

Ruth Amir, *Twentieth Century Forcible Child Transfers. Probing the Boundaries of the Genocide Convention*, Lanham, Boulder, New York, London: Lexington Books 2019, 273 pp.

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Children played a somewhat more important role in the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the Genocide Convention) than appears at first sight: while two genocidal acts mentioned in Article II of the Genocide Convention explicitly deals with children – Article 2 (d) imposing measures intended to prevent births within the group and 2 (e) forcibly transferring children to another group, the other articles have a somewhat indirect link with the concept of a child. The protected groups under the Genocide Convention were distinguished mainly by their biological characteristics,<sup>1</sup> so that an individual belonging to the group is not part of it through choice but through procreation.<sup>2</sup> In this sense children play a central role in the continuity and viability of the protected groups.

The forcible child transfer clause prohibits “transferring children of the group to another group with intent to destroy national, religious, racial and ethnic groups in whole or in part.”<sup>3</sup> The forcible children transfer clause is, however, the only genocidal act that is often justified by perpetrators as stemming from benevolent motives, such as “to benefit the affected children” or “to save” them. But motives behind forcible child transfer are irrelevant in “assessing genocidal culpability,” when forcible child transfer is implemented with the intent to destroy a group.<sup>4</sup>

Meanwhile, the term “forcibly” is not restricted to physical force and may include any act consisting of threats, threats of force, inflicted trauma, or coercion such as those caused by fear of violence, duress, detention, psychological oppression, abuse of power or by taking advantage of a coercive environment which would lead to the forcible transfer of children from one group to another.<sup>5</sup>

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1. Only in the case of religious groups, can belonging, in some limited cases, be through choice.
  2. Kurt Mundorff, “Other Peoples’ Children: A Textual and Contextual Interpretation of the Genocide Convention, Article 2(e),” *Harvard International Law Journal* 50, no. 1 (2009): 89-90.
  3. Convention on the Prevention and Punishment of the Crime of Genocide, at <https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>
  4. Ibid, also Keith David Watenpaugh, “Are There Any Children for Sale?”: Genocide and the Transfer of Armenian Children (1915–1922), *Journal of Human Rights* 12, no. 3 (2013): 289.
  5. The Prosecutor vs. Georges Anderson Nderubumwe Rutaganda Case No. ICTR-96-3-T, para. 55; Prosecutor v. Akayesu, Case ICTR-96-4-T, International Criminal Tribunal for Rwanda, September 2, 1998, para. 509.

Two massive programs of forced removal of children were implemented during the Armenian Genocide of World War I and the Holocaust during II World War with the former being considered as classical case of a genocidal forcible child transfer. Forcible transfer of Armenian children and their assimilation into the Turkish society was a structural component of the Ottoman genocidal policy and was one of the methods used for the destruction of the Armenians during the Armenian Genocide. During the death marches, vast numbers of Armenian children (also young women) were forcibly transferred and incorporated into the enemy group.<sup>6</sup> A similar policy was implemented during WWII when “racially valuable” children, mainly Polish, were forcibly removed from the occupied eastern lands to Germany for Germanization.<sup>7</sup> According to a well-designed plan nearly 200,000 *racially valuable* children were transferred to special institutions, orphanages or German families.

Other wide scale child removal programs were connected with colonization and further westernization or “education” of indigenous children. Starting from the mid nineteenth century in Australia, Canada and the United States, indigenous children were transferred from their groups for acculturation.<sup>8</sup> During 1920-1970s the Swiss government removed Roma children for the same purpose.<sup>9</sup> Starting from 1920s a policy of Russification of indigenous Siberian children was carried out by removing and placing them in distant schools of the Soviet Union.<sup>10</sup>

Despite being an old phenomenon with many examples in history, forcible child transfer has only recently gained considerable scholarly attention.<sup>11</sup>

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6. See for example Watenpaugh, “Are There Any Children for Sale?”: 283-295; Lerna Ekmekçiöglü, *Recovering Armenia. The Limits of Belonging in Post-Genocide Turkey* (Stanford, California: Stanford University Press, 2016); Uğur Ümit Üngör, “Orphans, Converts and Prostitutes: Social Consequences of War and Persecution in the Ottoman Empire, 1914-1923,” *War in History* 19, no. 2 (2012): 173-192.

7. For more on this see the International Military Tribunal, *Trials of War Criminals*, selected and prepared by the United Nations War Crimes Commission, Volume XIII, (London: His Majesty’s Stationery Office, 1949); Trial of Ulrich Greifelt and others, United States Military Tribunal, Nuremberg, 10<sup>th</sup> October, 1947 – 10<sup>th</sup> March, 1948; International Military Tribunal, *Trials of War Criminals before the Nuremberg Military Tribunals Under Control; Council Law No. 10, Nuremberg, October 1946 – April 1949*, Vol. 4 (Washington DC: United States Government Printing Office, 1949), 674-687.

