian population, protected persons or children pertaining to the adversary belligerent may extend beyond the establishment of an occupation *strictu sensu*. This is notably so with regards to the prohibition on forceful transfer

¹³² GC, Article 6(1-3), API, article 3 (a) and (b).

¹³³ GC, Article 6(4), API, Article 3(b). The principle is also expressed in APII Article 2(2): “persons detained for reasons related to the conflict shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty”.

¹³⁴ GCIII, Article 5.

¹³⁵ GCIV, Article 6(3) ; API, Article 3(b).

¹³⁶ API, Article 57(4), Article 58(a); GCIV, Article 17.

¹³⁷ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899, Article 42.

¹³⁸ ICRC, Commentary on the First Geneva Convention, 2016, paras 302ff; ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflict, 32nd International Conference of the Red Cross, 2015, p. 11.

or deportation in Article 49 of the GCIV. While the prohibition applies to occupied territories, the International Criminal Tribunal for the former Yugoslavia (ICTY) has asserted that “*nothing in the jurisprudence of the Tribunal supports the Defence contention that “occupation” is an element of the crime of deportation*”.¹³⁹ A similar approach has been adopted by the Eritrea-Ethiopia Claims Commission (EECC).¹⁴⁰ The same can be inferred from the language used in the Advisory Opinion on the *Wall in the Occupied Palestinian Territories* where the ICJ affirmed that “*the military exigencies contemplated by these texts [Article 49(2) GC IV and 53 of the 1907 Hague Regulations] may be invoked in occupied territories even after the general close of the military operations that led to their occupation*”,¹⁴¹ thus implying *a contrario* that the provisions are applicable *during* those military operations, at a stage when authority over the relevant region remains uncertain.

For the purpose of the question of forcible transfer or deportation by the advancing belligerent, the Mission relies on a functional concept of occupation to the invasion phase under which certain rules of IHL of military occupation gradually start to apply as soon Russia obtained control over those issues, while other rules do not yet apply.¹⁴² This ‘functional’ approach to the law of occupation entails that the rules are to be respected as soon as there materially exists a possibility to infringe them. The restrictions arising from GCIV relative to the prohibition on forceful transfer or deportation of children consequently apply to all areas of Ukraine for such time as an area is under the control of Russian armed forces. The nature of the conflict in Ukraine entails that frontlines are moving and that the rules applicable to occupied territory reflect the situation on the ground. Even if occupation of an area is short, i.e., only lasts for a couple of hours, children brought into the hands of the Russian belligerent party will be protected by the prohibitions in the GC IV for as long as their personal situation resulting from this occupation is affected, for example if they brought to another area under control of the occupying power or relocated to the territory of the Russian occupying power.

In conclusion, areas in Ukraine under the control of the Russian armed forces and subject to Russian civilian authority are treated as “occupied territory” for the purpose of the rules of IHL dedicated to the protection of Ukrainian children. Ukrainian areas newly brought under control of Russian armed forces, where they only exercise rudimentary authority, are treated as “occupied territory” to the extent that Russian military or civilian occupational authorities exercise authority relevant for the purpose of the rules of IHL dedicated to the protection of Ukrainian children.

4. THE IRRELEVANCE OF UNILATERAL CHANGES OF STATUS BY ONE BELLIGERENT

The very system of protection of children under IHL is set up in a way so as to avoid the displacement of unaccompanied children belonging to one party to the conflict into the territory of the enemy party to the conflict or territory controlled by this belligerent. The fact that the territories in question and the populations therein are claimed by both parties to the conflict in Ukraine, does not alter this basic tenet. If anything, it makes strict observance of these rules by all parties concerned all the more poignant. Instrumentalizing the fate of children during hostilities is the very anathema to the provisions of the GCs.

The occupation of territory as a result of international armed conflict is a temporary *de facto* situation which neither affects the legal status of occupied territory, nor deprives the occupied

¹³⁹ ICTY, *Prosecutor v Ante Gotovina, Ivan Čermak and Mladen Markač*, IT-06-90-PT, Decision on Several Motions Challenging Jurisdiction, 19 March 2007, para 55.

¹⁴⁰ Ethiopia-Eritrea Claims Commission, Western Front, Aerial Bombardment and Related Claims, Eritrea’s Claims, Partial Award, in 26 RIAA 291, 19 December 2005, para 27.

¹⁴¹ ICJ, Legal Consequences, op. cit., para 135.

¹⁴² Jean S. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV, ICRC, 1952, p. 60; pp. 65-86; ICTY, *Prosecutor v Naletilić and Martinović*, IT-98-34-T, Judgment, 31 March 2003, paras 219-222.

power of sovereignty.¹⁴³ An occupying power does not acquire sovereignty over the occupied territory. Annexation of occupied territory in wartime is unlawful and does not deprive persons of protection under the GCIV, where Article 47 explicitly provides that “*protected persons who are in occupied territory shall not be deprived in any case or in any manner whatsoever*” by the GCIV as a result of any annexation by the occupying power of the whole or part of the occupied territory.

IHL provides that the legislation of the occupied country shall remain applicable in the occupied territory unless the occupying power is “absolutely prevented” from doing so,¹⁴⁴ or unless they constitute a threat to the security of the occupying power or an obstacle to the application of the GCIV.¹⁴⁵ It is impermissible for an occupying power to compel inhabitants of occupied territories to swear allegiance to it, and allegiance to the displaced sovereign cannot be severed under duress.¹⁴⁶

In the first six months of the full-scale Russian invasion, Russia distinguished between areas belonging to the Ukrainian Luhansk and Donetsk oblasts on the one hand, and other newly occupied territories in terms of administration, public property located therein, and applicable legislation. Areas in Ukraine's Luhansk and Donetsk regions are subject to the administration, “laws” and institutions of the respective “republics”, as soon as Russia takes control of them, in violation of IHL.¹⁴⁷ In other newly occupied areas, Russia established “Komendaturas”, a type of civil administration by the occupying forces aimed at adopting and enforcing only rules deemed necessary to protect its forces' security or to maintain law and order, in principle not prohibited under IHL.¹⁴⁸

The approach changed in late September 2022, when Russian occupation authorities in the occupied territory of Donetsk, Luhansk, Kherson and Zaporizhzhia regions purported to hold “referenda” from 23 to 27 September on becoming part of the Russian Federation. On 30 September, the President of the Russian Federation signed the so-called *Treaties on the Accession of the Donetsk People’s Republic, the Lugansk People’s Republic, the Zaporizhzhia Region and the Kherson Region to the Russian Federation*,¹⁴⁹ purportedly annexing these regions and consequentially applying Russian legislation there, in displacement of the existing legal system,¹⁵⁰ and in clear violation of IHL. The UN General Assembly subsequently condemned these steps.¹⁵¹ Parts of the regions concerned were not in the hands of the Russian Federation at the time of the annexation. Ukrainian control over further parts of the Russian annexed provinces has since been restored, and the territories are incessantly subject to fierce hostilities by the belligerent parties.

In conclusion, changes of the formal status made by the occupying power to an occupied area does not influence applicability of the rules of IHL, and the benefits of “protected persons” cannot be removed due to changes or agreements between the occupying power and the authorities of the occupied territory.¹⁵² Certain types of changes may amount to violations of IHL, such as change of citizenship of children,¹⁵³ or war crimes, such as mobilization, but

¹⁴³ API, Article 4.

¹⁴⁴ Hague IV, Article 43.

¹⁴⁵ GCIV, Article 64.

¹⁴⁶ Hague IV, Article 45.

¹⁴⁷ GCIV, Article 47, Article 64; Hague IV, Article 43.

¹⁴⁸ Hague IV, Article 43.

¹⁴⁹ The Russian Parliament ratified the “Treaties on the Accession” on 3 October 2022. Nevertheless, they took effect from the date of their signature, i.e., on 30 September 2022, according to the reservations made by the “Parties” to each “Treaty”.

¹⁵⁰ Article 8 of each “Treaty”.

¹⁵¹ UN Doc. A/RES/ ES-11/4, Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations, 13 October 2022,

¹⁵² GCIV, Article 47.

¹⁵³ GCIV, Article 50(2).

formal changes to the status of an area, a group of people or individuals, made by the occupying power, have no implications for the rights of the civilian population, individual civilians or children under international humanitarian law.

B. THE PROTECTIVE SCHEME OF IHL APPLICABLE TO UKRAINIAN CHILDREN

Children are in a particularly precarious situation in times of armed conflict and they are therefore protected by various schemes under GCIV and API.

1. “CIVILIAN POPULATION”

It is universally established that children form part of the civilian population¹⁵⁴ and as such enjoy the rights and benefits accorded to the civilian population in order to protect them from hostilities.¹⁵⁵ Ukrainian children are individual civilians and belong to the civilian population.¹⁵⁶ This particularly entails a duty on the belligerent parties to protect children from hostilities. For example, belligerent parties must try to conclude local agreements for the removal of children and other vulnerable groups from besieged or encircled areas.¹⁵⁷ Prior to the outbreak of hostilities and in occupied areas, the parties may also establish localities organized so as to protect children under fifteen and other vulnerable groups from the effects of war.¹⁵⁸ When hostilities occur, the Parties may conclude agreements on mutual recognition of these zones and localities.¹⁵⁹

Belligerent parties are under an obligation to take precautions in defence, which includes a duty to remove the civilian population under their control from the vicinity of military objectives,¹⁶⁰ and to protect them against the dangers resulting from military operations.¹⁶¹ This may extend to the organization of evacuations out of the area of hostilities. However, the duty takes precautions in order to protect the civilian population can never be used as pretext for forced transfer or deportation.¹⁶²

2. “PROTECTED PERSONS”

Children are “protected persons” under GCIV, i.e., those who “*at a given moment and, in any manner, whatsoever, find themselves /.../ in the hands of a Party to the conflict or Occupying Power of which they are not nationals*”.¹⁶³ The GCIV prohibits forceful transfer or deportation of “protected persons” within or outside the occupied territory. Transferring protected persons out of an occupied territory is a grave breach of the convention.¹⁶⁴ Protected persons are also protected against collective punishment or reprisals.¹⁶⁵

A child is a “protected person” as soon as it falls into the hands of the troops of the enemy belligerent party. The prohibition applies to “occupied territories”, but as the ICTY stipulated in *Naletilić and Martinović*, “*the application of the law of occupation as it affects “individuals” as civilians protected under Geneva Convention IV does not require that the occupying power have actual authority. For the purposes of those individuals’ rights, a state of occupation exists*

¹⁵⁴ API, Article 50 (1) and (2).

¹⁵⁵ GCIV part II, API part IV section 1, notably API, Article 51. The provisions apply “*to all attacks, in whatever territory conducted*”, API, Article 49(2).

¹⁵⁶ API, Article 50 (1) and (2).

¹⁵⁷ GCIV, Article 17.

¹⁵⁸ GCIV, Article 14 (1).

¹⁵⁹ GCIV, Article 14(2).

¹⁶⁰ API, Article 58(a).

¹⁶¹ API, Article 58(c).

¹⁶² API, Article 58 (a).

¹⁶³ GCIV, Article 4(1) and (2).

¹⁶⁴ GCIV, Article 147.

¹⁶⁵ GCIV, Article 33.

*upon their falling into “the hands of the occupying power.” Otherwise, civilians would be left, during an intermediate period, with less protection than that attached to them once occupation is established”.*¹⁶⁶

The concept of protected person is one of the few provisions of IHL where *nationality* is a decisive feature for the scope of protection. Children who are nationals of the occupying power are not covered by Article 49 of the GCIV. A child with Ukrainian citizenship, who finds itself in the hands of Russian military or civilian authorities, is a “protected person”. Children without citizenship are protected by Article 78 of the API. Ukrainian children who are not Russian citizens are protected persons under the fourth Convention and GCIV and API apply concurrently. Children with Russian citizenship are not covered by the prohibition. With respect to children who are nationals of the party to the conflict arranging for the evacuation, the party is free to make such arrangements as it sees fit.¹⁶⁷

As mentioned above, in case of belligerent occupation of foreign territory, it is prohibited for the occupying power to change the status of the territory. It is equally forbidden to require compulsory changes of citizenship of the population in the occupied area. As explained in Section IV.D, a simplified procedure for the admission to the Russian citizenship has been progressively, since 2019, introduced for the inhabitants of the temporarily occupied territories, including children. This “russification” of the occupied territories by way of individual citizenship is a clear violation of international law and has no bearing on the protections under IHL.¹⁶⁸ These protections are provided to children of Ukrainian citizens and persons in the areas under the control of the so-called DPR and LPR or under the Russian occupation since 2014 and cannot be deprived based on involuntary changes of citizenship. The Mission would like to recall that the provisions of international humanitarian law protecting individuals in the hands of one of the parties are absolute in the sense that individuals are not in a position to voluntarily give up or renounce these rights.¹⁶⁹

3. FAMILIES

The nucleus of the family is essential for the protection of children during the hardships of armed conflict. IHL therefore protects family unity. If an occupying power undertakes evacuation of an area for certain reasons specified therein, it shall see to that members of the same family are not separated.¹⁷⁰ Interned and detained families should be kept together,¹⁷¹ systems must be set up to identify and register separated children,¹⁷² and families are entitled to give news to each other.¹⁷³ In case of separation, children must be provided with special treatment, and their reunification/repatriation with their families must be highly prioritized by the belligerent parties.¹⁷⁴ This entails a duty on the part of each belligerent party, and on occupying powers in particular, to avoid separating children from their families, and to do everything to reunite families as soon as conditions permit.¹⁷⁵

4. SPECIAL PROTECTION FOR CHILDREN

Due to the particular exposure of children in situations of armed conflict, they are afforded special protections under the GCs. API states that “*children shall be the object of special respect [...] Parties to the conflict shall provide them with the care and aid they require, whether*

¹⁶⁶ ICTY, Naletilić and Martinović, IT-98-34-T, op. cit., para 221.

¹⁶⁷ Yves Sandoz et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, 1986 (Sandoz Commentary API), para 3225.

¹⁶⁸ GCIV, Article 47 and Article 50(2).

¹⁶⁹ GCIV, Article 8.

¹⁷⁰ GCIV, Article 49. Commentary API and APII, para 3223

¹⁷¹ GCIV, Article 82.

¹⁷² GCIV, Article 24.

¹⁷³ GCIV, Article 25.

¹⁷⁴ GCIV, Article 49, API, Article 174.

¹⁷⁵ GCIV, Article 24 and 26, API, Article 74.

because of their age or for any other reason".¹⁷⁶ The need to protect children flows across the provisions of GCIV and API, prioritizing them for the receipt of aid and medical treatment,¹⁷⁷ regulating their involvement in hostilities, and considering the situation of those who are orphaned or separated.¹⁷⁸

GCIV provides special protection for orphans or children under 15 who have been separated from their families due to the war.¹⁷⁹ GCIV encouraged the reception of orphaned children or children separated from their families into neutral countries.¹⁸⁰ API is stricter, in order to prevent the practice of educating children according to a certain political or religious view, to prepare them for military service, or to raise them to customs foreign to that of their families.¹⁸¹ Therefore, API commands that everything possible should be done to avoid separating children, and especially young children, from their natural protectors.

Evacuation of unaccompanied children for medical or health reasons require the written consent of parents or guardians.¹⁸² In the absence of parents or guardians, consent is required of the persons who by law or custom are primarily responsible for the care of the children.¹⁸³ The prohibition takes into account that *"in time of war the mother and father are often assigned to military or civilian tasks and are therefore not able to take care of the well-being and upbringing of their child. Frequently the child will be entrusted to the grandparents or other more distant relatives, or otherwise he may be left to reception centres"*.¹⁸⁴

The GCs do not contain a definition of "children", but operate with three different age-parameters: 18 years, 15 years and 12 years.¹⁸⁵ Children are mentioned in Article 17, which provides for the evacuation of civilians from besieged areas. Article 50 deals with children in occupied territories and to the institutions devoted to their care. In occupied territory, Article 51 prohibits compelling children under eighteen years of age to work, and Article 68 prohibits pronouncing the death penalty on persons under eighteen years of age.

Children under 15 are specifically referred to with respect to safety zones, free passage of relief consignments intended for the weakest categories of the population, and when they are protected persons in the territory of belligerents entitled to enjoy preferential treatment in line with the national State concerned.¹⁸⁶ Orphans or children separated from their families due to war are given particular protection.¹⁸⁷ GCIV gives great importance to the subject of identification of children in order for a prompt identification and reunification with their families. Hence, all children under twelve years of age must be appropriately identified and their identity must be traceable.¹⁸⁸ This provision has been made keeping in view that children over twelve are generally capable of stating their own identity.

5. NATIONAL INFORMATION BUREAUX AND THE DUTY TO KEEP TRACK

Fulfilment of many of the duties of belligerent parties under IHL rely on the premise that information is available concerning the identity and whereabouts of persons lost or in the hands of the adversary belligerent. At the outset of an IAC, each belligerent party is therefore under

¹⁷⁶ GCIV, Article 77 (1).

¹⁷⁷ GCIV, Articles 17 and 41; API, Article 70 (1).

¹⁷⁸ GCIV, Articles 24 and 50.

¹⁷⁹ GCIV, Article 24.

¹⁸⁰ *Ibidem*.

¹⁸¹ Sandoz Commentary API, *op. cit.*, para 3211.

¹⁸² *Ibidem*, para 3232.

¹⁸³ *Ibidem*, para 3233.

¹⁸⁴ *Ibidem*, para 3213.

¹⁸⁵ *Ibidem*, para 3237.

¹⁸⁶ GCIV, Articles 14, 23, and 38.

¹⁸⁷ GCIV, Article 24.

¹⁸⁸ GCIV, Article 24 (3).

an obligation to establish procedures to keep track of persons pertaining to the adversary belligerent who fall into its hands. The GCs requires the setting up of “National Information Bureaux” by both belligerent parties.¹⁸⁹ Their task is to centralize information on individuals belonging to the adverse party, to transmit such information to the adverse party and to open or facilitate inquiries in order to elucidate the fate of missing persons. The national information bureaux have different tasks with regard to those who participate in the military effort on the one hand (PoW under GCIII), and civilians including children on the other (GCVI).¹⁹⁰

Under GCIII Article 122, upon the outbreak of a conflict and in all cases of occupation, each belligerent party “shall instate an official Information Bureau for prisoners of war who are in its power”. The Ukrainian Government in March 2022 established The National Information Bureau (NIB) of Ukraine for Prisoners of War, Forcibly Deported and Missing Persons.¹⁹¹ It was integrated under the Ministry of Reintegration of Temporarily Occupied Territories. The Russian side in August 2022 publicly stated that it had established a National Information Bureau in line with GCIII in February of 2022.¹⁹² It is located in the Ministry of Defence, and relates to information concerning Ukrainian prisoners of war. The Central Agency at the International Committee of the Red Cross (ICRC) is tasked with ensuring exchange of information between the national information bureaux of the two belligerent States.¹⁹³

Under GCIV, the belligerent parties are under the duty to establish another National Information Bureau, (or alternatively to task one NIB with all assignments under both Convention.) The tasks of the National Information Bureau under GCIV caters to the needs of civilians and children in particular. Each party is obliged to set up a special section of the Bureau for taking all necessary steps to identify children whose identity is in doubt, and record particulars of their parents or other near relatives.¹⁹⁴

The Ukrainian side has established a National Information Bureau that handles tasks under both GCIII and GCIV. The Mission has not been able to ascertain that the Russian side has indeed established a National Information Bureau in line with its obligations under GCIV articles 136 and 50. It is the understanding of the Mission that the Russian Ombudsman for Human Rights and the Russian Ombudsman for Children Rights who perform some of the tasks with regard to Ukrainian children in Russia, including those who have been transferred by occupational authorities. For Ukrainian children whose parents have died, or whose parents or guardians are unknown or unreachable, Russian authorities report conducting some family tracing; media reports describe Ms. Lvova-Belova and authorities from the Moscow region, reviewing State databases and the database of the Red Cross in search of relatives.¹⁹⁵ It has also been suggested that Russian Commissioner for Human Rights, Ms. Tatyana Moskalkova, has been looking for relatives of Ukrainian children whose parents had died and that six children had been handed over to legal representatives.¹⁹⁶ While these Russian offices have their own mandates, the Mission would like to stress that these mandates do not correspond with that of the National Information Bureau under GCIV.

¹⁸⁹ GCIII, Article 122; GCIV, Article 136.

¹⁹⁰ GCIII, Article 122; GCIV, Articles 136 and 50.

¹⁹¹ Cabinet of Ministers of Ukraine, Disposal No. 228-R, *op.cit.*

¹⁹² Замминистра обороны России Александр Фомин провел брифинг для иностранных военных атташе, *Министр обороны России*, 3 August 2022.

¹⁹³ GCIII, Article 123; GCIV, Article 140.

¹⁹⁴ GCIV, Article 50 (4).

¹⁹⁵ Детей из Донбасса взяли под опеку в Подмосковье. Главное о гуманитарной программе, *360TV*, 23 April 2022; Ніна Назарова, “Я привіз малих здоровими і живими”. Як шестеро дітей вижили в Маріуполі, застрягли в “ДНР” і опинилися в Європі, *BBC*, 18 July 2022.

¹⁹⁶ Захарова назвала ложью обвинення Києва в депортации детей с Украины, *RBK*, 25 June 2022. Corroborated by the Mission in several meetings with interlocutors.

The GCIV makes provision for the establishment of the Central Agency at the ICRC to ensure exchange of information between the National Bureaux.¹⁹⁷ The Agency may also take on the task of exchanging family correspondence between family-members in the territory of a belligerent State or in occupied territory. Ms. Lvova-Belova has denied any communications with Ukrainian authorities, but has suggested that her office has met with representatives of the ICRC, UNICEF, and Refugees International, and provided “*all available information about the situation of children*”.¹⁹⁸ Only the ICRC has confirmed communications with her.¹⁹⁹ But while Ms. Lvova-Belova has a crucial role in accommodating for unaccompanied Ukrainian children in Russia, her mandate is different from that of a National Information Bureau. The Mission cannot see that the Ombudsman can make up for this institutional shortcoming. The Mission has not been able to find any other traces of an Information Bureau established by the Russian belligerent in line with its obligations under GCIV nor any other institution with a mandate corresponding to that of the GCIV information bureau.

The Mission has taken notice that both parties to the armed conflict in Ukraine have prisoners of war in the hands of the adversary. There is consequently a reciprocal interest for the national information bureau under GCIII. However, the situation with respect to the civilian population is not symmetric. The Russian army is an occupying force with control over parts of the Ukrainian civilian population. There is no corresponding Russian civilian population under the control of Ukrainian forces. This fact does in *no way* discharge the Russian belligerent from her obligations under GCIV. The Mission would like to reiterate that due to the separation of *ad bellum* and *in bello*, the *status* of the territories under international law over which the belligerent States are fighting, does in no way influence their duties under IHL while the fighting is ongoing.

The Mission is of the view that the lack of an appropriate institutional arrangement by the Russian belligerent in line with its obligations under GCIV articles 136 and 50 amount to a manifest violation of Russia’s humanitarian law obligations under the GCIV. While Russian authorities may actually have relevant information, the absence of an institution with the specific task to trace, coordinate, update, and communicate this information to the enemy belligerent, is a clear violation of Russia’s obligations under humanitarian law. Moreover, the Mission considers that this violation is of considerable gravity in that it deprives both belligerent parties of a mechanism under the GCIV which enables compliance with a number of other duties under GCIV, in particular regarding the fate of children. The Mission is of the opinion that this violation therefore facilitates other violations of GCIV and API. Importantly, the absence of this institutional arrangement also aggravates the effects of other breaches, notably the breach linked to forcible transfer and/or deportation of children.

C. THE PROHIBITION OF DEPORTATION AND FORCIBLE TRANSFER

The prohibition against deportation serves to provide civilians with a legal safeguard against forcible removals in time of armed conflict and the uprooting and destruction of communities by an aggressor or occupant of the territory in which they reside. The prohibition of deportation was deemed to be customary already during the Nuremberg tribunals.²⁰⁰ The prohibition on deportation is absolute in the sense that no exception is permissible apart from those provided for in Article 49(2).²⁰¹ Moreover, the obligation on the High Contracting Parties” to respect and to ensure respect for the present Convention *in all circumstances*” implies that potential

¹⁹⁷ GCIV, Article 140.

¹⁹⁸ Edith Lederer, Red Cross confirms contact with Russia about Ukrainian kids, *Associated Press*, 7 April 2023.

¹⁹⁹ *Ibidem*.

²⁰⁰ Nuremberg Military Tribunals, Case of the United States of America v Erhard Milch, 17 April 1947.

