

Forcible Transfers of Ukrainian Children: Indoctrination as a Tool of Russia's Imperialism

(forthcoming in the German Yearbook of International Law)

Dr. Yulia Ioffe

In the wake of Russia's aggression against Ukraine, reports have surfaced, indicating the systematic and widespread forcible transfers of Ukrainian children from temporarily occupied territories to Russia. Mounting evidence suggests Russia's efforts to indoctrinate these children and erode their national identity are reminiscent of historical colonial practices. Although not unique to Russia, forcible child transfers have historical precedents globally. Understanding this history is essential for comprehensively addressing genocide, particularly, as defined in Article II (e) of the Genocide Convention. This article explores the classification of forcible child transfers as a form of genocide, with a focus on the Ukrainian context. Examining the impact of colonial powers on the drafting of the Genocide Convention, this article sheds light on the limitations of international law, particularly the law of genocide, which hinders the legal challenge of colonial violence within its framework. It analyses the challenges in establishing genocidal intent for forcible transfer of children and the role of indoctrination in facilitating the biological absorption of one group into another. Additionally, it provides a historical overview of Russia's colonial practices, drawing parallel with present-day transfers. The article concludes by examining the ongoing forcible transfers of Ukrainian children to Russia, highlighting Russia's policies on re-education and military training as tools to dissolve the national Ukrainian identity and absorb Ukrainian children into the Russian population.

Keywords: *children, Ukraine, Forcible Transfer, Russia's imperialism, colonialism, indoctrination, deportation, genocide*

I. Introduction

Since the latest wave of Russia's aggression against Ukraine, there have been credible reports of Ukrainian children from temporarily occupied territories being forcibly transferred to Russia. Although the figures provided by different sources vary significantly, ranging from 19,500 to 700,000,¹ it is evident that the practice of forcible transferring of Ukrainian

¹ As of 16 January 2024, this registry of Ministry of Reintegration of Ukraine and the National Information Bureau indicated that 19,546 Ukrainian children had been forcibly transferred. Children of War, *Deported Children*, available at <https://childrenofwar.gov.ua/en/> (the content of the website is updated daily and hence the website may contain different figures if checked after the date of publication of this article). On the other hand, Russia claims that 744,000 Ukrainian children have been 'evacuated' from Ukraine. Rebekah Daunt, *Life on the Margins: The Fate of Ukraine's Forcibly Deported Children*, 7 June 2023, available at <https://www.euronews.com/2023/06/07/life-on-the-margins-the-fate-of-ukraines-forcibly-deported-children>

children is systematic and extensive.² Considering the relatively short period since Russia's full-scale invasion of Ukraine, these large numbers serve as another reminder of the centrality of children in understanding armed conflicts.³

There is also mounting evidence of Russia's deliberate policy aimed to indoctrinate deported Ukrainian children and accelerate the dissolution of their national identity. Such indoctrination encompasses systematic efforts to re-educate children from Ukraine, exposing them to Russia-centric political and personal views by imposing Russian patriotic education, including military education. The rationale behind Russia's forcible transfers and indoctrination of Ukrainian children bears resemblance to its historical colonial practices, which are briefly discussed in Part IV.

The practice of forcible transferring of children from one group to another, however, is not unique to Russia. It has a long history with numerous examples from various parts of the world. Instances include the ISIS-forcible removal and indoctrination of Yazidi children, forcible transfer and separation of Uyghur children from their parents and their placement in the state institutions in China,⁴ the removal of indigenous children in North America and Australia and their placement in residential schools,⁵ the mass transfers of Armenian children in Ottoman Empire,⁶ Hitler's 'Germanization' of Polish children,⁷ the removal of Yenish children in Switzerland and the Inuit in Danish-ruled Greenland.⁸ Understanding this history of forcible child transfers, particularly during armed conflicts, is crucial for a comprehensive understanding genocide,⁹ specifically Article II (e) of the UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).¹⁰

² European Parliament, *Joint Motion for a Resolution on Human Rights Violations in the context of the Forced Deportation of Ukrainian Civilians to and the Forced Adoption of Ukrainian Children in Russia*, RC-B9-0388/2022, 14 September 2022, at para (i).

³ Jonathan Lanz, 'Lost (or Recovered?) Childhoods: Writing Children's Histories of Genocide', *Journal of Genocide Research* (2023) 1, at 1.

⁴ Alex Fox, 'China's Crimes Against Humanity upon the Uyghur People under the Rome Statute of the International Criminal Court', 17(2) *Loyola University Chicago International Law Review* (2021) 131, at 133.

⁵ Andrew Woolford and Jeff Benvenuto, 'Canada and Colonial Genocide', 17 *Journal of Genocide Research* (2015) 373; Anna Haebich, "'Clearing the Wheat Belt': Erasing the Indigenous Presence in the Southwest of Western Australia", in A. Dirk Moses, *Genocide and Settler Society* (2012) 286; David B. MacDonald, 'Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada', 17 *Journal of Genocide Research* (2015) 424.

⁶ Keith David Watenpugh, "'Are There Any Children for Sale?': Genocide and the Transfer of Armenian Children (1915–1922)", 12(3) *Journal of Human Rights* (2013) 283.

⁷ Isabel Heinemann, "'Until the Last Drop of Good Blood": The Kidnapping of "Racially Valuable" Children and Nazi Racial Policy in Occupied Eastern Europe", in A. Dirk Moses (ed.), *Genocide and Settler Society* (2012) 244.

⁸ Hedi Viterbo, *Problematising Law, Rights, and Childhood in Israel/Palestine* (2021), at 161–2.

⁹ Watenpugh, *supra* note 6, at 285.

¹⁰ 'In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

Article II (e) of the Genocide Convention prescribes that forcible transfer of children from a protected group to another group amounts to genocide, if conducted ‘with intent to destroy’ the group, ‘as such,’ at least ‘in part’. This provision reflects the historical nexus between child rights, minority rights, and human rights more broadly.¹¹ In this article, I explore the possibility of addressing forcible child transfers as a form of genocide, with a specific emphasis on the Ukrainian context. I argue that, in numerous instances, children have been forcibly transferred, indoctrinated, and ‘civilised’ to destroy their collective identity. The main aim is to analyse the limitations of international law, particularly in the context of genocide, which hinder the legal challenge against colonial violence within its framework.

Part II examines the impact of colonial powers on the content of the Genocide Convention during its drafting. It sheds light on Raphael Lemkin's interest in colonial genocides and how his conception of genocide was shaped by colonialism. This section also explores the concept of cultural genocide and its exclusion from the Genocide Convention, as well as the inclusion of the forcible transfer of children as a punishable act. This section explores cultural dimensions of *actus reus* and *mens rea* of genocide and argues that genocide may entail not only physical destruction but also the destruction of a group's social existence and cultural identity. Part III analyses the forcible transfer of children as a form of genocide. It highlights how those responsible for such actions often justify them as being in the ‘best interests’ of the child or for ‘philanthropic’ reasons. In this section, the interpretation of Article II (e) of the Genocide Convention by domestic and international courts is examined, exploring the challenges in establishing genocidal intent. The primary focus of this section is on indoctrination as a tool of imperialism and how it can contribute to the physical destruction of a certain group by facilitating biological absorption of children into another society. Part IV offers a historical account of Russia’s colonial practices during the time of the Russian Empire and the Soviet Union, particularly of Russification, ethnic cleansing, and mass deportations. This section concentrates on the oppression experienced by Ukrainians, recognising that other non-Russian nations were also subjected to colonial practices. Overall, these historical practices provide insights on the present-day forcible transfers of Ukrainian

-
- (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’. Article II(e), UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) 1948, 78 UNTS 277.

¹¹ Watenpugh, *supra* note 6, at 283.

children carried out by Russia and should inform their legal qualification. Concluding the discussion, Part V delves into the ongoing forcible transfers of Ukrainian children to Russia and territories temporarily occupied by Russia. The analysis focuses on Russia's policies on re-education and military training of children, examining them in the context of the previously outlined concept of indoctrination, viewed as a tool facilitating the dissolution of the national Ukrainian identity. This section suggests that Russia's practice of the forcible transfers aims to eliminate Ukrainians as a social unit and absorb Ukrainian children into the Russian population.

II. Drafting Genocide Convention and Colonial Powers

A. Lemkin's Interest in Colonial Genocides

It appears that Raphael Lemkin, who coined the term 'genocide', had a profound interest in colonial genocides. The intellectual breakthrough that led to the concept of genocide occurred well before the Holocaust, with Lemkin producing much of his work in the 1920s and early 1930s. Lemkin's manuscripts reveal that his conception of genocide was significantly influenced by early modern and modern colonialism.¹² In fact, scholars argue that Lemkin was also aware of the Holodomor (1932–3 man-made famine in Ukraine), which is discussed in the next sections, when he was working the genocide concept.¹³ These ideas culminated in his founding text, 'Axis Rule in Occupied Europe' (1944), and the subsequent Genocide Convention four years later.¹⁴ In his 'Axis Rule', Lemkin explicitly stated that genocide was a colonial practice.¹⁵

There are persuasive arguments suggesting that for Lemkin, the Holocaust constituted a continuation of genocidal occupations characteristic of colonialism throughout history.¹⁶ In the later 1940s and 1950s, Lemkin conducted systematic studies of colonial genocides, and

¹² Michael A. McDonnell and A. Dirk Moses, 'Raphael Lemkin as Historian of Genocide in the Americas', 7(4) *Journal of Genocide Research* (2005) 501, at 501.

¹³ Alexander Etkind, 'Ukraine, Russia, and Genocide of Minor Differences', 25 (3–4) *Journal of Genocide Research* (2023) 384, at 395.

¹⁴ McDonnell and Moses, *supra* note 12, at 501.

¹⁵ Raphael Lemkin, *Axis Rule in Occupied Europe* (1944), at 79 (emphasis added). See also Douglas Irvin-Erickson, 'Raphael Lemkin: Culture and Cultural Genocide', in Jeffrey Bachman (ed.), *Cultural Genocide: Law Politics, and Global Manifestations* (2019) 21, at 29.

