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The Reckoning  
Project

# NO CHOICE BUT TO LEAVE

A REPORT BY THE RECKONING PROJECT

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THE RECKONING PROJECT  
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# I. INTRODUCTION

1. This report is prepared by The Reckoning Project ('TRP'). TRP is an organisation that brings together investigative journalists and legal professionals to maximise prospects of accountability, both in courts of law, defined broadly to include different accountability mechanisms for state and individual responsibility, and courts of public opinion. TRP works with national jurisdictions, as well as various international mechanisms. In addition to our legal efforts, we use our experience as journalists through publishing long format essays, articles and films — to challenge propaganda by keeping the narrative truthful and creating the necessary public interest for accountability. TRP focuses its documentation of incidents on witness testimonies taken in person through a strict methodology of preservation. TRP has been documenting cases since March 2022 and continues to do so. To date, TRP on-the-ground researchers have taken more than 600 witness testimonies, from individuals from different regions of Ukraine. The incidents highlighted below were documented by TRP Ukrainian personnel operating in different parts of Ukraine and trained by internationally qualified legal professionals to preserve the legal integrity of collected evidence.
2. This report analyses the forcible displacement of Ukrainians by Russian and Russian-affiliated forces. In past years, TRP has focused on exploring the patterns of movement of Ukrainians both within Ukraine and outside its borders since Russia's full-scale invasion of 2022, and the legal frameworks that apply to their movement. Through this research, TRP seeks to shed light on the coercive environment causing displacement that is created, maintained and amplified by the Russian Federation. Torture, arbitrary detention, enforced disappearances, sexual violence and looting are rampant and pervasive in occupied Ukrainian territories. These wrongs are not only self-standing violations of international law. They are themselves the tools through which the Russian Federation establishes the coercive environment compelling people to leave their lives, homes and loved ones behind. Within this coercive environment, Ukrainians have no other option but to move, and no genuine choice over their decision to do so.

3. Violations constitutive of Russia's coercive environment in TRP's testimony database — arbitrary detention, torture, harassment and intimidation of educators — are detailed in the present report, which was submitted to the Working Group on Arbitrary Detention,<sup>1</sup> the Special Rapporteur on Torture<sup>2</sup> and the Special Rapporteur on the Right to Education<sup>3</sup> in October 2025. TRP's goal is to bring international attention to less obvious, yet no less harmful, practices of forcible displacement conducted by the Russian Federation and its affiliates, namely the use of a coercive environment that compels departure from Ukrainian territories.
4. The following sections analyse the factual background of displacement since Russia's full-scale invasion (II), the legal frameworks prohibiting forced displacement (III), four incidents from TRP's database exposing the coercive environment in occupied Ukraine (IV), state and individual responsibility for wrongful displacement, and available accountability avenues (V).

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1 The Working Group has the mandate to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights, or the international legal instruments accepted by the States concerned, at: <https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention>.

2 Since its inception in 1985, the mandate of the Special Rapporteur has been to examine questions relevant to torture, at: <https://www.ohchr.org/en/special-procedures/sr-torture>.

3 The Special Rapporteur is mandated to gather, request, receive and exchange information from all relevant sources, including Governments, intergovernmental organizations, civil society, including non-governmental organizations, and other concerned stakeholders, on the realization of the right to education and obstacles limiting effective access to education, and to make recommendations on appropriate measures to promote and protect the right to education, at: <https://www.ohchr.org/en/special-procedures/sr-education/annual-thematic-reports>.

## II. PATTERNS OF DISPLACEMENT FOLLOWING RUSSIA'S FULL-SCALE INVASION

5. Russia's full-scale invasion of Ukraine in 2022 triggered the largest forced exodus of people in Europe since the Second World War.<sup>4</sup> According to data from the United Nations High Commissioner for Refugees, more than five million Ukrainians are still displaced globally, with a majority residing in European states.<sup>5</sup> Many Ukrainians are also displaced within Ukraine, having been forced to flee areas occupied by the Russian Federation and frontline zones.<sup>6</sup>
6. Figures alone cannot convey the immense personal and societal toll of displacement. Those forced to flee have done so in a context of fear and intimidation, leaving their homes and property, and often family members and friends unable to flee, behind. Uprooted and terrorised, many displaced Ukrainians suffer from post-traumatic stress disorder and are at high risk of depression.<sup>7</sup> Reported experience of symptoms of depression in Ukrainians is highest among internally displaced persons, at 50 per cent of respondents of a study conducted by the International Organisation for Migration.<sup>8</sup> Once displaced, Ukrainians may face further uncertainties, struggling to settle in new localities due to both economic factors and fear of social isolation. As international support for Ukraine diminishes and Ukraine's budget becomes even more depleted by the demands of defence, many displaced Ukrainians find themselves fearful of what lies ahead.<sup>9</sup>
7. Patterns of forced displacement of Ukrainians since Russia's full-scale invasion have received significant attention internationally. This is particularly the case in relation to the organised displacement of Ukrainian children from occupied territories to Russia itself, Russian allies, or other Russian-occupied territories of Ukraine. Tens of thousands of Ukrainian children are still unaccounted for, believed to be taken to military camps,

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4 Lily Hyde, 'Alone and unwanted: Millions of displaced Ukrainians hope to go home as the war rages' (Politico, 12 August 2024), at: <<https://www.politico.eu/article/war-in-ukraine-ukrainian-refugees-russia/>>.

5 Ukraine refugee situation, Operational Data Portal, United Nations High Commissioner for Refugees, at: <<https://data.unhcr.org/en/situations/ukraine>>.

6 Internal Displacement Monitoring Centre, Country profile: Ukraine, at: <<https://www.internal-displacement.org/countries/ukraine/>>. It bears highlighting that many Ukrainians were also displaced from Crimea and Donbas after Russia's invasion in 2014 — Vlad Mykhnenko, Elliot Delahaye & Nigel Mehdi, 'Understanding forced internal displacement in Ukraine: insights and lessons for today's crises' (2022) 38(3) Oxford Review of Economic Policy 699.

7 Katerina Sergatskova, 'The Impact of War on Ukraine as Seen Through Its Communities in Exile' (Focus Ukraine, 19 February 2025), at: <<https://www.wilsoncenter.org/blog-post/impact-war-ukraine-seen-through-its-communities-exile>>.

8 International Organisation for Migration, Mental Health in Ukraine: Displacement, Vulnerabilities and Support — Thematic Brief (November 2024), at: <<https://reliefweb.int/report/ukraine/mental-health-ukraine-displacement-vulnerabilities-and-support-thematic-brief-november-2024>>.

9 Lily Hyde, 'Alone and unwanted: Millions of displaced Ukrainians hope to go home as the war rages' (Politico, 12 August 2024), at: <<https://www.politico.eu/article/war-in-ukraine-ukrainian-refugees-russia/>>.