²⁰¹ GCVI, Article 49(1).

circumstances precluding wrongfulness such as self-defence, reprisals, *force majeure* or state of necessity cannot be invoked to justify the deportation of civilian population.²⁰²

Article 49 of the GCIV stipulates that “*individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited*”. The provision prohibits *all kinds* of transfers of individuals or groups or deportations of protected people “regardless of their motive”. No exception under international law that *may otherwise justify* forcible transfer or deportation can be applied to protected persons in occupied territory, except those explicitly provided for in GCIV and API.

The reason for this stricter-than-usual regime is the temptation by belligerent parties to rely on a variety of arguments for the forced transfer or deportation of individuals or groups of persons directly or indirectly linked to (the motives behind or dynamics of) the conflict.²⁰³ Case law of the ICTY and other criminal tribunals have substantially contributed to circumscribe more closely the scope of the notions involved in the prohibition of deportation or forcible transfers.

1. THE CORE OF THE PROHIBITION

Both deportation and forcible transfer denote the act of forced displacement of persons by expulsion or other coercive acts from an area in which they are lawfully present.²⁰⁴ Deportation requires the displacement of persons across a national border, to be distinguished from forcible transfer which may take place within national boundaries.²⁰⁵ The concept of ‘forcible transfers’ – as opposed to deportation – was an innovation of the GCIV of 1949 and implies an extension of the prohibition to forced displacements occurring *within* the occupied territory.²⁰⁶ The issue of forcible transfer primarily relates to transfers from other regions of Ukraine to occupied Crimea. No distinction is made under the Convention between individual and mass forcible transfers, nor is the destination relevant. Any deportation is forbidden, whether to the territory of the occupant or to any other country, occupied or not. It is considered a grave breach of the GCs and a war crime.²⁰⁷

The prohibition set forth in Article 49(1) GC IV covers only situations where the belligerent *intended* to cause the displacement. Displacement as a consequence of attacks directed against military objectives in conformity with IHL is not perceived as deportation under IHL.²⁰⁸ A broader interpretation, encompassing so-called unintended indirect forced displacement would have the consequence that the prohibition would end up swallowing up almost the whole body of *ius in bello*, as almost any violation can induce a decision to depart.²⁰⁹ The corpus of IHL also assumes that the fear of the consequences of combat may lead the civilian population to

²⁰² GCIV, Common article 1.

²⁰³ Final Record of the Diplomatic Conference of Geneva of 1949, Volume II-A, pp. 664 and 759.

²⁰⁴ ICTY, *Prosecutor v. Blaškić*, IT-94-15-T, Judgment, 3 March 2000, par 234.

²⁰⁵ ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para 521; ICTY, *Prosecutor v. Krnojelac*, IT-97-24-T, Judgment, 15 March 2002, para 474; *Prosecutor v. Simić*, IT-95-9-T, Judgment, 17 October 2003, para 122; ICTY, *Prosecutor v. Jadranko Prlić*, IT-04-74-T, Judgment, 29 May 2013, para 47.

²⁰⁶ Etienne Henry, *The Prohibition of Deportation and Forcible Transfer of Civilian Population in the Fourth Geneva Convention and beyond*, in Borhan Uddin Khan, Jahid Hossain Bhuiyan (eds), *Revisiting the Geneva Conventions: 1949-2019*, Brill, 2019, p 11.

²⁰⁷ GCVI, Article 147; API, Article, 85(4)(a); Article 8(2)(b)(viii) of the Rome Statute.

²⁰⁸ ICTY, *Prosecutor v Ante Gotovina and Mladen Markač*, IT-06-90-A, Judgment, 16 November 2012, paras 96 and 114; EECC, *Central Front—Ethiopia’s Claim 2 (Eritrea-Ethiopia)*, Partial Award, 28 April 2004, para 53. The EECC held that Ethiopia did not allege or prove that Eritrea deliberately tried to cause the civilian inhabitants of the wereda to flee by terrorizing them.

²⁰⁹ Etienne Henry, *op. cit.*, p. 14.

spontaneously flee an affected area.²¹⁰ A situation with “spontaneous” displacement must be distinguished from “forced” displacement for the purpose of the Convention.²¹¹

2. CONSENSUAL TRANSFER

The prohibition on deportation and forcible transfer is limited to *non-consensual* displacement. Consensual individual or mass relocations are considered to fall outside the material scope of the prohibition, rather than being an exception.²¹² Consensual transfer is meant to accommodate for situations where protected persons belong to ethnic or political minorities who may fear discrimination or persecution and therefore might wish to leave a given territory.²¹³

In order to qualify as such, deportations or forcible transfers ought to be *forcefully* enforced, that is to say against the free will of the persons concerned, by the use of direct or indirect constraint or coercion.²¹⁴ The term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”²¹⁵ No obligation is violated where the displacement results from “genuine choice” of the protected persons to leave the territory.²¹⁶ While adults who have left Ukrainian territory may have given their consent to be relocated to Russian territory, children are not in a position to give such consent. Their parents or their legal guardians must give consent on their behalf.

Many children in institutions have been transported out of occupied areas. In these cases, the right person, either the director of the institution or parents or other legal guardians of each individual child must give consent. In April 2022, the director of a facility in Rostov stated that the decision to evacuate was made “within minutes” before a full-scale invasion, and that all children “gave their consent” to be transferred to families in Russia.²¹⁷ As noted previously, many of the children residing in institutions at the time of invasion had parents with parental rights. There can be no consensual transfer if consent is given by an unauthorized adult. The Mission was made aware of several instances where the directors of institutions did not give consent to the transfer of the children in the institution. This did not prevent transfer by the Russian occupational authorities. The Mission considers these instances to be non-consensual evacuations.

The determination as to whether a person giving consent had a genuine choice is one to be made within the context of the particular case being considered.²¹⁸ This has to be assessed considering all relevant factual circumstances.²¹⁹ Consideration must be paid to the prevailing situation and

²¹⁰ EECC affirmed that “flight of civilians from the perceived danger of hostilities is a common, and often tragic, occurrence in warfare, but it does not, as such, give rise to liability under international humanitarian law”. EECC, Central Front, *op. cit.*, para 53.

²¹¹ ICRC, Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. Geneva, 24 May - 12 June 1971, vol. VI (ICRC 1971), p. 29.

²¹² It is also not seen as a renunciation to a right secured by the Convention, which is barred by Article 8 of the GC IV, or a case of application of consent as a circumstance precluding wrongfulness.

²¹³ Pictet, Commentary GCVI, p. 279.

²¹⁴ *Ibidem*.

²¹⁵ UN Doc. PCNICC/2000/INF/3/Add.2, Report of the Preparatory Commission for the ICC, Finalised Draft Text of the Elements of the Crimes, 6 July 2000, p. 11.

²¹⁶ ICTY, *Krstić*, IT-98-33-T, *op. cit.*, para 148; *Naletilić and Martinović*, IT-98-34-T, *op. cit.*, para 519; The Tribunal asked whether the persons concerned exercised ‘a genuine choice to go’. This test was confirmed in *Simić*, IT-95-9-T, *op. cit.*, para 125 (“no real choice”); *Krnojelac* IT-97-24-T, *op. cit.*, para 475 (‘no real choice’); *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgment, 17 January 2005, para 596 (“a free or “genuine” choice”); *Stakić*, IT-97-24-A, *op. cit.*, para 279 (“the relevant persons had no genuine choice in their displacement”); and *Prosecutor v. Prlić*, IT-04-74-A, Judgment, 29 November 2017, para 495 (“it is the absence of genuine choice that makes displacement unlawful”).

²¹⁷ Every day, the children of Donetsk listened to the rockets, *360 TV*, 23 April 2022.

²¹⁸ ICTY, *Stakić*, IT-97-24-A, *op. cit.*, 2006, para 282.

²¹⁹ ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-24-A, Judgment, 17 September 2003, para 229.

atmosphere, including the victim's vulnerability.²²⁰ In an instance in Kherson, 2000 children from institutions were readied for evacuation towards non-occupied Ukraine. When the green corridors did not materialize, the children were returned to the institutions. Most of them were later discharged and sent to their families, thereby avoiding mass-evacuation in the other direction, towards Russian territory. In another instance in March 2022, a volunteer tried to take 17 children from a children's sanatorium in Mariupol to Ukrainian-controlled territory when they were stopped at a checkpoint. The next day, the children were taken by officials, accompanied by local media, from the so-called DPR.²²¹ An OSCE Moscow Mechanism report published in July noted Ukrainian reports that at least 2,000 children from institutions had been transferred to Russia "even though they have living relatives and were in the institutions only for medical care".²²² While evacuations of child institutions have taken place in situations of great stress, and under a variety of difficult conditions, the Mission have found some clear instances of non-consensual displacement that do not seem to fall within the lawful exceptions, and are likely forced transfers or deportations.

Children sent to rehabilitation camps pertain to a different category. In the large majority of cases examined by the Mission, the initial travel and planned stay at the rehabilitation camp took place with the consent of parents or legal guardians. The Mission has heard numerous accounts about children from Russian-occupied parts of the Kharkiv-region who were sent to summer camps in occupied Crimea or the Russian Federation with the consent of their parents, but were subsequently not returned home at the end of the vacation period.²²³ For example, in a summer camp in Krasnodarskiy Krai, in the Russian Federation, about 200 children remained after the summer and were enrolled in a local school.²²⁴ It has been suggested to the Mission that the Russian side uses the vulnerable position of the parents, their desire to protect the children from shelling and the difficulties of life in the occupied territory, misleading them about the nature and duration of the so-called "vacation".²²⁵ When the agreed period of stay comes to an end, it is usually extended without returning the children to their parents based on arguments of security such as dangers of shelling, or pro-Ukrainian views.²²⁶ While the Mission finds that most cases of children sent to recreational camps did not initially amount to forcible transfer or deportation, subsequent prolongation by the Russian occupying authorities of the stay of the children amounted to non-consensual displacement and separation by families, bringing the children into a situation akin to that of forcibly transferred or deported children.

Lack of genuine choice may be inferred from, inter alia, threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will.²²⁷ This may include, for example, situations involving "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or the act of taking advantage of a coercive environment."²²⁸ It follows from such interpretations that even in situations in which a person "consent[s] to, or even request[s], their removal", such removals may still be considered to be 'forcible' where that consent is not given "voluntarily and as a result of the individual's free will, assessed in light of the surrounding circumstances of the

²²⁰ ICTY, *Blagojević and Jokić*, IT-02-60-T, *op. cit.*, para 596.

²²¹ HRW Report I, *op. cit.*

²²² OSCE Moscow Mechanism Report II, *op. cit.*, p. 95.

²²³ OHCHR verified such instances from Kharkiv region that occurred during the previous reporting periods. Some children have not reunited with their parents as of December 2022. OHCHR Report II, *op. cit.*, para 69; A submission, *The Reckoning Project (TRP)*, *op. cit.*

²²⁴ In Gelendzhik, children from Kharkiv region began to learn the school curriculum, *Kuban 24*, 22 September 2022.

²²⁵ ZMINA, Forced displacement, *op. cit.*, p. 5

²²⁶ *Ibidem*.

²²⁷ ICTY, *Simić*, IT-95-9-T, *op. cit.*, para 126

²²⁸ ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, *op. cit.*, paras 488-490.

particular case.”²²⁹ With respect to children separated from their parents as a consequence of the war, for example at filtration points, these are coercive situations imposed by the occupying power, and no question of consent arises.

Numerous filtration camps have been established by the Russian occupational authorities. Filtration-points were established at Amvrosiivka, Bezimenne, Donetsk, Dokuchaievsk, Kachkarske, Kozatske, Khomutovo, Manhush, Nokolske (prev. Volodarske), Novoazovsk, Pervomaisk, Sartana, Shyrokyne, Starobesheve, Uspenka.²³⁰ It is clear that the number of Ukrainians passing through filtration is massive, although precise numbers are unavailable.²³¹ Reports indicate that the filtration-information is being used to create a new database for an “interior ministry” in the occupied areas.²³² People are also questioned about their families.²³³ Some reports suggest that they persons pressured to change their citizenship.²³⁴ Individuals subjected to filtration include those leaving areas of ongoing or recent hostilities and those residing in, or moving through, territory controlled by Russian armed forces and affiliated armed groups.²³⁵ The Mission is of the understanding that it is common procedure to separate parents and children at filtration points.

Under IHL interned or detained families should be kept together.²³⁶ Children should only be separated from adults to the extent that this does not involve a violation of the right of families to be housed together. Interned children must be lodged together with their parents, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purpose of enforcement of penal or disciplinary sanctions.²³⁷ And if separated, families are entitled to give news to one another.²³⁸ The Mission has seen and heard numerous reports concerning fathers or mothers at filtration-points suspected of having ties with Ukrainian armed forces or State institutions, or having pro-Ukrainian views, and being separated from their children while subjected to internment, transferred to penal colonies or pre-trial detention centers. Some internees are released after one or two months, while others remain interned or detained for an undetermined period of time, with no or little information for their families about their whereabouts and fate.²³⁹ The Mission has been informed about several instances of children who have become unaccompanied as a consequence of filtration. One example is a military physician, separated from her four-year-old daughter by Russian soldiers during the

²²⁹ *Ibidem*. See also, ICTY, *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, *op. cit.*, para 519; *Prosecutor v. Vlastimir Dordević*, IT-05-87/1-A, Judgement, 27 January 2014, para 727.

²³⁰ HRW Report II, *op. cit.*, p. 30.

²³¹ In the Summer of 2022, it was suggested by Polish intelligence services that 1.5 million Ukrainians had been sent to filtration camps, see Spokesman for the Minister Coordinator of Special Services, Special Services Have Identified Russian Filtration Camps, *Website of the Republic of Poland*, 27 July 2022, available at: <https://www.gov.pl/web/special-services/special-services-have-identified-russian-filtration-camps>.

²³² HRW Report II, *op. cit.*, pp. 31-32.

²³³ *Ibidem*.

²³⁴ Fedosiuk, *The Stolen Children*, *op. cit.*, p. 10; Shaun Walker, *Filtration and Forced Deportation: Mariupol Survivors on the Lasting Terrors of Russia’s Assault*, *The Guardian*, 26 May 2022; Mackintosh, Eliza, Oleksandra Ochman, Gianluca Mezzofiore, Katie Polglase, Teele Rebane, and Anastasia Graham-Yooll, *Russia or Die: After Weeks under Putin’s Bombs, These Ukrainians Were given Only One Way Out*, *CNN*, 7 April 2022

²³⁵ Yale School of Public Health, *System of Filtration: Mapping Russia’s Detention Operations in Donetsk Oblast*, 14 February 2022, available at: <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/7d1c90eb89d3446f9e708b87b69ad0d8/data> (Yale Report II).

²³⁶ GCIV, Article 82.

²³⁷ GCIV, Article 82(2), API, Article 77(4).

²³⁸ GCIV, Article 25.

²³⁹ OHCHR, *Human Rights Concerns Related to Forced Displacement in Ukraine*, Statement at the Security Council Open Meeting on Ukraine, 7 September 2022.

UN/ICRC evacuation from the Azovstal steelworks tunnels; after the filtration camp in the city of Manhush, the whereabouts of the child remained unknown.²⁴⁰

The Mission has found that in situations where the occupying power separates children from their parents for the purpose of filtration, it violates IHL obligations to intern children together with their families. Moreover, the separation of parents and children at filtration-points and subsequent relocation of the children of internes to other occupied areas or to the territory of the occupying power are serious cases of non-consensual separation of families in breach of IHL. When the occupying power picks up these children and relocates them to other occupied areas or to the territory of the occupying power, the Mission deems that these are clear cases of forcible transfer or deportation in violation of GCIV article 49, amounting to grave breaches of the Convention.

3. EXCEPTION: SECURITY OF THE POPULATION AND MATERIAL REASONS

Despite the absolute character of the prohibition against forcible transfer and/or deportation, not all forcible displacements of the population during armed conflict are unlawful. Article 49(2) of the GCIV allows for non-consensual evacuations “*if the security of the population or imperative military reasons so demand*”. The exception is reflected in treaties and State practice.²⁴¹ Non-consensual evacuation might be lawful if it is effectively justified on one of the two recognized grounds and carried out in accordance with relevant rules. The two grounds of evacuation may also overlap.²⁴² The rule on justified evacuations calls for a restrictive interpretation, as these are exceptions to a general prohibition of IHL. The exception is only applicable in cases where the security of the civilians involved or imperative military reasons (such as clearing a combat zone) require the evacuation, and only lasts for as long as the conditions warranting it exist.

Non-consensual evacuation of children from an occupied area is permitted for reasons of safety.²⁴³ The obligation to evacuate the civilian population applies *a fortiori* to certain categories of particularly vulnerable persons, hereunder children, from besieged and encircled areas.²⁴⁴ Yet, it is important to stress the importance of the principle of good faith in the application of the exceptions, as history is full of instances of *mala fides* arguments related to both. According to the Commentary to GCIV, a real necessity must exist; the measures taken must not be merely an arbitrary infliction or intended simply to serve in some way the interests of the occupying power.²⁴⁵ The commentary notes: “*if therefore an area is in danger as a result of military operations, the Occupying Power has the right and, subject to the provisions of Article 5, the duty of evacuating it partially or wholly, by placing the inhabitants in places of refuge. The same applies when the presence of protected persons in an area hampers military operations. Evacuation is only permitted in such cases, however, when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate*”.²⁴⁶

Evacuation may also be dictated by other provisions of IHL, such as the duty of taking precautions in defence, i.e., the duty of a belligerent to endeavour to remove the civilian population, individual civilians and civilian objects under its control to the maximum extent

²⁴⁰ Senate Foreign Relations Committee Ranking Member (@SenateForeign), I’m Particularly Concerned about the Children Separated from Their Parents like the Case of Victoria Obidina Who Was Separated from Her 4yr Old Daughter & Remains Missing, *Twitter*, 25 May 2022.

²⁴¹ GCVI, Article 49(2). Hencaerts, Customary International Humanitarian law, Volume I: Rules (Rule 129).

²⁴² ICTY, *Blagojević and Jokić*, IT-02-60-T, *op. cit.*, para 596. See also Yoram Dinstein, *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, p. 171.

²⁴³ API, Article 78.

²⁴⁴ GCIV, Article 17; GCI Article 15.

²⁴⁵ Pictet Commentary GCIV, *op. cit.*, p. 283.

²⁴⁶ *Ibidem*, p. 280.

possible from the vicinity of military objectives.²⁴⁷ This obligation to evacuate typically arises in the case of intense bombing or in situations of siege warfare,²⁴⁸ as frequently produced as one of the results of the Russian invasion of Ukraine on 24 February 2022. However, a belligerent cannot adapt the ground by “evacuating the population” under the pretext of their safety in order to be entitled to use heavy weapons that otherwise would have been unlawful.

IHL imposes stricter rules for the transfer of protected persons out of occupied territory. It follows from GCIV article 49(2) that displacement of protected persons by the occupying power may only take place if “*material reasons make it impossible to avoid*” such displacement. According to the ICRC commentary “*only when it is impossible for material reasons to avoid it, is a temporary transfer of a population outside occupied territory legitimate and this population should be returned to its own country as soon as hostilities have ceased in that area. In this case children will enjoy the guarantees accorded protected persons. In this way families will be kept together*”.²⁴⁹

In the initial face of the invasion, large areas in Eastern Ukraine became occupied by the Russian military and associated forces subsequent to fierce resistance by Ukrainian forces. The prospect of ongoing or future counterattacks may provide sufficient legal grounds to evacuate children from the area of hostilities, either together with their families or in groups organized by childcare institutions. The long and extended frontline, and prospects of future battles may serve to justify displacement of protected persons. While each belligerent power is under a constant duty to take care to protect the civilian population from the effects of hostilities, this applies *a fortiori* to “protected persons”, as they may easily be perceived to serve the occupying power as human shields during hostilities. While locating Ukrainian military objectives next to a Ukrainian child-institution may be a breach of the duty to precautions in defence, locating Russian military objectives next to a Ukrainian child-institution may effectively immunize the Russian military objective from attacks by Ukrainian forces, and amount to the use of “protected persons” as human shields, which is a war crime.²⁵⁰ There may therefore very well be *material reasons* for the evacuation of Ukrainian child institutions out of areas newly conquered by Russian forces. However, very strict requirements of an absolute nature are attached to the further treatment and fate of these children once they are removed from the occupied area. The displacement must be temporary and all must be done to facilitate reunification with families.

Forced evacuations of Ukrainian children from institutions in Ukrainian-controlled territories prior to February 2022 and brought to the attention of the Mission by Russian forces in occupied areas essentially fall into two categories.

One set of evacuations appears to have been rooted in the security of the children. Russia, as a belligerent party is under an obligation to take precautions in defence, which includes a duty to remove the civilian population under their control from the vicinity of military objectives.²⁵¹ This obligation may extend to a period immediately prior to planned military operations that may expose the civilian population to counter-attacks. One set of relocated children belong to those who were in child-institutions not under the control of Ukrainian authorities prior to the full-scale invasion, where evacuation of child-institutions started prior to the full scale invasion.²⁵² On 18 February 2022 the “evacuation” from the so-called DPR and LPR was

²⁴⁷ GCIV, Article 58(a), explicitly stating that such displacement must take place without prejudice to Article 4; Henckaerts, *Customary International Humanitarian Law, Volume I: Rules* (Rule 22).

²⁴⁸ Yoram Dinstein (Ed.), *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, Cambridge, 2004, p. 133–137.

²⁴⁹ Sandoz Commentary API, *op. cit.*, para 3223.

²⁵⁰ GCIV, Article 28; API, Article 51(7).

²⁵¹ API, Article 58(a).

²⁵² ZMINA, Deportation of places of detention in the Kherson region. *Analytical note of the Center for Human Rights*, 2023.

announced, and child-institutions were relocated to the Russian Federation before the full-scale invasion.²⁵³ One of the categories of people who were taken out first were children from shelters and boarding schools.²⁵⁴ On 19 February the first buses with 225 pupils of the Donetsk boarding school No. 1 arrived at the border of the Russian Federation.²⁵⁵ While many of these children had been given Russian citizenship following changes in the Russian legislation in 2018 and 2019, this did not apply to orphans. On 27 February information appeared about the settlement of “refugees from Donbas”, “evacuees” before a full-scale invasion of the territory of the Rostov region of the Russian Federation. In a media report from July 2022, the Advisor to the Head of the so-called DPR on Children’s Rights, Ms. Eleonora Fedorenko, reportedly confirmed that all children who had been in institutions in the so-called DPR were by that point in Russia.²⁵⁶

The Mission is of the view that these initial evacuations may be examples of evacuations in line with the requirements of material reasons. However, the duties of the occupying power towards these Ukrainian orphans for the duration of the evacuation must be strictly observed for the forced displacement to remain lawful.

Another instance brought to the attention of the Mission concerns the already mentioned 2,000 children in Kherson readied for evacuation but who were prevented by the advancing Russian army from using the announced green corridor. They returned to their institutions, and within days, the number of children was reduced by 70%. The Mission was informed by multiple stakeholders that the children were “sent home”, since the institutions lacked the means to cater to their security. While some children reportedly were well received by their families, other children stayed behind or found empty homes, and ended up unaccompanied, or as “street children”. In this group of children, the Mission was informed about several instances of the Russian forces or occupational authorities evacuating them from newly occupied areas, either to Crimea or to Russian territory. It has been communicated to the Mission that children from Kherson and Zaporizhzhia regions are being held in at least 11 places in the temporarily occupied Crimea. In February 2023 there were reports containing information about 43 institutions, including at least 6 in the temporarily occupied Crimea, where Ukrainian children from Kherson and Zaporizhzhia regions are held: Artek, Luchystyy, Laspi, Druzhba, a camp in Pischane and Psychiatric Hospital №5. A Ukrainian Centre has created a map of the camps where Russians resettle deported Ukrainian children, based on open source data.²⁵⁷ The Mission considers many of these transfers of children from an active combat theatre to be evacuations whereby the occupying power has complied with its duties of care for children unable to care for themselves in the midst of hostilities. However, while the initial relocation may be lawful, the transportation of these unaccompanied children *out* of the territory of the occupied belligerent will nevertheless be unlawful. Numerous cases have been brought to the Mission’s attention where children evacuated from areas of hostilities, have subsequently been relocated to the Russian Federation in clear violation of API article 78.²⁵⁸ The Mission has also heard reports about children deported to Belarus by advancing Russian forces in the Kyiv oblast during the initial phase of the invasion.²⁵⁹

²⁵³ The heads of the DPR and LPR announced the beginning of a mass evacuation, *RIA Novosti*, 18 February 2022.

²⁵⁴ ZMINA, Forced displacement, *op. cit.*, p. 3.

²⁵⁵ Rostov Oblast has started receiving evacuees from Donbass, *VestyRU*, 19 February 2022.

