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Children and Armed Conflict: A Legal Glossary on Abduction and Deportation

**The Children and Armed Conflict Publications Series –
Supporting policy-makers and other stakeholders
to enhance the protection of children in situations of armed conflict**

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Authored by Ioana Cismas, Ezequiel Heffes and Brook Morrison, this document forms part of the Children and Armed Conflict Publications Series. The series is jointly developed by Watchlist on Children and Armed Conflict and the Generating Respect Hub at the University of York's Centre for Applied Human Rights with the aim of enhancing legal understanding on child protection in armed conflict among international and domestic policymakers, field practitioners, civil society organizations and the media. The authors would like to thank Bethany Ellis for her feedback on earlier drafts and Aleksandra Jelonek for the layout.

About Watchlist on Children and Armed Conflict

Watchlist on Children and Armed Conflict (Watchlist) strives to end violations against children in armed conflicts and to guarantee their rights. As a global network, Watchlist builds partnerships among local, national, and international nongovernmental organizations (NGOs), enhancing mutual capacities and strengths. Working together, we collect and disseminate information on violations against children in conflicts in order to influence key decision-makers and implement programs and policies that effectively protect children. Watchlist is a fiscally sponsored project of United Charitable, a US-based 501(c)3 not-for-profit organization.

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The Generating Respect Hub at the University of York's Centre for Applied Human Rights (CAHR) is a knowledge exchange platform that facilitates socio-legal research focused on generating greater respect for humanitarian norms in armed conflict. The Hub's researchers work collaboratively with human rights, humanitarian, and transitional justice actors to address challenges on the ground through the co-production of conceptualisations and the development of operationalizable tools.

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Introduction

Worldwide, one in six children – or about 449 million – live in conflict zones. Their rights are often affected by the activities of State and non-State parties to armed conflicts. In 2022 alone, the United Nations (UN) verified 24,300 grave violations against children – these included killing and maiming, sexual violence, use and recruitment, abductions, and deprivations of vital resources ensuing from the destruction of schools, hospitals and the arbitrary denial of humanitarian relief. [1]

This document provides a glossary of legal terms relevant to abduction and deportation of children in armed conflict. It presents clear and succinct analysis of terms by referencing the legal basis under international law, relevant jurisprudence and interpretative work of adjudicative and monitoring mechanisms, and signposting, where pertinent, relations with other terminology. The analysis draws on international legal instruments under international humanitarian law (IHL), international human rights law (IHRL), international refugee law (IRL), international criminal law (ICL), UN Security Council resolutions, customary international law and other documents adopted by international organizations or drafted by independent experts affiliated with such bodies.

The aim of this glossary is to enhance legal understanding on child protection in armed conflict among international and domestic policymakers, field practitioners, civil society organizations and the media. It seeks to assist with monitoring and decision-making activities, thus contributing to the effective implementation of international law frameworks and mechanisms for the protection of children in armed conflict.

¹ UN Security Council, Report of the Secretary-General on Children and Armed Conflict, UN Doc. A/77/895–S/2023/363, 27 June 2023, <https://undocs.org/s/2023/363> (accessed 28 June 2023).

Glossary



CHILDREN

Definition of the child

- The **Convention on the Rights of the Child** provides the following definition:

“Child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

Source: Convention on the Rights of the Child 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990), art. 1.

- **International humanitarian law** instruments do not entail a definition of the term ‘child’ and/or ‘children’. The Geneva Conventions and the Additional Protocols use different age parameters for different protective measures.

Sources: ICRC Study on Customary International Humanitarian Law, Rule 135, footnote 19 and corresponding text; Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, 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, ODIHR.GAL/37/23/Rev.1/Corr.1, 4 May 2023, p. 29 [Hereafter, OSCE Moscow Mechanism Report]; See also, Yves Sandoz et al., Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC, 1986, para. 3237 [Hereafter, Sandoz Commentary].

Unaccompanied and separated children – Definitions & State obligations

- The **UN Committee on the Rights of the Child** provides the following definitions for unaccompanied and separated children, respectively:

“‘Unaccompanied children’ (also called unaccompanied minors) are children, as defined in article 1 of the Convention [on the rights of the child], 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.”

“‘Separated children’ are children, as defined in article 1 of the Convention [on the rights of the Child], who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other

relatives. These may, therefore, include children accompanied by other adult family members.”