'educational' camps, orphanages or foster care.<sup>10</sup> According to Ukraine, 19,546 children have been forcibly taken from regions occupied by Russia since 2022,<sup>11</sup> a number echoed in August 2025 by the United States.<sup>12</sup> In February 2024, the Prosecutor of the International Criminal Court ('ICC') applied for the issuance of arrest warrants for Vladimir Putin and Maria Lvova-Belova, for their alleged responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation.<sup>13</sup> In March 2023, Pre-Trial Chamber II issued the arrest warrants.<sup>14</sup> A year later, in its March 2024 report, the Commission of Inquiry for Ukraine considered certain Russian transfers of Ukrainian children to Crimean institutions unlawful, and amounting to the war crime of unlawful transfer.<sup>15</sup> Such displacements of children have also been discussed by national decision-making bodies, with a view to ensuring the children's return to Ukraine.<sup>16</sup>

8. Beyond the unlawful displacement of children, there have been reports of Russian practices of directly displacing 'unwanted' individuals — either to territories under Ukraine's control, or to third states. Such expulsions of Ukrainians are made in an attempt to remove from occupied territories those unwilling to cooperate with occupying forces and collaborators. A recently reported incident was the expulsion of Serhiy Serdiuk, a headteacher from the town of Komyshe-Zoria, Zaporizhzhia region. After the occupation of the town and his refusal to teach the Russian-imposed curriculum, he was informed that he would be deported alongside his family. After weeks of uncertainty over their fate, they were taken to Melitopol, and then, handcuffed to a guard in a minibus, to the border between Russia and Georgia. Serdiuk, his wife and daughter were released to cross into Georgia and banned from entry into Russia for periods ranging between 40 and 50 years.<sup>17</sup> This example is emblematic. Recent reports

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- 10 Ruchi Kumar, "'Basically impossible to get them back": Russia's mass abduction of Ukrainian children is a war crime, say experts' (The Guardian, 27 June 2025), at: <<https://www.theguardian.com/world/2025/jun/27/russia-ukrainian-children-abduction-war-crime>>.
  - 11 Mansur Mirovalev, 'Ukraine says Russia took 20,000 children during war. Will some be returned?' (Al Jazeera, 10 June 2025), at: <<https://www.aljazeera.com/news/2025/6/10/russia-ukraine-children-war>>.
  - 12 Mercedes Sapuppo, 'Trump should insist on the return of Ukrainian children abducted by Russia' (Atlantic Council, 14 August 2025), at: <<https://www.atlanticcouncil.org/blogs/ukrainealert/trump-should-insist-on-the-return-of-ukrainian-children-abducted-by-russia/>>.
  - 13 Requested under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.
  - 14 Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, ICC Press Release, 17 March 2023, at: <<https://www.legal-tools.org/doc/ux75v4/pdf>>.
  - 15 Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66, 18 March 2024, paras 95–97.
  - 16 UK Parliament, Ukraine: Forcibly Deported Children, 21 May 2025, at: <<https://hansard.parliament.uk/Commons/2025-05-21/debates/6EC99795-33E5-4D5E-9FF2-C0CEDACF5BA0/UkraineForciblyDeportedChildren>>.
  - 17 Shaun Walker, 'Banned from home for 40 years: deportations are Russia's latest move to "cleanse" Ukraine' (The Guardian, 21 June 2025), at: <<https://www.theguardian.com/world/2025/jun/21/banned-from-home-for-40-years-deportation-russia-latest-move-to-cleanse-occupied-ukraine>>.

suggest that many Ukrainians are facing the same fate, ripped from their homes and dragged towards Georgia in inhuman and degrading conditions.<sup>18</sup>

9. A pattern of displacement that has received less attention despite its prevalence and pervasive nature is that of departure due to the existence of a coercive environment, where individuals are left with no choice but to leave. As detailed in part III, the illegality of displacement through coercion is well-established in international jurisprudence. TRP's testimonies reveal that Russia and its affiliated forces create conditions of coercion — through arbitrary deprivations of liberty, enforced disappearances, ill-treatment, or the threat thereof — which compel people to leave on their own. Put differently, even in cases where Russia does not physically drive people away in buses or minivans, their conduct of intimidation, terrorisation and abuse produces the same effect, ultimately forcing Ukrainians to leave. This third pattern is the focus of this submission.
10. Testimonies on file with TRP demonstrate that Ukrainians feel compelled to leave due to a coercive environment in at least three types of situations. These include where:
  - a) Individuals living under occupation are themselves *subjected to* torture, inhuman or degrading treatment, arbitrary detention and other violations of international law by occupying forces. Following these violations, those individuals feel compelled to leave and actually do leave, as remaining in place means remaining at serious risk of repetition of the violations suffered.
  - b) Individuals living under occupation are personally *threatened* with torture, inhuman or degrading treatment, arbitrary detention and other violations of international law by occupying forces. To avoid being subjected to these violations, these individuals leave.
  - c) The conduct of the full-scale invasion, and the well documented violations committed by Russia within it, create and foster the credible perception of an imminent threat of violations of international law, such as torture and arbitrary detention. Because of this, individuals are driven to leave.
    - i) In some cases, individuals leave *after* the occupation of their towns and villages, having observed the violations committed by Russian and affiliated forces directly in their occupied areas.
    - ii) In other cases, individuals leave *before* the occupation of their towns and villages — either before the forces enter their area, or before they solidify control. In these cases, individuals see no reason to wait for the occupying forces to arrive, as they already know what will unfold once they do so. Additionally, persons may fear that departure will be rendered more difficult following the establishment of Russian effective control.

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18 Volodymyr Ivanyshyn, 'Ukrainians forcibly deported by Russia held in basement without food, water, media reports' (The Kyiv Independent, 22 June 2025), at: <<https://kyivindependent.com/ukrainians-forcibly-deported-by-russia-held-in-basement-without-food-water-media-reports/>>.

11. These different situations fall differently under the protective rules of international law. The analysis in part III unpacks the elements of relevant international law obligations, and explains how far these obligations protect individuals in these distinct situations.
12. Testimonies on file with TRP provide a glimpse into the environment of coercion driving the displacement of Ukrainians. Four incidents — detailed in part IV of the report — demonstrate the coerced displacement of educators, activists and medical staff.
13. Understanding the drivers of displacement on the ground and the legal frameworks that apply to them is of critical importance for survivors. Unless the harm is understood, it cannot be legally named; and unless it is legally named — it cannot be remedied. The present submission seeks to clarify the content of the relevant legal frameworks as a first step towards their implementation and enforcement. Unlocking the full scope of international law prohibitions can serve as a basis for calls for deterrence, protection, countermeasures and reparation.
14. Coercion-driven displacement is likely to increase in the coming months. In March 2025, Vladimir Putin issued a presidential decree ordering Ukrainians in 'Russia' (understood, in the decree, as encompassing Russia-occupied territories of Ukraine) to legalise their immigration status or leave.<sup>19</sup> Unless Ukrainians accept Russia's unlawful passportisation,<sup>20</sup> they will face legal consequences, including possible expulsion from their homes.<sup>21</sup> In circumstances of mounting coercion by the occupiers, many Ukrainians are increasingly left with no choice but to leave their lives behind.

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19 Decree of the President of the Russian Federation of 20.03.2025. Указ Президента Российской Федерации от 20.03.2025 № 159, "Об особенностях правового положения отдельных категорий иностранных граждан и лиц без гражданства в Российской Федерации, изменении и признании утратившими силу некоторых указов Президента Российской Федерации", at: <<http://publication.pravo.gov.ru/document/0001202503200022>>.

20 Eric Fripp, "'Passportisation': ECtHR finds imposition of Russian citizenship in Crimea a breach of article 8 ECHR" (EJIL:Talk!, 4 February 2025), at: <<https://www.ejiltalk.org/passportisation-ecthr-finds-imposition-of-russian-citizenship-in-crimea-a-breach-of-article-8-echr/>>.

21 Putin Orders Ukrainians to 'Legalize' Immigration Status or Leave Russia by September (The Moscow Times, 20 March 2025), at: <<https://www.themoscowtimes.com/2025/03/20/putin-orders-ukrainians-to-legalize-immigration-status-or-leave-russia-by-september-a88432>>.