²⁵⁶ Елена Яковлева, Мария Львова-Белова: Семьи из шести регионов РФ возьмут под опеку 108 детей-сирот из Донбасса, *RGRU*, 15 July 2022.

²⁵⁷ Дитячі табори та санаторії у яких росія промиває мізки українським дітям та проводить їх милітаризацію, published on 2 March 2023.

²⁵⁸ Reported by OHCHR Report II, *op. cit.*, para 67.

²⁵⁹ OHCHR Report II, *op. cit.*, para 51.

Relocation to Crimea and subsequently to Russian territory is a practice reported to have been widespread in Mariupol immediately after the city was captured by Russian forces.²⁶⁰ Similar practice has also been reported from other newly occupied territories. A notable example are fourteen children from institutions under the age of five who have reportedly been relocated from occupied Kherson to “*Yolochka*,” an orphanage in the city of Simferopol in the Autonomous Republic of Crimea, which specializes in housing patients with neurological and psychiatric disorders.²⁶¹ Some children’s profiles then appeared on “*usynovite.mosreg.ru*,” a Moscow regional government’s website for adoptions.²⁶²

The Mission considers that instances in which Ukrainian children from child-institutions have been moved to other occupied areas as a consequence of justified evacuations are subsequently moved from occupied Crimea to Russian territory without corresponding justification, must be seen to amount to deportations in breach of GCVI Article 49.

A second category of evacuations of children in institutions have taken place from occupied territories prior to the withdrawal of Russian forces from occupied territory. In October, prior to the Russian withdrawal from newly occupied territories, several reports brought to the attention of the Mission suggest that Russian soldiers had orders to evacuate Ukrainian children in child institution to other areas still under occupation or to Russia. The Mission has received credible reports that children began to be taken out of shelters and boarding schools in Kherson region with the approach of the Ukrainian offensive and the increasing possibility of reintegration of these territories.²⁶³ Mr. Lubinets reported that Russian forces had removed vulnerable children, aged nine to seventeen, from a boarding school in then-occupied Kherson Oblast before retreating.²⁶⁴ While the Mission acknowledges the difficulties for the belligerent parties of foreseeing how hostilities develop in an active theatre of war, it is the understanding of the Mission that the situation in the Kherson-area at the time did not give reason to evacuate the Ukrainian children out of the area. The reported strong resistance from the staff at these institutions may also suggest that the security of the population was not a credible justification. The Mission is therefore of the view that the non-consensual transfer of children pertaining to the enemy belligerent before de-occupying territory in these instances constitutes a clear violation of the prohibition to forceful transfer of protected persons under GCIV article 49, amounting to a grave breach of the GCIV and a war crime.²⁶⁵

4. EXCEPTION: MEDICAL EVACUATION OF CHILDREN OUT OF AREA

In occupied territory, there is a strengthened prohibition against the forced transfer of unaccompanied children *out* of the occupied area.²⁶⁶ It is prohibited to evacuate children from occupied territory to another country except for a *temporary* evacuation where compelling reasons of the health or medical treatment of the children is concerned.²⁶⁷ These children can only be transferred based on medical reasons. The obligation is absolute. Evacuation of children who are not nationals of the evacuating power is acceptable only for medical treatment and with the written consent of the parents or those primarily responsible for the care of children. Written consent by parent or guardian is required if they can be found, or written consent of the person

²⁶⁰ ZMINA, Forced displacement, *op. cit.*, p 3.

²⁶¹ Anna Ryzhkova, Regina Gimalova, Российские власти вывезли не менее 14 сирот из Херсона младше пяти лет в крымский детдом ‘Ёлочка’, *Verstka Media*, 26 January 2023.

²⁶² ZMINA, Forced displacement, *op. cit.*, p 3.

²⁶³ *Ibidem*.

²⁶⁴ Викрадених з Херсонського інтернату дітей вивезли до психлікарні у Криму – омбудсмен, *Slovo i Dilo*, 6 November 2022.

²⁶⁵ GCIV, Article 147.

²⁶⁶ API, Article 78 (1).

²⁶⁷ API, Article 78 (1).

primarily responsible for the care of the children. Any such evacuation shall be supervised. A violation of Article 78 of the API may constitute a breach of the prohibition of *illegal transfer*.²⁶⁸

The Mission was made aware of several instances where initial lawful medical evacuation to Russia (and one instance to Belarus) had been prolonged for reasons unrelated to the medical treatment. For example, a girl who had been undergoing medical treatment in Mariupol, was transferred to Donetsk with a group of other children in March of 2022. From Donetsk, she was taken to a facility near Moscow, and by autumn she had been placed in foster care in the Moscow region. Her family in Government-controlled Ukraine did not know about her fate and whereabouts, and although they heard in the media that she was in the Russian Federation, they did not have any contact with her as of 31 December 2022.²⁶⁹ The Mission is of the view that in instances when initial transfer from occupied territory to the territory of the occupying power is lawful under IHL, the exception only covers a temporary stay and the specific purpose of medical considerations. A prolonged stay not justified by medical reasons will constitute a violation of Article 78 of the API.

Reportedly, Russian occupational authorities are to a substantial extent relying on medical justification as legal grounds to remove Ukrainian children from Ukraine. Ukrainian stakeholders have suggested that Russian doctors in one instance determined that the majority of children in an institution had to be relocated to Russia for the purpose of medical care.²⁷⁰ The Mission has not been able to verify these allegations, but would like to reiterate that the protections provided under IHL against deportation by the civilian population and children pertaining to one belligerent power are to a considerable extent protection dependent on nationality. The duty under IHL to medical care to the sick and wounded is to the contrary unconditional and supersedes not merely nationality but also links to belligerents.²⁷¹ Medical justifications for transfers may therefore serve to circumvent the protections of protected persons and unaccompanied children in occupied territory. Great care should therefore be taken by each belligerent party and State parties to the GCs to ensure that medical evacuations are not relied on for ulterior motives.

5. TRANSFERS GOING BACK TO 2014

With respect to situations of forcible transfer going back to 2014, the Mission has heard several accounts to the effect that Russia began to transfer children from the occupied territories of Crimea, Donetsk and Luhansk regions in 2014.²⁷² As of 1 January 2014, there were 4,323 orphans and children deprived of parental care residing in social care institutions on the Crimean Peninsula at the time of its occupation and annexation according to Ukraine's Ministry of Social Policy.²⁷³ Only two dozen of those children were reportedly able to return to mainland Ukraine at that time.²⁷⁴ The National Preventive Mechanism of the Ukrainian Ombudsperson's office did not know of any public information on additional citizenship options being presented to children from Crimea as they reach the age of majority.²⁷⁵ Ukrainian stakeholders consulted by the Mission suggest that several thousand of Ukrainian children were transferred to the territory of the Russian Federation and their traces are lost as of now.²⁷⁶ They warn that the

²⁶⁸ API, Article 78.

²⁶⁹ OHCHR Report II, *op. cit.*, para 67.

²⁷⁰ "Russians Prepared 10,500 Children For Deportation To Russia," *National Resistance Center*, 26 November 2022. Similar stories were reported to the Mission in conversations with interlocutors.

²⁷¹ GCI-IV, Common Article 3(1)(2).

²⁷² Tetiana Fedosiuk, *The Stolen Children. How Russia Attempts to Kidnap Ukraine's Future. Analysis*, February 2023, available at: [ICDS Analysis The Stolen Children Tetiana Fedosiuk February 2023.pdf](#)

²⁷³ Ombudsperson of Ukraine, *Annual report of the Parliamentary Commission on Human Rights of Ukraine on the observance and protection of human rights and citizens in Ukraine*, 2015 p. 50.

²⁷⁴ *Ibidem*, para 41.

²⁷⁵ *Ibidem*.

²⁷⁶ Report received by the Moscow Mechanism, entitled "Children displacement" (on file with the authors).

same situation is about to be repeated. While the Mission is not in a position to confirm these statements/allegations, the Mission shares the concern that a practice and pattern of unlawful transfer and assimilation of various categories of unaccompanied Ukrainian children into Russia dating back to 2014 has multiplied and gained substantial traction as a result of the full-scale invasion in 2022.

D. TREATMENT OF CHILDREN

The general duty bestowed on any belligerent party to pay special respect to any children and protect them from any type of indecent assault, applies unabated to the occupying power in whose hands the evacuated or deported children find themselves.²⁷⁷ This entails a duty to provide the children with the care and aid they require.

1. REGISTRATION

The evacuation of an unaccompanied child must follow several formal procedures. In line with Article 50(2) of the GCIV, the occupying power must “take all necessary steps to facilitate the identification of children and the registration of their parentage”. Children under twelve shall have a card with a number of personal data registered, in order to facilitate reunification with family and ensure that the child is not “lost” for the family and the enemy party API 78 (3, a-s). A special section of the National Information Bureau shall be responsible for taking the necessary steps to identify children whose identity is in doubt, and record details about their parents or other close relatives. It is a well-known fact that many of the Ukrainian children who have ended up unaccompanied in the hands of the Russian belligerent have parents or other family members with legal guardianship, and that they are searching for them. The procedure is strictly regulated and requires a system to register the whereabouts of any evacuated children.

The duty of registration is closely tied to the right to re-establish contact with the family. Persons in an armed conflict and occupied territory have the right to news about family members.²⁷⁸ Protected persons shall also be allowed to apply to the ICRC.²⁷⁹ Parties to the conflict must facilitate enquiries by persons looking for family members dispersed by the conflict.²⁸⁰ Additional Protocol I requires each party to the conflict to search for persons who have been reported missing by the adverse party.²⁸¹ The obligation to account for missing persons is perceived to be declaratory of customary law, motivated by the right of families to know the fate of their missing relatives.²⁸²

For a forced evacuation to be lawful, there is therefore a requirement of notification. The occupying power must notify the protecting power (or the ICRC) of such “transfers and evacuations as soon as they have taken place”.²⁸³ As previously noted, the Russian belligerent has not put in place the appropriate mechanisms for such notifications under GCIV articles 136 and 50. The Mission has not been able to find any indications that such communications concerning evacuated/deported children are provided by Russian belligerent authorities to Ukrainian authorities. Rather, the Mission has heard numerous cases where the Ukrainian children themselves were left to contact their parents, often with the manifest non-cooperation of the persons in whose custody they were. In many cases where families have been able to locate their deported child, the process seems to be one of luck. Someone has recognized a child in pictures distributed in the press or social media for other purposes than reconnecting families.

²⁷⁷ GCIV, Article 77(1).

²⁷⁸ GCIV, Article 25.

²⁷⁹ GCIV, Article 30.

²⁸⁰ GCIV, Article 26.

²⁸¹ API article 33.

²⁸² Hencaerts, Customary International Humanitarian law, Volume I: Rules (Rule 117).

²⁸³ GCIV, Article 49(4).

The Mission has seen an overview of the way in which 20 children were repatriated. In one instance, a father saw his son in a Russian propaganda video.²⁸⁴

The Mission is of the view that the Russian belligerent party is in violation of numerous duties under humanitarian law linked to the registration, tracking, communication and re-establishment of contact with families of Ukrainian children who have been evacuated, forcibly transferred or deported to Russian controlled territory these children with their families. The Mission also finds that the persistent disregard of these duties of IHL exacerbates the gravity of the situation in which these children find themselves.

2. ACCOMMODATION AND EDUCATION

The occupying power arranging for the evacuation is also responsible for the fate of the evacuated children and should ensure that the requirements laid down are fulfilled.²⁸⁵ In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.²⁸⁶ The occupying power responsible for the displacement must ensure proper accommodation.²⁸⁷

In occupied territory, the occupying power is obliged to do everything possible so that child-institutions can fully perform their functions, continuously, on the territory where they are located, because any violations of this process can cause irreparable damage to the physical and psychological development of children. The role of the occupying State is limited only to the case when the local authorities do not fulfil their duties, and there are no relatives who can provide care and education for the child. Only in this case can the occupying State hand over such children to authorized persons or institutions.

GCIV requires that children who are separated from their parents as a result of the war are provided with education in all circumstances. According to Article 24 of the GCIV, such persons shall, if possible, be of the same nationality, speak the same language and practice the same religion as the children in their care. Article 78(2) of the API however clarifies that “*whenever an evacuation to a foreign country occurs, each child’s education, including “his religious and moral education as his parents desire”*”, shall be provided. As already noted, the prohibition in API of any transfer of children to the enemy belligerent is in place precisely to avoid this particular situation, “*to prevent the practice of educating children according to a certain political or religious view, to prepare them for military service, or to be raised to customs foreign to that of their families”*. It is almost impossible to insulate unaccompanied children pertaining to the enemy belligerent from the atmosphere, narratives and education of the population of the enemy belligerent in which the child finds itself in what that will provide the displaced children with the education and known cultural upbringing that they are entitled to under IHL. A report on the educational programs offered to Ukrainian children estimates that it “*fosters Russian nationalism*”.²⁸⁸ It has been difficult for the Mission to assess the precise conditions under which Ukrainian children are kept in Russia. A limited number of children have returned to Ukraine to rejoin their families however, and in their account of the conditions have spoken about “re-education” and in some cases also about military training. As illustrated by numerous reports brought to the attention of the Mission, the education to which Ukrainian children are exposed, impose the war-narrative of the adversary belligerent Russia on the Ukrainian children, in disregard of IHL.

²⁸⁴ Oleksandra Vodnyak, Викрадачі душ. Як і чому Росія краде українських дітей, *Zaxid*, 26 October 2022.

²⁸⁵ GCIV, Article 49(3). Sandoz Commentary API, *op. cit.*, para 3238.

²⁸⁶ Hencaerts, *Customary International Humanitarian law, Volume I: Rules* (Rule 131).

²⁸⁷ GCIV, Article 49 (3)

²⁸⁸ Fedosiuk, *The Stolen Children*, *op. cit.*

3. TEMPORARY NATURE AND PROHIBITION TO NATURALIZE

The distinctive feature of a genuine evacuation lies precisely in its provisional nature.²⁸⁹ According to the ICTY, the duration of the displacement has no impact on its illegality.²⁹⁰ While earlier judgments of the ICTY suggested that to amount to a crime against humanity or a war crime, the displacement must have been committed with the intent that the removal of the person or persons be permanent,²⁹¹ the Appeals Chamber later stated that no such requirement exists *lex lata*, although stressing that the displacement should not have been provisional.²⁹² Non-consensual evacuation of unaccompanied children from an area of active hostilities, whether justified or unjustified, into the territory of the enemy belligerent can never be the basis for naturalization or assimilation of the children into to the enemy population. An essential component of the protection of children displaced in the hands of an enemy belligerent is the prohibition in Article 50(2) of the GCIV to change the child's personal status, including nationality.

The Mission concludes that the extensive exposure of unaccompanied children to adoption or similar measures of assimilation by the Russian belligerent as shown in part IV is a violation of the Fourth Geneva Convention. Altering the nationality of Ukrainian children by offering Russian citizenship is a violation of Article 50(2) of the GCIV. Facilitating re-education and permanent integration into Russian families through various schemes of permanent foster care and potentially adoption serves to confirm that the displaced Ukrainian children are indeed the victims of deportation in the sense of Article 49 of the GCIV.

E. REUNIFICATION/RETURN OF CHILDREN

Under GCIV article 49 (3), protected persons evacuated beyond the bounds of occupied territory “shall be transported back to their homes as soon as hostilities in the area in question have ceased”. The main duty of the occupying power in these cases is to do everything possible to reduce the prolongation of the displacement, facilitate repatriation or reunion with families, or transfer the children to a third neutral country. While the justification of “security of the children” may still be relevant in terms of repatriation to the area where these children belong. Fierce and unpredictable hostilities are still ongoing in the war in Ukraine. The return of children to areas of hostilities is therefore not an option at the present time. This fact does in no way free the Russian belligerent power from its duties of reunification and repatriation of unaccompanied Ukrainian children in its hands.

1. A DUTY TO ENDURE REUNIFICATION

A main principle of the GCIV is that family unity is to be protected and respected. Belligerent parties and ratifying States to the GCs alike “shall facilitate in every possible way the reunion of families dispersed as a result of the armed conflict”.²⁹³ Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflict and shall encourage in particular the work of humanitarian organizations engaged in this task.²⁹⁴

²⁸⁹ GCIV, Article 49(2).

²⁹⁰ ICTY, *Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić*, IT-95-9-A, Judgment, 28 November 2006, para 134.

²⁹¹ *Ibidem*. See also *Prosecutor v Radoslav Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para 545; *Stakić*, IT-97-24-T, para 687.

²⁹² ICTY, *Prosecutor v Milomir Stakić*, IT-97-24-A, Judgment, Appeals Chamber, 22 March 2006, paras 306–7 and 319. See also Court of Bosnia Herzegovina, Section I for War Crimes, *Prosecutor's Office of Bosnia and Herzegovina v Mitar Rašević and Savo Todović*, Verdict, Case No. X- KR/06/275, 88, 28 February 2008; Court of Bosnia Herzegovina, Section I for War Crimes, *Prosecutor's Office of Bosnia and Herzegovina v Damir Ivanković aka 'Dado'*, Verdict, Case No. X-KR-08/549-1, 13, 2 July 2009.

²⁹³ API, Article 74.

²⁹⁴ API, Article 74.

For many unaccompanied, separated, and orphaned children, the process of reuniting with family members or guardians and leaving occupied parts of Ukraine or Russia is difficult. The Mission was informed by many stakeholders about Ukrainians who face daunting logistical barriers to recover children taken to Russia. Children whose parents have died in the war face a different challenge – they may not yet have another formally appointed guardian from Ukraine, although Ukrainian authorities have taken some steps to simplify the process of appointing guardians to orphans and children left without parental care.²⁹⁵ Even if a guardian from Ukraine has the requisite paperwork, occupation administration in the so-called DPR have required the guardian to travel to wherever the child is located to collect them, at great personal risk and cost.²⁹⁶ There are also the well-known cases of the children from Russian-occupied parts of Kharkiv who were not sent home after the recreational camps were over. The Russian authorities requested their parents to travel to the Russian Federation in person to get their children back, which for many was a practical impossibility.

Without a formal mechanism in place to systematically return Ukrainian children to Ukraine or to reunite them with their guardians or caregivers, the work of reunification falls largely on individuals, with support from Ukraine’s Ministry of Reintegration of Temporarily Occupied Territories, volunteers, NGOs and possibly some Russian government officials via back-channels.²⁹⁷ The Mission therefore concludes that non-justified prolonged stay or unfounded logistical hurdles violate the duty to facilitate reunification and contravene the principles embodied within GCIV that family unity is to be protected and respected.

The Mission has found that on the Russian side there is currently no functioning mechanism for the reunification of children with their relatives in Ukraine. Rather, the Mission has found a consistent pattern that suggests that efforts by the Russian authorities to allow the movement of children from Ukraine to families in the Russian Federation do not appear to include steps for family reunification. The system facilitates integration of these children into Russian families rather than a return to Ukrainian families, in disregard of IHL.

2. A DUTY TO FACILITATE REPATRIATION

The right to repatriation is a cornerstone of IHL, and the need to maintain and reinstate family unity is a central theme in GCIV. Victims who have been forcibly displaced have a “right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.” This includes where persons have been evacuated, in which case they “*must be transferred back to their homes as soon as hostilities in the area in question have ceased*”.²⁹⁸ The return of forcibly displaced persons in this sense is both a right and an obligation. Denial of the right to return as soon as possible has been deemed as an indication of the unlawfulness of the displacement.²⁹⁹ The parties are encouraged to conclude agreements for the repatriation, return to places of residence or the accommodation in a neutral country of certain classes of internees with special needs such as children.³⁰⁰ Unjustifiable delay in repatriation of civilians constitutes a grave breach under API, and amounts to a war crime.³⁰¹

Returning children from camps is complicated. Even children present in other occupied territory, such as Crimea, cannot easily be returned to their families under current Russian

²⁹⁵ Спрощено процедуру влаштування дітей-сиріт, дітей, позбавлених батьківського піклування, під опіку або піклування родичів, *Jurliga*, 24 March 2022.

²⁹⁶ Amnesty International, *Ukraine: “Like A Prison Convoy”: Russia’s Unlawful Transfer And Abuse of Civilians In Ukraine During ‘Filtration’*, 10 November 2022, available at: <https://www.amnesty.org/en/documents/eur50/6136/2022/en/> (AI Report), p. 27.

²⁹⁷ Захарова назвала ложью обвинения Киева в депортации детей с Украины, *РБК*, 25 June.

²⁹⁸ Hencsaerts, *Customary International Humanitarian Law*, Volume I: Rules (Rule 132).

²⁹⁹ ICTY, *Naletilić and Martinović*, IT-98-38-T, Judgment, para 526. No attempt had been made to bring the population back after the end of hostilities.

³⁰⁰ GCV, Article 133.

³⁰¹ API, Article 85 (4) b.

practice, refusing to return children except to close relatives. As martial law prevents men from leaving the Ukrainian territory, mothers or grandmothers must go through the enemy belligerent country Russia and enter occupied Crimea and bring the child back through the same route. The trip may pose security risks for Ukrainians. In addition, many neither have the funds nor the possibility to undertake such a trip. Older teenagers travelling on their own or with friends or relatives reportedly required a parent or guardian to grant them permission to leave Russia.³⁰²

While the Mission has not found evidence of outright denials of repatriation, the Mission has heard countless examples of parents and other family members who are not able to carry through with the repatriation due to logistical or technical hurdles.

The absence of a separate system for the repatriation of Ukrainian children brought out of the war-theatre by the enemy belligerent Russia is a violation of the right to repatriation and the duty to facilitate such return. The Mission has found that on the Russian side there is currently no functioning mechanism for the repatriation of children to Ukraine or for transport to a third country. Rather, the Mission has found a consistent pattern that suggests that efforts by the Russian authorities to allow the movement of children from Ukraine to the Russian Federation do not appear to include steps for further evacuation to third countries or back to safer areas in Ukraine. The system facilitates permanent stay and potentially unjustified delayed repatriation of these children, in disregard of IHL.

F. CONCLUSIONS

Children in the territories of Ukraine occupied by the Russian belligerent are exposed to a variety of transfers and forced displacements.

Firstly, children are exposed to non-voluntary movement away from an active theatre of massive hostilities. The Mission has found that while many forceful relocations of children in child-institutions have taken place in compliance with duties of IHL, other instances have been clear violations of IHL, some of which amount to a violation of the prohibition of forceful transfer or deportation in GCIV article 49, a grave breach of the Convention and a war-crime.

Filtration and internment of the civilian population with loyalties to Ukraine by the occupying power has led to the separation of families in violation of IHL. Instead of being interned together with their parents, some of these children have been “brought to safety” to Russia, in practical terms but also in ideological terms. The Mission has found that this practice of non-consensual separation of families with ensuing transfer of the children to Russia violates the prohibitions of GCIV (Article 49) and API, Article 78, and amounts to a breach of the prohibition on deportation in Article 49 of the GCIV, a grave breach of the Convention and a war-crime.

Some children from Ukraine have been brought to other occupied areas of Ukraine or to Russia with the consent of their parents or legal guardians for the purpose of medical treatment or recreational camps. However, the Mission has found that prolonged stay imposed by the occupying power is in most cases non-consensual and amounts to a violation of API article 78. In situations where the children are subsequently taken to Russia or where the treatment of the children is clearly intent on a prolonged stay, this non-consensual displacement may be juxtaposed with deportation under GCIV article 49.

Ukrainian children who find themselves in the hands of Russian occupational authorities shall be reunited with their families or repatriated as soon as possible. Consent by protected persons in occupied territory to displacement of children must be treated cautiously, and any type of evacuation is a temporary measure. Non-justified prolonged stay or non-justified logistical hurdles violate the IHL-duty to facilitate reunification and contravenes the principles embodied within the Fourth Convention that family unity is to be protected and respected.

³⁰² AI Report, *op. cit.*, p. 27.

Russia's relocation of Ukrainian children in areas occupied by the belligerent power Russia or into Russian territory and the disregard of the duty to establish compulsory mechanisms under the GCIV to track these children, to communicate their whereabouts and facilitate the regularization of the situation of these children in terms of repatriation or reunification with their families, exacerbate the gravity of many of the other violations of IHL and demonstrate a deplorable departure from and disdain for IHL rules to ensure protection of and respect for children under GCIV and API.

To expose unaccompanied children to adoption or similar measures of assimilation is anathema to the GCIV. Altering the nationality of Ukrainian children by offering Russian citizenship is a violation of Article 50(2) of the GCIV. The policy also contravenes the principles embodied within the Fourth Convention that family unity is to be protected and respected. Facilitating adoptions by Russian families suggests plans for prolonged stay and may indicate preparation for the grave breach of unjustifiable delay in the repatriation of civilians in Article 85(4)(b) of the API. It also serves to confirm that the displaced Ukrainian children are indeed the victims of deportation in the sense of Article 49 of the GCIV.

