

норми гуманітарного права конкретизують зміст прав людини в специфічних умовах війни. Для України, яка перебуває в стані міжнародного збройного конфлікту, імплементація цього підходу є критично важливою для документування воєнних злочинів та захисту прав своїх громадян у міжнародних інстанціях.

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RETURNING UKRAINE’S CHILDREN: CAN MEDIATION HELP?

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The large-scale abduction and illegal transfer of Ukrainian children to Russian territory constitutes one of the most grievous and emotionally charged dimensions of the war against Ukraine. Since the beginning of the full-scale invasion, thousands of children have been separated from their families, stripped of their identities, and subjected to systematic Russification and militarization. While international law clearly condemns such practices and steps toward criminal accountability are underway, the urgency of the situation demands more immediate, child-focused responses. This article explores the role that mediation – a peaceful and flexible tool for conflict resolution – might play in facilitating the return of Ukrainian children, offering an alternative avenue of justice centered on the best interests of the child.

According to official estimates, since the beginning of the full-scale Russian invasion, more than 20,000 Ukrainian children have ended up in Russia or the occupied territories. Ukraine has been able to return only 2,000 children home up to the moment. Ukraine established the International Coalition for the Return of Ukrainian Children (42 countries, the European Union, the Council of Europe, and the OSCE Parliamentary Assembly) [1].

It must be emphasized, that the abduction of Ukrainian children is a part of Russia's strategy to destroy Ukrainians as a nation. The abducted children are forced to forget their roots and are forbidden from speaking their native language. They are subject to illegal passportization and adoption. The Russian educational curriculum severely restricts the teaching of Ukrainian; history textbooks justify the Russian invasion and portray modern Ukraine as a "neo-Nazi state" [2]. The abducted and forcibly transferred children are used for military propaganda and military purposes. A story as an example: Vlad was forcibly transferred to a military college. During the occupation of Kherson, Russian soldiers began searching for families with children who were not enrolled in local schools. Vlad's mother initially hid him and other children at home. One day, Russian armed forces entered the house when Vlad was alone – they forced him to pack his belongings and leave with them, to an unknown place for an unknown period. He was transferred on a supposed "holiday trip" without his mother's knowledge and moved between camps in Yevpatoria and Lazurne. There, he was punished for protesting, including removing a Russian flag, and was placed in isolation. He also witnessed other children being mistreated, including being physically punished and forced to film apologies [3].

A military-sports camp named Avangard in Russia's Volgograd region targets children from occupied Ukrainian territories, claiming to focus on patriotic education and recreation while actually enforcing militarization. Backed by the Russian Ministry of Defense, it hosts over 80,000 children annually, including children from Donetsk, Luhansk, Zaporizhzhia, and Kherson regions. The program includes intensive military training, weapons handling, tactical medicine, drone operation, military-historical reenactments, and propaganda lectures – all aimed at preparing youth for potential Russian military conscription [4].

Lady Helena Kennedy LT KC, who co-chairs the Bring Kids Back UA Task Force, stressed that under international humanitarian law, the deportation of children constitutes a war crime: "Russia weaponizes deported children, conditioning them to believe that they are Russians too, that their past is a lie, and that their future is tied to the Russian Federation," she said [5].

It is clear that Russian authorities are not only Russifying Ukrainian children, which constitutes an encroachment on their nationality and identity, but are also training them to become future soldiers who may one

day fight against their homeland. Yulia Usenko, Head of the Department for the Protection of Children's Interests at the Office of the Prosecutor General, stated: "Today, we have confirmation that our children who were in the annexed Crimea have already died fighting against their own country, against their own people, and we do not know how many such cases will follow" [6].

This Russian policy poses a direct threat to the preservation of the child's identity. In our view, it violates the right to identity – including nationality, cultural identity, language, and values – protected by Article 8 of the Convention on the Rights of the Child. Moreover, it breaches Article 8(1) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which requires occupying authorities to respect the child's identity without unlawful interference. Ultimately, these actions constitute a manifestation of the crime of genocide under international law – specifically, Article 6(e) of the Rome Statute of the International Criminal Court, which criminalizes the "forcible transfer of children of the group to another group."

The question arises: how can this policy be countered? There seem to be two main avenues – punishing the Russian officials responsible for the illegal transfer of Ukrainian children, and returning the abducted children to Ukraine as soon as possible.