¹⁶ McDonnell and Moses, *supra* note 12, at 502; Douglas Irvin-Erickson, 'The History of Raphael Lemkin and the UN Genocide Convention', in David Simon and Leora Kahn (eds.), *Handbook of Genocide Studies* (2023) 7, at 14.

his later work indicates that he regarded colonialism as an integral part of a world history of genocide.¹⁷

Consequently, conceived originally as a legal remedy for specific groups, often colonised populations, to challenge acts of violence, particularly colonial oppression, the Genocide Convention, unfortunately, fell short of its intended purpose. The Genocide Convention does not include even a hint that genocide was a colonial crime.¹⁸ Lemkin once characterised the Genocide Convention as ‘a modest convention... a timid convention’, recognising the challenges in reconciling diverse interests. He observed, ‘You could not satisfy everybody. One party wanted to have everything and the other nothing. So we have compromised on something which would establish the rule of law in international relations’.¹⁹ The most influential states, inadvertently representing historical colonial powers, were more inclined to prosecute perceived enemies while avoiding scrutiny themselves. Scholars have illustrated that Soviet officials in 1948 edited the text of the Genocide Convention to prevent its application to the events transpiring in their country,²⁰ including the Soviet opposition to the inclusion of ‘political’ (including ‘social’) groups in the genocide definition.²¹ The US delegation was instructed to ensure that the treaty could not be applied to US policies involving state violence, repression, forced assimilation of American Indians, as well as government-sanctioned racial segregation and extrajudicial killings of African Americans. The Canadian and Swedish delegations received instructions from their governments not to sign a treaty that could be applied to the treatment of indigenous peoples. Officials from United Kingdom and France sought a treaty that could not be applied to their colonies. Careful analysis of the treaty negotiations has revealed the extent to which the delegations of UN member states worked to remove from the definition of genocide anything that could expose their governments to international responsibility.²²

B. Cultural Genocide and the Genocide Convention

¹⁷ McDonnell and Moses, *supra* note 12, at 502–15; Irvin-Erickson, *The History of Raphael Lemkin*, *supra* note 16, at 14.

¹⁸ Irvin-Erickson, *The History of Raphael Lemkin*, *supra* note 16, at 9.

¹⁹ American Society of International Law (ASIL), ‘Proceedings at Its Annual Meeting (1921–1969)’ (1969), at 82–3.

²⁰ Etkind, *supra* note 13, at 393; Douglas Irvin-Erickson, ‘Raphael Lemkin, Genocide, Colonialism, Famine, and Ukraine’, 8(1) *East/West: Journal of Ukrainian Studies* (2021) 193, at 200.

²¹ Lauri Mälksoo, ‘Soviet Genocide? Communist Mass Deportations in the Baltic States and International Law’, 14 *Leiden Journal of International Law* (2001) 757, at 759.

²² Douglas Irvin-Erickson, *Raphael Lemkin and The Concept of Genocide* (2017), at 152–96; Irvin-Erickson, *The History of Raphael Lemkin*, *supra* note 16, at 20–1.

The prevailing view on genocide maintains that there are different types, including physical, biological, economic, political, and cultural genocide, each distinguished by varying degrees of severity.²³ However, there is ambiguity surrounding the precise meaning of ‘cultural genocide’.²⁴ According to one definition, cultural genocide involves the destruction of both tangible elements (such as places of worship or libraries) and intangible elements (such as language) of a culture.²⁵ Thus, there is a cultural dimension to the *actus reus* of genocide, encompassing acts and means employed to achieve the destruction of a certain group, for example, burning a library or prohibiting a language. At the same time, cultural genocide may *additionally* entail a broader understanding of *mens rea*, extending beyond the intent to physically or biologically destroy a group to include attacks on the cultural and sociological characteristics that define the group’s distinct identity.²⁶

It appears that Lemkin relied on the latter definition of cultural genocide, which related to both *actus reus* and *mens rea*. Lemkin conceived genocide as not simply as the extermination of individuals within a nation but as the destruction of the nation, of a collective identity, through physical, biological, cultural, and political means.²⁷ In particular, his original conceptualisation of the crime of genocide placed culture at the forefront.²⁸ As the crimes by Nazis were a systematic effort to destroy a group, and a group's identity is rooted in its culture, Lemkin considered the essence of genocide to be cultural.²⁹ Indeed, Lemkin believed that a new legal category was necessary precisely because genocide could not be reduced to mere mass murder or war crime.³⁰

Owing to Lemkin’s contributions to the conceptualisation of genocide, early drafts of the Genocide Convention encompassed this idea of cultural genocide, incorporating acts such as ‘destroying the specific characteristics of the group’.³¹ But Lemkin's insistence on expanding the genocide definition to include cultural genocide faced resistance. This

²³ Leora Bilsky and Rachel Klagsbrun, ‘The Return of Cultural Genocide?’, 29 (2) *European Journal of International Law* (2018) 373, at 379.

²⁴ See Elisa Novic, ‘Heritage Destruction and Genocide: Legal Resistance, Conceptual Resiliency’, Jose Antonio Gonzales et al (eds.), *The Routledge Handbook of Heritage Destruction* (2023), at 102.

²⁵ Bilsky and Klagsbrun, *supra* note 23, at 374.

²⁶ See Elisa Novic, ‘Physical-Biological or Socio-Cultural “Destruction” in Genocide? Unravelling the Legal Underpinnings of Conflicting Interpretations’, 17 (1) *Journal of Genocide Research* (2015) 63, at 64, 73.

²⁷ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (1944), at 84–5.

²⁸ Lemkin, *supra* note 27, at 84–5.

²⁹ Bilsky and Klagsbrun, *supra* note 23, at 373.

³⁰ Raphael Lemkin, ‘Genocide’, 15 *American Scholar* (1946) 227, at 227.

³¹ William A. Schabas, *Genocide in International Law: The Crimes of Crimes* (2009), at 207.

resistance seemed to exist at the level of *actus reus*.³² Lemkin's proposal was perceived as an unwarranted extension of the notion of genocide and an effort to revive the former protection of minorities from the League of Nations era minority treaties, which were arguably based on different concepts.³³ These treaties aimed to secure language and educational rights for ethnic groups in Europe, with a post-war consensus emerging that they failed to adequately protect minorities. The resistance likely stemmed from the drafters' own states' attempts at assimilation directed at minorities and the concern about undermining state sovereignty.³⁴

It is argued that the concept of cultural genocide did not ultimately survive the treaty negotiations of the Genocide Convention.³⁵ The convention does not explicitly prohibit cultural genocide, or, in other words, it does not incorporate punishable acts of a cultural nature.³⁶ Instead, Article II includes acts of physical and biological destruction.

It should be noted that in the *travaux*, the drafters argued that a policy of forced assimilation of a portion of the population typically would not qualify as genocide, even if the notion of 'cultural genocide' would have been admitted. Lemkin also drew a distinction between cultural genocide and a policy of forced assimilation.³⁷ According to him, forced assimilation included measures such as prohibiting the establishment of schools teaching the language of the group, restricting the publication of newspapers in that language, and proscribing the use of that language in official documents and court proceedings. In contrast, cultural genocide, as he defined it, was a policy 'which, by drastic methods, aimed at the rapid and complete disappearance of the cultural, moral, and religious life of a group of human beings'. Lemkin did not consider the destruction of cultural symbols, artifacts, and institutions as genocide in itself, unless it posed a threat to the existence of a social group bound by a common culture. In this context, Lemkin viewed the prohibition of specific customs and rituals, attempts to abolish a language, or the dismantling of social and cultural institutions as genocidal when carried out with the intent of preventing the replication of a group's social identity.³⁸ One could argue that Lemkin's conception of cultural genocide focused mostly on a broader understanding of *mens rea*, which did not limit the intent to

³² See Novic, *Physical-Biological*, *supra* note 26, at 73; Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective* (2016), at 69.

³³ Hiram Abtahi and Philippa Webb, *Travaux Préparatoires of Multilateral Treaties: The Genocide Convention*, Vol. Two (2008), at 234.

³⁴ Watenpaugh, *supra* note 6, at 287–8; Bilsky and Klagsbrun, *supra* note 23, at 387; Irvin-Erickson, *Genocide, Colonialism, Famine*, *supra* note 20, at 200.

³⁵ International Law Commission, 'Report of the International Law Commission on the Work of its Forty-eighth Session', UN Doc. A/51/10, 6 May–26 July 1996, vol II, Part Two, 45–6, at para 12.

³⁶ Bilsky and Klagsbrun, *supra* note 23, at 374.

³⁷ Hiram and Webb, *supra* note 33, at 232, 235.

³⁸ Irvin-Erickson, *The Concept of Genocide*, *supra* note 22, at 31.

destroy a group solely in physical-biological terms but also encompassed its socio-cultural existence.

C. Cultural Genocide and Forcible Transfer of Children

As previously mentioned, the Genocide Convention ultimately excluded cultural genocide, or at least a cultural dimension to the *actus reus* of genocide. Some scholars, however, insist that a distant echo of cultural genocide is present in the Genocide Convention through the prohibition of forcible transfer of children (Article II (e)).³⁹ Some even propose that the forcible transfer of children constitutes a specific form of cultural genocide.⁴⁰ Given that forcible transfer of children does not involve biological destruction—an issue to be discussed in more detail later—paragraph (e) has also been labelled as ‘enigmatic’.⁴¹ Sceptics question whether forcible child transfers can still be considered genocide if the loss incurred is a matter of cultural identity rather than a threat to life itself.⁴² The latter poses a question of *mens rea* and the definition of what it means to ‘destroy’ a group.

In Lemkin’s book ‘Axis Rule’, forcible transfer of children was not explicitly listed as a punishable genocidal act.⁴³ In fact, Lemkin minimally addressed the specific effects of genocide on children, with exceptions of accounts of the legal and social Germanization of the children of German soldiers and women in occupied areas.⁴⁴ Instead, the phenomenon of forcible child transfers was only elucidated in subsequent discussions among UN experts advising the ad hoc committee during the drafting of the Genocide Convention in 1947, although implicitly present in other elements of Lemkin’s early ideas about cultural genocide.⁴⁵

Despite intense debates about cultural genocide, the drafters rarely opposed the inclusion of the forcible transfer of children as a punishable act.⁴⁶ One explanation may be that states recognised the broader societal significance of children and the need for their protection during armed conflicts due to their vulnerability.⁴⁷

³⁹ Bilsky and Klagsbrun, *supra* note 23, at 374.