# III. FORCED DISPLACEMENT UNDER INTERNATIONAL LAW

15. International law contains a number of legal frameworks that regulate forced displacement. To begin with, international humanitarian law contains specific prohibitions of deportation and forcible transfer of individuals or populations under occupation, together with narrowly defined exceptions allowing the movement of protected persons. Beyond international humanitarian law, international human rights law also contains treaty-based and customary obligations binding states that are of relevance to displacement. Finally, international criminal law criminalises deportation and forcible transfer as both war crimes and crimes against humanity,<sup>22</sup> thus opening the door to the potential for individual criminal responsibility. These three legal frameworks are analysed in turn.

## INTERNATIONAL HUMANITARIAN LAW

16. ***Legal basis and applicability.*** The prohibition of deportation and forcible transfer in situations of occupation is established in art 49 of Geneva Convention IV ('GC IV'), and posits that '[i]ndividual 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.'<sup>23</sup> Though the prohibition has a long pedigree — first enshrined in the Lieber Code of 1863<sup>24</sup> — its formulation in GC IV is a reflection of the tragic events during the Second World War, when 'millions of human beings were torn from their homes, separated from their families and deported from their country, usually under inhumane conditions'.<sup>25</sup> The prohibition is also established under customary international law.<sup>26</sup> The Russian Federation is bound by this prohibition under both GC IV, to which it is a party, and customary international law. It is worth noting that the prohibition is also replicated in Russia's own military doctrine, specifically in its *Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation*.<sup>27</sup>

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22 The forcible transfer of children of a protected group to another group can also be constitutive of the crime of genocide under international criminal law. For reasons of scope, this report confines its analysis to war crimes and crimes against humanity.

23 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Art 49(1). The prohibition of deportation is also a grave breach under art 147 of Geneva Convention IV.

24 United States Department of War, Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, 24 April 1963, art 23 — 'Private citizens are no longer [...] carried off to distant parts'.

25 ICRC Commentary to Geneva Convention IV of 1958, p 278.

26 ICRC, Customary International Humanitarian Law Study, rule 129 — The Act of Displacement, at: <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule129>>.

27 Russian Federation Ministry of Defence, Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation (2001), para 75, at: <<https://ihl-databases.icrc.org/en/customary-ihl/v2/rule129>>.



17. **Personal scope of application.** The category of persons protected under GC IV, and therefore under the rule in art 49 GC IV, are 'those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.'<sup>28</sup> Nationals of the occupying force are therefore excluded. Though in most cases individuals will, without controversy, fall within the category of 'protected persons', this exclusion from protection may raise particular issues given Russian practices of passportisation that have led to the conferral of Russian nationality to many Ukrainians. In March 2025, the Kremlin stated that it has issued 3.5 million passports for Ukrainian nationals in the Luhansk, Donetsk, Kherson and Zaporizhzhia regions.<sup>29</sup> Despite this, it could be argued that Ukrainians coercively conferred Russian nationality remain protected under GC IV.
18. *First*, even though the manner in which states confer nationality is typically seen as a matter of state discretion in the exercise of sovereignty,<sup>30</sup> this is not to say that international law contains no constraints on nationality conferrals, and how the international community ought to treat them. The Ukrainian authorities consider the coercive passportisation of Ukrainians in Russian-occupied territories null and void, and therefore without legal effect.<sup>31</sup> Key here is the element of coercion — it could be said that many Ukrainians find themselves coerced into Russian citizenship, especially as their ability to pursue their daily life becomes contingent on their citizenship. Further, the international community is bound to not recognise this coerced passportisation as lawful and effective. The phenomenon of passportisation has become possible through Russia's aggression against Ukraine since 2014, and is an ongoing violation of the right to self-determination of the Ukrainian people — undoubtedly in breach of peremptory rules of international law.<sup>32</sup> States are under a duty not to recognise as lawful a situation created through a serious breach of an obligation arising under a peremptory norm of international law.<sup>33</sup> The duty of non-recognition also applies to international organisations, including the United Nations.<sup>34</sup> This duty, applied to the Russia-Ukraine context, may be logically extended to cover the non-recognition of Russian citizenship conferred through passportisation.

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28 GC IV, art 4 — Definition of Protected Persons.

29 Joanna York, "'Passportisation', propaganda: In occupied Ukraine, Russia lays down roots' (France 24, 13 March 2025), at: <<https://www.france24.com/en/europe/20250313-passportisation-propaganda-in-occupied-ukraine-russia-lays-down-roots>>.

30 Anne Peters, 'Passportisation: Risks for international law and stability — Part I' (EJIL:Talk!, 9 May 2019), at: <<https://www.ejiltalk.org/passportisation-risks-for-international-law-and-stability-part-one/>>.

31 Patricio Barbirotto, 'The Russian Citizenship Law in Ukraine and International Law' (Opinio Juris, 6 October 2022), at: <<http://opiniojuris.org/2022/10/06/the-russian-citizenship-law-in-ukraine-and-international-law/>>. An analogy could be made to the law of treaties, which provides that a treaty is void and without legal effect where its conclusion has been procured through (1) the coercion of a state representative through acts or threats directed against them, or (2) the coercion of the state by a threat or use of force. Further, the treaty will be void if (3) it conflicts with a peremptory rule of international law — Vienna Convention on the Law of Treaties, arts 51, 52 and 53.

32 The International Law Commission has considered the prohibition of aggression as a peremptory norm of international law — ILC, Commentaries to the Articles on State Responsibility, Commentary to Article 26, p 85.

33 ILC, Articles on State Responsibility (2001), art 41(2).

34 International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024, para 280.

19. *Second*, if the conferral of Russian nationality is not considered void and a person retains both Ukrainian and Russian citizenship, it could be argued that a case-by-case analysis must be undertaken to determine the 'dominant and effective nationality' of each individual.<sup>35</sup> For many, the dominant nationality will be their Ukrainian one.
20. *Third*, if the conferral of Russian nationality is not considered void and the person has not retained Ukrainian nationality (or has been forced to renounce it<sup>36</sup>), a wider test of allegiance may be adopted for the purposes of determining protected persons under art 4 GC IV. This has been suggested by the International Tribunal for the Former Yugoslavia ('ICTY') and other tribunals for individual criminal responsibility.<sup>37</sup> The ICTY Appeals Chamber in *Tadić* affirmed that 'already in 1949 the legal bond of nationality was not regarded as crucial and allowance was made for special cases' and the test ought to be a bond of allegiance to a state.<sup>38</sup> It further considered that

*This legal approach, hinging on substantial relations more than on formal bonds, becomes all the more important in present-day international armed conflicts. While previously wars were primarily between well-established States, in modern inter-ethnic armed conflicts such as that in the former Yugoslavia, new States are often created during the conflict and ethnicity rather than nationality may become the grounds for allegiance.*<sup>39</sup>

21. Under all three approaches, Ukrainians coercively granted passports by Russia could still be considered protected persons under GC IV, and thus benefit from its protections against deportation and forcible transfer. This comports with the object and purpose of the legal regime: any other interpretation would allow the occupying power to abusively defeat its obligations through coercive passportisation.
22. **Territorial scope of application**. Another important condition built into art 49 GC IV is that it applies to situations of occupation. Occupation covers situations where 'a state exercises an unconsented-to effective control over a territory to which it has no sovereign title.'<sup>40</sup> According to The Hague Regulations of 1907, '[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.'<sup>41</sup> While occupation clearly covers circumstances where a state has

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35 Michael N. Schmitt, 'Deportation in International Humanitarian and Criminal Law Against the Backdrop of the War in Ukraine', in Jelena Pejic and Captain Margaret Kotlik, *Civilian Protection in Armed Conflict* (OUP 2025), p 179. This is also the approach favoured by the ICRC in its 2025 Commentary of Geneva Convention IV: 'In the ICRC's view, this approach — which places substantial relations above formal ties — is also consistent with the object and purpose of the Convention and helps ensure its effectiveness in complex situations that characterize certain modern-day armed conflicts' — at para 1020.