Source: Committee on the Rights of the Child, General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, UN Doc. CRC/GC/2005/6, 1 September 2005, paras. 7 and 8.

→ The **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GCIV)** stipulates:

“The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.”

Source: Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 (Hereafter, GCIV), art. 24.

→ The **OSCE Moscow Mechanism Report** notes:

“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. This provision has been made keeping in view that children over twelve are generally capable of stating their own identity.” [References omitted]

Source: OSCE Moscow Mechanism Report, p. 29.

See also:

- ⦿ Abduction → State obligations relating to the prevention and redress of abductions
- ⦿ Evacuation → Evacuation of children

Best interests of the child

→ The **Convention on the Rights of the Child** provides:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Source: Convention on the Rights of the Child 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990), art. 3.1.

→ The **Committee on the Rights of the Child** emphasized that the child's best interests is a “threefold concept”:

“(a) A substantive right: The right of the 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, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for states, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: 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 must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, states parties shall 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.”

Source: Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, para. 6.

→ According to the **Committee on the Rights of the Child**, assessments of a child’s best interests must consider several core elements, among which:

- a) The child’s views (paras. 53-54)
- b) The child’s identity (paras. 55-57)
- c) Preservation of the family environment and maintaining relations (paras. 58-70)
- d) Care, protection and safety of the child (paras. 71-74)
- e) Situation of vulnerability (paras. 75-76)
- f) The child’s right to health (paras. 77-78)
- g) The child’s right to education (para. 79)

“In weighing the various elements, one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.” (para. 82)

Source: Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, paras. 53-79, and 92.

ABDUCTION

Definition

→ The **Hague Convention on the Civil Aspects of International Child Abduction** provides the following definition:

“The removal or the retention of a child is to be considered wrongful where –

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the state in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”

Source: Hague Convention on the Civil Aspects of International Child Abduction (adopted 25 October 1980, entered into force 1 December 1983), art. 3.

Abduction as a grave violation against children in armed conflict

- Abduction of children has been established by the **UN Security Council** as one of the six grave violations against children committed in the context of armed conflicts that may trigger the listing of states and non-state armed groups in the Annual Report of the UN Secretary-General on children and armed conflict.

Sources: UN Special Representative of the Secretary General on Children and Armed Conflict, The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation (October 2009, updated in November 2013); Report of the Secretary-General, Children and armed conflict, UN Doc. A/69/926-S/2015/409, 5 June 2015, paras. 6-10 and 273; UN Security Council Resolution 2225, 18 June 2015, operational paras. 3 and 4.

- The Office of the **Special Representative of the Secretary-General for Children and Armed Conflict** uses the following working definition for abduction as a grave violation:

“the removal, seizure, capture, apprehension, taking or enforced disappearance of a child either temporarily or permanently, including for the purpose of any form of exploitation of the child. The abduction must be perpetrated by a party to conflict in the context of and be associated with an armed conflict. This definition is also applicable in situations where a spillover into the territory of one or more neighboring states has taken place.”

Source: Office of the Special Representative of the Secretary General on Children and Armed Conflict, Guidance note on Abduction (2022), pp. 14-15.

Abduction for purposes of exploitation

The Field Manual – Monitoring and Reporting Mechanism on Grave Violations Against Children in Situations of Armed Conflict, Annex 3 (p. 77), clarifies that “abduction is always illegal and, in essence, criminal conduct.” Annex 2 (pp. 70-71) of the Field Manual notes that when abduction is undertaken for purposes of exploitation, this could amount to:

- **Child recruitment and use by armed forces or armed groups**

Sources: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002), arts. 2 and 4; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts,

1977, art. 77(2) (Hereafter, Additional Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977, art. 4(3)(c) (Additional Protocol II); ICRC Study on Customary International Humanitarian Law, Rule 136.

→ **Child trafficking, sale of children, child prostitution, or other forms of sexual violence**

Note that for children, there is no need to demonstrate

“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.” (Annex 2, p. 71).

Sources: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted 15 November 2000, entered into force 25 November 2003), art. 3; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January, 2002); Additional Protocol I, Art. 75 (2) (b); Additional Protocol II, Art. 4 (2) (e); ICRC Study on Customary International Humanitarian Law, Rule 93.