⁴⁰ Paola Gaeta, *The UN Genocide Convention: A Commentary* (2009), at 103.

⁴¹ Schabas, *supra* note 31, at 201.

⁴² Watenpaugh, *supra* note 6, at 286.

⁴³ *Ibid.*, at 287.

⁴⁴ Lemkin, *supra* note 27.

⁴⁵ Watenpaugh, *supra* note 6, at 287.

⁴⁶ UN Doc. E/447; UN Doc. E/C.2/52; UN Doc. A/C.6/SR.82 (Vallindas, Greece). See also Florian Jeßberger, ‘The Definition and the Elements of the Crime of Genocide’, in Paola Gaeta (ed.), *The UN Genocide Convention: A Commentary* (2009), at 103; Weiss-Wendt, *supra* note 19, at 130.

⁴⁷ Watenpaugh, *supra* note 6, at 289–90.

The widespread support for incorporating child transfer into the crime of genocide may also be due to the significant efforts of the Greek delegation during the drafting stage of the Convention,⁴⁸ which coincided with the political struggle during that time, particularly growing tensions between the Soviet Union and Yugoslavia.⁴⁹

The Greek state advocated for the inclusion of child transfer to penalise the practice of leftist partisans relocating Greek children from conflict zones to Yugoslavia. In the Cold War context, a foreseeable objection to the Greek campaign came from the Soviet delegate, who questioned the historical occurrence of any instances of genocide committed through the transfer of children.⁵⁰ Coincidentally, during that period, the Soviet Union had already enacted a policy of forcible transfers in relation to indigenous Siberian children, which will be discussed in more detail below. The Greek amendment passed by a small margin.⁵¹

The most compelling explanation on why the ‘forcible transfer of children’ clause remained in the text of the Genocide Convention may be that the transfer of children goes beyond cultural genocide and incorporates biological aspects.⁵² In other words, a punishable act, such as forcible child transfer (as opposed to, for example, abolishing a language), was considered in terms of its physical or biological nature. During the drafting of the Genocide Convention, the forcible child transfer was redefined as a form of delayed mass killing.⁵³ The drafters asserted that the forcible transfer of children had ‘not only cultural but also physical and biological effects since it imposed on young persons conditions of life likely to cause them serious harm or even death’.⁵⁴ Furthermore, the drafters argued that this practice could be ‘as effective a means of destroying a human group as that of imposing measures intended to prevent births or inflicting conditions of life likely to cause death’.⁵⁵

Upon closer examination of the Greek amendment to Article II(e) and its direct normative antecedent, specifically the case of Greek children,⁵⁶ however, it becomes apparent that the amendment sought to protect not only the biological *or* cultural ties between children

⁴⁸ See Kourtis's analysis for insights into the Greek amendment to the draft of the Genocide Convention, specifically addressing the issue of Greek children and its ontological connection with Article II (e) of the Genocide Convention. Dimitrios A. Kourtis, ‘The Greek Civil War and Genocide by Forcible Transfer of Children’, *Journal of Genocide Research* (2022), at 14–18.

⁴⁹ Anton Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention* (2017) 130–3.

⁵⁰ Schabas, *supra* note 31, at 204.

⁵¹ Weiss-Wendt, *supra* note 19, at 131.

⁵² Robert van Krieken, ‘Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation’, *75 Oceania* (2004), at 135.

⁵³ Watenpaugh, *supra* note 6, at 290; Kurt Mundorff, ‘Other Peoples’ Children: A Textual and Contextual Interpretation of the Genocide Convention, Article 2(e)’, *50(1) Harvard International Law Journal* (2009), at 111–2; van Krieken, *supra* note 52, at 135.

⁵⁴ UN Doc. A/C.6/SR.82 (Vallindas, Greece) 186; (Rios, Uruguay) 189.

⁵⁵ *Ibid.* (Vallindas, Greece), 186–7.

⁵⁶ Kourtis, *supra* note 48, at 19.

and their respective groups, but also the group's capacity to dictate the fate of children *both* in terms of biological life *and* their cultural, ideological, and political future.⁵⁷ Hence, a comprehensive reading of the *travaux* indicates that classifying forcible child transfers as either biological or cultural genocide is overly simplistic,⁵⁸ and also depends on the definition of cultural genocide, as discussed above. This interpretation is in line with Lemkin's vision and can be argued is also sociologically sound, as it recognises that social collectivities, such as national and ethnical groups, are not solely biologically determined and transcend the sum of their individual members.⁵⁹ I share the perspective of scholars who argue that genocide invariably involves social destruction through a range of means, including the destruction of a group's institutions, social networks and fabric, ways of life, culture, social existence, and territorial presence, rather than being solely a physical destruction, unless it entails the complete physical destruction of the entire group.⁶⁰ Furthermore, I would argue that it is not evident from the *travaux* of the Genocide Convention that *dolus specialis* should necessarily be defined as prescribing only biological destruction and should exclude the intent to destroy a group in a non-physical or non-biological way.⁶¹

III. Forcible Transfer of Children as Genocide

A. Forcible Transfer of Children as a 'Philanthropic' Endeavour

It is important to highlight that in contrast to other punishable acts under the genocide definition those responsible for forcibly transferring children have often sought to justify their actions by asserting they were motivated by 'philanthropic' intentions and the child's 'best interests', such as aiming to 'save' or 'benefit' the children in question.⁶² It is worth noting that the 'best interests' of the child are also historically and culturally specific, and they are

⁵⁷ *Ibid.*, at 20.

⁵⁸ *Ibid.*, at 37.

⁵⁹ See Martin Shaw, 'Russia's Genocidal War in Ukraine: Radicalization and Social Destruction', 25(3–4) *Journal of Genocide Research* (2023) 352, at 358; Christopher Powell, 'What Do Genocides Kill? A Relational Conception of Genocide' 9(4) (2007) *Journal of Genocide Research* (2007) 527, at 526. *Cf.*, scholars who believe that a collectivity is a group of individuals who share—either actually, or in the mind of the genociders—some common attribute or attributes.

⁶⁰ Shaw, *supra* note 59, at 358. See also Larry May, *Genocide: A Normative Account* (2010), at 6–7.

⁶¹ Yulia Ioffe, 'Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?' 25 (3–4) *Journal of Genocide Research* (2023) 315, at 320–1.

⁶² Watenpugh, *supra* note 6, at 289; Mundorff, *supra* note 53, at 110.

dynamic and fluid rather than fixed.⁶³ The best interests of the children are also often determined without any input from the children themselves.

In the case of indigenous children in North America and Australia, they were forcibly separated from their families under the guise of ‘protection’ and were educated ‘in the way of the white men’. The English language was imposed as the medium of education, with the intention of facilitating their ‘civilisation’.⁶⁴ In the well-known case of *Kruger v Commonwealth*, the High Court of Australia unanimously agreed that there was no violation because the wording of the 1918 Ordinance did not exhibit the required genocidal intent.⁶⁵ The 1918 Ordinance was the legislation that authorised the removal of Aboriginal children from their families from 1918 to 1957. This was because the powers granted by the 1918 Aboriginals Ordinance, permitting the forcible transfer of children, were supposed to be exercised in the ‘best interests’ of Aboriginal children or the Aboriginal community as a whole.

Importantly, in the course drafting the Genocide Convention, the Venezuelan delegate argued that genocide may occur even when the act of forcible transfer is carried out in the ‘best interests’ of the child or for the ‘sake of the child’ as determined by state interest or by the ambiguous concept of ‘standards of civilization’.⁶⁶ The argument advanced underscores that genocide could still be recognised, notwithstanding the seemingly well-intentioned nature of these actions. This has become a prevailing view that highlights the importance of focusing on the act itself and its consequences rather than delving into the motivations behind it when establishing the occurrence of genocide.⁶⁷ It is recognised that genocide does not require malice and can be carried out, albeit misguidedly, in the ‘best interests’ of a protected population.⁶⁸ Nevertheless, this did not deter the Russian Federation from manipulating the language of the ‘best interests’ of the child to justify forcible transfer of Ukrainian children, as discussed below.

⁶³ Diane L. Wolf, ‘Child Withholding as Child Transfer: Hidden Jewish Children and the State in Postwar Netherlands’, 12(3) *Journal of Human Rights* (2013) 296, at 296.

⁶⁴ Ruth Amir, ‘Killing Them Softly: Forcible Transfers of Indigenous Children’, 9(2) *Genocide Studies and Prevention* (2015), at 44, 46–8.

⁶⁵ *Kruger v. The Commonwealth*, *Australian Law Review* 146 (HC, 31 July 1997), at 161 (Dawson, J.), at 43–4, (Toohey, J.), at 64, (Gaudron, J.), at 89, (McHugh, J.), at 133, (Gummow, J.), at 152. See also Matthew Storey, ‘*Kruger v. The Commonwealth*: Does Genocide Require Malice?’ 21(1) *University of New South Wales Law Journal* (1998) 224, at 226–8.

⁶⁶ Watenpugh, *supra* note 6, at 289.

⁶⁷ David L Nersessian, ‘The Contours of Genocidal Intent: Troubling Jurisprudence for the International Criminal Tribunals’, 37(2) *Texas International Law Journal* 37 (2002), at 267–8; Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (2012), at 154; International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber, *Prosecutor v. Jelisić*, Judgment, 5 July 2001, Case No. IT-95-10-A, at para 71.

⁶⁸ Storey, *supra* note 65, at 228.

B. Interpretation of Article II (e) of the Genocide Convention by Courts and Tribunals

1. Domestic Courts

There is a dearth of case law regarding Article II (e) of the Genocide Convention, which could also mean a greater flexibility in the courts' assessment of the forcible transfers of Ukrainian children.