36 Olena Roshchina, 'Russian "law" on renouncing Ukrainian citizenship is null and void — Ukraine's Foreign Ministry' (Ukrainska Pravda, 16 March 2023), at: <<https://www.pravda.com.ua/eng/news/2023/03/16/7393725/>>.

37 ICRC, 2025 Commentary to Geneva Convention IV, paras 1028 and 1034.

38 ICTY, *Prosecutor v Tadić*, IT-94-1-A, Appeals Chamber Judgment, 15 July 1999, para 165.

39 id, para 166.

40 ICRC, Occupation, at: <<https://www.icrc.org/en/law-and-policy/occupation>>.

41 Hague Regulations 1907, art 42.

established effective control over territory,<sup>42</sup> it is less clear whether occupation-related protections can be extended to the invasion phase. This matter has been the subject of controversy among experts. While some suggest that protections under GC IV would 'begin as soon as the foreign forces came into contact with the civilian population of the territory being invaded', others argue that such an extended reading of the law lacks legal basis.<sup>43</sup> Most cases of documented displacement in TRP's database occurred after Russia established control over Ukrainian territories, and therefore unambiguously fall within the scope of the rule. Debate may arise over the displacement pattern identified under (c)(ii) above,<sup>44</sup> where persons leave prior to any close contact between invaders and the local population. Even there, recent work has suggested that certain occupation law protections could be triggered through effective control over individuals, even in circumstances where the occupier does not (yet) control territory'.<sup>45</sup>

23. ***Distinguishing between 'deportation' and 'transfer'***. A distinction must be drawn between the categories of 'deportation' and 'forcible transfer'. While deportation refers to movement across *de jure* or *de facto* state lines (for instance, towards the territory of the occupying power or a third state), forcible transfer refers to movement within occupied territory or territory of the occupied state.<sup>46</sup>
24. ***Protection from individual and mass displacement***. Not only mass displacements, but also *individual* transfers of persons are covered by the prohibition in GC IV and custom. Despite some contrary national jurisprudence, the better view is that individual displacement is indeed covered by the customary prohibition.<sup>47</sup>
25. ***The meaning of 'forcible' deportation/transfer***. The prohibition of deportation and transfer under GC IV has been interpreted to cover practices of 'forcible' displacement. At its core, the test is about determining the presence or absence of a genuine choice for individuals to stay.<sup>48</sup> The interpretation of the rule has primarily taken place in fora tasked with the determination of individual criminal responsibility, most notably the ICTY and the ICC. Despite this, their interpretation bears on the content of the prohibition under international humanitarian law. ICTY's jurisprudence suggests that 'force' can be exercised in different ways: it 'is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons

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42 International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024, para 90.

43 ICRC, Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory (2012), pp 24–26.

44 See above, at p 5.

45 Michael N. Schmitt, 'Deportation of Ukrainian Civilians to Russia: The Legal Framework' (Articles of War, 24 March 2022), at: <<https://lieber.westpoint.edu/deportation-ukrainian-civilians-russia-legal-framework/>>.

46 ICTY, *Prosecutor v Radovan Karadžić*, IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, Vol. I, para 488; ICC, Bangladesh Situation, Decision on the Prosecution's Request for a Ruling on Jurisdiction Under Article 19(3) of the Statute, 6 September 2018, para 55.

47 Michael N. Schmitt, 'Deportation in International Humanitarian and Criminal Law Against the Backdrop of the War in Ukraine', in Jelena Pejic and Captain Margaret Kotlik, *Civilian Protection in Armed Conflict* (OUP 2025), pp 177–178.

48 ICRC, 2025 Commentary to Geneva Convention IV, para 3170.

or another person, or by taking advantage of a coercive environment.<sup>49</sup> This prohibition covers not only instances where the Occupying Power expressly orders or organises the deportation/transfer, but also those in which the Occupying Power's conduct in violation of international law causes persons to leave.<sup>50</sup>

26. Importantly, the interpretation of forcible transfer and deportation must not be stretched so far as to cover any displacement driven by fear of armed confrontations. Otherwise, every movement from occupied territory may be taken to meet the test of 'forcible' displacement. According to the Eritrea-Ethiopia Claims Commission, in cases where individuals leave due to a coercive environment, 'those who leave a country must have experienced dire or threatening conditions so extreme as to leave no realistic alternative to departure.'<sup>51</sup>
27. **Exceptions to the prohibition**. Under art 49(2) GC IV, occupying powers are granted two limited exceptions for the movement of local populations: '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.' Under the first exception, it is the well-being of the population that requires their displacement from an occupied locality. Under the second, protected are the imperative military reasons of the occupier. The standard under the latter exception is stringent, with one commentator suggesting that '[i]mperative military necessity means that an operation may fail, or forces be at risk, if the action is not taken.'<sup>52</sup> It bears emphasis that even where one of the two legitimate aims of evacuation is met, '[s]uch 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' and '[p]ersons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.'<sup>53</sup> Not only must the conditions for evacuation be met, but the occupying power is also under an obligation to ensure that the removals are carried out 'in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.'<sup>54</sup>
28. **Special rules for children**. While this submission does not focus on the displacement of children, as such, from occupied territories, it is important to highlight that children are afforded special protection from displacement under international humanitarian law. Thus, under Additional Protocol I,

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49 ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Appeal Judgment of 22 March 2006, para 281.

50 ICRC, 2025 Commentary to Geneva Convention IV, paras 3171–3173.

51 Eritrea-Ethiopia Claims Commission, Partial Award: Civilians Claims, Ethiopia's Claim 5 (2004) 44 ILM 630, para 126.

52 Michael N. Schmitt, 'Deportation in International Humanitarian and Criminal Law Against the Backdrop of the War in Ukraine', in Jelena Pejic and Captain Margaret Kotlik, *Civilian Protection in Armed Conflict* (OUP 2025), pp 182–183.

53 GC IV, art 49(2).

54 GC IV, art 49(3).



*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.*<sup>55</sup>

29. This regime is more limited than the one under art 49 GC IV. Evacuations from occupied territory are only permissible for medical reasons. The drafters of the Protocol considered that the dangers of such evacuations — under the guise of safety or other reasons — are greater than those associated with remaining in the occupied territory.<sup>56</sup> Many Russian practices of displacing Ukrainian children within or outside occupied territories constitute clear violations of these rules.<sup>57</sup>
30. **Fundamental guarantees.** Even if individuals are not protected under art 49 GC IV, additional protection could be found under the fundamental guarantees established by Additional Protocol I, subject to individuals being considered 'in the power of a Party to the conflict'. These guarantees require of parties to conflict the respect of the person and honour of individuals, to abstain from torture — physical or mental, outrages upon personal dignity and collective punishment.<sup>58</sup>
31. **It can be concluded that international humanitarian law establishes robust safeguards against the displacement of protected persons.**

## INTERNATIONAL HUMAN RIGHTS LAW

32. International human rights law establishes a wide range of positive and negative obligations which bind states in their protection of individual rights. Human rights law is contained in a number of treaties, universal and regional, and in customary law. A core of human rights obligations arising under both treaties and custom regulate practices of arbitrary displacement. The Russian Federation is a party to the International Covenant on Civil and Political Rights ('ICCPR'), the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the Convention on the Rights of the Child, among others.<sup>59</sup> It is also bound by customary international human rights law.