→ **Hostage taking**

Sources: International Convention Against the Taking of Hostages, art. 1; Geneva Conventions, Common Art. 3; Geneva Convention IV, Art. 34 and 147; Additional Protocol I, Art. 75 (2)(c); Additional Protocol II, Art. 4 (2)(c); ICRC Study on Customary International Humanitarian Law, Rule 96.

→ **Enforced disappearance, including as a crime against humanity**

Sources: International Convention for the Protection of All Persons from Enforced Disappearance, (adopted 20 December 2006, entered into force 23 December 2010), art. 2; Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), arts. 7.2 (i).

State obligations relating to the prevention and redress of abductions

Under international law, States have obligations to prevent abductions of children and to secure the children’s prompt return in times of peace and armed conflict. These obligations are either explicitly included in legal instruments, or they can be inferred from other general

obligations of States by means of the customary rules of treaty interpretation. The following are particularly relevant provisions:

→ The **Convention on the Rights of the Child** stipulates:

“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

Source: Convention on the Rights of the Child 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990), art. 35.

→ Under the **Hague Convention**, Contracting Parties have an obligation to

“designate a Central Authority”

“to co-operate with each other and promote cooperation amongst competent authorities in their respective states to secure the prompt return of children...”

Source: Hague Convention on the Civil Aspects of International Child Abduction, (adopted 25 October 1980, entered into force 1 December 1983), arts. 3, 6 and 7.

→ **Common Article 3 to the Geneva Conventions** provides:

“Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.”

Source: Common Article 3 to the Geneva Conventions.

→ **Customary international humanitarian law** and provisions in GCIV, Additional Protocols I and II, stipulate that in international and non-international armed conflict,

“[c]hildren affected by armed conflict are entitled to special respect and protection.”

According to the ICRC Study on Customary International Humanitarian Law, state practice interprets this provision as including the obligation of:

“reunification of unaccompanied children with their families.”

Sources: ICRC Study on Customary International Humanitarian Law, [Rule 135](#); GCIV, arts. 23–24, 38, 50, 76 and 89; [Additional Protocol I](#), art. 77(1); [Additional Protocol II](#), art. 4(3).

ADOPTION

State obligations relating to adoption

→ The **Convention on the Rights of the Child** stipulates:

“States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.”

Source: [Convention on the Rights of the Child](#) 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990), art. 21(a)-(d)

→ Importantly, when considering adoption as a possible solution, the Convention requires that states pay

“due regard [...] to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”

Source: [Convention on the Rights of the Child](#) 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990), art. 20(3).

Requirements relating to intercountry adoption

→ The **Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption** requires that intercountry adoptions:

“shall take place only if the competent authorities of the state of origin

a) have established that the child is adoptable;

b) have determined, after possibilities for placement of the child within the state of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

c) have ensured that

1. the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
2. such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
3. the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
4. the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that

1. he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
2. consideration has been given to the child's wishes and opinions,
3. the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
4. such consent has not been induced by payment or compensation of any kind.”

Source: Convention on the Rights of the Child 1577 UNTS 3 (adopted 20 November 1989, entered into force 2 September 1990), art. 21(a)-(d)

Limitations & requirements relating to adoption in humanitarian emergencies

→ UNICEF Guidance notes:

“Children separated from their parents during a humanitarian emergency cannot be assumed to be orphans and are not available for adoption. For this reason, adoption should not occur during or immediately after emergencies. Children have a right to an identity, including the right to know and be cared for by their parents. Until the whereabouts of a child's parent(s) or other close family members can be verified, each separated child – even those who were living in residential care before the war – is considered to have living close relatives.”

Source: UNICEF, Guidance for protecting displaced and refugee children in and outside of Ukraine, (2022).

DEPORTATION OR FORCIBLE TRANSFER OF POPULATION

Definition of deportation or forcible transfer of population as a crime against humanity

→ The **Rome Statute of the International Criminal Court** (Rome Statute) provides the following definition:

“Deportation or forcible transfer of population’ means 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.”

Source: Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), art. 7.2 (d).

→ The **International Criminal Court (ICC) Elements of Crimes** notes that

“[d]eported or forcibly transferred’ is interchangeable with ‘forcibly displaced.’”