8. Ruth Amir, “Killing Them Softly: Forcible Transfers of Indigenous Children,” *Genocide Studies and Prevention: An International Journal* 9, no. 2 (2015): 41-60. Also see Margaret Jacobs, *A Generation Removed: The Fostering and Adoption of Indigenous Children in the Postwar World* (Lincoln: University of Nebraska Press, 2014); Margaret Jacobs, *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940* (Lincoln: University of Nebraska Press, 2009).

9. Mundorff, “Other Peoples’ Children,” 64.

10. Nikolai Vakhtin, *Native Peoples of the Russian Far North* (Minority Rights Group, 1992), 36.

11. The first major contribution in this direction is the work of Kurt Mundorff, “Other Peoples’ Children: A Textual and Contextual Interpretation of the Genocide Convention, Article 2(e),” *Harvard International Law Journal* 50, no. 1 (2009): 61-127; some separate aspects of the issue were addressed by Tara Zahra, *The Lost Children: Reconstructing Europe’s Families after World War II* (Cambridge, Massachusetts, and London: Harvard University Press, 2011); Sonja C. Grover, *Child Soldier Victims of Genocidal Forcible Transfer: Exonerating Child Soldiers Charged With Grave Conflict-related International Crimes* (Berlin: Springer Publishing, 2012); Sonja C. Grover, *Humanity’s Children: ICC Jurisprudence and the Failure to Address the Genocidal Forcible Transfer of Children* (Berlin: Springer Publishing, 2012); Sonja C.

Ruth Amir's book is a major attempt at bringing the issue of forcible child transfer to the reader by presenting a detailed analysis of the legal history of the forcible child transfer clause within the context of genocide. By referring to different historical examples, the author argues that recognition should be granted to children of any identifiable group that have been forcibly transferred, as a fifth protected group under the Genocide Convention, by adding a special Protocol to it.

The book consists of a detailed introduction, three parts (six Chapters, including a Conclusion), as well as a Bibliography and an Index. In the Introduction Amir presents the forcible transfers of children from one group to another as an old phenomenon that developed with modernity. She views a blood tax, *Devshirme*, in the Ottoman Empire as an early example of forcible child transfer (14<sup>th</sup> – 17<sup>th</sup> centuries).<sup>12</sup> She also points out that children were also removed for religious purposes in the 15<sup>th</sup> century, for filling the shortage of slaves, the westernization programs starting at the end of the 19<sup>th</sup> century, etc.

Amir examines certain 20<sup>th</sup> century forcible child transfer programs aimed at children with a particular collective identity, such as “nationality, political affiliation, economic class or ethnicity.” Among these she mentions the removal of Armenian children to Turkish homes and institutions during the Armenian Genocide, Stalin's mass-deportations of women and children from the Baltic States, and Hitler's Germanization of Polish children. Some other examples of forcible child transfer brought by the author relates to political conflicts in Cuba,<sup>13</sup> Spain,<sup>14</sup> Argentina,<sup>15</sup> Israel,<sup>16</sup> and Belgium.<sup>17</sup>

Part 1 of the book provides a detailed legal analysis of the crime of genocide by paying a considerable attention to the notion of groupism as “a major constitutive element of genocide.” The whole legal analysis is paralleled with Raphael Lemkin's broader notion of genocide and the intentions of the people drafting the Genocide Convention.

In Chapter 2 of Part 1 Amir concentrates on the legal analysis of the forcible transfer clause assessing it as protecting “children as a subgroup of a protected group.” In this part of the book the author argues for granting protection to children of any identifiable group as the fifth protected group under the Genocide Convention. Her argument is based on four pillars. First, children are recognized as a special protected group by national and international

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Grover, “Child Soldiers as Victims of ‘Genocidal Forcible Transfer’: Darfur and Syria as Case Examples,” *The International Journal of Human Rights* 17, no.3 (2013): 411–427; Robert van Krieken, “Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation,” *Oceania* 75, no. 2 (2004): 125-151; Jonas Nilsson, “The Vückovi'c Trial in Kosovo – Deportation and Forcible Transfer under the Definition of Genocide,” *Nordic Journal of International Law* 71 (2002): 545–555.

12. Young Christian boys were kidnapped, converted to Islam and raised as Muslims, being trained for military or civil service and later involved in the Janissary military corps.

13. Operation Peter Pan, when during 1960-62 over 14,000 unaccompanied Cuban children were moved to the US with a support of the US government against Fidel Castro's regime.