An example predating the negotiations and adoption of the Genocide Convention is the *RuSHA* case, tried by the United States International Military Tribunal of Nuremberg. This case primarily addressed the forcible transfers of 'racially valuable Polish children' to Nazi Germany for education in Nazi ideology. The accused were convicted of war crimes and crimes against humanity. While the tribunal lacked jurisdiction to classify such acts as genocide, the Prosecutor did not hesitate to use the neologism (for that time) to characterise this specific set of acts.⁶⁹ It is important to note that during the Third Reich, the transfers of children were accompanied by a range of other acts targeting the biological and physical existence of the group, such as forced sterilisations and the extermination of children. Therefore, the *RuSHA* case has limited precedence in the context of the cases discussed in this section.

On a domestic level, Article II (e) has been invoked in Canada, Australia, and the US. Australia and Canada, in particular, also have undertaken processes of truth and reconciliation, with commissions releasing their final reports in 1997 (Australian Human Rights Commission)⁷⁰ and 2015 (Truth and Reconciliation Commission of Canada).⁷¹

The Canadian courts, for example, consistently deemed the Genocide Convention inapplicable to the forced removal of indigenous children to residential schools due to the principle of non-retroactivity and the perceived 'political' nature of genocide allegations.⁷² In

⁶⁹ Ulrich Greifelt et al. (*RuSHA case*) Judgment (1949) United Nations War Crimes Commission, XIII Law Reports of Trials of War Criminals 1, United States Military Tribunal, Nuremberg, at para 2. See also Novic, *The Concept of Cultural Genocide*, supra note 32, at 68–9; Amann, Diane M., 'Child-Taking', *Michigan Journal of International Law*, Vol 45, No 10, 2024, available at <http://dx.doi.org/10.2139/ssrn.4610553>, at 17–29.

⁷⁰ Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: Australian Human Rights Commission, 1997).

⁷¹ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future* (Ottawa: Truth and Reconciliation Commission of Canada, 2015), available at https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf

⁷² James R. Miller, 'Reconciliation with Residential School Survivors: A Progress Report', in Jerry White, Julie Peters, and Dan Beavon (eds), *Aboriginal Policy Research* (2010), at 138.

the United States, survivors, despite their attempts to seek justice through civil litigation in U.S. courts, have thus far been unsuccessful in their endeavours.⁷³ Indigenous plaintiffs initiated also claims against the Australian state for acts of genocide committed against Aboriginal and Torres Strait Islander peoples, the majority of which turned out unsuccessful.⁷⁴ This included the case of *Kruger v Commonwealth*, which was discussed above. As is common in many genocide-related legal cases, the special intent requirement has proven to be a significant obstacle.⁷⁵

In the *Jorgić* case, the German courts did not specifically examine acts of the forcible transfer of children, but they argued that genocide did not require the intent to physically destroy a group, grounding it in the nature of the crime of forcible child transfer.⁷⁶ The case concerned Nikola Jorgić, who was convicted for genocide. Jorgić had established a paramilitary group, participating in the ethnic cleansing of local Bosnian Muslims in Bosnia and Herzegovina in 1992.⁷⁷ The court interpreted the special intent of genocide as the intent to destroy a ‘social unit’, indicating that the intended destruction should not be construed as limited to the physical or biological targeting of its members.

2. International Courts

In the context of international courts, most of the ICJ’s case law pertains to other punishable acts under Article II of the Genocide Convention, where the court consistently adopted a restrictive interpretation of the genocide definition. I would argue that it has further restricted already narrow genocide definition in the convention. This restriction involves interpreting ‘destruction’ exclusively in biological sense and narrowly construing *dolus specialis*, when based on manifestations of intent in the form of a systemic pattern of conduct directed against a specific group, from which special intent is inferred.

⁷³ See e.g. Brad Brooks, *Native American Survivors of Alleged Boarding School Sex Abuse Want Justice*, 26 July 2022, available at <https://www.reuters.com/investigates/special-report/usa-native-americans-schools/>

⁷⁴ See e.g. *Kruger*, *supra* note 65; *Nulyarimma v. Thompson* (1999); *Cubillo v. Commonwealth* (2001). Cf. *Trevorrow v. State of South Australia* (2007), in which the initial indigenous plaintiff successfully sought damages related to his removal from his family as a child, but this case did not involve a claim of genocide.

⁷⁵ See Haebich, *supra* note 5, at 286.

⁷⁶ Higher State Court of Dusseldorf, *Jorgić*, Judgment, 26 September 1997, IV-26/96; 2StE 8/96; English version available at: <http://www.legal-tools.org/doc/bd3e74/>, at 94–5; Federal Supreme Court of Germany, *Nikola Jorgić*, 30 April 1999, 3 StR 215/98; English version available at: <http://www.legal-tools.org/doc/85b784/>, at 24; German Federal Constitutional Court, *Nikola Jorgić*, 12 December 2000, 2 BvR 2190/99; English version in *International Law Report*, Vol 135, at 153.

⁷⁷ See Karolina Wierczynska, ‘The Evolution of the Notion of Genocide in the Context of the Jurisdiction of the National Courts’, 28 *Polish Yearbook of International Law* (2008) 83, at 90.

The only instance where the ICJ addressed Article II (e) was in the *Bosnian Genocide case*, during which it examined whether the act of ‘procreative rape’ committed by Serb men against Bosniak women could be classified as falling under this article.⁷⁸ However, the ICJ found no evidence supporting the existence of a policy involving forced pregnancy or the specific intent to transfer children of the protected group to another group.⁷⁹ In its 2015 judgment in *Croatia v. Serbia*, the ICJ revisited the issue, even though Croatia had not raised it in its application. The ICJ emphasised the potential biological destruction resulting from the forcible transfers of children from one group to another, stating that it ‘can have consequences for the group’s capacity to renew itself, and hence to ensure its long-term survival’.⁸⁰ It could be argued that that ICJ’s interpretation of Article II(e) as requiring biological destruction is excessively narrow and is not in line with the methodology set out by the Vienna Convention on the Law of Treaties (VCLT). The primary basis for the ICJ’s interpretation is the *travaux* of the Genocide Convention, which should play a supplementary role under Article 32 of the VCLT. The text of Article II (e), lacking explicit reference to the nature of ‘destruction’ implied by genocide, along with a contextual reading of the genocide definition and the convention’s object and purpose, suggest broader understanding of the term that would include socio-cultural destruction.⁸¹

Additionally, the ICJ has set strict criteria for establishing intent where an overall plan to commit genocide can be inferred from the pattern of acts directed against a specific group.⁸² In the *Bosnian Genocide case*, the ICJ recognised the possibility of inferring genocidal intent from a pattern of conduct but underscored that such an inference must be the *only* reasonable conclusion drawn from the observed acts.⁸³ This sets an exceptionally high standard, since diverse intentions may inform human actions, including seemingly well-intentioned, as discussed above. This position of the ICJ has faced compelling criticisms for its excessive

⁷⁸ International Court of Justice (ICJ), *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Bosnian Genocide case)*, Judgment, 26 February 2007, ICJ Reports 2007, at para 362. See also Anthony Marino, ‘Bosnia v. Serbia and the Status of Rape as Genocide under International Law’, 27 *Boston University International Law Journal* (2009) 205, at 222–6.

⁷⁹ *Bosnian Genocide case*, *supra* note 78, at para 367. See also Novic, *The Concept of Cultural Genocide*, *supra* note 32, at 69–70.

⁸⁰ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 3 February 2015, ICJ Reports 2015, at para 136.

⁸¹ Ioffe, *supra* note 61, at 320–1; Novic, *Physical-Biological*, *supra* note 26, at 70–3.

⁸² Philippe Sands, *What the Inventor of the Word ‘Genocide’ Might Have Said About Putin’s War*, 28 April 2022, available at <https://www.nytimes.com/2022/04/28/opinion/biden-putin-genocide.html>

⁸³ *Bosnian Genocide case*, *supra* note 78, para 373. See also *Croatia v. Serbia*, *supra* note 80, at paras 148, 417, 510.

restrictiveness, bordering on absurdity.⁸⁴ However, within the context of Russia's actions in Ukraine, this particular interpretation of special intent may not necessarily impact the determination of the genocide case, as there are persuasive reasons to believe that genocidal intent could be demonstrated though 'general plan'.⁸⁵

The International Criminal Tribunal for Rwanda (ICTR) suggested that instances of rape and forced impregnation might be considered a method of forcibly transferring children of a protected group under Article II (e) of the Genocide Convention.⁸⁶ However, the ICTR did not provide further elaboration on this particular issue. On the other hand, the International Criminal Tribunal for the Former Yugoslavia (ICTY) did not adjudicate a case directly related to the forcible transfer of children as genocide. But it developed its own case law addressing other punishable acts, revealing a distinct inclination toward a biological understanding of genocide, albeit with many dissents.⁸⁷

While not yet considered by the court, although the case may emerge in German domestic courts based on universal jurisdiction,⁸⁸ the UN Commission of Inquiry on Syria examined Article II (e) of the Genocide Convention and found reasonable grounds to believe that ISIS committed genocide against the Yazidi by forcibly transferring Yazidi children, among other punishable acts. The Commission concluded that ISIS transferred Yazidi children through two methods: girls were sold as sex slaves to ISIS fighters in Syria and Iraq, while boys were sent to ISIS training bases in Syria and Iraq, where they were indoctrinated into ISIS ideology. The Commission, however, inferred genocidal intent from a larger programme for genocide of Yazidis and not only through the policy of child removal, including through deliberate and systematic physical targeting, the use of derogatory language, methodical planning, the scale of atrocities committed, and their general nature.⁸⁹

⁸⁴ Shaw, *supra* note 59, 356–7.

⁸⁵ Denys Azarov et al, 'Understanding Russia's Actions in Ukraine as the Crime of Genocide', 21(2) *Journal of International Criminal Justice* (2023) 233, at 243–9; Ioffe, *supra* note 61, at 340–3.

⁸⁶ International Criminal Court for Rwanda (ICTR), *Prosecutor v. Akayesu*, Judgment, 2 September 1998, Case No. ICTR-96-4-T, at para 509. See also Charli R. Carpenter, 'Surfacing Children: Limitations of Genocidal Rape Discourse', 22 *Human Rights Quarterly* (2000), at 428–77.

⁸⁷ Novic, *The Concept of Cultural Genocide*, *supra* note 32, at 52; Novic, *supra* note 24, at 105. See ICTY. (2001). *Prosecutor v. Krstić*. Case No. ICTY-98-33-T, Trial Chamber, Judgment, 2 August.