Source: International Criminal Court Elements of Crimes, ICC-PIOS-LT-03-002/15, 2013, p. 4, footnote 13.

- The **International Criminal Tribunal for the former Yugoslavia (ICTY)** has clarified the distinction between the deportation and forcible transfer:

“for deportation, the displacement of persons must be across a de jure border between two states or, in certain circumstances, a de facto border, and for forcible transfer, the removal may take place within national boundaries.”

Source: ICTY, The Prosecutor v. Radovan Karadžić, 24 March 2016, para. 488.

Elements of the crime of deportation or forcible transfer of population as a crime against humanity

- According to the **ICTY**, the following *common elements* need to be ascertained for a finding of deportation or forcible transfer as a crime against humanity:

"(i) the unlawful character of the displacement;
(ii) the area where the person displaced lawfully resided, and the destination to which the person was displaced;
[iii] the intent of the perpetrator to deport or forcibly transfer the victim."

Source: ICTY, The Prosecutor v. Simic et al, 17 October 2003, para. 124.

- As to the first element, the **ICTY** explains that:

“To establish deportation and forcible transfer, there must be a forced displacement of persons carried out by expulsion or other forms of coercion. The term “forced” may include physical force, as well as the 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. The forced character of the displacement is determined by the absence of genuine choice by the victim in his or her displacement. As such, while persons may consent to, or even request, their removal, any consent or request to be displaced must be given voluntarily and as a result of the individual’s free will, addressed in light of the surrounding circumstances of the particular case...”

Source: ICTY, The Prosecutor v. Radovan Karadžić, 24 March 2016, para. 489.

→ The **International Criminal Court (ICC) Elements of Crimes** notes that

“‘[d]eported or forcibly transferred’ is interchangeable with ‘forcibly displaced.’”

Source: International Criminal Court Elements of Crimes, ICC-PIOS-LT-03-002/15, 2013, p. 4, footnote 13.

→ As to the second element of deportation and forcible transfer, the **ICTY** held that:

“the victim must be “lawfully present” in the area from which the forced displacement takes place. In analysing this element of deportation and forcible transfer, the terms “lawfully present” should be given their common meaning and should not be equated to the legal concept of lawful residence.”

Source: ICTY, The Prosecutor v. Radovan Karadžić, 24 March 2016, para. 489.

→ In respect to the third element of deportation and forcible transfer, the **ICTY** notes:

“Deportation and forcible transfer do not require intent that the victims be displaced permanently, only that they be intentionally displaced.”

Source: ICTY, The Prosecutor v. Radovan Karadžić, 24 March 2016, para. 493.

Definitions and elements of the crime of genocide by forcibly transferring children

→ According to the **Rome Statute**,

“Forcibly transferring children of the group to another group” amounts to genocide when the act is “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”

Source: Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), art. 6(e).

→ The **ICC Elements of Crimes** clarify that for forcibly transferring children to be considered genocide the following *elements* must be met:

- “1. The perpetrator forcibly transferred one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”

Source: International Criminal Court Elements of Crimes, ICC-PIOS-LT-03-002/15, 2013, p. 3.

Unlawful deportation or transfer as grave breaches and war crimes

→ **Geneva Convention IV** establishes as *grave breaches*:

“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, regardless of their motive.”

Source: Geneva Convention IV, arts. 49 and 147.

→ **Additional Protocol I** similar establishes as *grave breaches*:

“the transfer by the Occupying Power of parts of its own civilian population into the territories it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Geneva Convention”

“the unjustifiable delay in the repatriation of prisoners of war or civilians”

Source: Additional Protocol I, art. 85.

→ The **Rome Statute** defines *war crimes*, inter alia, as

“(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

[...]

(vii) Unlawful deportation or transfer...”

Source: Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), art. 8(2)(a)(vii).

→ The **Rome Statute** defines the *war crime of deportation or transfer of population by an Occupying Power* in international armed conflict:

“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.”

Source: Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), art. 8.2(b)(viii).

→ The **ICC Elements of Crimes** list the following elements for the *war crime of unlawful deportation or transfer*:

- “1. The perpetrator deported or transferred one or more persons to another state or to another location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

Source: International Criminal Court Elements of Crimes, ICC-PIOS-LT-03-002/15, 2013, p. 11.