VI. ALLEGED VIOLATIONS AND ABUSES OF INTERNATIONAL HUMAN RIGHTS LAW

A. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW

As was explained in the previous two Mission reports, IHRL continues to apply in times of armed conflict. In such times, however, many human rights guarantees may be suspended by means of a *derogation* (Article 4 of the ICCPR, Article 15 of the ECHR). The Russian Federation has not entered any derogation in the context of the current conflict. Ukraine, conversely, has extensively derogated from its obligations under the ICCPR and the ECHR. These derogations can be broadly separated into two cohorts. The older derogations (2015-2019 but still in force) relate to the situation in the Autonomous Republic of Crimea and the City of Sevastopol and in the Donetsk and Luhansk regions. The more recent derogations (2022) have been made in connection to the Russian full-scale attack on Ukraine and the introduction of a state of emergency in most regions of Ukraine (23 February 2022) and of the introduction of martial law on the entire territory of Ukraine; the latest notification received by the Secretary General of the UN was on 14 February 2023 whereby notification is given of extension of the martial law in all territory of Ukraine for further 90 days. The recent derogations concern a broad range of human rights, namely those granted by Articles 2(3), 3, 8(3), 9, 12-14, 17, 19-22, 24-27 of the ICCPR, Articles 4(3), 5-6, 8-11 and 13-14 of the ECHR, Article 1-3 of the Additional Protocol to the ECHR and Article 2 of Protocol 4 to the ECHR.³⁰³ However neither Ukraine nor the Russian Federation have entered any derogations in respect to the UNCRC.

Similarly to the previous two Missions, the present Mission recalls that States have the obligation to secure human rights of all individuals within their *jurisdiction* and that, as established under the case-law of international human rights bodies, jurisdiction is not limited to the territory of the State³⁰⁴ but extends to the territories under the effective (*de facto*) control

³⁰³ Status of the Treaties, *UN Treaty Collection*, available at: https://treaties.un.org/P.s/ViewDetails.aspx?chapter=%204&clang=en&mtdsg_no=IV-4&src=IND; Reservations and Declarations for Treaty No.005, *Council of Europe*, available at: <https://www.coe.int/en/web/conventions/full-list2?module=declarations-by-treaty&numSte=005&codeNature=0>

³⁰⁴ ECtHR, *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 132.

of the State, exercised directly or through non-state entities,³⁰⁵ as well as to individuals under the specific control of the State (typically individuals in detention).³⁰⁶ Whereas the State exercising effective control over an area has the responsibility to secure to individuals within this area the full range of recognized human rights, the State exercising specific control over an individual has the obligation to secure to that individual those rights that are relevant to his/her particular situation.³⁰⁷

The present Mission shares the view expressed in the previous two Mission reports that some parts of the Ukrainian territory are, or were for a certain period, under the effective control of the Russian Federation. This is the case of the Autonomous Republic of Crimea and the City of Sevastopol, which have been temporarily occupied and (unlawfully) annexed by Russia since 2014. Certain parts of the Donetsk and Luhansk regions have also been under the effective control of Russia since 2014. This control is exercised through a subordinate local administration of the so-called Donetsk and Luhansk People's Republics, over whose acts Russia exercises (at least) overall control. Since 24 February 2022, moreover, Russia has secured (and sometimes subsequently lost) effective control over certain other areas of the Ukrainian territory, especially other parts of the Donetsk and Luhansk regions and the Kherson and Zaporozhzhia regions.

This Mission also reiterates that in times of armed conflict, IHRL applies *in parallel to IHL*. In this situation, as declared by the International Court of Justice (ICJ), “*some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law*”.³⁰⁸ It is largely accepted that when the last scenario materializes, the standards of IHRL have to be interpreted in light of IHL, which in most instances constitutes the applicable *lex specialis*. At the same time, as stipulated by the UN Human Rights Committee (HRC), “*while, in respect of certain /.../ rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of /.../ rights, both spheres of law are complementary, not mutually exclusive*”.³⁰⁹ Thus, the two sets of legal standards – those of IHL and IHRL – both have to be taken into account in the legal evaluation of many incidents which occur in times of armed conflict. Consequently, the same set of facts can simultaneously give rise to violations of both IHL and IHRL.

Noting the mandate of the present Mission, the applicability of the provisions of the UNCRC are particularly relevant. As noted earlier, both Ukraine and the Russian Federation are States parties to this treaty and neither has entered any derogations in respect to this treaty despite the ongoing armed conflict. It is therefore absolutely clear that while the effects of the ongoing armed conflict may pose an obstacle to the implementation of the obligations stemming from the UNCRC, the international human rights obligations are continuous and the rights under the UNCRC apply to all children at all times,³¹⁰ including the current context in Ukraine. Therefore, the Russian Federation is bound by its obligations under the UNCRC in respect of any actions it undertakes in relation to the Ukrainian children both on the territory of Ukraine and on its own territory. These obligations shall be examined next.

³⁰⁵ ECtHR, *Loizidou v. Turkey (preliminary objections)*, Application no. 15318/89, Judgment, 23 March 1995, para 62; *Cyprus v. Turkey*, Application no. 25781/94, Judgment (GC), 10 May 2001, para 76.

³⁰⁶ ECtHR, *Al-Skeini, op. cit.*, para 136. See also UN Doc. CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, para 63.

³⁰⁷ ECtHR, *Al-Skeini, op. cit.*, para 137.

³⁰⁸ ICJ, *Legal Consequences, op. cit.*, para 106.

³⁰⁹ UN Doc CCPR/C/21/Rev.1/Add. 13, *General Comment No. 31. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, para 11.

³¹⁰ UN Doc. CRC/C/SYR/CO/5, para 4.

B. THE BEST INTERESTS OF THE CHILD

1. THE SCOPE

Article 3(1) of the UNCRC requires all States parties, which include both Ukraine and the Russian Federation, to uphold the best interests of the child as a primary consideration “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies*”. This is one of the four general principles of the UNCRC for its interpretation and application, alongside the principles of non-discrimination, embodied in Article 2 of the UNCRC, survival and development, set out in Article 6 of the UNCRC and children’s participation, provided for in Article 12 of the UNCRC.³¹¹ Specific references to the principle of the “best interests of the child” are made in seven substantive Articles of the Convention³¹² and, as noted above, Article 3(1) of the UNCRC requires consideration of the “best interests of the child” in all actions concerning children. Therefore, from the perspective of the human rights of the child, it is paramount to fully understand the meaning of Article 3(1) of the UNCRC and to this end, the key terms are “in all actions concerning children”.

As the Committee on the Rights of the Child (CRC) has explained in its General Comment No. 14,³¹³ the obligation to uphold the best interests of the child “in all actions” means that every action relating to a child or children has to take into account their best interests as a primary consideration and the word “action” does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures as well as inaction and failure to act.³¹⁴ The latter, inaction or failure to act, include, for example, when social welfare authorities fail to take action to protect children from neglect or abuse.³¹⁵

Further, Article 1 of the UNCRC defines as child anyone under the age of 18 and therefore the words “concerning children” in Article 3(1) of the UNCRC are to be understood to apply to all decisions and actions that directly or indirectly affect anyone under the age of 18, without discrimination.³¹⁶ The term “concerning” also must be understood broadly to encompass not only the decisions and actions that have direct impact upon a child or group of children but also such which may affect them even though the measure is not directed specifically at children.³¹⁷

The focus of the Mission is directly impacted by the overarching obligation to have the best interests of the child as the prime consideration in all actions concerning children. Firstly, in relation to the Ukrainian children who are reported to have been sent to the so-called “summer camps” or “recreation camps”,³¹⁸ the Mission received numerous testimony of this having taken place throughout the 2022, in many instances with the consent of their parents.³¹⁹ The most

³¹¹ UN Doc CRC/C/GC/14, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1)*, paras 1, 41-45.

³¹² Articles 3, 9, 18, 20, 21, 37 and 40.

³¹³ UN Doc CRC/C/GC/14, *op. cit.*, para 6.

³¹⁴ *Ibidem*, paras 17-18.

³¹⁵ *Ibidem*, para 18.

³¹⁶ *Ibidem*, paras 19 and 21.

³¹⁷ *Ibidem*, para 20.

³¹⁸ OHCHR Report II, *op. cit.*, para 69; IICIU Report, *op. cit.*, para 99. See OSCE/ODIHR, *Second Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, 14 December 2022, para 137; Micaela Del Monte, Nefeli Barlaoura, *Russia's war on Ukraine. Forcibly displaced Ukrainian children*, *European Parliament Briefing*. European Parliamentary Research Service, April 2023.

³¹⁹ Interlocutors 2, 3, 5, 6 15, 18, 19, 20, 23 (on file with the authors). See also e.g.: IICIU Report, *op. cit.*; OHCHR Report II, *op. cit.*; Ombudsman of Ukraine, *Children during Russia's war against civilian population of Ukraine*, February 2023; Regional Centre for Human Rights, *Recreation camps as another means of eradicating the Ukrainian national identity of children from the occupied territories*, 22 February 2023; Yale Report I, *op. cit.*; Yale Report II, *op. cit.*; 5:00Am Coalition, *Deportation of Ukrainian citizens from the territory of active military operations or from the temporarily occupied territory of Ukraine to the territory of the Russian Federation and the Republic of Belarus*. *Analytical Report*, available at: <https://zmina.ua/wp-content/uploads/sites/2/2023/01/>

common scenario would be the parents being approached by the authorities with a suggestion to allow their children to travel to the so-called recreation camps, usually to Crimea but also to other places in the Russian Federation, commonly for the period of two weeks upon the expiry of which the child would be returned. The testimony received gives rise to concern over the circumstances under which such consent was forthcoming and whether it could be considered a genuine and voluntary consent of a parent.³²⁰

There are credible reports that parents were approached by such professionals as schoolteachers and social workers with whom the families have had many interactions prior and who were thus considered to be trusted. Such professionals persuaded the parents to allow the children to travel, promising that they [the teachers and social workers] would accompany the children, look after them and return them; in case of the children from the temporarily occupied territories of Donetsk and Luhansk especially it was commonly suggested that children would have a kind of a “respite” following years of living in the active warfare zone. It was also significant for these families, who have been living on a brink of poverty for years following the occupation that all expenses related to these camps would be borne by the Russian authorities, including the transportation, accommodation, food and all activities. As put by one interlocutor “*at least children would receive regular food which was very scarce otherwise*”.³²¹ The assurances of return and good treatment provided by professionals in the position of trust, were a significant factor in persuading the parents of these children to allow for their taking to these so-called recreation camps.

There was also testimony received that those parents who were reluctant to allow their children to go to such camps faced implicit and, at times, explicit threats that the failure to allow their children to go would lead to the reconsideration of their parental rights as the refusal would be seen akin to a neglect of the child. As such, the interlocutors³²² were clear that these were implicit threats that the parental rights might be terminated if a parent would refuse.

Subsequent to children having been sent to such camps, while some children were allowed to return as originally agreed, in respect to other children the testimony received indicates that the Russian authorities refused to ensure their return. It was only when the parents started to enquire as to the whereabouts of their children and their return the Russian authorities would request that the parents or legal guardians travel to collect children in person.³²³ From the perspective of the rights of the child this practice raises several serious concerns over the observance of the best interests of the child, noting the deceiving of parents, sometimes coercing, to ensure they would allow children to travel. Above all, the failure to return children as agreed with the parents is a violation of the best interests of the child in addition to other rights and the right not to be separated from parents most notably. Even in those cases when the return of the children would have been complicated due to the advances made by the Ukrainian army as a result of which Russian authorities had lost control over the territories from which the children were transported from, it was the obligation of the Russian authorities to seek other ways of returning the children to their families. The Mission found no evidence of such efforts. Instead,

[deportation_eng.pdf](#); Human Rights Center ZMINA, *Forced displacement and deportation of children from the temporarily occupied territories of Ukraine to the Russian Federation, Analytical note*, April 2023; also Del Monte, Barlaoura, *op. cit.*; AI Report, *op. cit.*

³²⁰ Regional Centre for Human Rights, *Recreation camps, op. cit.*, p. 2. Similar observations have been made about ‘voluntary’ evacuations from Mariupol and other cities of the Donbas region, where the evacuations to families, including children were ‘offered’ more or less forcefully by the Russian authorities would only be directed at the territory of the Russian Federation and territories controlled by the so-called DPR and LPR. See: OSCE/ODIHR, *Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, 20 July 2022; para 68 and OSCE/ODIHR, *Second Interim Report, op. cit.*, paras 126-127.

³²¹ Interlocutor 5 (on file with the authors).

³²² Interlocutors 2, 3, 5, 6, 18, 19 (on file with the authors). See also Regional Centre for Human Rights, *Recreation camps, op. cit.*, p. 2.

³²³ ICIU Report, *op. cit.*, para 99. See also OSCE/ODIHR, *Second Interim Report, op. cit.*, para 137.

the families were left in the dark about the whereabouts of their children and those who managed to establish contact were required to make the exceptionally complex, lengthy and costly travel to collect their children from such camps.³²⁴

Secondly, the Mission has received reports of children transported to Russia who have been either found to be without parents/legal guardians or who have been separated from their parents at filtration points³²⁵ or children who have been in institutions.³²⁶ In all these situations, it is clear that the authorities engaged in the transportation of these children have acted on behalf of the Russian Federation; the decisions taken clearly qualify as “actions concerning children” within the meaning of Article 3 (1) of the UNCRC and consequently the obligation to have the best interests of the child as primary consideration applies to each individual case of a child thus transferred from Ukraine to the Russian Federation. Yet, the Mission did not establish any evidence that this was the case. As will be discussed in more detail further (see Section VI.C.2), the Russian authorities provided no attempt to secure alternative care from relatives to children who were separated from their parents at filtration or other arrangements made to ensure that the child would not be separated from their parents. Equally when parents were released from filtration, there was no information provided to them as to the whereabouts of their children or assistance rendered to ensure the reunification of the family. On the contrary, the parents were left “to fend for themselves” to locate their children and secure their custody.³²⁷ Albeit each case deserves an individual examination, given the information furnished to the Mission, it appears that the absolute majority of cases have followed this pattern and as such, the approach of the Russian authorities cannot be reconciled with the best interests of the child principle enshrined in the UNCRC.

Turning to the children who have been in institutions, their movement from the institutions where they were residing at by the Russian authorities equally is difficult to reconcile with the principle of the best interests of the child. While in some instances this movement may be justified on the basis of imminent threat to life due to ongoing military operation, the Mission has serious concerns over the compatibility of the majority of cases with Russia’s obligations under the UNCRC and the best interests of child principle. Indeed, as noted by the IICIU, “*there seems to be no indication that it was impossible to allow the children to relocate to territory under Ukrainian Government control*”.³²⁸ In fact, the Mission received a testimony that the Ukrainian authorities had organized buses for evacuating children, including children from institutions in Kherson, but the Russian side refused to allow humanitarian corridors to be established for safe passage and evacuated the children to their side instead.³²⁹

Moreover, in addition to all the above, the best interests of the child should have been considered not only in those instances when decisions to transport Ukrainian children were taken on the spot but also, for example, when broader decisions to transport/evacuate Ukrainian civilians were taken as part of overall evacuation/strategic planning, given that such decisions would affect children as part of their families. To this end, it must be recalled that the requirement encapsulated in Article 3 (1) of the UNCRC that the best interests of the child

³²⁴ Interlocutors 2, 3, 5, 11, 12, 19, 20, 23 (on file with the authors). See also, for example, AI Report, *op. cit.*; A submission, *The Reckoning Project (TRP)*, *op. cit.*, paras 22-23.

³²⁵ IICIU Report, *op. cit.*, para 97; See also, e.g. A submission, *The Reckoning Project (TRP)*, *op. cit.*, para 19; AI Report, *op. cit.*; Yale Report I, *op. cit.*; EHRG/ISRS Report I, *op. cit.*, p. 9; Del Monte, Barlaoura, *op. cit.*; Tetiana Fedosiuk, *The Stolen Children*, *op. cit.*

³²⁶ OHCHR Report II, para 67; OSCE Moscow Mechanism Report II, p. 95.

³²⁷ Interlocutors 2, 3, 5, 6, 10, 11, 16, 17, 18, 19, 20, 23 (on file with the authors). See also e.g., IICIU Report, *op. cit.*, para 98; AI Report, *op. cit.*, p. 27; 5:00Am Coalition, *Deportation*, *op. cit.*, p. 20; Yale Report I, *op. cit.*; Del Monte, Barlaoura, *op. cit.*; Fedosiuk, *The Stolen Children*, *op. cit.*

³²⁸ IICIU Report, *op. cit.*, para 98.

³²⁹ Interlocutor 22 (on file with the authors); see also *Hope Faded With Each Day': How Dozens Of Ukrainian Orphans Endured Months Of Russian Occupation*, *Radio Free Europe*, 16 February 2023.

“shall be the primary consideration” place a strong obligation upon all States parties, including the Russian Federation, and, most notably, eliminate the possibility of discretion as to whether children’s best interests are to be assessed.³³⁰ In other words, the obligation to have child’s best interests as prime consideration is not left at the discretion of a State party. This also means that the child’s best interests may not be considered on the same level as all other considerations³³¹ and it should be highlighted that in relation to some of the UNCRC provisions, such as Article 21 which addresses the issue of adoption, the threshold is even higher as States are required to give “paramount consideration” to the best interests of the child.³³²

Finally, it is important to note that Article 3(1) of the UNCRC obliges to act in accordance with the best interests of child not only public welfare organizations, courts of law, administrative authorities, or legislative bodies, but also private welfare institutions. The CRC has specifically emphasized that reference in Article 3(1) of the UNCRC to “public or private social welfare institutions” should not be narrowly construed or limited to social institutions *stricto sensu*. Rather, it is to encompass all institutions whose work and decisions impact on children and the realization of their rights which include not only those related to economic, social and cultural rights (e.g. care, health, environment, education, business, leisure and play, etc.), but also institutions dealing with civil rights and freedoms (e.g. birth registration, protection against violence in all settings, etc.).³³³ Conversely, in relation to the private social welfare institutions, these are to include “private sector organizations – either for-profit or non-profit – which play a role in the provision of services that are critical to children’s enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative”.³³⁴ Therefore, turning to the issue at the heart of the present Mission, it is clear that all civilian and military authorities of the Russian Federation as well as Russian occupation administration of the temporarily occupied territories of Donetsk and Luhansk, who engaged in the decision making around the transportation of the Ukrainian children as well as those who took part in that process were all duty bound to consider whether this would be in the best interests of the children who were being transported.

In the remits of the present mandate, the present Mission has not been able to identify that any such evaluation of the direct or indirect impact of the decision to transport/evacuate children and/or adult populations involved the consideration of the best interests of the child. While that is not to say that such did not occur, it is nevertheless plain that, despite the efforts of the present Mission as well as other international bodies, the authorities of the Russian Federation have not been forthcoming with any information on the subject which in itself runs counter to the best interests of the children affected as it prevents ascertaining whether their rights stemming from the UNCRC have been upheld and are continuously being upheld in the prevailing situation.

2. THE CONTENT AND THE IMPLEMENTATION

The UNCRC does not set out a definition of the “best interests of the child”, which is indeed a complex concept and as noted by the CRC, its content must be determined on a case-by-case basis. This requires that the provisions of the UNCRC are interpreted and implemented in the light of this principle and applied to a concrete case. Consequently, this principle “*should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs*”.³³⁵ In practice, this requires authorities who make decisions concerning children, directly or indirectly, to engage in a process of assessing and weighing whether such decisions would meet

³³⁰ UN Doc CCPR/C/21/Rev.1/Add. 13, *op. cit.*, para 36.

³³¹ *Ibidem*, para 37.

³³² *Ibidem*, para 38.

³³³ *Ibidem*, para 26.

³³⁴ *Ibidem*, para 26.

³³⁵ *Ibidem*, para 32.

the best interests of the child/children in the *particular circumstances of the child/children*. The most widely recognized tool for achieving is the so-call child rights impact assessment which is a detailed and complex exercise to be undertaken to determine the impact of a decision or measure upon a child/children, assess the proportionality of the impact and evaluate whether the best interests of the child is met in the concrete situation. In other words, “*The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights and should complement ongoing monitoring and evaluation of the impact of measures on children’s rights*”.³³⁶

This also highlights a further important aspect of the obligation of the States to have the best interests of the child as the prime consideration- this is an ongoing obligation. In other words, it is not sufficient that a State has initially ascertained that a particular decision or measure is in the best interests of a child/children. All States are obliged to engage in an ongoing monitoring and evaluation of the impact of such decisions and measures upon the rights of a concrete child/children – after all, noting that evaluation must be made on a case-by-case basis, the obligation of ongoing evaluation is natural, given that the circumstances of each such case would inevitably change.

The Mission has found no evidence that any child-rights impact assessment has been carried out in relation to any of the children who have been transported from Ukraine to the Russian Federation. It is important recall that such assessment is required on a case-by-case basis and must be reassessed continuously. The Mission has not been able to uncover any evidence suggesting that this has taken place. While it is possible that some of the cases involving the transportation of children required immediate action to preserve the life of a child due to present and imminent danger in the context of active warfare, it is certain that these are minority cases. This is especially the case in relation to what clearly appears to have been planned evacuations of whole institutions with the children. Given the forward planning that such operations, involving large number of children, required, it is evident that child-rights assessment assessments should have been part of such planning. The Mission has not been able to establish any evidence of such.

Moreover, the obligation to carry out child-rights impact assessment certainly also applied to all those instances when parents were invited to send their children to the so-called recreation camps as these actions were pre-planned by the Russian authorities. In this context it is also paramount to recall that even a voluntary parental consent does not remove the obligation of the authorities to carry out a child-rights impact assessment. The Mission has uncovered no evidence of any child-rights impact assessment having been carried out. Furthermore, it has also uncovered no evidence that such child-rights assessment was carried out subsequent to the decision not to return the children to their parents in Ukraine as initially undertaken. To this end, it is once again recalled that the obligation to carry out child-rights assessment is a continuous one and must be carried out periodically and especially as the situation changes.

As explained by the CRC, the “best interests of the child” is a complex, threefold concept³³⁷: (i) it is a *substantive right* which involves the right of any child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake; (ii) a *fundamental, interpretative legal principle* which requires that in those instances when a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests is chosen; and (iii) a *rule of procedure* which requires that whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process includes an evaluation of the possible impact (positive or negative) of the

³³⁶ *Ibidem*, para 99.

³³⁷ *Ibidem*, para 6.

decision on the child or children concerned. The CRC proceeds to elaborate that as a rule of procedure, the best interests of the child require that the justification of a decision shows that the right has been explicitly taken into account and has requested the States parties to the UNCRC to explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.³³⁸ Noting the complexity, the CRC has provided some guidance on the elements to be taken into account when assessing and determining the child's best interests, as relevant to the particular situation. These elements include child's views;³³⁹ child's identity;³⁴⁰ preservation of the family environment and maintaining relations;³⁴¹ care, protection and safety of the child;³⁴² situation of vulnerability;³⁴³ the child's right to health³⁴⁴ and the child's right to education.³⁴⁵

Consequently, considering all the above, it is perhaps not surprising that commentators describe the principle of the best interests of the child as having "*an important agenda-setting role which elevates children's interests to a primary and legitimate consideration in all decision-making which is about to or has impact on children*".³⁴⁶

The Mission has seen no evidence, direct or indirect, that the authorities of the Russian Federation or those of the temporarily occupied territories of Luhansk and Donetsk have engaged in the best interests of the child assessment in relation to the children who have been transported from Ukraine. Even if it could be accepted that in some cases the decision to transport the children were taken in the light of the imminent threat to children's lives in the context of present military strikes and active warfare, the authorities were obligated to reassess the compliance of the decision to transport children with their best interests when the imminent danger to life had passed. The present investigation found no evidence to suggest that this has taken place. It is therefore the view of the Mission that a violation of Article 3(1) of the UNCRC has occurred.

C. SPECIFIC RIGHTS OF THE CHILD

1. THE RIGHT TO IDENTITY

Recognized in Article 8 of the UNCRR, the child's right to identity is among the most important rights, which is signified by its placement within the Convention. This right specifically includes child's right to preserve his/her own nationality, name and family relations. It is significant to recall that Article 8 in the UNCRC was introduced following a proposal by Argentina whose experiences under the 1970s military junta regime was marred by practices of child abduction or removal from imprisoned mothers and subsequently "adopted" by members of the military police. Consequently, the very introduction of this provision into the text of the UNCRC was a recognition that "*the child has the inalienable right to retain his true and genuine personal, legal and family identity. In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must give him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible.*

³³⁸ *Ibidem*, para 6 (c).