⁸⁸ Jennifer Venis, *War Crimes: Universal Jurisdiction Secures Convictions for Genocide against Yazidi People* (2022), available at <https://www.ibanet.org/War-crimes-Universal-jurisdiction-secures-convictions-for-genocide-against-Yazidi-people> ; Amal Clooney, *German Court Hands Down Second Genocide Conviction against ISIS Member Following Enslavement and Abuse of Yazidi Woman in Syria*, Doughty Street Chamber, 28 July 2022, available at <https://www.doughtystreet.co.uk/news/german-court-hands-down-second-genocide-conviction-against-isis-member-following-enslavement>

⁸⁹ *Ibid*, at para 147–9, 152.

C. Indoctrination as a Tool of Imperialism

In various locations worldwide, indigenous children have been subject to forcible transfers and programmes of enculturation and indoctrination.⁹⁰ This has been achieved, in part, by disrupting the transmission of knowledge between generations, fostering historical and cultural amnesia.⁹¹ These programmes were justified, as mentioned above, through appeals to civilisation and the purported best interests of the child, often accompanied by regimes of abuse, torture, and coercive language policies.⁹² Residential schools have played a central role in states' efforts to control and assimilate indigenous populations.⁹³ The literature on the subject, particularly in anthropology, emphasises how residential schooling has become symbolic of a painful loss of language, culture traditional subsistence knowledge, and even self-respect.⁹⁴

These forcible child transfers may violate multiple international legal provisions.⁹⁵ However, for an act of forcible transfer to qualify as genocide, the transfer should be carried out with the intention of destroying the group's existence. Article II(e) is predicated on the notion that when children are transferred to another group, they are unable to grow up as part of their original group and may become estranged from the identity of their group.⁹⁶ Such identity may include cultural identity, language, and traditions.

As explained above, according to the ICJ interpretation, for an act to fall within the scope of Article II of the Genocide Convention, the forcible transfer of children must be executed with the intention of physically destroying a group, in whole or in part.⁹⁷ Therefore, it is necessary to demonstrate that forcible transfers result in severe physical and biological consequences that are akin to compulsory measures aimed at preventing the reproduction and biological survival of a group.⁹⁸

⁹⁰ Watenpugh, *supra* note 6, at 293.

⁹¹ Alexia Bloch, *Red Ties and Residential Schools: Indigenous Siberians in a Post-Soviet State* (2004), at 95; Alex Bloch, 'Longing for the Kollektiv: Gender, Power, and Residential Schools in Central Siberia', 20(4) *Cultural Anthropology* (2005) 534, at 540.

⁹² Watenpugh, *supra* note 6, at 293.

⁹³ Bloch, *Red Ties*, *supra* note 91, at 95.

⁹⁴ Rosalyn N. Ing, 'The Effects of Residential Schools on Native Child-Rearing Practices', 18 *Canadian Journal of Native Education* (1991) 65; Mary-Ellen Kelm, "'A Scandalous Procession': Residential Schooling and the Re/formation of Aboriginal Bodies, 1900/1950', 11(2) *Native Studies Review* (1996), 51; Bloch, *Longing*, *supra* note 91, at 534, 54.

⁹⁵ Yulia Ioffe, 'Accountability Measures for the Forcible Transfer and Deportation of Ukrainian Children', European Parliament, Policy Department, Directorate-General for External Policies (forthcoming).

⁹⁶ Gaeta, *supra* note 40, at 103.

⁹⁷ *Bosnian Genocide case*, *supra* note 78, at paras 344, 423, 438; *Croatia v. Serbia*, *supra* note 80, at paras 137, 390.

⁹⁸ Ioffe, *supra* note 61, at 336.

A comprehensive examination of Article II (e)'s *travaux* suggests that the process of indoctrination plays a crucial role in establishing special intent for the purposes of this paragraph of Article II.⁹⁹ Indoctrination has also been a focal point in the analysis conducted by the UN Commission of Inquiry on Syria regarding the forcible transfers of Yazidi children by ISIS.¹⁰⁰

In this context, indoctrination can be defined as a strategy for governing education and controlling information with the aim of shaping public opinion, promoting the regime's narrative, ideology, and the national myth, and ensuring their survival and dominance.¹⁰¹ At the same time, I argue that indoctrination can serve as a tool, with the ultimate desired outcome being the complete biological absorption of children from a certain group.¹⁰² This process leads to the physical destruction of this group 'as such', fulfilling the criteria for the definition of genocide.

One could assert that biological absorption is more rapidly achievable in what Etkind defines as a 'genocide of minor differences'.¹⁰³ As noted by Etkind, Russia's actions against Ukraine since 2022 may be characterised as a genocide of minor differences, where Russians and Ukrainians look alike, share similar clothing, preferences in films and music,¹⁰⁴ and even language in certain regions (i.e. Russian in Eastern and Southern parts of Ukraine). The lack of significant distinctions, however, does not diminish the magnitude or brutality of mass murder and other genocidal acts. Etkind argues that 'lesser differences lead to bigger genocide'.¹⁰⁵

IV. Russia's Historical Colonial Practices

For a better understanding of the ongoing forcible child transfers carried out by Russia, explored in the subsequent section, a brief historical account of Russia's colonial practices is provided, both during the time of the Russian Empire and the Soviet Union. While it will

⁹⁹ See Kourtis, *supra* note 48, at 19.

¹⁰⁰ UN Human Rights Council, "'They Came to Destroy': ISIS Crimes Against the Yazidis", UN Doc. A/HRC/32/CRP.2, 15 June 2016.

¹⁰¹ On indoctrination in different contexts, see Johanne Akerø, *Education under Threat? Navigating the Intersection of Informational Autocracy and Indoctrination in Russian Education* (2023), available at: https://www.duo.uio.no/bitstream/handle/10852/104148/1/Aker-J_MA_2023_UiO.pdf, at 8, 20

¹⁰² On biological absorption in the Australian context, see Russell McGregor, 'Governance, Not Genocide: Aboriginal Assimilation in the Postwar Era', A. Dirk Moses (ed.), *Genocide and Settler Society* (2012) 290, at 293.

¹⁰³ Etkind, *supra* note 13, Etkind.

¹⁰⁴ See Etkind, *supra* note 13, at 397, referring to Pål Kolstø to draw analogies with the paradox of minor differences in the former Yugoslavia. Pål Kolstø, "The 'Narcissism of Minor Differences' Theory: Can It Explain Ethnic Conflict?" *Filozofija i Društvo* (2007): 154, <https://doi.org/10.2298/FID0702153K>

¹⁰⁵ Etkind, *supra* note 13, at 397.

become evident from this account that Ukrainians were not the sole subjects of colonial oppression, the focus of this section is on them.

A. Russian Empire and Colonialism

During the 19th century, Russia pursued colonial policies,¹⁰⁶ including the ‘Russification’ policies,¹⁰⁷ first officially introduced in 1833. The primary goal was to subordinate nations to the Russian state, including its government, language, and the Orthodox church. Nations deemed rebellious such as Poles and Lithuanians, experienced the elimination of their languages from schools and public spaces.¹⁰⁸

The Czarist regime in Russia also implemented a policy of ethnic cleansing during the final phase of the Caucasus wars of conquest in the late 1850s to early 1860s.¹⁰⁹ In 1858, Alexander II approved a plan to forcibly remove local population and settle Russian colonists in the western Caucasus. Over five years, half a million people were forced to leave the Caucasus, their villages destroyed, and civilians massacred.¹¹⁰ Central Asia became another region where the ‘population policy’ was implemented.¹¹¹

During World War I, the Imperial Russian Army displaced or deported over a million people based on their nationality or ethnic origin. This included Germans, Austro-Hungarians, and Russian subjects of Jewish or German origin. The expulsions and deportations of Jewish communities occurred in various places, accompanied by violence and pogroms.¹¹² Similarly, Russian subjects of German origin were also expelled.¹¹³ Russian authorities also aimed to eliminate Ukrainian culture in occupied Galicia, shutting down

¹⁰⁶ Mark von Hagen, ‘Wartime Occupation and Peacetime Alien Rule: “Notes and Materials” toward a(n) (Anti-) (Post-) Colonial History of Ukraine’, 34(1/4) *Harvard Ukrainian Studies* (2015) 153, at 155; Irma Kreiten, ‘A Colonial Experiment in Cleansing: The Russian Conquest of Western Caucasus, 1856–65’ 11(2–3) *Journal of Genocide Research* (2009) 213, at 213, 220–1.

¹⁰⁷ Russification is a form of linguistic imperialism, referring to both official and covert ethnic and language policies which were implemented by the Russian authorities during the tsarist empire and the Soviet Union. Mart Rannut, ‘Russification in the Soviet Era’, in Carol Chappelle (ed.), *The Encyclopedia of Applied Linguistics*, (2012), at 1. See also Robert Phillipson, *Linguistic Imperialism* (1992).

¹⁰⁸ Rannut, *supra* note 107, at 1.

¹⁰⁹ Irma Kreiten, ‘A Colonial Experiment in Cleansing: The Russian Conquest of Western Caucasus, 1856–65’ 11(2–3) *Journal of Genocide Research* (2009) 213, at 213, 220–1.

¹¹⁰ Nicola Werth, ‘Mass Deportations, Ethnic Cleansing, and Genocidal Politics in the Later Russian Empire and the USSR’, in Donald Bloxham and A. Dirk Moses (eds.), *The Oxford Handbook of Genocide Studies* (2010), at 388–9.

¹¹¹ Nadira A. Abdurakhimova, ‘The Colonial System of Power in Turkestan’, 34(2) *International Journal of Middle East Studies* (2002) 239, at 239.

¹¹² Eric Lohr, ‘The Russian Army and the Jews: Mass Deportations, Hostages, and Violence during World War One’, 60(2) *Russian Review* (2001) 404; A. Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (2021), at 254; von Hagen, *supra* note 106, at 155.