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55 Additional Protocol I, art 78(1).

56 Yves Sandoz, Christophe Swinarski, & Bruno Zimmermann, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1987), para 3227.

57 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, ODIHR.GAL/37/23/Rev.1/Corr.1, 4 May 2023.

58 Additional Protocol I to the Geneva Conventions, art 75(1) and (2).

59 United Nations Treaty Body Database, Ratification status by country: Russian Federation, at: <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN)>.

33. **Unlawful displacement.** Under most human rights instruments, there is no self-standing prohibition of unlawful displacement of individuals. A prohibition of unlawful displacement can be established through the right to liberty of movement and freedom to choose one's residence,<sup>60</sup> the right to home<sup>61</sup> and housing,<sup>62</sup> and property protections.<sup>63</sup> The United Nations Guiding Principles on Internal Displacement, while not binding, affirm that '[e]very human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.'<sup>64</sup> Therefore, a key concept in need of interpretation is 'arbitrariness'. According to the Human Rights Committee, 'the notion of "arbitrariness" is not to be fully equated with "against the law" [domestic and international], but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.'<sup>65</sup> Conduct by a state that creates an environment of terror and intimidation, prompting people to abandon their homes and flee to safety, is likely to satisfy the threshold of arbitrariness. For instance, a widespread or systemic state conduct of torture, enforced disappearances and arbitrary detentions that leaves no choice to individuals but to leave would undoubtedly meet that threshold. Even a *failure* of a state to act against threats to life that drive a person into involuntary exile, or to provide remedies for that person to return safely, has been deemed a violation of the freedom to choose one's residence by the Human Rights Committee.<sup>66</sup>
34. Further, the right to self-determination, recognised under both the ICCPR and the ICESCR, bears on matters of displacement. As recognised by the International Court of Justice in its 2024 Palestine Advisory Opinion, 'by virtue of the right to self-determination, a people is protected against acts aimed at dispersing the population and undermining its integrity as a people'.<sup>67</sup> In the context of the Opinion, the Court reiterated that 'Israel's settlement policy as a whole, its annexation of territory and its related legislation and measures that discriminate against Palestinians in the Occupied Palestinian Territory contribute to the departure of Palestinians from certain areas of the Occupied Palestinian Territory, notably from Area C and East Jerusalem.'<sup>68</sup> Similarly, the range of practices and measures taken by the Russian Federation compel Ukrainians to flee in contravention with their right to self-determination.

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60 For instance, under art 12 ICCPR.

61 For instance, under art 17 ICCPR.

62 For instance, under art 11 ICESCR.

63 For instance, under art 1 Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11.

64 United Nations High Commissioner for Refugees (UNHCR), 'Guiding Principles on Internal Displacement' (22 July 1998), Principle 6(1).

65 Human Rights Committee, General comment 36 on the right to life, CCPR/C/GC/36, 3 September 2019, para 12.

66 Human Rights Committee, *Jiménez Vaca v. Colombia*, Communication No. 859/1999, 25 March 2002, CCPR/C/74/D/859/1999, para 7.4.

67 International Court of Justice, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para 239.

68 *ibid.*

35. Even if, in principle, it could be argued that the conduct of Russian state organs and persons under their control have created such conditions entailing arbitrary interferences with the human rights to, among others, residence, home, property and self-determination, a first preliminary question is to determine whether Russia owes obligations to such persons in the first place.
36. **Jurisdiction**. As a general rule, states owe obligations under human rights law to individuals under their jurisdiction.<sup>69</sup> Jurisdiction is primarily territorial, extending over those located within the territory of a particular state. There are circumstances, however, in which jurisdiction is also established extraterritorially. There are two main models of extraterritorial jurisdiction. The first is a spatial model, which applies when states exercise effective control over territories outside their sovereign borders.<sup>70</sup> The Russian Federation has been found to exercise such control over occupied Ukrainian territories.<sup>71</sup> The second is a personal model, which applies when states exercise control over the enjoyment of individual rights to persons located outside their spatial control.<sup>72</sup> This jurisdiction can be established, for instance, when states conduct extraterritorial surveillance or carry out targeted killings. Although the precise boundaries of the personal model of jurisdiction have been hotly contested both in the jurisprudence<sup>73</sup> and in academic works,<sup>74</sup> it is today clear that this model is firmly established in law. Thus, in the words of the Human Rights Committee, interpreting the jurisdictional clause of the ICCPR, 'a State party has an obligation to respect and ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose *enjoyment of the right to life it exercises power or effective control*.'<sup>75</sup>
37. Most patterns of displacement observed by TRP clearly fall within Russia's jurisdiction under the spatial model following its occupation of Ukrainian territories. Under the personal model of jurisdiction, it could be argued that the Russian Federation exercises power over the rights of Ukrainians before establishing effective control over occupied areas, or indeed even before the invasion phase of a particular town. This would mean that, in certain circumstances, their climate of intimidation and operations in breach of international law could remove choice over decisions to stay or leave, and thus interfere

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69 Note that the applicability of human rights law depends on the wording of specific treaty instruments, and different treaties use distinctive language — 'jurisdiction', 'territory and jurisdiction', etc.

70 Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (OUP 2011), ch 4.

71 European Court of Human Rights, *Ukraine and The Netherlands v Russia*, Grand Chamber Admissibility Decision, paras 555–697.

72 Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (OUP 2011), ch 4.

73 Marko Milanovic, 'The Mariupol Test: Analysing the Briefs of Third States Intervening in Ukraine and the Netherlands v. Russia' (EJIL:Talk!, 9 January 2024), at: <<https://www.ejiltalk.org/the-mariupol-test-analysing-the-briefs-of-third-states-intervening-in-ukraine-and-the-netherlands-v-russia/>>.

74 Charlotte E. Blattner, 'Beyond Territoriality: Symposium on Jurisdictional "Hooks" for (Extraterritorial) Human Rights Obligations — Post Agostinho Learning Moments for Extraterritorial Jurisdiction in Human Rights Law, Using a Public International Law Perspective' (Opinio Juris, 30 April 2024), at: <<http://opiniojuris.org/2024/04/30/beyond-territoriality-symposium-on-jurisdictional-hooks-for-extraterritorial-human-rights-obligations-post-agostinho-learning-moments-for-extraterritorial-jurisdiction-in-human/>>.

75 Emphasis added. Human Rights Committee, General comment 36 on the right to life, CCPR/C/GC/36, 3 September 2019, para 63.

with the enjoyment of rights of individuals located in yet unoccupied areas, forcing them to move away from their homes. Under this interpretation, all situations detailed in part II — (a) to (c)<sup>76</sup> — could be covered by the protective reach of human rights law.

38. ***Interaction between human rights law and international humanitarian law.*** Finally, it is accepted that human rights protections do not cease in times of armed conflict, and that they continue to operate concurrently with international humanitarian law.<sup>77</sup> The sharp-end issue is how precisely the obligations under these legal frameworks interact. Human rights bodies have sought a harmonious approach to the interpretation of these two bodies of law.<sup>78</sup> Thus, through the principle of systemic integration codified in art 31(3)(c) of the Vienna Convention on the Law of Treaties, ‘any relevant rules of international law applicable in the relations between the parties’ must be taken into account in the interpretation process. This means that, in interpreting the relevant obligations under human rights law in times of armed conflict, regard must be had to the relevant rules of international humanitarian law.
39. In some instances, it may be that the human rights standard could be accommodated to the standard of an international humanitarian law provision dealing with the same subject-matter. Thus, for displacement *during occupation*, it has been suggested that the prohibition of arbitrary displacement can accommodate the two exceptions under GC IV: security of the civilians involved and imperative military reasons.<sup>79</sup> The human rights concept of arbitrariness can easily be moulded to the relevant test under humanitarian law. In other situations, there may be no equivalent rule of humanitarian law regulating the same subject-matter. Thus, for interferences with the right to freedom of movement, residence and home *during an invasion or pre-invasion stage*, the dominant framework will remain human rights law, though the context of armed conflict can be relevant in interpreting the tests for limiting these rights (*ie* legitimate aim, necessity and proportionality).<sup>80</sup>
40. **It can be concluded that international human rights law provides protection against the arbitrary displacement of individuals.**

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76 Above at p 5.