Punishment appears necessary and inevitable. The first steps have already been taken. On March 17, 2023, the International Criminal Court issued arrest warrants for President Vladimir Putin and Maria Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation. They are accused of the war crimes of unlawful deportation and unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute). The European Parliament strongly condemned Russia's "genocidal strategy," supported by Belarus, which aims to erase Ukrainian identity. MEPs called for an end to the forced transfer and deportation of Ukrainian children, their illegal adoption, assassination, and Russification [7]. The Verkhovna Rada of Ukraine adopted a law establishing criminal liability for the illegal transfer and use of children for military purposes by representatives of foreign states (Criminal Code of Ukraine, Article 438. War crimes).

However, international and national justice is slow to act – while children cannot wait. Every day spent in conditions of Russification moves them further from their homeland. History offers a warning: few Polish children subjected to Germanization during World War II ever returned. Most lost their Polish identity and grew up identifying as Germans. A. Ryk found only about 3 thousand children returned from British, American and French Occupation Zones to Poland up to 1950 while hundreds of thousands were kidnapped by Nazis [8]. We must not allow this tragic pattern to repeat.

Many of the abducted children are orphans or children whose parents have been deprived of parental rights. For example, at the beginning of the full-scale invasion, Russia removed an orphanage from Kherson containing 46 children. Their whereabouts remain unknown. All were infants or toddlers, and some had serious disabilities such as cerebral palsy [9]. Some had living parents who retained limited custody, while others had been removed from troubled homes. Thus, application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction is impossible in such cases.

Under the current circumstances, mediation may offer a promising path to returning Ukrainian children home. Mediation is a peaceful method of conflict resolution in which a neutral, impartial third party assists disputing parties in reaching a solution without violence or legal coercion. In international contexts, mediators may be individuals, organizations, or states not involved in the conflict. Mediation is inherently flexible, capable of addressing legal, moral, and political disputes that elude conventional legal frameworks. The peaceful resolution of conflicts through such alternative means is increasingly seen as part of the broader right of access to justice. With the internationalization of law, mediation is increasingly used not only in domestic settings but also in international relations, representing an area where national and international legal developments intersect.

Mediation is a universally recognized conflict-resolution method, as referenced in Article 33(1) of the UN Charter. The United Nations Department of Political and Peacebuilding Affairs maintains a Mediation Support Unit to assist in global mediation efforts [10]. Other actors – such as international organizations, politicians, and professional mediators – also frequently undertake mediation. In this case, the Office of the Special Representative of the UN Secretary-General for Children and Armed Conflict, or the UN's Mediation Support Unit, could potentially provide such services [11].

There are several reasons why mediation is appropriate in this situation:

1. *Maturity of the conflict.* The illegal transfer of Ukrainian children has been ongoing for over three years. Ukraine has raised alarms repeatedly. With the ICC now involved, the conflict has reached a point where all sides may seek alternatives. Mediation is often most successful when parties are fatigued or exhausted by ongoing tensions.

2. *Partial acknowledgment by Russia.* Russia has issued numerous justifications for its actions in the media, signaling some awareness of the conflict. This could indicate a willingness – however limited – to resolve the issue, particularly if a skilled mediator can help identify and articulate mutual interests.

3. *Existence of precedent.* Qatar has already played a mediating role in reuniting abducted children with their families. Since the full-scale

invasion began, Qatar has successfully facilitated at least nine such reunifications, providing medical, psychological, and social support and ensuring the children's safety [12]. The Holy See has also taken on mediation efforts. President Volodymyr Zelenskyy publicly thanked Pope Francis for his role in facilitating the return of illegally deported Ukrainian children[13]. In addition, the Republic of South Africa has expressed its readiness to join efforts with the Vatican and Qatar in mediating the return of kidnapped Ukrainian children [14].

Conclusion. The forced transfer and militarization of Ukrainian children by Russian authorities represent not only grave human rights violations but also a calculated assault on Ukrainian national identity. While holding perpetrators accountable is essential, legal proceedings alone are too slow to meet the urgency of this crisis. Mediation, grounded in neutrality and dialogue, has already shown promise through efforts led by Qatar and supported by the Holy See. It may offer a complementary pathway for reuniting children with their families.

By engaging international mediators, child-centered institutions, and diplomatic partners, Ukraine and the global community can prioritize the children's immediate safety, emotional well-being, and right to identity – while upholding the core principles of international law and justice.

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