¹¹³ Werth, *supra* note 110, at 389–91.

schools and bookstores, prohibiting Ukrainian national colours, and arresting Ukrainian activists and intelligentsia. Similar attacks on Polish institutions and individuals were documented during Russian occupation as well.¹¹⁴

B. Soviet Union, Mass Deportations, Ethnic Cleansing, and Russification

The remarkable scale of mass deportation and ethnic cleansing, alongside genocidal policies involving famines, exemplify the Soviet era from 1917 to 1953. In this period, over six million people were deported, and among them, a million and a half—mostly children and the elderly—died prematurely. Additionally, an additional six million perished due to man-made famines from 1931 to 1933.¹¹⁵

During the early years of Soviet rule, Bolshevik Red Guards initiated a campaign of anti-Ukrainian terror in Ukraine. In 1918, they bombarded Kyiv and took control, suppressing Ukrainian culture and language. The Bolsheviks destroyed Ukrainian press, censored books, and silenced the Ukrainian theatre, aiming to establish Russian dominance and treat Ukraine as a colony.¹¹⁶

The Bolsheviks upheld a political ideology that classified the population into loyal and dangerous elements, particularly distinguishing among reliable and unreliable national minorities. In line with this approach, the Soviet Union implemented measures to remove perceived enemy elements, which included ‘kulaks’ (wealthy peasants),¹¹⁷ a significant number of whom resided in Ukraine, primarily an agrarian country. Given their substantial numbers and dispersed locations, deportation alone was not a feasible option for kulaks. Instead, a policy of deliberate starvation was implemented, resulting in genocidal consequences for Ukrainian and Caucasian peasants.¹¹⁸

Stalin's coercive collectivisation policies in agriculture faced strong opposition, resulting in executions, deportations, and arrests. Between 1930 and 1932, over two and a half million individuals were deported and more than 20,000 were executed. Several hundred thousand people were also sent to camps. The deportations took place to inhospitable regions such as Siberia, the Great North, the Urals, and Kazakhstan. Many deportees suffered significant losses, with over half a million peasants disappearing, dying, or escaping out of the two million deported in 1930-1. The majority of deaths were children, with infant

¹¹⁴ von Hagen, *supra* note 106, at 156–8.

¹¹⁵ Werth, *supra* note 110, at 387–8.

¹¹⁶ von Hagen, *supra* note 106, at 161–2.

¹¹⁷ Moses, *supra* note 112 at 268.

¹¹⁸ Werth, *supra* note 110, at 394; Moses, *supra* note 112, at 269.

mortality reaching sixty percent in special villages for deportees in Western Siberia in 1933.¹¹⁹

Between 1931 and 1933, over six million people died of hunger due to severe famines in the Soviet Union.¹²⁰ The famine that occurred in Ukraine from 1931 to 1933 was particularly egregious, with some scholars suggesting it constituted genocide rather than an unintended outcome of misguided policies.¹²¹ In Ukraine, Stalin escalated the forced requisitions of grain in the summer of 1932, potentially aiming to suppress secessionist movements among Ukrainian communists. The military and police forces were deployed to prevent Ukrainian peasants from leaving their areas, condemning them to starve. Approximately three million Ukrainians perished from hunger, while nearly 100,000 people were imprisoned for resisting the forced requisitions.¹²² Some scholars consider this famine as deliberately orchestrated by Stalin's regime to suppress the resistance of Ukrainian peasants, who strongly opposed collectivisation, and to eradicate the Ukrainian nation in its 'peasant-national' distinctiveness, seen as a significant obstacle to transforming the Soviet Union into a new kind of imperial state, dominated by Russia.¹²³ Lemkin in his 1953 speech and an unpublished essay,¹²⁴ which was declared 'extremist' in 2015 and forbidden for circulation in Russia,¹²⁵ viewed Holodomor as a component of longer-running genocide against a distinct Ukrainian identity, which was perpetrated through violent and non-violent forms of repression and oppression within the context of Soviet empire-building.¹²⁶

The Stalin regime systematically deported 13 entire nationalities to remote areas of the USSR from 1937 to 1951. The Soviet Koreans, Finns, Germans, Karachays, Kalmyks, Chechens, Ingush, Balkars, Crimean Tatars, Meskhetian Turks, Georgian Kurds, Khemshils, and Pontic Greeks were displaced from their traditional settlements to Kazakhstan, Central

¹¹⁹ Werth, *supra* note 110, at 394–5; Moses, *supra* note 112, at 269.

¹²⁰ Werth, *supra* note 110, at 395.

¹²¹ Moses, *supra* note 112, at 270.

¹²² Werth, *supra* note 110, at 386–406; Moses, *supra* note 112, at 270.

¹²³ Andrea Graziosi, 'Les famines soviétiques de 1931–1933 et le *Holodomor* ukrainien. Une nouvelle interprétation est-elle possible et quelles en seraient les conséquences?', *Cahiers du monde russe* 46:3 (2005), 453, at 456.

¹²⁴ The speech, preserved in the New York Public Library, is published by Roman Serbyn in "Lemkin on Genocide of Nations," *Journal of International Criminal Justice* 7, no. 1 (2009): 123–30. See also Viktoria Malko, *The Ukrainian Intelligentsia and Genocide: The Struggle for History, Language, and Culture in the 1920s and 1930s* (2021).

¹²⁵ Etkind, *supra* note 13, at 394.

¹²⁶ Serbyn, *supra* note 124. See also Douglas Irvin-Erickson, 'The Lemkin Turn in Ukrainian Studies', in Graziosi and Sysyn, *The Power and Problems of the Concept of Genocide*, at 145–6; Etkind, *supra* note 13, at 393.

Asia, Siberia, and the Urals.¹²⁷ Furthermore, in the 1940s, the USSR carried out mass deportation in three Baltic states.¹²⁸ Many deportees died in transit to their new places of residence and also in the exile due to insufficient accommodation and malnutrition.¹²⁹

The Soviet Union's language policies were characterised by the dominance of a political ideology. Language variety and maintenance were viewed negatively, considered indicators of ideological backwardness. The solution, according to Soviet ideology, involved not substituting one language for another (capitalist approach) but eliminating the entire ethnic structure. This was achieved through migration flows, deportations, mechanical mixing of people at workplaces, and even promoting mixed marriages. The implementation of these measures included advancing the Russian language into non-Russian areas through language shift, protecting Russian monolingualism in non-Russian areas, and introducing exclusively or dominantly Russian-language services. Consequently, the native language maintenance system for non-Russian languages was dismantled, introducing transitional or submersion models in education that mandated language shift for higher-status functional areas.¹³⁰ As part of the Russification policy, the Ukrainian language and literature were constrained and prohibited, Ukrainian culture was degraded as inferior and mediocre, and Ukrainians were portrayed as 'backward' villagers.¹³¹

C. Soviet Union and Forcible Transfer of Children

In addition to deportations, ethnic cleansing, and Russification, the Soviet Union implemented a policy of forcibly transferring children. More precisely, indigenous Siberian children were forcibly separated from their families and placed in distant Soviet schools. As an illustration, four generations of the Evenki people, indigenous to Siberia, have undergone the upbringing in residential schools.¹³²

Since the late 1930s, the majority of school-age indigenous Siberians have been compelled to attend residential schools, often leading to a disconnection from their traditional

¹²⁷ J. Otto Pohl, 'Stalin's Genocide against the "Repressed Peoples"', 2(2) *Journal of Genocide Research* (2000) 267, at 267.

¹²⁸ Mätksoo, *supra* note 21, at 763–5.

¹²⁹ Alexander Statiev, 'Soviet Ethnic Deportations: Intent versus Outcome', 11(2–3) *Journal of Genocide Research* (2009) 243, at 250; Mätksoo, *supra* note 21, at 763.

¹³⁰ Rannut, *supra* note 107, at 1–2.

¹³¹ See e.g. Vitaly Chernetsky, 'Postcolonialism, Russia and Ukraine', 7 *Urbanius Review* 7 (2003) 38, at 40; James Richter, 'Famine, Memory, and Politics in the Post-Soviet Space: Contrasting Echoes of Collectivization in Ukraine and Kazakhstan' 48(3) *Nationalities Papers* (2020), at 487.

¹³² Bloch, *Red Ties*, *supra* note 91, at 94–104.

way of life and causing significant hardship and loneliness.¹³³ Scholars argued that residential schools ‘weaken[ed], and often even sever[ed], the succession of generations’.¹³⁴ Post-World War II, residential schooling emerged as a defining aspect of indigenous Siberian identities. Residential schools became compulsory to attend and were the sole institution providing education to the children of Siberian indigenous communities. Regardless of their parents’ wishes, all Siberian schoolchildren were required to reside in residential schools. Russification was widely recognised as a primary objective. Children were obligated to wear school uniforms instead of their traditional clothing. Scholars attributed to residential schooling disrupting the system of socialisation and creating barriers in the acquisition of skills necessary for traditional living of indigenous people. The traditional mobile dwellings, such as the chum or balok, came to be viewed as abnormal, because children resided in schools. Instruction in residential schools was conducted exclusively to Russian language. The majority of adults in residential schools communicated in Russian, and children were often prohibited from using their native language even among themselves. The outcomes of attending residential schools were the weakening, and often total loss, of native languages.¹³⁵

V. Contemporary Forcible Transfer of Ukrainian Children to Russia

Since the full-scale Russian invasion from 19,500 to 700,000 Ukrainian children were forcibly transferred to Russia and territories temporarily occupied by Russia. However, credible reports suggest that the Russian Federation initiated the forcible transfer of children from the temporarily occupied Crimea and Donbas as early as 2014.¹³⁶ The instances of such forcible transfers can be categorised into five groups: a) transfers involving children from occupied Ukrainian state institutions, such as orphanages, boarding schools, and hospitals, even if these children have parents or families; b) children who temporarily attended ‘holiday’ camps (re-education camps), either with or without parental consent, and are now unable to return to Ukraine; c) the forced removal of children to Russia following separation

¹³³ *Ibid.*, at 96.

¹³⁴ Elena Liarskaya, ‘Northern Residential Schools in Contemporary Yamal Nenets Culture’, 4(1) *Sibirica: Interdisciplinary Journal of Siberian Studies* (2004) 74.

¹³⁵ Bloch, *Red Ties*, *supra* note 91, at 100, 102; Liarskaya, *supra* note 134, at 74–5.