³³⁹ *Ibidem*, paras 53-54.

³⁴⁰ *Ibidem*, paras 55-57.

³⁴¹ *Ibidem*, paras 58-70.

³⁴² *Ibidem*, paras 71-74.

³⁴³ *Ibidem*, paras 75-76.

³⁴⁴ *Ibidem*, paras 77-78.

³⁴⁵ *Ibidem*, para 79.

³⁴⁶ John Eekelaar, John Tobin, J., Article 3. The Best Interests of the Child, in John Tobin (eds), *The UN Convention on the Rights of the Child. A Commentary*, Oxford University Press, 2019, p. 77.

*In particular, this obligation of the State includes restoring the child to his blood relations to be brought up”.*³⁴⁷

Indeed, prior to the adoption of the UNCRC, no other international human rights treaty explicitly recognized the right to identity. The very specific context in which Article 8 was introduced into the UNCRC by Argentina is therefore paramount to the proper understanding of the legal content of this provision.

The content of the child’s right to identity is complex, comprised of numerous elements all aimed at the preservation of the characteristics unique to each child. These characteristics, in turn, collectively “*provide children with an understanding of where they have come from, who they are, and the right to decide who they will become*”;³⁴⁸ it includes static elements such as child’s genetic/biological identity, family heritage or record time spent in care as well as more dynamic attributes such as appearance cultural, religious and political identity.³⁴⁹ The development of child’s identity is continuous process and particularly complex for adolescents as they create a pathway between minority and mainstream cultures.³⁵⁰ Therefore, undoubtedly, this is an inherently fluid concept, which can evolve and develop over the time. However, irrespective of that evolution, it is certainly clear that child’s identity is closely linked to his/her family as the provision itself specifically mentions “family relations”. This term too is of particular significance: while it is not unusual for a term “family” to be used in international human rights law, the term “family relations” is unique and connotes the wider understanding which is to be attributed to its understanding. As such, the term “family relations” is to include not only parents and siblings, but also wider family members such as grandparents and other relatives involved in the care and relevant to the welfare of the child. Indeed, through these family relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours.³⁵¹

Turning to the obligations of the States, Article 8 of the UNCRC imposes two sets of obligations. Pursuant to Article 8(1) of the UNCRC, the States “undertake to respect” child’s right to identity. Further, Article 8(2) UNCRC requires States to provide assistance and protection in instances when a child has been deprived of his/her identity or of its elements illegally “*with a view to re-establishing speedily his or her identity*”. The former obligation certainly entails measures to prevent any unreasonable interference with child’s identity as well as obliges the State to protect from any such interference and ensure that a child is able to enjoy this right effectively. As to the latter, this obligation is triggered when there has been an interference with the child’s right to identity and it involves a provision of an effective legal mechanism for the reestablishment of child’s identity. Such mechanisms can be in various forms and indeed, States have resorted to variety of mechanisms to fulfil this obligation. The establishment of a National Genetic Data Bank in 1987 in Argentina was one such example, offering free of charge services to the relatives of the disappeared.³⁵² Another example could be found in Article 78 of the API, requiring to ensure the preservation of the identities of children subject to evacuation during armed conflict. In such situations, each child is to be provided with a card containing the details related to their identity, including name, sex, date

³⁴⁷ OHCHR, *Legislative History of the Convention on the rights of the child. Volume I.*, UN, 2007, p. 383.

³⁴⁸ John Tobin, Jonathan Todres, Article 8. The Right to Preservation of a Child’s Identity, in John Tobin (eds), *The UN Convention on the Rights of the Child. A Commentary*, Oxford University Press, 2019, p.285

³⁴⁹ *Ibidem*, p. 293.

³⁵⁰ UN Doc. CRC/C/GC/20, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para 10.

³⁵¹ UN Doc. CRC/C/GC/7/Rev.1, *General comment No. 7 (2005) Implementing child rights in early childhood*, para 16.

³⁵² OEA/Ser.L/V/II.74 doc. 10 rev.1, A study about the situation of minor children of disappeared persons who were separated from their parents and who are claimed by members of their legitimate families, in *Annual Report of the Inter-American Commission on Human Rights 1987-1988*, 16 September 1988, Chapter V, Section I.

and place of birth, nationality, parent's names, next of kin, language, religion and home and present address. A copy of this card is to be delivered to the ICRC Central Tracing Committee. It must also be recalled that Article 8 (2) of the UNCRC obliges a State to establish such legal mechanism in order to restore child's identity speedily. This recognizes the special vulnerability of children, that even short-term denial of rights can have life-long consequences and, most importantly, that the denial of the child's right to identity may lead to that child assuming the identity of a family or culture into which that child has been placed illegally. Therefore, a sense of urgency is clearly justified and the onus rests with the State in question to show that it has implemented this obligation with the requisite degree of urgency.

The Mission has uncovered serious allegations³⁵³ that the children who have been deported from Ukraine to Russia have had their right to identity seriously and repeatedly violated by the Russian Federation which finds confirmation also in the reports of other international mechanisms.³⁵⁴ As concluded above, these deportations in most cases took place without any consideration of the best interests of the children involved. Moreover, even in those cases when the transportation could be justified as in the best interests of the child due to imminent threat to life in the prevailing circumstances of active warfare, the interference with the identity of such children cannot be justified.

The interference with the identity of the Ukrainian children has taken place in numerous different ways. The Mission has received credible and consistent testimony that children who have been either sent to the so-called recreation camps or separated from their parents at filtration and subsequently find themselves in social care institutions of the Russian Federation or in foster care arrangements are consistently required to speak Russian,³⁵⁵ to attend Russian language lessons³⁵⁶ and even taught that Ukrainian and Belorussian are mere dialects of Russian.³⁵⁷ This appears a blanket requirement irrespective of whether the child is Russian speaking or not. Moreover, although many of the Ukrainian children speak Russian as their mother tongue, there are important cultural differences that still prevail which appear to have been ignored entirely by the Russian Federation.³⁵⁸

Notably, the national and political identities of such children have not been respected. The Mission was presented with credible reports of the so-called "patriotic education" which includes requirements to sing the national anthem of Russia, usually daily, as well as take part in various lessons, geared towards changing children's understanding of the history and geo-political context of Ukraine and Russia.³⁵⁹ Thus, for example, Ukrainian children are to take part in history lessons which present various historical facts in a light favourable to Russian Federation.³⁶⁰ Significantly, the underlying ethos of such lessons is the idea that Ukraine has

³⁵³ Interlocutors 3, 5, 6, 10, 11, 12, 15, 16, 17, 18, 19, 20, 23 (on file with the authors). See also e.g., Fedosiuk, *The Stolen Children*, *op. cit.*, pp. 6-7, 13-15; EHRG/ISRS, *Ideological education of children in the temporarily occupied territory of Ukraine. Analytical report*, March 2023 (EHRG/ISRS Report II), pp. 16, 41, 43; EHRG/ISRS Report I, *op. cit.*, p. 32; Almenda, *The Russian System of Destroying the Identity of Children in the TOT*, 6 April 2023, available at: <https://almenda.org/en/rosijska-sistema-znishhennya-identichnosti-ukrainskix-ditej-na-tot-sxema/>; 5:00Am Coalition, *Deportation*, *op. cit.*; AI Report, *op. cit.*, p. 34.

³⁵⁴ OHCHR Report II, *op. cit.*, para 65; IICIU Report, *op. cit.*

³⁵⁵ See, *inter alia*, ZMINA, *Forced displacement*, *op. cit.*, p. 18; Almenda, *The Russian System*, *op. cit.*, p. 5; Yale Report I, *op. cit.*; Del Monte, Barlaoura, *op. cit.*

³⁵⁶ 5:00Am Coalition, *Deportation*, *op. cit.*, p. 18.

³⁵⁷ EHRG/ISRS Report II, *op. cit.*, p. 18.

³⁵⁸ EHRG/ISRS Report I, *op. cit.*, pp. 23-26; Del Monte, Barlaoura, *op. cit.*

³⁵⁹ See, *inter alia*, ZMINA, *Forced displacement*, *op. cit.*, pp. 5, 18-19; Yale Report I, *op. cit.*; The reports documenting similar requirements of adults at filtration camps, for example, are also notable in this context. See, e.g., AI Report, *op. cit.*, p.23; Almenda, *The Russian System*, *op. cit.*, pp. 3-4; Yale Report I, *op. cit.*

³⁶⁰ See, *inter alia*, EHRG/ISRS Report II, *op. cit.*, 5:00Am Coalition, *Deportation*, *op. cit.*, p. 18; Almenda, *The Russian System*, *op. cit.*, p. 5; EHRG/ISRS Report I, *op. cit.*, p. 26; Yale Report I, *op. cit.*

always been a part of Russia and its rightful place is to be part of the Russian Federation.³⁶¹ In relation to the temporarily occupied territories, a significant factor contributing to this “patriotic education” is the fact that in 2020 all Ukrainian schools there were required to follow the standards of the Russian Federation and as of then, all educational institutions in the temporarily occupied territories switched to the educational standards of the Russian Federation.³⁶² As an example, the Mission was presented with a Regulation on the holding of the commemorative event to mark the Day of Cosmonauts, issued by the pan-Russian organization of children from children’s homes “Children of All Russia”,³⁶³ accompanied by Annex 1. These documents contain detailed instruction on the commemorative event(s) that must be held compulsorily between 10-17 April 2023 across children’s homes, the specifics of the content, which underline the achievements of Russia in the area of cosmonautics, near verbatim prescription to the teachers as to what they are to say, as well as a requirement to report on having held such events via public social media, including specific hashtags that are to be utilized for this purpose.

Overall, there is also credible evidence of military training, involving not only lessons about the military personalities of the Russian Federation, but also drills and even learning how to assemble weapons.³⁶⁴

Furthermore, the Mission has not been able to establish any steps undertaken by the Russian Federation to preserve the identities of the Ukrainian children that have been deported to Russia from Ukraine. This is especially exacerbated by the fact that in the vast majority of such cases the Ukrainian children have been deported to a different country, hundreds of kilometres away from their normal places of residence, placed in a linguistically and culturally Russian environments of foster families or institutions, schools, orphanages or other social care institutions.³⁶⁵ This means that such children are placed in environments entirely different from what they are used to, where all usual daily things are different, all life is conducted in a different language and according to different traditions.

Arguably the most far reaching and disturbing interference with the identities of the Ukrainian children deported and transported to Russia is the granting of the citizenship to many such Ukrainian children. In this regard, the Mission particularly notes numerous legislative and executive acts adopted in the Russian Federation, both at federal and provincial levels, concerning the facilitation of granting the Russian citizenship to some categories of Ukrainian children. As was noted earlier (see Section IV.D), the simplification of procedures for obtaining the citizenship of Russian Federation precedes 24 February 2022. Since then, however, there have been numerous legislative and executive legal acts pertaining to further expansion of simplified procedure for obtaining the Russian citizenship, expanding the scope of their applicability to different categories of persons as well as further relaxing various requirements as well as procedure for relinquishing Ukrainian citizenship.

Further to the Presidential Decree No. 330 of 20 May 2022³⁶⁶ and Presidential Decree No. 440 of 11 July 2022³⁶⁷ noted earlier, there is also Presidential Decree No 951 of 26 December 2022

³⁶¹ See, *inter alia*: EHRG/ISRS Report II, *op. cit.*, p.15; Almenda, *The Russian System*, *op. cit.*, pp. 3-4; Del Monte, Barlaoura, *op. cit.*

³⁶² See EHRG/ISRS Report II, *op. cit.*, p. 6; ZMINA, *Forced displacement*, *op. cit.*, p. 18.

³⁶³ Всероссийская Содружества Выпускников Детских Домов “Дети Всей Страной”, *Положение о Проведении Всероссийской Акции Посвященный Дню Космонавтики*, 28 марта 2023 г., and *Приложение №1. Интерактивное занятие* (on file with the authors).

³⁶⁴ See, *inter alia*: Almenda, *The Russian System*, *op. cit.*, pp. 3-4; Yale Report I, *op. cit.*; Del Monte, Barlaoura, *op. cit.*; Fedosiuk, *The Stolen Children*, *op. cit.*

³⁶⁵ See, *inter alia*, 5:00Am Coalition, *Deportation*, *op. cit.*, p. 13; Yale Report I, *op. cit.*

³⁶⁶ Указ Президента РФ от 30 мая 2022 г. № 330, *op. cit.*

³⁶⁷ Указ Президента Российской Федерации от 11 июля 2022 г. № 440 “О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019 г. № 183 “Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке” и Указ Президента Российской Федерации от 29 апреля 2019 г. № 187

*On Certain Questions Pertaining to the Obtaining of Citizenship of Russia*³⁶⁸ which approves three further regulations concerning the simplified procedure for relinquishing Ukrainian citizenship and applying for the Russian citizenship.³⁶⁹ It is of particular importance for the Mission that these regulations specifically identify procedure for relinquishing Ukrainian citizenship for children under the age of 14, including children who do not have legal guardians, who are orphans or are residing in care institutions and for their obtaining Russian citizenship.³⁷⁰ Thus, in case of children who are social care institutions or who are orphans, the applications can be made on their behalf by, *inter alia*, legal guardians as well as authorized persons from the social care institutions.³⁷¹ Notably, in the case of children under the age of 14, their views as to whether they wish to relinquish the citizenship of Ukraine and obtain the citizenship of Russia are not sought. Further, there is Federal Law *On Special Legal Regulations concerning the Russian Citizens who have Ukrainian Citizenship* of 18 March 2023.³⁷² This Law specifies the procedure for relinquishing Ukrainian citizenship and specially provides that in respect to the children under the age of 14 application to relinquish Ukrainian citizenship is made by the parent, adopted parent or legal guardian or, in case of orphans or children who have no parents such application can be made by the authorized person from the social care institution.³⁷³ Similarly to the earlier Presidential Decrees, the views of the child are not sought.

All these legislative acts pertaining to the change of the citizenship of Ukrainian children not only run counter Article 12 of the UNCRC obliging States to involve children in decision-making concerning the child or at least enable their participation and fulfilment of child's right to be heard "*in any judicial or administrative proceedings affecting the child*"³⁷⁴ through a representative. This is also a profound violation of Article 8 of the UNCRC protecting child's right to identity. As noted by the IICIU, the granting of Russian citizenship to such children and various family placement measures "*may have profound implication on a child's identity*"³⁷⁵ and thus constitutes a violation of Article 8 of the UNCRC.

It is important to recall that the granting of the Russian citizenship to the children born after 24 February 2022 in the occupied territories, such as Kherson and Melitopol, was also announced in Summer 2022, a step clearly incompatible with Russia's international obligations.³⁷⁶

Further, it is particularly concerning that the failure to obtain Russian citizenship may have profound consequences in other areas of life and thus, *de facto*, measures adopted to simplify obtaining the Russian citizenship act as a kind of 'incentive'. For example, the Mission notes that failure to obtain Russian citizenship by elderly residents of the occupied territories was received with threats that their pensions could not be paid.³⁷⁷ Similarly to this, in respect to the

"Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство".

³⁶⁸ Указ Президента РФ от 26 декабря 2022 г. № 951, *op. cit.*

³⁶⁹ "Порядок подачи лицам, приобретшими гражданство Российской Федерации результате признания их гражданами Российской Федерации, заявления о выдаче паспорта гражданина Российской Федерации", "Порядок подачи заявления о признании ребёнка не достигшего возраста 14 лет, гражданином Российской Федерации", "Порядок подачи и учёта заявлений о нежелании состоять гражданство Украины". *Ibidem.*

³⁷⁰ "Порядок подачи заявления о признании ребёнка не достигшего возраста 14 лет, гражданином Российской Федерации", "Порядок подачи и учёта заявлений о нежелании состоять гражданство Украины". *Ibidem.*

³⁷¹ "Порядок подачи заявления о признании ребёнка не достигшего возраста 14 лет, гражданином Российской Федерации", статья 1 (б).

³⁷² Федеральный закон от 14 марта 2023 № 62-ФЗ, *op. cit.* It must be noted that this Law will come into force 90 days following its publication (see Article 6 of the Law) and as such, while adopted, is not yet in force.

³⁷³ *Ibidem*, статья 1 (2).

³⁷⁴ See Article 12(1) of the UNCRC.

³⁷⁵ IICIU Report, *op. cit.*, para 102.

³⁷⁶ OSCE/ODIHR, Interim Report, *op. cit.*, para 80.

³⁷⁷ OHCHR Report II, *op. cit.*, para 75; IICIU Report, *op. cit.*, para 92.

Ukrainian children who are in foster care arrangements, there are reports that unless they would become Russian citizens, their entitlement to social benefits as well as entitlement to other benefits such as schooling and medical care could be adversely impacted.³⁷⁸ Consequently it appears that there is a concerted effort to ‘incentivize’ applications for Russian citizenship in respect to the Ukrainian children. Notably also, once a child obtains Russian citizenship, the possibilities for adopting such a child become much simpler, noting that the adoption of children (усыновление, удочерение) in the Russian Federation, as regulated by Section 19 of the Family Code,³⁷⁹ is only possible with respect to children who are citizens of the Russian Federation. Consequently, simplification in the procedure of the admission to this citizenship for foreign children automatically entails the simplification of the procedure of the adoption of such children, a point which will be examined in more detail later (see Section VI.C.2).

The Mission considers that the measures undertaken by the Russian Federation in facilitating the granting of Russian citizenship to the Ukrainian children it has deported from Ukraine, including the territories it has occupied, is *prima facie* breach of Article 8 of the UNCRC. The profound and long-lasting effects that such measure is certain to have on the identities of the children concerned are entirely incompatible with Russia’s obligations under the UNCRC. This step is very likely to further exacerbate the severing of the family ties that has already occurred through the deportation of these children and thus have further adverse effect on children’s identity.³⁸⁰ This is a particularly egregious violation as ICIU reports they uncovered “*no indication that it was impossible to allow the children to relocate to territory under Ukrainian Government control*”.³⁸¹ The failure to involve children in the decision making process that concerns them also is a violation of Article 12 of the UNCRC through the denial of children’s right to participate in decision making processes concerning them. The Mission considers that multiple violations of this obligation have been perpetrated by the Russian authorities not only when decisions to deport children have been taken but also subsequently when children have been placed and required to live in Russian environment, attend Russian schools, when the status of their nationalities have been altered and when some of such children have been placed in fostering arrangements and even adopted.

Furthermore and finally, this investigation has found no evidence of any meaningful attempt by the Russian Federation to comply with its obligations under Article 8 (2) of the UNCRC, namely, to establish a legal mechanism for the reestablishment of the child’s identity.³⁸² Recalling that this provision requires such steps to be undertaken speedily, it is evident that it has been and continues to be violated by the Russian Federation.

2. THE RIGHT TO FAMILY

Closely linked to the child’s right to identity is the child’s right to family which broadly encompasses the right not to be separated from parents (Article 9 of the UNCRC), the right to family reunification (Article 10 of the UNCRC) and the right to family environment, including adoption (Articles 20 and 21 of the UNCRC). These provisions make it clear that a State can only separate a child from his/her parents if that is required by the best interests of the child in question. Thus, the UNCRC recognizes that the family is a “*fundamental group of society and the natural environment for the growth and well-being of its members and particularly children*”³⁸³ and the CRC clearly states that “*preventing family separation and preserving*

³⁷⁸ Interlocutor 5 (on file with the authors).

³⁷⁹ “Семейный кодекс Российской Федерации” от 29 декабря 1995 г. № 223-ФЗ.

³⁸⁰ ICIU Report, *op. cit.*, para 98; OHCHR Report II, *op. cit.*, para 69.

³⁸¹ ICIU Report, *op. cit.*, para 98.

³⁸² See also OHCHR Report II, *op. cit.*, para 70.

³⁸³ UNCRC, Preamble.

family unit are important components of the child protection system".³⁸⁴ This is particularly important for younger children since *"young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers"*.³⁸⁵

This obliges all authorities to act in a way that would preserve the unity of the family as much as possible and is permitted by the best interests of the child. Consequently, *"given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child"*.³⁸⁶ Moreover, if a separation must take place as a measure of last resort to preserve the best interests of the child, the State *"must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests"*.³⁸⁷ Furthermore, when such separation must take place, the State is obliged to ensure that *"the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests"*.³⁸⁸

In other words, the international human rights law bestows each child with a right to grow up in a family and there is a presumption that this is in the best interests of the child. There may be instances when separation is in the best interests of the child, but each such instance must follow a careful determination of whether the test of best interests of the child is met. This is supported by the UN Guidelines for the Alternative Care³⁸⁹ which seek to ensure that children are not placed in alternative care unnecessarily, underlying that *"the family being the fundamental group of society and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members"*.³⁹⁰ It is important to recall that these Guidelines continue to apply in situations of emergency arising from natural and man-made disasters, including international and non-international armed conflicts, as well as foreign occupation³⁹¹ and therefore are of particular relevance to the Mission. Noting the exceptionality of separation of children from their families, the Guidelines underline that all decisions concerning alternative care must be made on a case-by-case basis and grounded in the best interests of the child,³⁹² which echo the views of the CRC.³⁹³ Similarly, both the Guidelines and the CRC require that the views of the child must be taken into account as part of the right of the child to be heard and to have his/her views taken into account in accordance with his/her age and maturity.³⁹⁴

To further the aims of Article 9 of the UNCRC, Article 10 of the UNCRC envisages the right to family reunification which requires States to facilitate the family reunification in a positive,

³⁸⁴ UN Doc. CRC/C/GC/14, *op. cit.*, para 60.

³⁸⁵ UN Doc. CRC/C/GC/7/Rev.1, *General comment No. 7 (2005) Implementing child rights in early childhood*, para 18.

³⁸⁶ UN Doc. CRC/C/GC/14, *op. cit.*, para 61.

³⁸⁷ *Ibidem*, para 64.

³⁸⁸ *Ibidem*, para 65.

³⁸⁹ UN Doc. A/RES/64/142, *Guidelines for the Alternative Care of Children*, 24 February 2010, annex.

³⁹⁰ *Ibidem*, annex., para 3.

³⁹¹ *Ibidem*, annex., para 153.

³⁹² *Ibidem*, annex., para 6.

³⁹³ UN Doc. CRC/C/GC/14, *op. cit.*, paras 60-65.

³⁹⁴ *Ibidem*, paras 43-45; UN GA Resolution 64/142, annex, para 7.

humane, and expeditious manner.³⁹⁵ This requires States to act in a certain manner and their discretion therefore is more limited. Thus, the child's right to reunification with the family encapsulated in Article 10 of the UNCRC creates a presumption and expectation that States will act in good faith to facilitate the reunification of children with their parents and failure to do so carry a heavy burden to justify such a decision.³⁹⁶

Further, turning to the adoption, Article 21 of the UNCRC require that when adoption is being considered, the best interests of the child are not just a primary consideration but a paramount consideration which means that the best interests of the child is the determining factor when adoption is being considered.³⁹⁷ Moreover, subparagraphs (a) to (e) of Article 21 imposes compulsory minimum procedural safeguards, including an obligation to ensure that the adoption is authorized only by competent authorities which in turn must determine this in accordance with applicable law and on the basis of all pertinent and reliable information, including ascertaining of the status of child's parents, relatives and legal guardians and their consent³⁹⁸; as well as in case of inter-country adoption, it is incumbent to ascertain that a child cannot be cared for in a suitable manner in child's country of origin³⁹⁹.

Finally, similarly to Article 8 of the UNCRC which recognizes the importance of wider family as part of child's identity, also the right to family environment, comprised of numerous UNCRC provisions, all acknowledges that preservation of family environment encompasses the preservation of the family ties of the child in a wider sense and to this end, "*ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places*".⁴⁰⁰

The Mission received credible evidence of numerous violations of these provisions by the Russian Federation. There are reports of the children being separated from their parents at filtration points, as well as children not being returned promptly from the so-called recreation camps. As reported by the ICIU in March 2023 "*in all the incidents examined by the Commission, the onus to trace and find parents or family members fell primarily on the children. Parents and relatives encountered considerable logistical, financial, and security challenges in retrieving their children. In some cases, it took weeks or months for families to be reunited. Witnesses told the Commission that many of the smaller children transferred have not been able to establish contact with their families and might, as a consequence, lose contact with them indefinitely*".⁴⁰¹ The ICIU notes prolonged and even indefinite family separations⁴⁰² and children expressing a profound fear of being permanently separated from parents, guardians, or relatives.⁴⁰³

For example, the Mission received reports of a father whose case has been widely reported in the mass media⁴⁰⁴ as he was separated from his three children, aged 12, 7 and 5, at a filtration

³⁹⁵ See the Final Act of the CSCE (Helsinki Accords) (1975) which requires States to deal with family reunification applications in a positive and humanitarian spirit and as expeditiously as possible.