77 International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para 25.

78 Human Rights Committee, General comment 36 on the right to life, CCPR/C/GC/36, 3 September 2019, para 64; European Court of Human Rights, *Ukraine and The Netherlands v Russia*, Grand Chamber, Judgment of 9 July 2025, paras 427–428.

79 United Nations High Commissioner for Refugees, ‘Guiding Principles on Internal Displacement’ (22 July 1998), Principle 6(2).

80 See, for instance, Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, 2 November 1999, paras 11–18.



## INTERNATIONAL CRIMINAL LAW

41. International criminal law establishes individual criminal responsibility for commission of or participation in international crimes — genocide, crimes against humanity, war crimes and the crime of aggression. International crimes are established under both treaties, such as the Rome Statute of the ICC, and custom. The ICC has jurisdiction over crimes committed or facilitated by Russian and Russia-affiliated individuals by virtue of Ukraine's acceptance of the Court's jurisdiction through two declarations.<sup>81</sup> Such individuals can also be investigated and prosecuted by any national state exercising jurisdiction — Ukraine itself, as the territorial state, or others, either by virtue of the principle of universality or any other applicable jurisdictional basis (such as vital interests or nationality).<sup>82</sup>
42. International criminal law prohibits deportation and forcible transfer. The forcible transfer of children of one group to another is an act that can be constitutive of genocide;<sup>83</sup> the deportation or forcible transfer of a civilian population are also self-standing crimes against humanity,<sup>84</sup> and can also be prosecuted as acts of persecution;<sup>85</sup> they are also war crimes when committed in either international<sup>86</sup> or non-international armed conflicts.<sup>87</sup> The war crimes regime is built on the prohibitions under international humanitarian law, and their regime of grave breaches, and crimes against humanity are criminalisations of large-scale violations of human rights. As war crimes and crimes against humanity have different content and protect different interests, care must be taken in identifying their constitutive objective and subjective elements. That said, prosecuting authorities can charge the same conduct under both crimes.<sup>88</sup>
43. A comparison between deportation and forcible transfer as war crimes and crimes against humanity demonstrates an important difference — the scope of potential victims under the latter category can be significantly broader. This is because the war crimes (as the underlying prohibition in art 49 GC IV) are, under a strict textual interpretation, contingent on occupation. Crimes against humanity contain no such constraints, and could therefore capture displacement amidst or preceding conduct of hostilities. Given this, crimes against humanity could more easily capture all situations of compelled displacement evidenced in TRP testimonies, as detailed in situations (a)–(c) in part II.<sup>89</sup> Of course, it must be shown that 'one or more acts that the perpetrator has performed

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81 ICC, Situation in Ukraine, at: <<https://www.icc-cpi.int/situations/ukraine>>. The ICC has jurisdiction for Rome Statute crimes other than aggression.

82 Cedric Ryngaert, *Jurisdiction in International Law* (OUP 2015), ch 4.

83 Rome Statute, art 6(e).

84 Rome Statute, art 7(1)(d).

85 Rome Statute, art 7(1)(h).

86 Rome Statute, art 8(2)(a)(vii) and 8(2)(b)(viii).

87 Rome Statute, art 8(2)(e)(viii).

88 Guido Acquaviva, Forced displacement and international crimes (2011) UNHCR Legal and Protection Policy Research Series, p 19.

89 See above, at p 5.

produced the effect to deport or forcibly transfer the victim'.<sup>90</sup> Movement of persons, as such, would not suffice — the displacement must be linked to the conduct of the perpetrator.

44. Deportation and forcible transfer have a long pedigree of prosecution under international criminal law,<sup>91</sup> starting with the Nuremberg trials<sup>92</sup> and the subsequent trials by individual occupying powers.<sup>93</sup> In the evolution of these crimes, of particular note is the jurisprudence of the ICTY. In *Stakić*, the Appeals Chamber considered 'that the actus reus (material element) of deportation is the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a de jure state border or, in certain circumstances, a de facto border, without grounds permitted under international law', and that the *mens rea* of the crime does not require intention to move the individual or group out of occupied territory permanently. Importantly, in relation to possible exceptions to the prohibition, the Chamber held that 'displacement for humanitarian reasons is justifiable in certain situations [but] the Appeals Chamber agrees with the Prosecution that it is not justifiable where the humanitarian crisis that caused the displacement is itself the result of the accused's own unlawful activity'.<sup>94</sup>
45. On the distinction between deportation and forcible transfer, ICTY jurisprudence has clarified that the two crimes are closely related. Even if no *de jure* or *de facto* border is crossed for conduct to qualify as deportation, it could still amount to forcible transfer. To this effect was the judgment of the Appeals Chamber in *Krnjelac*, where the Court affirmed that

*The prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference. The forced character of displacement and the forced uprooting of the inhabitants of a territory entail the criminal responsibility of the perpetrator, not the destination to which these inhabitants are sent.*<sup>95</sup>

46. For both the war crimes and crimes against humanity of deportation and transfer, a crucial question is the meaning of 'forcible' displacement. At their core, these crimes are directed at conduct compelling individuals to move against their will, without a genuine choice. As explained above, fear of violence, duress, detention, psychological oppression, and other such circumstances may create a coercive environment where there is no choice

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90 ICC, *Prosecutor v. Ruto et al.*, ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para 245.

91 Victoria Colvin and Phil Orchard, 'A forgotten history: forcible transfers and deportations in international criminal law' (2021) 32(51) Criminal Law Forum 95.

92 The Trial of German Major War Criminals at Nuremberg, Judgment of 1 October 1946.

93 United Nations War Crimes Commission, *United States v Milch*, Judgement of 1948, VII Law Reports of Trials of War Criminals 27; United Nations War Crimes Commission, *United States v Krupp et al*, Judgment 1949, X Law Reports of Trials of War Criminals 69.

94 ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Appeal Judgment of 22 March 2006, paras 278 and 287 — discussing deportation as a crime against humanity.

95 ICTY, *Prosecutor v Krnjelac*, IT-97-25-A, Appeal Judgment of 17 September 2003, para 218.

but to leave. The ICTY has held that the shelling of civilian objects, burning of civilian property and threats of criminal conduct calculated to terrify the population may, depending on the circumstances, suffice to demonstrate an absence of choice.<sup>96</sup>

47. At the ICC, while the elements of crimes for the war crimes of deportation and transfer do not elaborate on the meaning of 'forcible' displacement/deportation/transfer, the crimes against humanity ones do. Thus, the elements of the crime against humanity of deportation and forcible transfer are, as follows:
- 1) The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts. [The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.]
  - 2) Such person or persons were lawfully present in the area from which they were so deported or transferred.
  - 3) The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
  - 4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
  - 5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>97</sup>
48. This notion of 'forcible' was confirmed by the ICC in its Decision on the Confirmation of Charges in *Muthaura, Kenyatta and Ali*. There, it was held that 'the destruction of homes in residential areas, the brutality of the killings and injuries, the rape of perceived ODM supporters, and the public announcements to the effect that 'all Luos must leave' amounted to coercion.'<sup>98</sup> In *Ntaganda*, the ICC Trial Chamber distinguished between forcible displacement and 'incidental displacement as a result of an entirely lawful attack, or collateral consequences of a lawful attack'. The latter would not satisfy the elements of crimes. The Chamber reaffirmed that a genuine lack of choice on the part of the individuals transferred must be demonstrated.<sup>99</sup>

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96 ICTY, *Prosecutor v Simić*, IT-95-9-T, Judgment of 17 October 2003, para 126; ICTY, *Prosecutor v Milutinović et al*, IT-05-87-T, Judgment of 26 February 2009, Vol. I, para 165.