¹³⁶ Regional Center for Human Rights (RCHR) and Lemkin Institute for Genocide Prevention, *Responsibility of Russian Federation Officials for Genocide in Ukraine, in particular, for Forcibly Transferring Children of the Group to Another Group*, 25 October 2022, available at https://www.lemkininstitute.com/_files/ugd/9bc553_b7b957498faa441cbe88e21bf717bfe7.pdf

from their families as part of the so-called ‘filtration’ process;¹³⁷ d) children captured on the battlefield; e) the forcible evacuation of Ukrainian families with children (accompanied children).¹³⁸

There is mounting evidence of Russia’s deliberate policy aimed to indoctrinate deported Ukrainian children and accelerate the dissolution of their national identity.¹³⁹ Such indoctrination encompasses systematic efforts to re-educate children from Ukraine, exposing them to Russia-centric political and personal views by imposing Russian patriotic education.¹⁴⁰ Reliable reports suggest that Russian authorities have been involved in the military education of Ukrainian children in the occupied territories of Ukraine, with the objective of recruiting them into the Armed Forces of Russia.¹⁴¹ Moreover, Russia’s school curriculum has undergone significant militarisation and an increasing emphasis on patriotism.¹⁴² The Russian educational programmes mandate military training in schools under the subject ‘Basics of life safety’, which has already been implemented in the schools of occupied Crimea.¹⁴³ As a result, Ukrainian children are not only exposed to the Russian ideology but are also provided with military skills, preparing them for ‘heroic deeds’ needed to combat contemporary ‘Nazism’,¹⁴⁴ i.e. their relatives in Ukraine.

Ukrainian children who were forcibly transferred to Russia have not been afforded the opportunity to receive education based on the Ukrainian curriculum or to be taught in the

¹³⁷ Yale School of Public Health, Yale School of Public Health Humanitarian Research Lab (Yale HRL), *System of Filtration: Mapping Russia’s Detention Operations in Donetsk Oblast*, 25 August 2022, available at <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/filtration-1>

¹³⁸ Ioffe, *supra* note 61, at 325.

¹³⁹ Ioffe, *supra* note 61, at 337. See also Yale HRL, *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>; Alison Bisset, *Ukraine Symposium – Russia’s “Re-Education” Camps: Grave Violations against Children in Armed Conflict*, 20 March 2023, available at <https://lieber.westpoint.edu/russias-re-education-camps-grave-violations-against-children-armed-conflict/>

¹⁴⁰ Mickle Nacki, *Kak Putin pohishhaet detej iz Ukrainy i promyvaet im mozgi*, 22 March 2023, [11:45–14:50], available at <https://www.youtube.com/watch?v=1Fq4NFJInss>

¹⁴¹ Olena Roshchina, *Russia is preparing children from occupied territories to fight against Ukraine*, 10 August 2023, <https://www.pravda.com.ua/eng/news/2023/08/10/7415066/>. On the insufficiently covered aspect of the militarisation of patriotic education for Ukrainian children, see Asymmetrical Haircuts, *Ukraine’s Taken Children with Yulia Ioffe and Nathaniel Raymond*, 19 May 2023, [30:06–32:48], available at <https://www.asymmetricalhaircuts.com/episodes/episode-78-ukraines-taken-children-with-yulia-ioffe-and-nathaniel-raymond/>

¹⁴² Raimondo Lanza, *Generation Z: Propaganda in Russian Schools and the Militarization of Memory*, 10 October 2022, available at <https://aspeniaonline.it/generation-z-propaganda-in-russian-schools-and-the-militarization-of-memory/>

¹⁴³ Anastasiia Vorobiova, *Education as Indoctrination: Mnemonic Constitutionalism and History Teaching in Russia*, 25 April 2023, available at <https://verfassungsblog.de/education-as-indoctrination-mnemonic-constitutionalism-and-history-teaching-in-russia/>

¹⁴⁴ Amun Trellevik, ‘Why War History is Increasingly Important for Russia’, 11 December 2019, available at: <https://www.highnorthnews.com/en/why-war-history-increasingly-important-russia>

Ukrainian language.¹⁴⁵ In the occupied territories, Russian authorities have applied pressure, including detention, ill-treatment, and expulsion, on schoolteachers to adopt the Russian educational programme.¹⁴⁶ Ukrainian language, literature, and history are eliminated from the school curriculum; Ukrainian textbooks are substituted with Russian ones.¹⁴⁷ Furthermore, the use of the Ukrainian language and Ukrainian-language books in education has been prohibited, and Russian teachers have been brought in to instruct in the occupied territories.¹⁴⁸ Ukrainian children have been compelled to listen to Russia's national anthem in school,¹⁴⁹ and the recent amendments to the Russian school curriculum are enforced on Ukrainian children.

In 2023, Russia amended domestic legislation on education to establish a mandatory federal curriculum for various school subjects, particularly humanities.¹⁵⁰ According to the Russian parliament, subjects in the humanities receive 'special attention' as they form the basis of a person's worldview. Therefore, these subjects require an unchanged and mandatory programme sanctioned by the government to foster uniform and homogeneous values within Russian society.¹⁵¹ The unified history curriculum included justifications for the 2022 invasion of Ukraine by Russian forces.¹⁵² In a 2022 Russian history textbook, the annexation of Crimea and Putin's leadership were justified and praised multiple times.¹⁵³

¹⁴⁵ Yale HRL, *supra* note 139.

¹⁴⁶ UN OHCHR, 'Report of the Independent International Commission of Inquiry on Ukraine', UN Doc. A/HRC/52/62, 15 March 2023, at para 94.

¹⁴⁷ Maksym Vishchyk, *Occupation of Minds: IHL Response to Russian Education Policies in the Occupied Ukrainian Territories*, 12 October 2022, available at <https://www.ejiltalk.org/occupation-of-minds-ihl-response-to-russian-education-policies-in-the-occupied-ukrainian-territories/>; Lorenzo Tondo, *Moscow Forcing Teachers in Occupied Ukraine to Follow Russian Curriculum*, 1 July 2022, available at <https://www.theguardian.com/world/2022/jul/01/moscow-forcing-teachers-in-ukraine-to-sign-up-to-russian-curriculum>

¹⁴⁸ Robyn Dixon, *Russia Sending Teachers to Ukraine to Control What Students Learn*, 18 July 2022, available at <https://www.washingtonpost.com/world/2022/07/18/russia-teachers-ukraine-rewrite-history/>; Sergii Gorbachov, Education Ombudsman of Ukraine, *Educational Genocide Is a Component of the Russian Genocide of the Ukrainian People*, 26 May 2022, available at <https://eo.gov.ua/osvitniy-henotsyd-skladova-rosiyskoho-henotsydu-ukrainskoho-narodu/2022/05/26/>

¹⁴⁹ Media Centre of the Mayor of Melitopol, Comment on Russian curriculum in the Melitopol schools, 9 September 2022, available at <https://www.facebook.com/UkraineMediaCenter/posts/russian-invaders-prevent-children-from-leaving-schools-in-melitopol-but-children/156853276958026/>

¹⁵⁰ Vorobiova, *supra* note 143.

¹⁵¹ Tamara Atstapenkov, *В Госдуме рассказали, что изменится в школах благодаря «золотому стандарту» образования [What will change in schools owing to 'gold standard', according to the State Duma]*, 11 January 2023, available at <https://ug.ru/v-gosdume-rasskazali-cto-izmenitsya-v-shkolah-blagodarya-zolotomu-standartu-obrazovaniya/>

¹⁵² Abhishek Awasthi, *Russia Adds Chapter of Ukraine Invasion in History Books*, 8 May 2023, available at <https://www.firstpost.com/world/russia-adds-chapter-of-ukraine-invasion-in-history-books-students-to-get-questions-on-it-in-upcoming-exams-12465362.html>

¹⁵³ Akerø, *supra* note 101, at 7.

So far, 43 camps have been identified where Ukrainian children are sent, and at least 32 of these facilities have actively pursued systematic re-education efforts, exposing Ukrainian children to Russia-centric academic, cultural, patriotic, and/or military education. Many of these facilities in Russia are promoted as ‘integration programmes’, ostensibly created to assimilate Ukrainian children into the Russian social identity. Re-education initiatives have received support from various levels of the Russian government, including federal (especially the Ministry of Education), regional, and local officials and agencies, with high-ranking officials serving as intermediaries between federal institutions and the camps involved in re-education efforts.¹⁵⁴

Russia also impedes communication with children's Ukrainian family members, such as changing the names of Ukrainian children¹⁵⁵ and dispersing them across the Russian Federation to prevent family reunification.¹⁵⁶ During the forcible transfers, some Ukrainian children have been put up for adoption by Russian adoptive parents or placed for upbringing in the families of Russian nationals.¹⁵⁷ The adoption process of Ukrainian children by Russian adoptive parents has been facilitated by the legislation that expedites the adoption through passportisation and the practice of compelling children to accept Russian citizenship.¹⁵⁸

Parallel to historical instances of forcible child transfers in other contexts, Russian state officials rely on ostensibly ‘philanthropic’ justifications, asserting that the ‘evacuation’ of Ukrainian children is in their best interests. They claim that the re-education efforts are driven by purportedly altruistic aims, such as protection, assimilation, and civilisation. For instance, President Putin has referred to the war in Ukraine as ‘extraordinary circumstances’,

¹⁵⁴ Yale HRL, *supra* note 139, at 5–6, 14–15.

¹⁵⁵ Emma Bubola, *Using Adoptions, Russia Turns Ukrainian Children into Spoils of War*, 22 October 2022, available at <https://www.nytimes.com/2022/10/22/world/europe/ukraine-children-russia-adoptions.html>; Katya Bonch-Osmolovskaya and Dmitry Velikovskiy, *How Russia Parliamentary Leader Sergey Mironov and His New Wife Adopted a Child Kidnapped from Ukraine and Changed Her Identity*, 23 November 2023, available at <https://stories.media/en/stories/2023/11/23/mironov-kidnapping/>

¹⁵⁶ Maksym Lypchansky, *The Russian Federation Deported 8,700 Ukrainian Children—Ombudsman [РФ депортувала 8700 українських дітей – омбудсмен]*, 20 October 2022, available at <https://ua.korrespondent.net/ukraine/4527683-rf-deportuvala-8700-ukrainskykh-ditei-ombudsmen>. See also Nigina Berojeva and Sonia Groysman, *Как Россия украла тысячи детей из Украины и отдала их на «перевоспитание» [How Russia stole thousands of children from Ukraine and gave them to “re-education”]*, 26 February 2023, available at https://tvrain.tv/teleshov/reportazh/kak_rossija_ukrala_tysjachi_detej_iz_ukrainy_i_otdala_ih_na_perevospitani_e-550205/

¹⁵⁷ PACE, ‘Deportations and Forcible Transfers of Ukrainian Children and Other Civilians to the Russian Federation or to Temporarily Occupied Ukrainian Territories’, Resolution 2495, 27 April 2023, at para 6.