³⁹⁶ Jason Pobjoy, John Tobin, Article 10. The Right to Family Reunification, in John Tobin (eds), *The UN Convention on the Rights of the Child. A Commentary*, Oxford University Press, 2019, pp. 343-369; p. 369.

³⁹⁷ UN Doc. CRC/C/GC/14, *op. cit.*, para 38.

³⁹⁸ UNCRC, Article 21 (a).

³⁹⁹ UNCRC, Article 21 (b).

⁴⁰⁰ UN Doc. CRC/C/GC/14, *op. cit.*, para 70.

⁴⁰¹ ICIU Report, *op. cit.*, para 101.

⁴⁰² *Ibidem*, para 99.

⁴⁰³ *Ibidem*, para 100.

⁴⁰⁴ See, *inter alia*, Dad, you have five days before they adopt us' How a Mariupol father survived a Russian POW camp and travelled to Moscow to save his kids, *Meduza*, November 2022; Нас хотят усыновить, у тебя пять дней. Многодетный отец из Мариуполя смог вернуть детей, которых насильно увезли в Росси, *Current Times*, 16 February 2023; "Папа, нас хотят усыновить". Похищенные украинские дети в России, *Radio Svoboda*, 14 February 2023.

point by the Russian forces although there was nobody else to look after the children. Following some 45 days of detention, he was released without any information about his children or their whereabouts. His eldest managed to contact him, only to tell the father that he has five days to collect them, or they would be either placed in an institution or adopted. After complying with all the requirements of Russian authorities to prove that he is the legal guardian of the children and raising the requisite funds to travel to Moscow, the father was able to reclaim his children. This report starkly illustrates the failure of the Russian authorities to respect the rights of the child: not only were the three children separated from their sole parent, there were no attempts made to locate whether there was any next of kin who would be able to look after the children nor was there a record kept as to where the children would be taken or the father provided with this information upon his release or assisted with the reunification with his children. In this case it is plainly evident that the Russian authorities knew that the three children had a parent as well as had the whereabouts of that parent and knew of his release. Yet, if the father had not made the effort to locate children and travel to collect them, the Russian authorities would have likely either institutionalized these children or placed them in foster care. This also correlates with the findings of the IICIU that “Russian authorities required the parents or the legal guardians to travel in person to pick up their children. This involved long and complicated travel and security risks. Not all parents have therefore been able to do so”.⁴⁰⁵ This constitutes multiple violations of the rights of the child, including the right not to be separated from parents as well as the obligation to assist with reunification.⁴⁰⁶

Another case of the complexities created by the Russian authorities to *de facto* obstruct family reunification was reported to the Mission. This is a report⁴⁰⁷ of a single mother who was persuaded to send her son to a so-called recreation camp. The Russian authorities subsequently refused to return her son, requesting the mother to travel to collect him instead. Following a long, expensive, and logistically complex journey, she was asked of the whereabouts of the child’s father. Despite her producing documents that she is a single mother, the authorities requested a specific document providing that there is no known father of the child. The mother was required to travel back to Ukraine to obtain such a document and only upon her return with such document was she able to collect her son.

Further complications are faced by such families who seek to locate their children who have been placed in foster families (приемные семьи) about which the Mission received numerous statements.⁴⁰⁸ While the decision on fostering is an administrative decision by the social care authorities in the Russian Federation, it is nevertheless clear that to dissolve this is a more complex process which, in turn, impedes family reunification and thus contradicts Articles 9 and 10 of the UNCRC.

The Mission notes that foster parents would usually receive social care benefits, monetary payments, for taking children into their care.⁴⁰⁹ While this is not unusual in most jurisdictions globally, what is disturbing is that there are some suggestions that these social benefits acted as an ‘incentive’ to take more Ukrainian children into foster care.⁴¹⁰

The Mission also notes the enormous complexities of individual cases of children transgressing numerous provisions of the UNCRC. Thus, for example, the HRMMU report a case of a boy who “was transferred from the Mariupol area, where he lived with relatives, to Donetsk and

⁴⁰⁵ IICIU Report, *op. cit.*, para 99.

⁴⁰⁶ See also OSCE/ODIHR, *Second Interim Report, op. cit.*, para 138 and OHCHR, *Human rights concerns related to forced displacement in Ukraine*, 7 September 2022. See further AI Report, *op. cit.*, pp. 6 and 27.

⁴⁰⁷ Interlocutor 23. CHECK.

⁴⁰⁸ Interlocutors 2, 3, 5, 6, 10, 11, 12, 14, 18, 19, 20, 23 (on file with the authors); See also, *inter alia*, Fedosiuk, *The Stolen Children, op. cit.*; EHRG/ISRS Report I, *op. cit.*; Yale Report I, *op. cit.*; 5:00Am Coalition, *Deportation, op. cit.*; AI Report, *op. cit.*

⁴⁰⁹ Interlocutor 5 (on file with the authors); See also ZMINA, *Forced displacement, op. cit.*, pp. 24-25.

⁴¹⁰ *Ibidem*.

then to the Russian Federation, despite his family ties in Ukraine. He was placed in a foster family in the Moscow region and issued a Russian passport. The Russian Presidential Commissioner for the Rights of the Child reported that she personally took into foster care one of the boys from the group, and that he had received Russian citizenship in September”.⁴¹¹ This correlates to the findings of the IICIU which reports on Ukrainian children being transferred to Russia where they are subjected to “granting of Russian citizenship and the placement of children in foster families, which appears to create a framework in which some of the children may end up remaining permanently in the Russian Federation”.⁴¹²

In this regard, there are multiple violations of the rights of the child concerned, including the right to identity under Article 8 of the UNCRC as well as rights under Articles 9 and 10 to family unity. Moreover, the Mission once again particularly notes numerous legislative and executive acts adopted in the Russian Federation, both at federal and provincial levels, concerning the facilitation of granting the Russian citizenship to some categories of Ukrainian children. The precise long-lasting effects of granting the children citizenship of the Russian Federation at this stage of course are unknown but it is fair to conclude that such a step is not compatible with the obligations arising in respect to Russia regarding the family rights of the Ukrainian children it has deported and in fact constitute a further violation of the child’s right not to be separated from their parents as well as the obligation of the Russian Federation to assist with the reunification of families, as stipulated in Articles 9 and 10 of the UNCRC.

Turning to the reports received concerning the adoption of children deported from Ukraine to Russia, the Mission recalls that the highest standard of the regard to the best interests of child in the adoption as required by Article 21 of the UNCRC, namely, the best interests of the child must be the paramount consideration.⁴¹³ As already noted in Section IV.D, the legal provisions adopted by the Russian Federation concerning the simplified procedure for adopting Russian citizenship as well as for relinquishing Ukrainian citizenship which include provisions for children, have profound enabling effect in other areas of life. This is especially evident in the case of adoption (усыновление, удочерение). As stipulated by Section 19 of the Family Code of Russia,⁴¹⁴ adoption is only possible with respect to children who are citizens of the Russian Federation. It is however significant to recall that the adoption process in the Russian Federation allows for fundamental changes to be made vis-à-vis the adopted child, including the change of name, date and place of birth and even reissuance of birth certificate in the line with these changes. Further to that, adoption can only be established through court proceedings and the principle of secrecy of adoption also operates in the Russian Federation. Consequently, it becomes *de facto* impossible to ascertain of the true identities of the adopted children. While the Mission notes the reports of other international mechanisms expressing concern over this⁴¹⁵ and received testimonies that adoptions of children deported from Ukraine have taken place⁴¹⁶ and indeed, there are many such reports in the media,⁴¹⁷ the Mission was unable to establish the

⁴¹¹ See also OHCHR Report II, *op. cit.*, para 67.

⁴¹² IICIU Report, *op. cit.*, para 96.

⁴¹³ See further AI Report, *op. cit.*, p. 34.

⁴¹⁴ “Семейный кодекс Российской Федерации” от 29 декабря 1995 г. № 223-ФЗ.

⁴¹⁵ IICIU Report, *op. cit.*, para 100; Office of the High Commissioner for Human Rights, HRMMU “Report on the Human Rights Situation in Ukraine. 1 August 2022- 31 January 2023” (24 March 2023) para 133 (x).

⁴¹⁶ See, *inter alia*, AI Report, *op. cit.*; Fedosiuk, *The Stolen Children*, *op. cit.*; ZMINA, *Forced displacement*, *op. cit.*; A submission, *The Reckoning Project (TRP)*, *op. cit.*; EHRG/ISRS Report I, *op. cit.*; Yale Report I, *op. cit.*; 5:00Am Coalition, *Deportation*, *op. cit.*

⁴¹⁷ See, *inter alia*, Using Adoptions, Russia Turns Ukrainian Children Into Spoils of War, *The New York Times*, 22 October 2022; Children are being taken from Ukraine and adopted in Russia, US think tank says, *Euronews*, 27 October 2022; Нас хотят усыновить, у тебя пять дней. Многодетный отец из Мариуполя смог вернуть детей, которых насильно увезли в Россию, *Current Times*, 16 February 2023; Putin’s alleged war crimes: who are the Ukrainian children being taken by Russia?, *The Guardian*, 17 March 2023.

exact numbers of affected children. It is however clear that such adoptions would be a violation of Article 21 of the UNCRC.

The Mission concludes that multiple and overlapping violations of children's rights under Articles 9, 10 and 21 of the UNCRC pertaining to family unity of the child have taken place as a result of Russia's practice of deporting children from Ukraine. Alongside the *prima facie* breach of the right to family unity which arises in every case when a child is separated from her/his parents unnecessarily, the Russian Federation has done nothing to facilitate the reunification of families in breach of its obligations under Articles 9 and 10 of the UNCRC. On the contrary, the Mission has received numerous testimonies of obstacles placed in the path of parents seeking to reunite with their children, including requesting parents to travel in person to the Russian Federation (logistically and financially hugely complex for vast majority of such parents) to producing numerous documents to prove their parenthood over the child in question. This has been yet more complex for parents whose children have been placed in fostering arrangements. The Mission is particularly disturbed at the testimony of cases of adoption of Ukrainian children which have been carried out in violation of Article 21 of the UNCRC. To this end, the easing of the requirements for obtaining Russian citizenship appears to have acted as a facilitator for adoption in some cases.

3. THE RIGHT TO EDUCATION

Also, closely linked to the child's right to identity is the child's right to education, provided for in Article 28 of the UNCRC and especially the stipulations concerning the aims of education as set out in Article 29 of the UNCRC. Particularly significant for the purposes of the present report is Article 29(1) (c) of the UNCRC which require that the child's education is directed towards the "*development of respect for child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own*". Therefore, the obligation of a State vis-à-vis child's education does not stop at the provision of education but, by virtue of prescription in Article 29 of the UNCRC, extends to the quality of education which, in turn, has a profound impact upon the formation of child's identity.⁴¹⁸

The Mission received consistent accounts that the Ukrainian children deported are provided with education by the Russian authorities. The challenge with Articles 28 and 29 of the UNCRC however arises as to the content of the education provided. As has been extensively noted above (see Section VI.C.1 on identity), the children are subject to Russian education standard; there are also credible reports on special measures taken to ensure an education of Ukrainian children that is 'patriotic' towards Russia.⁴¹⁹ It is therefore evident that the approach to education of the Ukrainian children by the Russian authorities violates these children's right to education as set out in Articles 28 and 29 of the UNCRC.

4. THE RIGHT TO INFORMATION

It is rather similar with the child's right to information as with the right to education examined in the previous section. Article 17 of the UNCRC sets out the child's right to information, obliging States to "*ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health*". This obligation also extends to digital forms of information and the CRC has particularly requested States to ensure

⁴¹⁸ UN Doc. CRC/GC/2001/1, *General comment No.1 (2001). Article 29 (1): The Aims of Education*, Annex IX, para 2.

⁴¹⁹ See, *inter alia*, EHRG/ISRS Report II, *op. cit.*; EHRG/ISRS Report I, *op. cit.*

age appropriate, diverse content to all children, including in the language a child can understand.⁴²⁰

While the Mission did not receive reports that the Ukrainian children deported would be denied access to information *per se*, it is widely known and accepted that the Russian information space is rather limited and does not provide for diversity of views, especially of the views which do not follow the line of the authorities.⁴²¹ It is particularly challenging when it comes to the obligation to provide diverse materials from international sources as well as material in a language which a child can understand – the availability of Ukrainian language resources on the territory of Russian Federation is exceptionally limited. The Mission thus concludes that the right to information of Ukrainian children deported to Russia under Article 17 of the UNCRC is violated.

5. THE RIGHT TO REST, LEISURE, PLAY, RECREATION AND PARTICIPATION IN CULTURAL LIFE AND ARTS

The child's right to rest, leisure, play, recreation and participation in cultural life and arts, set out in Article 31 of the UNCRC and its proper implementation also has a profound impact upon the child's identity. The CRC has particularly noted the importance of participation in cultural life emphasizing that children "*inherit and experience the cultural and artistic life of their family, community and society, and through that process, they discover and forge their own sense of identity and, in turn, contribute to the stimulation and sustainability of cultural life and traditional arts*".⁴²² It is important to recall that these activities cannot be imposed upon a child. Indeed, as stressed by the CRC, "*compulsory or enforced games and sports or compulsory involvement in a youth organization, for example, do not constitute recreation*".⁴²³

The Mission has received several consistent reports concerning the allegations of violations of children's rights under Article 31 of the UNCRC. As already noted above, the children are commonly subjected to military education, which extends to their leisure time as part of the mainstream education and/or an after-school activity,⁴²⁴ which bear the hallmarks of "compulsory or enforced games" as stipulated by the CRC. Moreover, there is evidence that children are required to join youth organizations such as military patriotic clubs of various cities and "Cossack Cadet Corps".⁴²⁵ Thus, for example, the Deputy Prime Minister of the Republic of Tatarstan, Ms. Leyla Fazleeva in August 2022 noted that "all camps... are aimed at the patriotic upbringing of youth, development of communication skills, and preservation of [Russian] cultural heritage".⁴²⁶ In terms of the provision for participation in cultural life, this is limited to the cultural life of Russia rather than "*cultural and artistic life of their family, community and society*" as required by Article 31 of the UNCRC.⁴²⁷ The Mission was unable to establish a single instance when even an element of the Ukrainian culture would have been allowed by the Russian authorities. The Mission thus opines the children's rights under Article 31 of the UNCRC have been violated.

⁴²⁰ UN Doc. CRC/C/GC/25, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, para 52; UN Doc. CRC/C/GC/20, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, paras 47-48.

⁴²¹ See, for example, 5:00Am Coalition, *Deportation*, *op. cit.*

⁴²² UN Doc. CRC/C/GC/17, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, para 11.

⁴²³ UN Doc. CRC/C/GC/17, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, para 14 (d).

⁴²⁴ See, *inter alia*, EHRG/ISRS Report II, *op. cit.*; Almenda, *The Russian System*, *op. cit.*,

⁴²⁵ See, for example, EHRG/ISRS Report II, *op. cit.*, especially pp. 12-13.

⁴²⁶ Лейла Фазлеева встретила с детьми из ЛНР и ДНР, отдыхающими в лагерях Татарстана, *Татар Информ*, 8 August 2022.

⁴²⁷ See, *inter alia*, Yale Report I, *op. cit.*; Fedosiuk, *The Stolen Children*, *op. cit.*

6. THE RIGHT TO THOUGHT, CONSCIENCE AND RELIGION

The child's right to thought, conscience and religion is protected by Article 14 of the UNCRC and there is a fundamental obligation upon a State to respect child's freedom of thought, conscience and religion. This also presumes the right of the child to choose own religion.⁴²⁸ Moreover, "*States parties should ensure that children are not penalized for their religion or beliefs or have their future opportunities in any other way restricted. The exercise of children's right to manifest their religion or beliefs in the digital environment may be subject only to limitations that are lawful, necessary and proportionate*".⁴²⁹

The Mission received numerous accounts of the violations of the right to thought, conscience and religion of the Ukrainian children in Russia.⁴³⁰ Noting the split of the Ukrainian Orthodox Church from Moscow Patriarchate in May 2022,⁴³¹ it is clear that the two churches are separate identities. Yet, for example, there are reports of children having "educational" conversations with representatives of the Russian Orthodox Church of the Moscow Patriarchate as part of their "patriotic" education.⁴³² Moreover, given the dominant anti-Ukraine narrative in the Russian Federation, it is safe to conclude that there are no opportunities for Ukrainian children to attend Ukrainian Orthodox churches or indeed meet with religious leaders of their church. Similarly, as evidence by the discussion in Section VI.C.1 on the right to identity, the Ukrainian children deported are required to follow the Russian education standard as well as being subjected to 'patriotic' educational measures.⁴³³ All these cannot be reconciled with the freedom of thought and conscience protected by Article 14 of the UNCRC.

Consequently, noting all the above, the Mission is of the view that the right to freedom of right to thought, conscience and religion of the Ukrainian children as set out in Article 14 of the UNCRC has been violated.

7. THE RIGHT TO HEALTH

Article 24 of the UNCRC recognizes the right of every child to the highest attainable standard of health and to this end, it is crucial to underscore that this right also encompasses mental health provision as well.⁴³⁴ The obligation imposed by Article 24 of the UNCRC upon States is recognized to include an obligation to respect, protect and fulfil the child's right to health⁴³⁵ and the CRC has recognized the particularly negative effects of armed conflict upon the health of children.⁴³⁶ The Mission has serious reservations about the profoundly negative effects that the practice of deportations as well as the treatment that has taken place since have on the physical and mental well-being of the Ukrainian children.⁴³⁷ The Mission also takes note of the reports of treatment provided to some children in the absence of a consent from their parents or indeed without even information the parents as to the treatment⁴³⁸ as well as lack of medical

⁴²⁸ Sylvie Langlaude Done, John Tobin, Article 14. The Right to Freedom of Thought, Conscience, and Religion, in John Tobin (eds), *The UN Convention on the Rights of the Child. A Commentary*, OUP, 2019, p. 489.

⁴²⁹ UN Doc. CRC/C/GC/25, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, para 63.

⁴³⁰ See, *inter alia*, Fedosiuk, *The Stolen Children*, *op. cit.*, p. 8; ZMINA, *Forced displacement*, *op. cit.*, pp. 24-25.

⁴³¹ *Постанова Собору Української Православної Церкви від 27 травня 2022 року*, published on the Facebook p. of the Ukrainian Orthodox Church. See also Moscow-led Ukrainian Orthodox Church breaks ties with Russia, *Reuters*, 28 May 2022.

⁴³² 5:00Am Coalition, *Deportation*, *op. cit.*, p. 26.

⁴³³ See, for example, ZMINA, *Forced displacement*, *op. cit.*

⁴³⁴ UN Doc. CRC/C/GC/15, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, para 7.

⁴³⁵ *Ibidem*, para 71.

⁴³⁶ *Ibidem*, para 5.

⁴³⁷ See also CoE Report.

⁴³⁸ See, for example, Yale Report I, *op. cit.*; Regional Centre for Human Rights, *Recreation camps*, *op. cit.*

care provided to children who went to the so-called recreation camps.⁴³⁹ The Mission concludes that the violations of Russia’s obligations under Article 24 of the UNCRC are very likely.

8. THE RIGHT TO LIBERTY AND SECURITY

Article 37 (b) of the UNCRC prohibits unlawful or arbitrary deprivation of child’s liberty and requires that any detention of a child be used as a measure of last resort and for the shortest period of time. In this regard, it must be recalled that the United Nations Working Group on Arbitrary Detention (WGAD) has clearly stated that “*deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave [a place of detention], then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected*”.⁴⁴⁰ To this end it is also important to recall that deprivation of liberty can and does occur in settings other than criminal justice and, as noted by the Human Rights Committee “*examples of deprivation of liberty include police custody, arraigo, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children and confinement to a restricted area of an airport, as well as being involuntarily transported*”.⁴⁴¹ Moreover, it is important to recall that even if a deprivation of liberty is lawful in accordance with the domestic legislation, it can still be considered arbitrary if it infringes upon the international norms concerning the permitted limitations to the right to personal liberty.⁴⁴²

In the remits of the present Mission this raises a very serious question as to whether the Ukrainian children deported to the temporarily occupied territories and/or Russian Federation have been in fact deprived of their liberty. This is mainly the case in the numerous instances of children who remain in the so-called recreation camps or who have been institutionalized in Russia. Moreover, the Mission wishes to underscore that deprivation of liberty may also take place in private settings, including foster families/homes, and it is the duty of the State to ensure that there are effective safeguards to guard against arbitrary deprivation of liberty in such cases. As such, at the very minimum, the Russian authorities are obliged to ensure that all children are provided with the possibility to challenge their deprivation of liberty. The Mission has not been able to establish that this is the case and consequently is of the view that violations of Article 37 (b) of the UNCRC are very likely to have taken place.

D. CRIMES AGAINST HUMANITY

This definition of crimes against humanity, as set out in Article 7(1) of the Rome Statute, includes, as already stated, the crimes of “*deportation or forcible transfer of population*”.⁴⁴³ For this crime to occur, three elements need to be present: (1) the acts must take place in the specific context of a widespread or systematic attack against civilian population; (2) the perpetrators must have the knowledge of carrying out such an attack, and (3) there must be deportation or forcible transfer of civilian population. It is important to note that such forced displacement does not necessarily require use of force, but may also include threats of force or coercion, duress or indeed abuse of power against such persons or by taking advantage of a coercive environment.⁴⁴⁴ Indeed, as stated by the ICC, while individuals may agree, or even request, to be removed from an area, “*consent must be real in the sense that it is given voluntarily and as a result of the individual’s free will*”.⁴⁴⁵

⁴³⁹ A submission, *The Reckoning Project (TRP)*, *op. cit.*; 5:00Am Coalition, *Deportation*, *op. cit.*

⁴⁴⁰ UN Doc. A/HRC/36/37, *WGAD Report of the Working Group on Arbitrary Detention*, para 56.

⁴⁴¹ UN Doc. CCPR/C/GC/35, *General comment No. 35. Article 9 (Liberty and security of person)*, para 5.

⁴⁴² See, for example, Un Docs A/HRC/WGAD/2017/15, para 67; A/HRC/WGAD/2017/41, paras. 98-101; A/HRC/WGAD/2018/52, para 78.

⁴⁴³ Article 7(1)(d) of the Rome Statute of the ICC.

⁴⁴⁴ ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgement, 8 July 2019, para 1056.

⁴⁴⁵ ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Judgement, Appeals Chamber, 22 March 2006, para 279.

The Mission recalls that by virtue of Article 7(2)(a) of the Rome Statute, an “attack directed against a civilian population” means “*a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack*”. The attack does not need to be of military nature but may consist in certain administrative measures, such as a large-scale displacement of the population. “Widespread” refers to “*the attack being conducted on a large scale as well as to the high number of victims it caused*”,⁴⁴⁶ systematic refers to “*the organised character of the acts of violence and the improbability of their random occurrence*”.⁴⁴⁷ The previous two Missions established that “*some patterns of violent acts violating IHRL, which have been repeatedly documented during the conflict, such as targeted killing, enforced disappearance or abductions of civilians*”⁴⁴⁸ do indeed, due to their extent and severity, meet the definition of the widespread or systematic attack against a civilian population, thus providing the contextual element for crimes against humanity.

The Mission notes that there is credible evidence to conclude that the deportation of Ukrainian children undertaken by the Russian authorities may contain elements of this crime against humanity. As evidenced by the present report, while the Mission has not been able to ascertain the exact number of children thus deported, it is clear that these numbers are measured in several thousands. Moreover, except for few instances when the transportation of children could be justified due to imminent threat to life owing to ongoing armed conflict, the Mission has been able to establish with certainty that by and large the deportation of children cannot be qualified as voluntary. Even in those instances when children have been sent to the so-called recreation camps with the consent of their parents or other legal guardians, this consent has not been entirely voluntary.⁴⁴⁹ The Russian authorities have used persuasion, manipulated the desperate economic situation of the families, and even resorted to threats to elicit the agreement of parents. In other cases, such as separation of children from their parents during filtration, it is quite clear that this has been forceful. The Mission thus concludes that the practice of the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation may amount to a crime against humanity of “*deportation or forcible transfer of population*”.