97 ICC, Elements of crimes, pp 4-5, at: <<https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>>.

98 ICC, *Prosecutor v Muthaura, Kenyatta and Ali*, ICC-01-09-02/11, Pre-Trial Chamber II Decision on the Confirmation of Charges, 23 January 2012, para 244.

99 ICC, *Prosecutor v Ntaganda*, ICC-01/04-02/06, Trial Chamber VI Judgement of 8 July 2019, para 1056.

49. The ICC has also found that it is possible to conceive of *attempted* deportation falling within the scope of the Rome Statute — '[i]f the victims refused to leave the area despite the coercive environment or they did not cross an international border, it would constitute forcible transfer or an attempt to commit the crime of deportation.'<sup>100</sup>
50. Thus, under both custom and the Rome Statute, in the jurisprudence of both the *ad hoc* tribunals for individual criminal responsibility and the ICC, the core of the test for deportation and forcible transfer is the genuine absence of choice on whether to leave or to stay.
51. **It can be concluded that the legal framework of international criminal law establishes individual responsibility for those participating in deportation and forcible transfer.**

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100 ICC, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, Pre-Trial Chamber III, 14 November 2019, para 52.



## IV. FORCED DISPLACEMENT FROM UKRAINIAN TERRITORIES: THE FACTS ON THE GROUND

52. Testimonies collected by TRP paint a grim reality of displacement of Ukrainians from occupied territories in the context of a coercive environment enabled and maintained by the Russian Federation. The following are four incidents that exemplify the climate of terror and intimidation instilled by the Russian Federation and its affiliates.
53. ***Incident 1*** concerns the intimidation, detention and ill-treatment of a Ukrainian educator in Kherson region. The witness reports that, shortly after the occupation of her town, representatives of the occupation authorities began holding meetings with educators, promoting the Russian education management system, and offering teachers, educators and heads of schools and kindergartens to side with the Russian occupation authorities. Occupiers and collaborators subsequently began preparing schools for the new 'Russian' curriculum and expelling local educators from their institutional premises. Tactics of intimidation were on the rise. The witness was made aware that a director of a local lyceum had been detained for a day for refusing to hand over computer equipment belonging to her school. After the detention of the school director, the witness started planning her departure from the city. Her departure was delayed due to shelling in the region.
54. As she was waiting for an opportune moment to leave the occupied town, soldiers arrived at her house with assault rifles to collect her. The witness asked them: 'will you torture? You better shoot me in the yard.' The soldiers took her to a police department converted into a detention centre. The reason for the witness's detention, as explained by her captors, was the fact that she promoted Ukrainian education in the city, introduced distance learning, and refused to hand over educational equipment, including computer equipment. During her seven days in detention, the witness was provided neither food nor basic necessities (the only food she received was provided by her husband), and had to endure the sounds of torture of other detainees. Two days after her release, the witness left her town for territories controlled by Ukraine.
55. ***Incident 2*** narrates the detention, torture and sexual abuse of a woman who sought to assist the organisation of pro-Ukrainian rallies in a town in Zaporizhzhia region. The witness used her Facebook account to urge participation in these rallies. Almost immediately, the Russian occupying forces started detaining the organisers of the rallies. One morning, four men in black uniforms with Russian flag patches on their sleeves, balaclavas and body armour came to her home and took her away, handcuffed and with a bag over her head. She was taken to a detention centre. In the centre, the living conditions were inhuman and undignified. As the witness recalls, she was placed in 'a room of three meters, very small, two tables and two stools. Nothing else, everything is in tiles, in bars, everything is dirty, incomprehensible'. The witness was lightly dressed and not provided with additional clothing despite the sub-zero temperatures outside. The guards opened the window of her cell and prohibited her from closing it.

56. During her interrogations, the witness was beaten and threatened. In her first interrogation, one of the Russian soldiers beat her on the ears with books from both sides. At night, a soldier attempted to rape her twice. As recorded in the testimony, the witness was scared, crying, and had a reddened body from scratches when she fought him off. Before her release, she was ordered to record a propaganda video for Russia. She refused. They continuously threatened her, including with 'an elephant': the placement of a gas mask over her face, with soldiers intermittently blocking the air. Under such immense psychological pressure and physical harm, the witness recorded the video. A day after her release, she took her daughter and left for Ukrainian-controlled territory.
57. **Incident 3** concerns the detention of a man holding pro-Ukrainian views from a town in Zaporizhzhia region. The man, eighteen years of age at the time of detention, was running a pro-Ukrainian news channel on Instagram. From April 2022, the witness observed abductions of locals by the occupation authorities, and hid at his acquaintances'. Despite this, he was found in June 2022, detained for five days, and questioned about his online activities. After his release, he stayed at home for 2 weeks without leaving the apartment. At the same time, he was looking for carriers, but many refused to take two young men — him and his cousin. In the end, he was able to leave, together with his mother and brother, towards an area of Ukraine under government control.
58. **Incident 4** is composed of five testimonies from hospital staff that worked at a medical institution in a town in Mykolaiv region. These testimonies reveal the critical shortages of staff, including the departure — without notification — of the chief hospital doctor on the first day of the occupation.
59. The witnesses describe daily searches of the hospital by occupying forces, compulsion to hand over much-needed medical equipment, intimidation of staff, obstruction of treatment — all against the background of the cases of tortured and shelled patients they needed to care for. The occupiers wanted to take expensive and necessary medical equipment. The staff hid it, so the Russians 'threatened to take away the beds and mattresses.'
60. The active chief physician of the hospital was detained by the occupying forces, and told he would survive only if he left the city. He left within 24 hours of his release. Most witnesses from the hospital interviewed by TRP left the town in the weeks and months following its occupation.
61. **Timing of departure**. While most displacements occurred in the context of established occupation, Incident 4 suggests that some people left before the occupying forces solidified control over the town. Such compelled departures could be considered unlawful under (1) an expanded interpretation of the prohibition in art 49 GC IV, applicable before the establishment of effective control by the occupying forces; and (2) the prohibition of arbitrary displacement under human rights law (as a self-standing customary prohibition or the combination of different rights, such as liberty, residence and home).

62. **The existence of a coercive environment.** All four incidents demonstrate the coercive environment created, maintained and fuelled by Russian forces and their affiliates, ultimately leading to the displacement of Ukrainians from occupied territories. In Incidents 1, 2 and 3, the departure of the witnesses occurred after unlawful detention, torture and ill-treatment, both physical and mental. Incident 4 also reveals patterns of displacement preceding the solidification of Russia's effective control.
63. A parallel can be drawn with ICTY's Trial Judgment in *Stakić*. From the second half of 1991 until April 1992, the non-Serb population of the municipality of Prijedor was living in 'constant fear and uncertainty'. Propaganda fuelled an 'atmosphere of mistrust, fear, and hatred'.<sup>101</sup> Those who left the municipality did so under heightened pressure. One witness provided the following description:
- we no longer had any rights there. We no longer had the right to live, let alone own anything. Any day, somebody could come, confiscate your car, take away your house, shoot you, without ever being held responsible for it.*<sup>102</sup>
64. The Trial Chamber considered that there indeed had been a coercive environment resulting in forcible displacement under the crime against humanity of deportation. In the case of Russian and Russia-affiliated individuals, a similar pattern can be observed. Intimidation, torture, detentions, disappearances, looting all contribute to the absence of genuine choice in decisions to stay or leave. This coercive environment is further compounded by the absolute impunity of Russian soldiers and collaborators for their wrongful acts.