Displacement of the civilian population as a serious violation of the laws and customs of war and war crime

→ **Additional Protocol II** stipulates that in non-international armed conflict:

“1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”

Source: Additional Protocol II, art. 17.

→ The **ICRC Study on Customary International Humanitarian Law** presents the above provision as a customary rule applicable in non-international armed conflict.

Source: ICRC Study on Customary International Humanitarian Law, Rule 129 B.

→ The **Rome Statute** defines *war crimes*, inter alia, as:

“(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character

[...]

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.”

Source: Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted 17 July 1998, entered into force 1 July 2002), art. 8.2(e)(viii).

→ The **ICC Elements of Crimes** list the following elements for the *war crime of displacement of civilians*:

- “1. The perpetrator ordered a displacement of a civilian population.
2. Such order was not justified by the security of the civilians involved or by military necessity.
3. The perpetrator was in a position to effect such displacement by giving such order.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

Source: International Criminal Court Elements of Crimes, ICC-PIOS-LT-03-002/15, 2013, p. 27.

See also:

➤ Evacuation

Evacuation

Evacuation as an exception to the prohibition of transfer/displacement

→ **Geneva Convention IV** introduces ‘evacuation’ as an exception to the prohibition of individual or mass forcible transfers or displacement whilst placing strict conditions on its application:

“...the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.”

Source: Geneva Convention IV, art. 49.

→ A similar provision is present in **Additional Protocol II**.

Source: Additional Protocol II, art. 17.

- The **ICRC Study on Customary International Humanitarian Law** posits that state practice establishes the exception to the prohibition of displacement in both international and non-international armed conflicts. It further notes:

“[The time-boundness of the exception] “as long as the conditions warranting [the evacuation] to exist. [...]

The exception of ‘imperative military reasons’ can never cover cases of removal of the civilian population in order to persecute it. [...]

[In international armed conflicts] evacuations may not involve displacement outside the bounds of the occupied territory ‘except where for material reasons it is impossible to avoid such displacement’.

With respect to non-international armed conflicts, [...] evacuations may never involve displacement outside the national territory.”

Source: ICRC Study on Customary International Humanitarian Law, Rule 129.

- The **Commentary on Geneva Convention IV** of 1958 further clarifies the scope and aim of this exception:

“Unlike deportation and forcible transfers, evacuation is a provisional measure entirely negative in character, and is, moreover, often taken in the interests of the protected persons themselves.”

Source: Jean Pictet (ed), Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1958, p. 280.

Evacuation of children

- **Additional Protocol I** entails strict and detailed conditions relating to the evacuation of children:

“No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.”

Source: Additional Protocol I, art. 78.

- Authoritative **commentators** contrasted the conditions relating to the evacuation of children in the Geneva Convention IV and Additional Protocol I as follows:

“GCIV provides special protection for orphans or children under 15 who have been separated from their families due to the war. GCIV encouraged the reception of orphaned children or children separated from their families into neutral countries. 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. Therefore, API commands that everything possible should be done to avoid separating children, and especially young children, from their natural protectors.” [References omitted].

Sources: OSCE Moscow Mechanism Report, p. 29; Sandoz Commentary, para. 3211.

Release, repatriation, and return

- **Geneva Convention IV** makes specific reference to the release, repatriation and return of children during hostilities or occupation:

“Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.”

Source: Geneva Convention IV, art. 132.

→ The **International Convention for the Protection of All Persons from Enforced Disappearance** entails provisions on the search, identification, treatment and return of children affected by enforced disappearances:

“2. Each state Party shall take the necessary measures to search for and identify [...] children referred to in paragraph 1 (a) of this article [children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance] and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have reestablished, their identity, including their nationality, name and family relations as recognized by law, states Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.”

Source: International Convention for the Protection of All Persons from Enforced Disappearance, (adopted 20 December 2006, entered into force 23 December 2010), art. 25.

- The ‘international return of children’ makes the object of a treaty concluded in the **Inter-American** system:

“The purpose of this Convention is to secure the prompt return of children habitually resident in one state Party who have been wrongfully removed from any state to a state Party or who, having been lawfully removed, have been wrongfully retained. This Convention further seeks to secure enforcement of visitation and custody rights of parties entitled to them.”

Source: Inter-American Convention on the International Return of Children, (adopted 15 July 1989, entered into force 4 November 1994), art. 1.