E. CONCLUSIONS

The Mission concluded that numerous and overlapping violations of the rights of the children deported to the Russian Federation have taken place. Not only has the Russian Federation manifestly violated the best interests of these children repeatedly, it has also denied their right to identity, their right to family, their right to unite with their family as well as violated their rights to education, access to information, right to rest, leisure, play, recreation and participation in cultural life and arts as well as right to thought, conscience and religion, right to health, and the right to liberty and security. These are ongoing violations of Articles 3, 8, 9, 10, 12, 14, 17, 20, 21, 24, 28, 29, 31 and 37 (b) of the UNCRC. The cumulative effects of these multiple violations also give rise to very serious concerns that the rights of these children to be free from torture and ill-treatment and other inhuman or degrading treatment or punishment (Article 37 (a) of the UNCRC) have been violated. The Mission also concludes that the practice of the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation may amount to a crime against humanity of “*deportation or forcible transfer of population*”.

⁴⁴⁶ ICTY, *Prlić*, IT-04-74-T, *op. cit.*, paras 41-42.

⁴⁴⁷ *Ibidem*.

⁴⁴⁸ OSCE Moscow Mechanism Report I, *op. cit.*, p. 87; OSCE Moscow Mechanism Report II, *op. cit.*, p. 108.

⁴⁴⁹ See Sections VI.B and VI.C.2; see also Regional Centre for Human Rights, *Recreation camps as another means of eradicating the Ukrainian national identity of children from the occupied territories*, 22 February 2023.

VII. ACCOUNTABILITY FOR VIOLATIONS OF IHL AND IHRL AND FOR POTENTIAL WAR CRIMES AND CRIMES AGAINST HUMANITY

In the previous sections the Mission established that the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation has involved and continues to involve various violations of IHL and IHRL. It has also found credible evidence to argue that some of these violations could, if responsible individuals are identified, amount to war crimes and crimes against humanity. In this section, in line with the mandate of “*collecting, consolidating, and analyzing /.../ information with a view to /.../ provide the information to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction*”, the Mission identifies the obligations arising for States in the three main areas of international law (IHL, IHRL, ICL) relevant for this report and it provides an overview of accountability mechanisms available in these three spheres.

A. ACCOUNTABILITY UNDER IHL

IHL imposes on States a series of obligations, both by means of specific treaty provisions and through customary rules. These obligations apply not only to the Parties to the conflict but also, to a large extent, to other States. There are, at the moment, no specific IHL accountability mechanisms similar to those established under IHRL and ICL.

1. OBLIGATIONS OF STATES UNDER IHL

By virtue of Common Article 1 of the four GC, all States have the obligation “*to respect and to ensure respect for the present Convention in all circumstances*”. This obligation is not limited to the Parties to the conflict but it also, in its latter part, extends to other States. The obligation *to respect* means the obligation for the State to do everything that can realistically be done in the given circumstances to ensure that the rules of IHL are respected by its armed forces, its other organs as well as other persons or groups acting in fact on its instructions, or under its direction or control. The obligation *to ensure respect* means the obligation for the State, including those not Parties to the conflict, to take all possible measures, given the circumstances, to ensure that the rules of IHL are respected in the conflict. The obligation to respect and to ensure respect is considered a customary rule.⁴⁵⁰

As noted in the ICRC Study on Customary IHL, “*the obligation of States to respect international humanitarian law is part of their general obligation to respect international law*”.⁴⁵¹ The violations of the obligation to respect IHL, i.e., the breach of certain rules of IHL attributable to a State triggers the responsibility of this State under the classical rules on the State responsibility.⁴⁵² It is important to recall that States are responsible for acts committed by their organs even if when carrying out such acts, the organs exceed their authority or contravene instructions.⁴⁵³ It is also important to once again recall that States are responsible for acts carried out by a person or group of persons who are “*in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct*”.⁴⁵⁴

⁴⁵⁰ Jean-Marie Henckaerts, Louise Doswald-Beck (Eds.), *Customary International Humanitarian Law, Volume I: Rules*, Cambridge University Press, Cambridge, 2005, p. 495 (Rule 139) and p. 509 (Rule 144).

⁴⁵¹ *Ibidem*, p. 495.

⁴⁵² *Draft articles on Responsibility of States for internationally wrongful acts*, in UN Doc. A/56/10, *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, November 2001, pp. 43-59.

⁴⁵³ *Ibidem*, Article 7.

⁴⁵⁴ *Ibidem*, Article 8.

The State responsible for violations of IHL has new, additional obligations. First, it has the continued duty to perform the obligation breached.⁴⁵⁵ Second, it is obliged to cease the violation and to offer appropriate assurances and guarantees of non-repetition.⁴⁵⁶ Third, it has to provide full reparation – in the form of restitution, compensation or satisfaction – for the injury caused by the internationally wrongful act.⁴⁵⁷

In the case at hand, the State responsible for the violations of IHL committed by, and in the course of, the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the Russian Federation, i.e., Russia, is obliged to:

- a) respect the relevant rules of IHL applicable to this area;
- b) immediately terminate those instances of the displacement of Ukrainian children that have been found to be unlawful, to immediately stop violating the rules of IHL applicable during the displacement, and to offer assurances and guarantees of non-repetition of such acts; and
- c) provide reparation, involving *inter alia* the reunification of children displaced in violation of IHL with their families and their return to home areas or to other safe places, and the provision of financial compensation to Ukraine and arguably to individual affected children and families, and the provision of adequate satisfaction (apology, criminal prosecution of individuals responsible for the violations of IHL).

The Mission recalls once again that under Article 49(2) of the GCIV persons who have been evacuated from occupied territories “*shall be transferred back to their homes as soon as hostilities in the area in question have ceased*”. It also recalls that the ICRC has identified the rule under which “*displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist*”⁴⁵⁸ as a rule of customary IHL.

All other States are obliged not to encourage violations of IHL by Parties to the conflict and to “*exert their influence, to the degree possible, to stop violations of international humanitarian law*”.⁴⁵⁹ This implies a negative obligation not to encourage, aid or assist in the commission of violations of IHL and a positive obligation to take measures, either collectively or individually, to prevent or end such violations. Thus, for instance, third States are not allowed to send Ukrainian children that find themselves in their territory to the territory of Russia.

2. ACCOUNTABILITY MECHANISMS UNDER IHL

IHL does not establish any specific accountability mechanisms similar to the procedures before the judicial and quasi-judicial bodies under IHL or the ICC under ICL. Yet, there are certain specific institutions mandated to provide various accountability avenues. One of the specific institutions established by IHL, more specifically by Article 90 of the API to the GCs, is the *International Fact-Finding Commission (IFFC)*. The IFFC is a permanent body composed of 15 experts which may investigate allegations of grave breaches and serious violations of IHL committed in international armed conflicts. As was recalled in the previous reports issued under the Moscow Mechanism, in spite of being set up already in 1991, the IFFC has so far never been used in practice. Due to the withdrawal from the IFFC mechanism by the Russian Federation in 2019, it is not likely that the current conflict would mark a shift in this respect. Instead, the fact-finding tasks related to the conflict in Ukraine have been entrusted to *ad hoc* bodies, namely the three missions of experts established in 2022-2023 under the OSCE Moscow

⁴⁵⁵ *Ibidem*, Article 29.

⁴⁵⁶ *Ibidem*, Article 30.

⁴⁵⁷ *Ibidem*, Articles 31 and 34-37.

⁴⁵⁸ Jean-Marie Henckaerts, Louise Doswald-Beck (Eds.), *Customary International Humanitarian Law, Volume I: Rules*, Cambridge University Press, Cambridge, 2005, p. 468 (Rule 132).

⁴⁵⁹ *Ibidem*, p. 509 (Rule 144).

Mechanism and the *Independent International Commission of Inquiry on Ukraine*, set up in March 2022 by the UN Human Rights Council.

Another institution foreseen by IHL that could play a useful role in the area considered in this report but which has not been (thus far) put in place either, is that of *protecting powers*. Protecting powers are third States designated by one party to the conflict and accepted by the other party to the conflict and tasked to safeguard the interests of the former party and of its citizens.⁴⁶⁰ Protecting powers ensure indirect communication between the parties to a conflict when the diplomatic relations between them are severed. Several of the provision of IHL applicable to children and to transfer of populations, namely Article 24 and 49 of the GCIV and Article 78 of the API, explicitly mention protecting powers and attribute some tasks to them, including that of supervising evacuation of children.⁴⁶¹ Yet, the institute of protecting power has been in principle out of use since the times of the World War II and it has not been employed in the context of the current conflict either.

Article 5(3) of the API clearly stipulates that in the absence of a designation or acceptance of protecting powers, the *International Committee of the Red Cross (ICRC)* shall be recognized as their substitute. It is indeed a standard practice in the armed conflicts of the past decades that the ICRC assumes tasks entrusted to protecting powers. Moreover, the ICRC also exercises a host of other activities under the mandate conferred on it by the four GCs and the API. Since the ICRC operates under the principle of confidentiality, it is usually not possible to learn the full extent of its activities in a particular conflict, or with respect to a particular issue.

The ICRC has however issued several statements confirming that it has been dealing with the issue under consideration by this Mission. In Spring 2022, the ICRC set up a special bureau of the Central Tracing Agency (CTA) for the humanitarian crisis in Ukraine. The CTC Bureau “collects, centralizes, and transmits information about the fate and whereabouts of people, both military and civilians deprived of their liberty, who have fallen in the hands of the enemy”.⁴⁶² It also “helps any families who have been separated due to the armed conflict to find their missing relatives”.⁴⁶³ In April 2023, the ICRC spokesman confirmed that “in line with its mandate to restore contact between separated families and facilitate reunification where feasible”,⁴⁶⁴ the ICRC was in contact with Ms. Lvova-Belova. No further details about the nature of these contacts and the specific role that the ICRC might have in the tracing and the return of Ukrainian children could be obtained by the Mission.

B. ACCOUNTABILITY UNDER IHRL

IHRL also imposes various obligations on States, primarily the State which has a jurisdiction over a particular individual(s). In case of violations of IHRL, the rules on the responsibility of the State apply as well. Yet, they are modified – mostly for the benefit of individual victims of IHRL violations – through specific human rights treaties. Moreover, various political as well as quasi-judicial and, even, judicial bodies have been set up at the universal and regional level to monitor the compliance with the obligations stemming from IHRL and to consider individual or inter-State complaints alleging violations of IHRL.

⁴⁶⁰ See Article 5 of the API.

⁴⁶¹ See Article 78(1) of the API

⁴⁶² ICRC’s Central Tracing Agency Bureau for the International Armed Conflict in Ukraine: Providing answers to families, *ICRC*, 2 June 2022, available at: <https://www.icrc.org/en/document/central-tracing-agency-missing-persons-ukraine>

⁴⁶³ *Ibidem*.

⁴⁶⁴ Red Cross confirms contact with Russia about Ukrainian kids, *CNBC*, 8 April 2023

1. OBLIGATIONS OF STATES UNDER IHRL

Under IHRL, States have both negative and positive obligations. The negative obligations consist of the obligation to respect human rights, i.e., to refrain from interfering with such rights in a way that could not be justified under the relevant human rights instrument. The positive obligations comprise the obligation to protect human rights, i.e., to ensure that the enjoyment of human rights by an individual is not compromised by an action of or failure to act by other individuals, and the obligation to fulfil human rights, i.e., to take positive actions to ensure the enjoyment of such rights by individuals. The positive obligations also include the obligations to duly investigate any alleged violations of IHRL. The State has those obligations with respect to “*all individuals within its territory and subject to its jurisdiction*”.⁴⁶⁵ As explained in Section III.C.3, jurisdiction is not limited to the territory of the State but may extend beyond it, either due to the exercise of an effective control over some parts of the territories of another State or due to the specific control over concrete individuals.

Violations of IHRL give rise to the responsibility of the State to which such violations are attributed. Again, the State is responsible for the acts or omissions of its own organs as well as those who act on its behalf; it is also responsible for acts or omissions by individuals or groups under its control. The State may also be responsible for acts carried out by individuals and groups that are not under its control, if it fails to display adequate due diligence to prevent such acts (under the obligation to protect). The responsible State again remains bound by the continued duty to perform the obligation breached. It also has the obligation to cease the violation, offer appropriate assurances and guarantees of non-repetition and provide adequate reparations which can and must take various forms. The content of these obligations, including the form and beneficiary of reparation, are specified in various human rights treaties. Those treaties typically stipulate that in addition to other State parties, individual victims of violations are also entitled to bring claims to relevant international or national bodies and to receive reparations.

In the IHRL there is no provision similar to the Common Article 1 of the GCs imposing the obligation to “ensure respect” for IHRL on third States. Yet, human rights are of *erga omnes* (or, in case of treaty provisions, *erga omnes partes*) nature. As such, they are “*the concern of all States. /.../ all States can be held to have a legal interest in their protection*”.⁴⁶⁶ The most fundamental human rights, such as the right to life or the prohibition of torture, are moreover considered to belong to the imperative norms of international law (*jus cogens*). Serious breaches of *jus cogens* entail the obligations of all States: a) not to recognize as lawful a situation created by such a serious breach, nor render aid or assistance in maintaining this situation; b) to cooperate to end through lawful means any such serious breaches.

2. ACCOUNTABILITY MECHANISMS UNDER IHRL

IHRL establishes various political as well as quasi-judicial and, even, judicial bodies to monitor the compliance by States with the obligations stemming from IHRL and/or to consider individual or inter-State complaints alleging violations of IHRL. Such bodies exist both at the universal and at the regional level.

At the *universal* level, the UN Human Rights Council (HRC), composed by the representatives of 47 States,⁴⁶⁷ may address any human rights violations and make recommendations on them. The HRC has already taken several steps in response to the act of aggression by the Russian

⁴⁶⁵ Article 2(1) of the ICCPR and Article 2(1) of the CRC.

⁴⁶⁶ ICJ, *Barcelona Traction, Light, and Power Company, Ltd (Belgium v Spain)*, Judgment, ICJ Rep 1970, p. 3, para 33.

⁴⁶⁷ The membership of the Russian Federation in the HRC was suspended by the UN General Assembly in April 2022, resulting in the withdrawal of the Russian Federation from the HRC. See UN Doc. A/RES/ES-11/3, *Suspension of the rights of membership of the Russian Federation in the Human Rights Council*, 8 April 2022.

Federation against Ukraine and the allegations of serious breaches of IHRL (and of IHL) committed in the ensuing conflict.

First, in March 2022, it established the Independent International Commission of Inquiry on Ukraine (IICIU) and having received its report in March 2023, it decided to extend its mandate for a further year.⁴⁶⁸ Secondly, on 12 May 2022, it held a special session on the deterioration of human rights situation in Ukraine stemming from the Russian aggression. The resolution adopted during this session demanded all parties to the conflict “*to refrain from any human rights violations and abuses in Ukraine*”.⁴⁶⁹ Thirdly, in October 2022, the HRC established the mandate of the Special Rapporteur on the situation of human rights in the Russian Federation⁴⁷⁰ and, in April 2023, appointed Ms. Mariana Katzarova (Bulgaria) as the first mandate holder.

Fourthly, on 4 April 2023, the HRC adopted Resolution 52/32, on the situation of human rights in Ukraine stemming from the Russian aggression. The resolution explicitly refers to the “*unlawful forcible transfer and deportation of civilians and other protected persons within Ukraine or to the Russian Federation, as appropriate, including children*”,⁴⁷¹ calling upon the Russian Federation to cease this practice, provide humanitarian organizations with unimpeded, immediate, sustained and safe access of humanitarian organizations to deported Ukrainians and provide reliable and comprehensive information about their numbers and whereabouts. Following this resolution, the HRC may ask the IICIU to prepare a special report on this issue and it may also refer the issue to the attention of the UN General Assembly.

In addition to the HRC as a political body, the UN human rights system encompasses nine human rights treaty bodies, composed of individual experts, established within individual human rights treaties and their optional protocols. These bodies monitor the implementation of and respect for the relevant treaties through the consideration of national reports that States have to submit on a periodic basis. They also consider individual and/or inter-State complaints alleging violations of rights guaranteed by individual treaties, but this competence is usually granted by optional protocols and/or subject to an opt-in mechanism. The Russian Federation has recognized the competence of treaty bodies to consider individual complaints under the ICCPR and the CAT but not under the UNCRC. Children who allege been victims of forcible transfer or deportation from Ukraine to the temporarily occupied territories or to the territory of the Russian Federation, or their parents, other relatives or legal guardians, consequently could submit application to the UN Human Rights Committee established under the ICCPR or the UN Committee against Torture, established under CAT, although this procedure is limited to cases where there is “*reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party*”.⁴⁷²

A further avenue of redress may be found in the work of the Ukrainian National Preventive Mechanism of (NPM), established in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁴⁷³ As stipulated in Article 4 of OPCAT, NPMs are to have access to all places of deprivation of liberty to ascertain that those in such facilities are treated humanely. It is important to recall that the term “deprivation of liberty” does not only encompass the institutions from the criminal justice system such as prisons and police stations, but also other settings such as medical care (for example, psychiatric institutions) and social care.⁴⁷⁴ The latter certainly includes children’s

⁴⁶⁸ UN Doc. A/HRC/51/L.41/Rev.1, *op. cit.*, para 18.

⁴⁶⁹ UN Doc. A/HRC/RES/S-34/1, *The deteriorating human rights situation in Ukraine stemming from the Russian aggression*, 16 May 2022, para 1.

⁴⁷⁰ UN Doc. A/HRC/RES/51/25, *Situation of human rights in the Russian Federation*, 11 October 2022.

⁴⁷¹ UN Doc. A/HRC/52/L.41/Rev.1, *Situation of human rights in Ukraine stemming from the Russian aggression*, 4 April 2023.

⁴⁷² Article 20(1) of the CAT.

⁴⁷³ On 19 September 2006 Ukraine designated the Parliament Commissioner for Human Rights as its NPM.

⁴⁷⁴ UN Docs CAT/C/50/2, para. 67; CAT/OP/ECU/2, para. 51; CAT/OP/SEN/ROPNPM/1, paras. 30–31.

institutions and homes and consequently, the mandate of the Ukrainian NPM could be usefully employed to ascertain of the treatment of the children in question. While the Russian Federation is not a State party to OPCAT, given it has custody of Ukrainian citizens (children) in its childcare institutions, the mandate of the Ukrainian NPM could be extended to cover such facilities and the treatment of Ukrainian children in them.

The HRC has also established a system of Special Procedures, which is currently comprised of 45 thematic and 14 country-specific mandates – Special Rapporteurs or Working Groups. The Special Procedures enjoy a universal coverage in that, by virtue of their mandates being established by the HRC and therefore being anchored in the UN Charter, they can engage with any State irrespective of what treaties the State in question has ratified or not. This is a significant advantage if compared with the UN treaty bodies as the latter can only engage with States parties to their respective treaties.

The Special Procedures do not have strict enforcement powers; however, they can raise issues of concern with the State in question through the urgent communications procedure. Some of them, such as the Working Group on Arbitrary Detention (WGAD), also have quasi-judicial functions and can receive allegations from individuals, issuing Opinions as a result. There are number of Special Procedure mandate holders that are of particular relevance to the subject matter of the present Mission. In terms of country-specific mandate, the newly established Special Rapporteur on the situation of human rights in the Russian Federation has already been noted. In terms of thematic mandates, in addition to the WGAD, other relevant mandates include the Special Rapporteur on the Right to Education, the Working Group on Enforced or Involuntary Disappearances, Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It must be noted that both States and individuals may engage the Special Procedures.

At the *regional* level, the most robust human rights system exists within the Council of Europe, based on the European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR). The Mission recalls that due to the exclusion of the Russian Federation from the Council of Europe, the country ceased to be bound by the ECHR on 16 September 2022, though the ECtHR continues to have the competence to consider cases related to events having occurred within the jurisdiction of the Russian Federation prior to that date.

As noted in the previous report, since 2014, several inter-State applications have been submitted by Ukraine against the Russian Federation (and one by the Russian Federation against Ukraine). On 30 November 2022, the ECtHR declared partially admissible the application by Ukraine and the Netherlands submitted in 2014.⁴⁷⁵ Although the application primarily focuses on the downing of Malaysia Airlines flight MH17, it also contains allegations of other violations of the ECtHR. One of them pertains to the alleged administrative practice in respect of the abduction and transfer to Russia for a period of several days of three groups of children placed in care homes, orphanages and foster care in the so-called DPR and LPR. This part of the application, alleging violations of Articles 3, 5 and 8 of the ECHR and of Article 2 of Protocol No. 4 to the ECHR was declared admissible.⁴⁷⁶

On 17 February 2023, the ECtHR decided to join to these applications a new application by Ukraine (Ukraine v. Russia (X)) which concerns allegations of mass and gross human-rights violations committed by the Russian Federation in its military operations on the territory of Ukraine since 24 February 2022. It is not clear whether this application contains any allegations related to the forcible transfer or deportation of Ukrainian children to the temporarily occupied territories or to the territory of the Russian Federation.

⁴⁷⁵ ECtHR, *Case of Ukraine and the Netherlands v. Russia*, Applications Nos. 8019/16, 43800/14 and 28525/20, 30 November 2022.

⁴⁷⁶ *Ibidem*, para 898.

Under the conditions set in Articles 34 and 35 of the ECHR, individuals considering themselves victims of violations of human rights enshrined in the ECHR can submit an individual application to the ECtHR. The Mission was not in the position to verify whether any such individual applications pertaining specifically to the topic under consideration in this report have been submitted. The Mission also recalls that on 11 June 2022, the Russian Federation adopted a law stipulating that the country “*will not implement decisions of the European Court of Human Rights entering into force after 15 March 2022*”.⁴⁷⁷ The law does not exempt the Russian Federation from its obligation under international law to respect the decisions of the ECtHR concerning the acts occurred prior to 16 September 2022. Yet, it suggests that the country may be reluctant to abide by this obligation. This is confirmed by the country’s reaction, or rather the lack of it, to the interim measures granted, on 1 March 2022, by the ECtHR in the case *Ukraine v. Russia (X)*.⁴⁷⁸

C. ACCOUNTABILITY UNDER ICL

The obligation for States to prevent, repress, investigate and prosecute war crimes and crimes against humanity stems from IHL treaties and from customary international law. Accountability mechanisms exist both at the international and at the national level and two arrest warrants have already been issued by the ICC concerning the forcible transfer or deportation of Ukrainian children.

1. OBLIGATIONS OF STATES UNDER ICL

The four GCs and the API explicitly identify acts which qualify as grave breaches. Article 85(5) of the API confirms that “*grave breaches /.../ shall be regarded as war crimes*”. The Rome Statute of the ICC confirms that the category of **war crimes** nowadays encompasses both grave breaches of the GCs (and serious violations of Common Article 3 of the GCs) and other serious violations of the laws and customs applicable in international or non-international armed conflict. It provides a lengthy catalogue of war crimes in its Article 8. States have the obligation to “*enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention /.../*”.⁴⁷⁹ They also have to “*search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and /.../ bring such persons, regardless of their nationality, before /their/ own courts*”.⁴⁸⁰ Customary international law extends these obligations to other types of war crimes. It furthermore specifies that States *must* establish and exercise territorial and personal jurisdiction over war crimes (crimes committed by their nationals or armed forces, or on their territory) and *may* establish but if they do so *must* exercise universal jurisdiction.⁴⁸¹ Both Ukraine and Russia have introduced certain war crimes into their criminal codes.⁴⁸²

Crimes against humanity have not so far been codified in a special treaty. Yet, Article 7 of the ICC Rome Statute contains a list of acts which “*when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*”,⁴⁸³ amount to crimes against humanity. Under customary international law, all States the obligation

⁴⁷⁷ Федеральный закон от 11 июня 2022 г. № 183-ФЗ *О внесении изменений в отдельные законодательные акты Российской Федерации и признании утратившими силу отдельных положений законодательных актов Российской Федерации*, пара 7(а).

⁴⁷⁸ The European Court grants urgent interim measures in application concerning Russian military operations on Ukrainian territory, *ECtHR Press Release*, 1 March 2022.

⁴⁷⁹ Article 49 GCI, Article 50 GCII, Article 50 GCIII, Article 129 GCIV, Article 145 API.

⁴⁸⁰ *Ibidem*.

⁴⁸¹ Rules 157-158 CIHL.

⁴⁸² See, especially, Section XX of the Ukrainian Criminal Code and Section XII of the Russian Criminal Code.

⁴⁸³ Article 7(1) of the Rome Statute of the ICC.

to prevent, prosecute and punish crimes against humanity.⁴⁸⁴ For those purposes, they must take the necessary measures to ensure that these crimes constitute offences under their criminal law and that their organs have jurisdiction over such crimes based on the principles of territoriality, personality, and universality. Each State must also “ensure that its competent authorities proceed to a prompt, thorough and impartial investigation whenever there is reasonable ground to believe that acts constituting crimes against humanity have been or are being committed in any territory under its jurisdiction”.⁴⁸⁵ Unlike other States, neither Ukraine, nor the Russian Federation have included the category of crimes against humanity as such into their respective criminal codes.⁴⁸⁶ When implementing the obligation to punish crimes against humanity, they thus would need to resort either to war crimes or to general “ordinary” offences (murder, rape, hostage taking, etc.).