14. Forcible transfer of children of Republican families during and after the Spanish Civil War by Franco regime.

15. Forcible transfer of children of political dissidents.

16. Forcible transfer of immigrant Yemeni Jewish children and their re-education.

17. Children born to Congolese and Belgian parents who were reclaimed by Belgium after decolonization.

law. Second, a child's right is a peremptory norm in international humanitarian and human rights law, as the 1989 Convention on the Rights of the Child is the most rapidly and widely ratified human rights treaty.<sup>18</sup> Third, the Genocide Convention recognizes the invaluable contribution of the protected groups to humanity. Finally, the forcible child transfer clause recognizes the child not only in her/his individual capacity, but as a member of a family and a group.

Each of the following three chapters in Part Two deals with case studies of forcible child transfer, enquiring whether these historical cases could be framed as genocide within the framework of the Genocide Convention. All case study chapters in the book provide a detailed historical background of these cases, the dominant ideology of the perpetrator group followed by their intent to destroy the group. The final sections of these chapters deal with forcible child transfer.

Here the author omits a mention of transfer cases that took place during the Armenian and Jewish genocides and starts with the phase of European colonialism and the forced removal of aboriginal children in Australia, Canada, and USA. In this section Amir highlights the difficulty in defining indigenous people fitting into the category of protected groups under the Genocide Convention.

The forcible transfer of aboriginal children was viewed in the context of "the nineteenth century mega-narrative of progress," which became a political doctrine in the three discussed countries. The forcible removal of indigenous children from their tribal communities to boarding schools and their adoption by foster families was the essence of socialization or westernization that resulted in the eradication of tribal identity and culture. The author concludes that the concepts of civilization and assimilation are sometimes blurred as if they are synonyms. While seriously presenting the philosophy, political doctrine, and the intent of the forcible transfer of indigenous children, the author has a difficulty in putting the indigenous communities under the protected groups of the Genocide Convention, which is somewhat debatable.

The next case studied in the book is that of Jewish immigrant children moved to Israel from Yemen after the 1948 declaration of Israeli independence. At least 1,500 babies and young children were forcibly removed from their families by the Jewish Agency for Israel as part of its activities to absorb immigrants.<sup>19</sup> Drawing similarities with indigenous boarding schools and methods, Amir highlights the east-west divide between European and non-European Jews and the Zionist movement. From the first day of immigration Yemeni Jews were singled out as primitive and uncivilized and the need for their civilization and re-education was put forward by the Ben Gurion government. Here Amir stresses the

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18. Dr. Amir also details some rights listed in the Convention on the Rights of the Child related to the issue, mainly the child's right to be free of discrimination of any kind based on his or her parents' or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status (§ 2), to identity (§ 7), to grow up in a family environment, to be cared for by his/her parents and not to be separated from his/her parents against their will (except under specified conditions, § 9).

19. According to the book this number may be up to 10,000 children.

doctrine of the centrality and superiority of the state over an individual. However, by trying to draw a line between assimilation and genocide, the author asserts that the methods used for assimilation in this case were much harsher and more violent. Here again she points to the difficulty in viewing Yemeni Jews as a separate group and casts doubt on the genocidal intent of the Israeli government.

The last case study in the book deals with the Spanish Civil War and the forced removal of children of Republicans' parents until the 1950s.<sup>20</sup> Here, together with persecutions and murders, thousands of children of imprisoned Republicans were forcibly transferred. The author argues that when targeting Republicans, ethnic, national, racial/biological terminology was used to enhance political and ideological rivalry, thus making it difficult to ascertain that the Republicans were only a political group. In this section Amir stresses the existence of genocidal intent and the devastating effect of excluding political groups from the Genocide Convention.

Chapter six concentrates on the discussion of the exclusion of political groups from the Genocide Convention and the debates among the scholars and international criminal tribunals on the issue by also referring to Lemkin's notion of protected groups. The chapter then analyzes from a comparative perspective Operation Peter Pan in Cuba and the Spanish case of transfer of Republican children to illustrate the differences between genocidal and non-genocidal forcible child transfer within the framework of political conflicts.

The conclusion summarizes the historical cases and discusses the recognition of children as a fifth protected group under the Genocide Convention. By singling out some modern ways of forcible child transfer such as recruiting child soldiers, forced marriages and forced impregnation, children born out of genocidal rape, sex slaves and domestic workers, Amir highlights the new ways genocide can affect children. Mentioning the ambiguity in the definition of groups protected under the Genocide Convention, the author rightly points out that it cannot be reasonably resolved by only legal interpretation, thus offering to add a Protocol to the Genocide Convention.

Amir's work is very valuable in bringing forcible child transfer cases to our attention; a once enigmatic concept is shown here under a new light. The book has crucial in that it also presents the complex nature of defining a group whereby some genocidal forcible child transfer cases fall outside the scope of the crime of genocide.

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20. *The Republicans and the Nationalists* were the two sides of the Spanish Civil War (1936-1939).