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101 ICTY, *Prosecutor v. Stakić*, Trial Chamber Judgment of 31 July 2003, Case. No. IT-97-24-T, para 688.

102 *id.*, para 691.

## V. ESTABLISHING AND IMPLEMENTING STATE AND INDIVIDUAL RESPONSIBILITY FOR FORCED DISPLACEMENT

65. The previous sections outlined a number of obligations under international humanitarian law, human rights law and international criminal law that bear on the regulation of displacement. Whose responsibility do these obligations engage? And how can responsibility be implemented? This section examines these two questions.
66. The concept of state responsibility is anchored in customary international law. It is built on the notion of the internationally wrongful act, which denotes conduct consisting of an action or omission that (a) is attributable to the state under international law; and (b) constitutes a breach of an international obligation of the state.<sup>103</sup> If the Russian Federation, through its *de jure* or *de facto* organs, other entities whose operations it instructs, directs or controls, or whose actions are otherwise attributable to it, breaches obligations under treaty or customary international humanitarian law or international human rights law, its responsibility will automatically arise.
67. The responsible state is under an obligation to make full reparation for the injury caused by its internationally wrongful act.<sup>104</sup> Reparation can take the form of restitution, compensation and/or satisfaction.<sup>105</sup> Importantly, in the implementation of a state's responsibility, a key role can be played not only by the injured state, but also by other non-injured states acting in the collective interest. Non-injured states can invoke the responsibility of the wrongdoing state in front of international bodies (courts, tribunals, mechanisms).<sup>106</sup> Further, there is a discernible trajectory towards acceptance that non-injured states can take countermeasures in the collective interest.<sup>107</sup> Countermeasures have been a critical part of the discussion over frozen Russian assets (and the possibility of their seizing to provide reparation to Ukraine).<sup>108</sup>

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103 ILC, Articles on State Responsibility (2001), art 2.

104 id, art 31.

105 id, art 34.

106 id, art 48.

107 For an analysis of recent state positions that bear on the legal boundaries of countermeasures, see Talita Dias, 'Countermeasures in international law and their role in cyberspace' (2024) Chatham House Research Paper, p 48.

108 Philippa Webb, Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine, European Parliamentary Research Service, February 2024, at: <[https://www.europarl.europa.eu/RegData/etudes/STUD/2024/759602/EPRS\\_STU\(2024\)759602\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2024/759602/EPRS_STU(2024)759602_EN.pdf)>.



68. Beyond state responsibility, individual criminal responsibility can play an important role through punishment, deterrence and truth-telling in domestic and international trials. Both national judiciaries and international bodies, such as the ICC, can exercise jurisdiction over international crimes.
69. Importantly, responsibility under international criminal law does not only arise for those who physically commit crimes. There is a myriad of ways for participating in international criminality. Thus, responsibility for deportation and forcible transfer can be borne by those who order, solicit or induce the crimes; those who aid and abet their commission; those that in any other way contribute to the commission or attempted commission of the crimes by a group of persons acting with a common purpose.<sup>109</sup> To take aiding and abetting as an example, individuals can provide practical assistance, encouragement, or moral support to the perpetration of a crime, whether by positive action or omission, in ways that have an effect over the commission of the crime in question. Thus, the ICTY found responsibility for aiding and abetting crimes of displacement in circumstances where individuals made morale boosting speeches with a substantial effect on the commission of the crimes.<sup>110</sup>
70. **The wrong of forced displacement can only be addressed if all forms of responsibility — of all relevant entities and perpetrators — are duly established and implemented.**

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109 Rome Statute, art 25(3)(b), (c), (d).

110 ICTY, *Prosecutor v Milutinović et al*, IT-05-87-T, Trial Chamber Judgment of 26 February 2009, para 281.

## VI. CONCLUSIONS AND RECOMMENDATIONS

71. Following Russia's full-scale invasion, Ukrainians have faced unlawful displacement not only through the orchestrated campaigns of physically 'bussing' children and unwanted individuals out of or within occupied Ukrainian territories. They have been forced to move through a coercive environment created and fuelled by the Russian Federation. Arbitrary deprivations of liberty, torture and other forms of ill-treatment, property violations, the general intimidation of the civilian population are all building blocks of this coercive environment. They leave individuals with no choice but to seek safety elsewhere, to leave their homes and lives behind. Special targets of this coercive environment are educators, activists, journalists, specialised staff refusing to cooperate with the occupation authorities and collaborators. While some individuals lived through the solidification of Russian occupation in their towns, others left before the arrival of the occupiers. They knew what would be unleashed on them once under the control of Russian forces.
72. International law contains a number of rules that prohibit forced displacement.
  - International humanitarian law contains a specific prohibition of deportation and forcible transfer.
  - International human rights law covers matters of forced displacement, though in a fragmented fashion — through the rights to liberty of movement, residence, home, housing and property.
  - International criminal law criminalises deportation and forcible transfer as both crimes against humanity and war crimes.
73. Of relevance to all these obligations are the coercive tactics driving people away, leaving no choice in their decision-making. This absence of choice can be achieved through the use of a range of tactics — physical force, threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power.
74. To say that international law prohibits Russia's practices of forced displacement is not sufficient. The law must be analysed, applied to facts, and implemented. To this effect, we advance the following recommendations:
  - 1) States, international organisations and other stakeholders should pay close attention to Russia's practices of displacement in all their variety. Beyond the deportations and forcible transfers of children from educational and foster institutions, relevant stakeholders should invest in analysing patterns of coercion that drive displacement from and within Ukraine.
  - 2) Human rights mandate-holders, review mechanisms, and domestic authorities should take measures to specifically call attention to and condemn Russia's coercive environment driving Ukrainian displacement. By now, it has become clear that Putin and his regime seek to remove from occupied Ukrainian territories any individuals committed to their Ukrainian identity. Russia's practices of direct displacement of

persons, coercion and passportisation all betray its ultimate goal of removing any individuals who may resist its occupation and solidification of control. Relevant stakeholders must speak out, drawing international attention to Russia's coerced displacements.

- 3) States should consider invoking, as non-injured third states, the responsibility of the Russian Federation in front of every available procedural body, and adopting third-party countermeasures, including sanctions, to induce Russia to comply with its international obligations. States should also ensure the operation of the Register of Damage for Ukraine and the International Claims Commission for Ukraine. These mechanisms can provide a lifeline to Ukrainians facing hardship following displacement.
- 4) States and the ICC should include displacement through coercion in their investigation and prosecution of the crimes of deportation and forcible transfer. States can rely on the principle of universal jurisdiction as a legal basis for such investigations and prosecutions. In considering such criminal proceedings, attention should be paid not only to the direct physical perpetrators of the tortures, unlawful detentions and disappearances, among others. The coercive environment is facilitated through a range of individuals providing important assistance to the physical perpetrators. The net of responsibility must be appropriately wide to capture all relevant forms of participation in international criminality.
- 5) For victims and survivors, acknowledging the legal wrong they have faced at the hands of Russia and its affiliates can be particularly meaningful and healing. Any opportunity to provide such acknowledgment should be taken.