2. ACCOUNTABILITY MECHANISMS UNDER ICL

The investigation and prosecution of war crimes and crimes against humanity should primarily take place at the *national* level – in the countries where the crimes were allegedly committed (territoriality) or from where the alleged perpetrators come (personality) or, on a subsidiary basis, in any other countries in the position to carry out the investigation and the prosecution (universality). The Mission welcomes the efforts by Ukraine and by certain other countries, such as Germany,⁴⁸⁷ Lithuania,⁴⁸⁸ Romania,⁴⁸⁹ Spain,⁴⁹⁰ or Sweden,⁴⁹¹ to investigate alleged war crimes and crimes against humanity and, in some cases, to initiate prosecution. It also welcomes the establishment of the Joint Investigation Team (JIT), comprised of teams from Estonia, Latvia, Lithuania, Poland, Romania, Slovakia and Ukraine and supported by Eurojust, tasked to look into allegations of core international crimes committed in Ukraine.⁴⁹²

The Mission found reports suggesting that some of the investigations, especially those carried out by the Office of the Prosecutor General of Ukraine, pertain to the forcible transfer or deportation of Ukrainian children to the temporarily occupied territories or to the territory of the Russian Federation.⁴⁹³ No further details were, however, available. During the meetings with the Ukrainian authorities in Kyiv, the Mission was informed that there was an intention to amend the Criminal Code of Ukraine to make it better suited for the prosecution of crimes against children. Indeed, on 13 April 2023, a draft amendment to para. 438 of the Criminal Code, relating to the Violations of Laws and Customs of War, was submitted to the Verkhovna Rada.⁴⁹⁴ This amendment should include “*forcible displacement of persons outside the territory of Ukraine*” into the list of war crimes explicitly mentioned in the provision and it should also add a new paragraph stipulating that if committed against a minor, the crime would entail a more severe sanction (8-15 years imprisonment, instead of 8-12 years imprisonment for

⁴⁸⁴ *Draft articles on Prevention and Punishment of Crimes Against Humanity*, in UN Doc. A/74/10, *Report of the International Law Commission on the work of its Seventy-first session*, Official Records of the General Assembly, Seventy-first session, Supplement No. 10, August 2019, pp. 11-21.

⁴⁸⁵ *Ibidem*, Article 8.

⁴⁸⁶ In Ukraine, a legal act implementing the Rome Statute, which shall include into the Ukrainian legal order the category of crimes against humanity, was adopted by the Verkhovna Rada in May 2021 but so far has not been signed into Law by the President. See *Проект Закону No. 2689 про внесення змін до деяких законодавчих актів України щодо імплементації норм міжнародного кримінального та гуманітарного права*.

⁴⁸⁷ Germany launches probe into suspected war crimes in Ukraine, *Al Jazeera*, 8 March 2022.

⁴⁸⁸ Lithuania opens probe into crimes against humanity in Ukraine attacked by Russia, *LRT*, 3 March 2022.

⁴⁸⁹ Romania to investigate Russian crimes against humanity committed in Ukraine, *TV World*, 11 July 2022.

⁴⁹⁰ Spain opens probe into 'serious violations' by Russia in Ukraine, *The Local*, 8 March 2022.

⁴⁹¹ Sweden launches investigation into Ukraine war crimes, *The Local*, 5 April 2022.

⁴⁹² For more details, see Eurojust and the war in Ukraine, *Eurojust*, available at: <https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine>

⁴⁹³ Anthony Deutsch, Stephanie van den Berg, Exclusive: Ukraine probes deportation of children to Russia as possible genocide, *Reuters*, 3 June 2022.

⁴⁹⁴ Проект Закону No. 9204 від 13 квітня 2023 про внесення змін до Кримінального кодексу України щодо насильницького переміщення особи за межі території України.

adult persons). By the time of the submission of this report, the amendment was not adopted. The Mission however notes that already under the current Criminal Code, acts constituting war crimes under the GCs, the API, other IHL treaties or the Rome Statute of the ICC, may easily qualify as “*other violations of the laws and customs of war provided for by international treaties*” included in Article 438 of the Criminal Code.

Core international crimes may also be investigated and prosecuted at the *international* level. This is the case with alleged war crimes and crimes against humanity committed in Ukraine, which have been under investigation by the ICC Office of the Prosecutor since 2 March 2022. As already mentioned in Section II of this report, on 17 March 2023, the ICC issued the very first arrest warrants related to the situation in Ukraine, pertaining specifically and exclusively to the forcible transfer or deportation of Ukrainian children to the temporarily occupied territories or to the territory of the Russian Federation. The arrest warrants are directed against the President Putin and the Commissioner Ms. Lvova-Belova, for whom, according to the ICC Pre-Trial Chamber II, “*there are reasonable grounds to believe that /they/ bear responsibility 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, in prejudice of Ukrainian children*”.⁴⁹⁵ By the time of the submission of the report, the arrest warrants had not been executed and there was no information available about any further steps being taken by the ICC in the case concerning the transfer of Ukrainian children.

VIII. GENERAL CONCLUSIONS

The Mission established that a large number of Ukrainian children have been, since 24 February 2022 and even prior to this date, displaced from the territory of Ukraine to the temporarily occupied territories and to the territory of the Russian Federation. While the exact numbers remain uncertain, the fact of a large-scale displacement of Ukrainian children does not seem disputed by either Ukraine or Russia. In this report, primary focus has been placed on orphans and on unaccompanied children, since those constitute the most vulnerable groups among displaced children. The Mission has found out that the three most commonly indicated grounds for the organized displacement of these children are: the evacuation for security reasons, the transfer for the purpose of adoption or foster care, and temporary stays in the so-called recreation camps. While in the temporarily occupied territories or in the Russian Federation, Ukrainian children are placed in various institutions or in Russian families – the forms of the placement include adoption, which has been applied mainly to children from Crimea (at least since 2015) or custody, guardianship or foster families which seem more common for other Ukrainian children (mainly since 24 February 2022). Whatever the form of placement, Ukrainian children are exposed to pro-Russian information campaigns often amounting to targeted re-education. The Russian Federation does not take any steps to actively promote the return of Ukrainian children. Rather, it creates various obstacles for families seeking to get their children back.

The Mission reviewed the reported evacuations and forced displacements of Ukrainian children at the hands of the Russian occupying power in light of applicable IHL. The Russian Federation is obliged, in her capacity as belligerent and occupying power, to respect the applicable rule of IHL under which children enjoy protections pertaining to the “civilian population”, “protected persons”, family-members and finally the special protections dedicated to children.

The Mission found that while certain cases of evacuations of children were in line with Russia’s obligations under IHL, other practices of non-consensual evacuations, transfers and prolonged displacement of Ukrainian children constitute violations of IHL, and in certain cases amount to grave breaches of GCIV and war crimes, notably violation of the prohibition on forcible transfer

⁴⁹⁵ ICC, *Situation in Ukraine*, available at: <https://www.icc-cpi.int/situations/ukraine>

or deportation under Article 49 of the GCIV. The Mission also found that non-justified prolonged stay or unfounded logistical hurdles violate the obligation to facilitate reunification and contravene the principles embodied within the GCIV that family unity is to be protected and respected.

Further, the Mission is of the opinion that Russia's relocalization of Ukrainian children to Russia-controlled areas or Russian territory, combined with the belligerent powers, disregard the obligation to establish compulsory mechanisms under the GCIV to track these children, to communicate their whereabouts and facilitate their repatriation or reunification with their families, is a violation of the GCs that exacerbates the gravity of other violations.

Moreover, the Mission concludes that the exposure of unaccompanied children to adoption or similar measures of assimilation is incompatible with the GCIV. Altering nationality of Ukrainian children is a violation of Article 50(2) of the GCIV. It also contravenes the principles embodied within the GCIV that family unity is to be protected and respected. Facilitating re-education and permanent integration into Russian families serves to confirm that the displaced Ukrainian children are indeed the victims of deportation in the sense of Article 49 of the GCIV.

The Mission has also found that the Russian belligerent currently has no functioning mechanism that facilitates family reunification for Ukrainian children presently in Russia or Russian occupied territories. Rather, the Mission sees traces of a consistent pattern suggesting that efforts by the Russian authorities to allow the movement of children from Ukraine to the Russian Federation do not include steps for further evacuation to third countries or back to safer areas in Ukraine. The present approach by the Russian authorities facilitates permanent stay and potentially unjustified delayed repatriation of these children, in disregard of IHL.

The Mission concluded that numerous and overlapping violations of the rights of the children deported to the Russian Federation have taken place. Not only has the Russian Federation manifestly violated the best interests of these children repeatedly, it has also denied their right to identity, their right to family, their right to unite with their family as well as violated their rights to education, access to information, right to rest, leisure, play, recreation and participation in cultural life and arts as well as right to thought, conscience and religion, right to health, and the right to liberty and security. These are ongoing violations of Articles 3, 8, 9, 10, 12, 14, 17, 20, 21, 24, 28, 29, 31 and 37 (b) of the UNCRC. The cumulative effects of these multiple violations also give rise to very serious concerns that the rights of these children to be free from torture and ill-treatment and other inhuman or degrading treatment or punishment (Article 37 (a) of the UNCRC) have been violated. The Mission moreover concluded that the practice of the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation may amount to a crime against humanity of "*deportation or forcible transfer of population*".

The Mission recalls that IHL, IHRL and ICL impose various obligations on States. Those encompass the obligation to respect and to ensure respect for IHL; the obligation to respect, protect and fulfil human rights; and the obligation to prevent, repress, investigate and prosecute war crimes and crimes against humanity. Such obligations apply not only to the Parties to the conflict (IHL) or to the territorial State (IHRL, ICL) but also, in one form or another, to third States. It is for the international community as a whole to ensure that IHL, IHRL and ICL are respected.

There are no specific accountability mechanisms under IHL. *The International Fact-Finding Commission* could be activated and protecting powers could be designated but these institutions have been rarely, if ever, put in use in the recent decades. It is thus largely left to the ICRC, in its role of a substitute to protecting powers as well as in its autonomous role, to take steps, albeit confidential ones, to ensure respect for IHL rules. Under IHRL, conversely, various political as well as quasi-judicial and, even, judicial bodies exist that monitor the compliance by States with their obligations stemming from IHRL and/or consider individual or inter-State complaints

alleging violations of IHRL. Such bodies include the HRC, the UN Human Rights Committees, or the ECtHR. Most of these bodies have been already actively seized with the situation of Ukraine and some have even considered, albeit so far with limited outcomes, the forcible transfer and/or deportation of Ukrainian children. Finally, under ICL, both national courts in Ukraine and in other countries and the ICC have started investigating allegations of war crimes and/or crimes against humanity, including allegations related to the forcible transfer and/or deportation of Ukrainian children.

IX. RECOMMENDATIONS

In the remits of the present mandate, the Mission makes the following recommendations, addressed not only to the Russian Federation and Ukraine but also to other States and international organizations. However, the principal recommendation of the present Mission to all the stakeholders is to urgently and above all prioritize the safe reunification of all Ukrainian children who have been forcibly transferred or deported to the temporarily occupied territories and the Russian Federation, with their parents, relatives, and true legal guardians and that these children are allowed to develop their own identities without undue interference, in compliance with the provisions of Article 74 of the API and Article 8 of the UNCRC. The best interests of the children dictate that this is achieved with utmost urgency and above all other considerations.

A. TO THE RUSSIAN FEDERATION

- (1) To immediately cease the practices of forcible transfer or deportation of children from Ukraine to the temporarily occupied territories and the Russian Federation.
- (2) In those cases when the duty to precautions in defence and/or imminent threat to life due to prevailing hostilities requires evacuation, allow without delay the establishment of safe passage through humanitarian corridors for all civilians, especially children, to the territory of their free and genuine choice, be it Ukraine or the Russian Federation or a third country.
- (3) Without delay, establish a new NIB or appropriately expand the mandate of the existing NIB in accordance with the obligations arising in respect to Russia under Articles 136 and 50 of the GCIV.
- (4) Without delay, compile, provide and promptly update comprehensive lists of the names and whereabouts of all children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation. Specifically indicate in such lists the legal status of each individual child, especially any cases of adoption and/or change in the fundamental data of the child (for example, name, date, and place of birth) in accordance with Article 78 of API. To this end, the principle of adoption secrecy must be immediately lifted to allow the provision of data to appropriate agencies such as NIBs of both countries and the ICRC.
- (5) Establish appropriate procedures for and actively assist family reunifications of all children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation in full compliance with Article 77 of API and Articles 9 and 10 of the UNCRC.
- (6) Immediately cease the current practice of expedited admission into the Russian citizenship of Ukrainians, especially children, and their relinquishing of the citizenship of Ukraine.
- (7) Immediately impose a moratorium on any further adoptions of children who have previously held or currently hold Ukrainian citizenship until each individual adoption case can be verified as fully compliant with all requirements arising in respect to Russia under international law and especially with the provisions of the GCIV and UNCRC.

- (8) Without delay cease the practice of the so-called “patriotic education” of all Ukrainian (or formerly Ukrainian) children forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation. Ensure full respect for the rights of all such children to, *inter alia*, speak the Ukrainian language, practice their own religion, and develop their own identities, rooted in their true and genuine personal, legal, and family identity, as required by the UNCRC.
- (9) Immediately establish a legal mechanism to assist with the restoration of the identity of all children who have been forcibly transferred or deported to the temporarily occupied territories or the Russian Federation, in full compliance with Article 8(2) of the UNCRC.
- (10) Urgently seek assistance and good offices of a third country to bring about an end to the practice of forcible transfers or deportation of Ukrainian children to the temporarily occupied territories and the Russian Federation in accordance with Article 24 (2) of the GCIV and ensure full respect of their right to family reunification as stipulated in Articles 9 and 10 of the UNCRC.
- (11) Ensure immediate, safe, and unfettered access of the ICRC to all institutions in the temporarily occupied territories and in the Russian Federation where children who have been forcibly transferred or deported from Ukraine are currently residing.
- (12) Ensure immediate, safe, and unfettered access to the National Preventive Mechanism of Ukraine, established in accordance with the OPCAT, to all institutions in the temporarily occupied territories and in the Russian Federation where children who have been forcibly transferred or deported from Ukraine are currently residing.

B. TO UKRAINE

- (1) Urgently increase its multi-agency efforts to collect and duly verify data of all children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation.
- (2) Redouble its efforts in seeking out the children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation with the view of promptly implementing their right to family reunification as stipulated in Articles 9 and 10 of the UNCRC.
- (3) Continue with its efforts, at all levels of authority, to seek lists of and information about all children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation from the Russian authorities.
- (4) Urgently seek assistance and good offices of a third country to bring about an end to the practice of forcible transfers or deportation of Ukrainian children to the temporarily occupied territories and the Russian Federation in accordance with Article 24 (2) of the GCIV and ensure full respect of their right to family reunification as stipulated in Articles 9 and 10 of the UNCRC.
- (5) Continue providing medical, psychological, social and other support to all children (and their families) who have been returned following their forcible transfer or deportation from Ukraine to the temporarily occupied territories and the Russian Federation.
- (6) Increase its efforts to review its current practice of institutionalization of children in Ukraine to bring it in line with the international human rights obligations arising with respect to Ukraine.
- (7) Ensure full respect for the right to develop their own identities of all Ukrainian children in full compliance with Article 8 of the UNCRC.
- (8) Support its National Preventive Mechanism, established in accordance with the OPCAT, in seeking from the Russian Federation immediate, safe, and unfettered access to all institutions in the temporarily occupied territories and in the Russian territory where children who have been forcibly transferred or deported from Ukraine are currently residing.

C. TO OTHER STATES AND INTERNATIONAL ORGANIZATIONS

- (1) Provide urgently all necessary assistance, including logistical, know-how and financial, to Ukraine to support its multi-agency efforts to collect and duly verify data of all children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation, in line with their obligations under Article 1 of the GCIV and API Article 74 of the API.
- (2) Provide urgently all necessary assistance, including logistical, know-how and financial, to Ukraine to support its efforts to locate the children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation with the view of duly implementing their right to family reunification as stipulated in Articles 9 and 10 of the UNCRC, and in line with their obligations under Article 1 of the GCIV and API Article 74 of the API.
- (3) Proactively offer their good offices to Ukraine and the Russian Federation to urgently facilitate the family reunification of all children who have been forcibly transferred or deported from Ukraine to the temporarily occupied territories and the Russian Federation in full compliance with Articles 9 and 10 of the UNCRC, and in line with their obligations under Articles 1 and 24 of the GCIV and API Article 74 of the API.
- (4) Provide assistance to Ukraine to increase its efforts to review its current practice of institutionalization of children to bring it in line with the international human rights obligations arising with respect to Ukraine.

Comments by Ukraine

to the Report of the Mission of Experts, established to address the violations and abuses of international humanitarian and human rights law, war crimes and crimes against humanity, related to the forcible transfer and/or deportation of Ukrainian children to the Russian Federation

In chapter C. Accountability under ICL of the part VII. Accountability for Violations of IHL and IHRL and for Potential War Crimes and Crimes against Humanity and in part VIII. General Conclusions forcible transfer or deportation of Ukrainian children is described as possible war crime and/or crime against humanity. While we support such qualification, we also consider that these parts shall include a notion that this crime of forcible transfer or deportation of Ukrainian children may also constitute genocide. Under Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 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. Thus, forcible transfer or deportation of Ukrainian children to the Russian national group may constitute genocide. We believe that this shall be reflected in the text of the Report.

Prof. Veronika Bílková (Czech Republic)
Prof. Cecilie Hellestveit (Norway)
Prof. Elīna Šteinerte (Latvia)

Prague-Riga-Oslo, 6 April 2023

His Excellency
Ambassador Alexander Lukashovich
Permanent Representative of the Russian Federation to OSCE

cc Mr. Matteo Mecacci
Director of the Office of Democratic Institutions and Human Rights (ODIHR)

Representatives of 45 invoking Participating States and of Ukraine

Your Excellency,

On 30 March 2023, the delegations of 45 OSCE participating States, after the consultation with Ukraine, invoked the Moscow Mechanism under paragraph 8 of the Moscow Document. They requested that ODIHR enquire with Ukraine whether it would invite a mission of experts “*to build upon previous findings and establish the facts and circumstances surrounding possible contraventions of relevant OSCE commitments, violations and abuses of human rights, and violations of international humanitarian law and international human rights law, as well as possible cases of war crimes and crimes against humanity, associated with or resulting from the forcible transfer of children within parts of Ukraine’s territory temporarily controlled or occupied by Russia and/or their deportation to the Russian Federation; and to collect, consolidate, and analyze this information with a view to offer recommendations, as well as provide the information to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction*”. Following on this inquiry, Ukraine established, on 4 April 2023, a mission composed of the three experts undersigned below. The mission of experts shall deliver its report by 25 April 2023.

The mandate of the mission pertains to events which, while originating in the territory of Ukraine and concerning Ukrainian citizens, also involve acts purportedly carried out by persons acting on behalf or under the control of the Russian Federation. Since, by virtue of Paragraph 6 of the Moscow document, “*the mission may receive information in confidence from any*

individual, group or organization on questions it is addressing”, we would like to invite the Russian Federation to collaborate with our mission and to share with us any information it might be in possession of and that might assist us in accomplishing our mandate. With this in mind, we would very much appreciate an opportunity to meet with your Excellency. We would also particularly welcome information from, and contacts with, the following authorities:

- the Office of the High Commissioner for Human Rights in the Russian Federation,
- the Office of the Presidential Commissioner for Children’s Rights in the Russian Federation,
- the Government Commission on Minors’ Affairs and Protection of Their Rights,
- the Ministry of Education of the Russian Federation, and
- the National Information Bureau.

We shall be grateful to receive copies of any written communications, including letters, that any of these offices or indeed others from the Russian Federation have sent to any authorities in the Ukraine on the subject matter of the present mandate, the issue of transportation of children to Russia. We would also appreciate if you could provide us with a total number and list of names of unaccompanied children who have been received in the Russian Federation from Ukraine since 24 February 2022 and the number of those of them who have been adopted or placed into foster families.

We thank you in advance for acknowledging the receipt of this letter and for kindly providing us with a response to it. In view of the time frame envisaged for the mission, we shall appreciate to receive your reply by 17 April 2023.

Yours sincerely,



Veronika Bílková



Cecilie Hellestveit



Elīna Šteinerte

Prof. Veronika Bílková (Czech Republic)
Prof. Cecilie Hellestveit (Norway)
Prof. Elīna Šteinerte (Latvia)

Prague-Riga-Oslo, 6 April 2023

His Excellency
Ambassador Yevhenii Tsymbaliuk
Permanent Representative of Ukraine to OSCE

cc Mr. Matteo Mecacci
Director of the Office of Democratic Institutions and Human Rights (ODIHR)

Representatives of 45 invoking Participating States and of Ukraine

Your Excellency,

On 30 March 2023, the delegations of 45 OSCE participating States, after the consultation with Ukraine, invoked the Moscow Mechanism under paragraph 8 of the Moscow Document. They requested that ODIHR enquire with Ukraine whether it would invite a mission of experts “*to build upon previous findings and establish the facts and circumstances surrounding possible contraventions of relevant OSCE commitments, violations and abuses of human rights, and violations of international humanitarian law and international human rights law, as well as possible cases of war crimes and crimes against humanity, associated with or resulting from the forcible transfer of children within parts of Ukraine’s territory temporarily controlled or occupied by Russia and/or their deportation to the Russian Federation; and to collect, consolidate, and analyze this information with a view to offer recommendations, as well as provide the information to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction*”. Following on this inquiry, Ukraine established, on 4 April 2023, a mission composed of the three experts undersigned below. The mission of experts shall deliver its report by 25 April 2023.

The mandate of the mission pertains to events which originate in the territory of Ukraine and concern Ukrainian citizens. We therefore believe that your country might be in possession of information and materials relevant for the completion of our mission. Since, by virtue of Paragraph 6 of the Moscow document, “*the mission may receive information in confidence*

from any individual, group or organization on questions it is addressing”, we would like to invite Ukraine to collaborate with our mission. We would particularly welcome information from, and contacts with, the following authorities:

- the Office of the Prosecutor General of Ukraine,
- the Ministry of Reintegration of the Temporary Occupied Territories of Ukraine,
- the National Information Bureau of Ukraine,
- the Office of the Ukrainian Parliament Commissioner for Human Rights,
- the Commissioner of the President of Ukraine for Children’s Rights,
- the National Social Service,
- the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea,
- the National Police of Ukraine, and
- Civil society organisations, especially SOS Children Villages and Save Ukraine Foundations.

We shall also be grateful to receive copies of any written communications, including letters, that any of these offices or indeed others from Ukraine have sent to any authorities in the Russian Federation on the subject matter of the present mandate. We would also appreciate if you could provide us with a total number and list of names of unaccompanied children who have been transferred from Ukraine to the Russian Federation since 24 February 2022 or even prior to this date.

We thank you in advance for acknowledging the receipt of this letter and for kindly providing us with a response to it. In view of the time frame envisaged for the mission, we shall appreciate to receive your reply by 17 April 2023.

Yours sincerely,



Veronika Bílková



Cecilie Hellestveit



Elīna Šteinerte



Permanent Mission of Ukraine
to the International Organizations
in Vienna

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Nº4131/36-180/7-42542

Vienna,
14 April 2023

Dear professors,

In response to your letter of 06 April 2023 let me first sincerely thank you for your willingness to act as experts of the mission of the OSCE Moscow Human Dimension Mechanism to address the deportation of children amidst the human rights violations and humanitarian impacts of russia's war of aggression against Ukraine.

As you are well aware this OSCE Mechanism was invoked on 30 March 2023 by 45 OSCE participating States in close cooperation with Ukraine. Please find enclosed for your attention the copy of the Statement of the Delegation of Ukraine on the issue.

We believe that your mission's activities and future report will significantly contribute to the international efforts and accountability mechanisms to ensure justice and hold to account the masterminds and perpetrators of russia's crimes.

The Ukrainian Side stays ready to maintain fruitful cooperation with your mission of experts and looks forward to your forthcoming visit to Ukraine on 17-18 April 2023 (the proposals to the draft programme of your visit are enclosed).

Please accept, dear professors, the assurances of my highest consideration.

Enclosure: as stated, on 3 pages.

Yevhenii Tsymbaliuk

Ambassador,
Permanent Representative of Ukraine to
the International Organizations in Vienna

Professor Veronika Bílková
Prague

Professor Cecilie Hellestveit
Oslo

Professor Elīna Šteinerte
Rīga