¹⁵⁸ Yale School of Public Health, *Forced Passportization in Russia-Occupied Areas of Ukraine*, 2 August 2023, available at <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/e280a7eeb7bf4dc588ed50ee655b9858/data>, at 18.

in which it is imperative ‘to protect interests of children’.¹⁵⁹ Commissioner for Children’s Rights under the President of the Russian Federation, Maria L’vova-Belova, in her open letter ‘We Are for the Future of Children’, supported Putin’s decision to invade Ukraine, claiming that it was done to protect the children of Donbas.¹⁶⁰ On another occasion, Commissioner L’vova-Belova confirmed that a group of Ukrainian children, who were taken from the basements of Mariupol and forcibly transferred to the Russian Federation, defiantly sang the Ukrainian national anthem during their removal to Russia before being transformed to ‘love’ Russia.¹⁶¹ Similarly, Ukrainian children were made to believe that they were destined to be ‘children of Russia’.¹⁶² Those Ukrainian children reunited who were forcibly transferred and later reunited with their parents recounted experiences of being beaten with an iron stick and confined in a basement for expressing support for Ukraine.¹⁶³ If these children happened to have Ukrainian flags with them, the flags were burnt.¹⁶⁴

Forcibly transferred Ukrainian children have been undergoing indoctrination into the Russian government’s conception of national culture, history, and society. This indoctrination is achieved through education in the Russian language and adherence to the Russian curriculum.¹⁶⁵ In this manner, the Russian government has been orchestrating family and cultural separation, systematically dismantling Ukrainian ways of life and thought, destroying cultural and religious heritage, and eradicating the presence of Ukrainians from a specific territory.

If we accept the figures provided by the Russian government on the forcibly transferred Ukrainian children and take into account that the child population of Ukraine is

¹⁵⁹ President of Russia, *Meeting with Commissioner for Children’s Rights Maria L’vova-Belova*, 9 March 2022, available at <http://en.kremlin.ru/events/president/news/67949>

¹⁶⁰ Commissioner L’vova-Belova, *Uchastniki “Roditel’skoj platformy” i Obshchestvennogo soveta pri Upolnomochennom pri Prezidente RF po pravam rebenka podderzhali otkrytoe pis'mo “My—za budushhee detej!”*, 27 February 2022, available at <http://deti.gov.ru/articles/news/uchastniki-roditel-skoj-platformy-i-obshchestvennogo-soveta-pri-upolnomochennom-pri-prezidente-rf-po-pravam-rebenka-podderzhali-otkrytoe-pis-mo-my-za-budushhee-detej>

¹⁶¹ Maria L’vova-Belova, Telegram: Contact @malvovabelova, 28 September 2022, available at <https://t.me/malvovabelova/605>

¹⁶² The Insider, «Били железной палкой, держали в подвале». Украинские дети рассказали, как их удерживали в российских лагерях [“They beat me with an iron rod and kept me in the basement.” Ukrainian children told how they were held in Russian camps], 23 March 2023, available at <https://theins.ru/news/260402>

¹⁶³ Tatyana Popova, *Как возвращают украденных Россией детей?* [How can you get to Russian children?], 24 March 2023, available at <https://www.youtube.com/watch?v=nEnlyZnP0eI>; Nataliya Vasilyeva and Roland Oliphant, *Ukrainian Children Reveal Scale of Abuse at Russian “Re-education” Camps*, 23 March 2023, available at <https://www.telegraph.co.uk/world-news/2023/03/23/russia-beat-children-sticks-having-pro-ukraine-views/>

¹⁶⁴ *Ibid.*

¹⁶⁵ Ioffe, *supra* note 61, at 339.

around 7 million,¹⁶⁶ it implies that 10% of all Ukrainian children are undergoing indoctrination, being persuaded that they are no longer Ukrainian but Russian. The substantial number of Ukrainian children transitioning to Russian identity, coupled with the ongoing industrial-scale forcible child transfers,¹⁶⁷ may constitute evidence of the partial physical decline of Ukrainians as a national group.¹⁶⁸ This would align with the ICJ interpretation of Article (e), as described above, indicating reproductive management conducted by Russia that may potentially ‘have consequences for the group’s capacity to renew itself, and hence to ensure its long-term survival’.¹⁶⁹ The biological aspect of the forcible transfers of Ukrainian children lies in their removal due to the belief that if Ukrainian children remained within their group, they would adopt its culture, traditions, language, and social structures.¹⁷⁰ The aim of forcible transfers is to eliminate the Ukrainian group ‘as such’ by cutting off the intergenerational transmission of culture and language, preventing children from practicing them. In a longer-term perspective, it involves promoting the genetic modification of the Ukrainian community by attempting to blend it with the local Russian population and dispersing them throughout Russia.

At the same time, I am of the opinion that the proper interpretation of Article II(e) requires a broader reading of ‘destruction’ and should not be limited to the physical or biological targeting of the group members. I share Mundorff’s view that the transfer is a physical act if intended to destroy the group as a physical-biological entity, even if destruction is often culturally mediated.¹⁷¹ With the limited case law on Article II (e), the courts have a genuine opportunity to interpret this provision in accordance with the VCLT rules and the intentions of the parties to the Genocide Convention.

Finally, it should be acknowledged that the transfers of Ukrainian children are accompanied by a wide range of other punishable acts unequivocally targeting the biological and physical features of the group, such as the killings of Ukrainians, causing serious bodily harm, and deliberately inflicting conditions incompatible with life.¹⁷² Therefore, the determination of the destruction of Ukrainians as a group may depend not only on the forced

¹⁶⁶ UNICEF, *How many children are there in Ukraine?*, available at <https://data.unicef.org/how-many/how-many-children-under-18-are-there-in-ukraine/>

¹⁶⁷ Asymmetrical Haircuts, *supra* note 141, at 45:14–45:35.

¹⁶⁸ Ioffe, *supra* note 61, at 337.

¹⁶⁹ *Croatia v. Serbia*, *supra* note 80, para 136.

¹⁷⁰ See Novic for analogies with forcible transfers of indigenous children in Australia. Novic, *The Concept of Cultural Genocide*, *supra* note 32, at 72.

¹⁷¹ Mundorff, *supra* note 53, at 111–2.

¹⁷² Azarov et al, *supra* note 84, at 252–61; Iryna Marchuk and Aloka Wanigasuriya, ‘Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine’s Prospects in Its Pursuit of Justice at the ICJ’, 25(3–4) *Journal of Genocide Research* (2023) 256, at 267–70.

child transfers but also on these other acts, especially considering they occur within the context of an armed conflict.

Ukraine is pursuing various avenues to hold the Russian Federation accountable for forcible child transfers and is invoking different provisions of international law. Optimistically, should the issue of forcible transfers of Ukrainian children be brought before a court as a crime of genocide, it would provide an excellent opportunity for the court to explore the concept of 'destruction' and evaluate the extent to which it incorporates a cultural dimension.

Conclusion

The forcible transfer of Ukrainian children and their subsequent indoctrination can be seen as a form of genocide, as Russia aims to destroy the group's collective identity and absorb them into Russian society. The Genocide Convention, particularly Article II (e), identifies the forcible transfer of children as a potential genocide if conducted with the intent to destroy the group, in whole or in part.

The interpretation of Article II (e) by courts and tribunals has been limited and often restrictive, focusing primarily on physical and biological destruction. This restrictive interpretation hinders the legal challenge against colonial violence within the framework of international law. However, a comprehensive reading of the provision's text, context, the convention's object and purpose, and *travaux* suggests that the forcible transfer of children should be understood as a form of genocide, encompassing both physical *and* cultural destruction. The intent to destroy a group can manifest through the disruption of social networks, the dismantling of societal and cultural institutions, and the indoctrination of children. I have argued that indoctrination plays a crucial role in establishing special intent for the purposes of Article II (e), as it seeks to destroy the group's collective identity and prevents the group from renewing itself.

The historical context of the drafting of the Genocide Convention reveals the tension between colonialism and the concept of genocide. Raphael Lemkin, who coined the term 'genocide', had a profound interest in colonial genocides and considered them a continuation of genocidal occupations throughout history. However, the Genocide Convention does not explicitly address colonial genocides, and Lemkin himself labelled it as a 'timid convention' due to compromises made during its drafting.

Examining Russia's colonial practices, spanning from the Russian Empire to the Soviet Union, provides important insights into the motivations and strategies behind the forcible transfer of Ukrainian children. These practices, which included deportations, ethnic cleansing, Russification, and the forcible transfer of indigenous Siberian children, demonstrate a pattern of oppression and assimilation aimed at subjugating and eradicating non-Russian cultures and identities.

The present-day forcible transfer of Ukrainian children to Russia could fall under the scope of Article II (e) of the Genocide Convention. The systematic re-education efforts, the suppression of Ukrainian language and culture, and the forced assimilation and even absorption into Russian society all contribute to the destruction of the Ukrainian national identity. The justifications put forth by Russia, claiming that the forcible transfer of Ukrainian children is in their best interests, are reminiscent of historical colonial practices. These 'philanthropic' justifications mask the true intention behind the transfers, which is to erase the Ukrainian identity.

If the issue of forcibly transferring Ukrainian children were to be presented before a court as a crime of genocide, it would provide a valuable opportunity for a comprehensive exploration of the concept of 'destruction' and its cultural dimensions. While a more expansive interpretation of the *mens rea* would not eliminate all the ambiguities in the legal definition of genocide, it would certainly bring a level of coherence to it, if only to clarify the status of paragraph (e).