Chapter 13

Specifically Prohibited Acts in Occupied Territory

1. Introduction

In this chapter, the examinations will turn to two specific prohibited acts in occupied territory: (i) deportation or forcible transfer of protected persons; and (ii) forced labour. With respect to the former issue, there is ample body of case-law, which is derived both from the international jurisprudence and from national case-law, which has engendered complex doctrinal discourse on specific elements of deportation or forcible transfer. In-depth inquiries are needed to discern general principles on this matter.

2. Deportation or Forcible Transfer of Protected Persons

2.1. Overview

Article 49(1) of GCIV forbids deportation or forcible transfer of protected persons from the occupied territory to the territory of the occupying power or to that of any other country. This prohibition is absolute, subject to no derogation. Persons not nationals of the occupying power are entitled to leave the occupied territory.1

Historically, the massive and systematic form of deportation was practiced by many military powers in modern warfare. Great Britain engaged in this practice against thousands of French Canadians in Acadia in the French-Indian War at the end of eighteenth century and against the “Afrikaans” during the Boer War at the turn of the twentieth century. Wilhelm II’s German Empire was involved in the sombre practice of deporting civilians in Belgium and Northern France in 1916 during World War I.2 Nevertheless, no doubt Article 49(1) GCIV has

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1 GCIV, Article 48.
2 C. Rousseau, Le droit des conflits armés (1983), at 1258, para. 101C.
been inserted in response to the Nazi Germany’s abominable policy of uprooting and deporting millions of civilians (mostly Jewish people, but also Slavic populations, Romas, homosexuals, mentally handicapped, or communists and others) into extermination or slave labour camps on the basis of the Nazi’s egregious racial theory.\(^3\) This practice was intrinsically intertwined with genocidal intent with respect to the Jewish and Roma population. Similarly, in the European theatre, hundreds of thousands of civilians in three Baltic countries and other territories occupied by the USSR were sent to gulags in Siberia, even though this was not intended for an extermination purpose.\(^4\) Prior to the outbreak of the Second World War, Mussolini’s Italian army invaded Libya and built desert concentration camps to which thousands of Libyans were transferred to die through executions and starvation.\(^5\) In East Asia during the Second World War, the Japanese Imperial Army forcibly deported hundreds of thousands of civilians in East Asian countries that it colonised or occupied,\(^6\) and tens of thousands of Allied prisoners of war, to slave labour camps in utterly abhorrent conditions. This practice, albeit not designed for an extermination purpose, had shockingly high mortality rate, and this was readily recognised as amounting to the nascent concept of crimes against humanity. In the aftermath of World War II, the USSR deported approximately 600,000 Japanese and Korean prisoners of war and civilians to gulags in Siberia and Central Asia, as it did in relation to a vast number of nationals of European Axis powers (Germany, Italy, Hungary, Romania etc.). In the post-1945 order, the concepts of deportation and forcible transfer have been closely intertwined with “ethnic cleansing”, as borne out in the context of the partition of India and Pakistan in 1947, the war of independence of Bangladesh (the former East Pakistan) in 1971, the former Yugoslavia in early 1990s,\(^7\) Darfur and in many other places.

\(^3\) See, for instance, *Final Record*, Vol. II-A, Committee III, 16th Meeting, 16 May 1949 and 40th Meeting, 6 July 1949, at 664 and 759–760 respectively (regarding draft Article 45). See also the remark concerning the Imperial Japanese Army’s abominable practice, during the Second World War, of transferring numbers of women and children to unhealthy climates and forced to build roads, which resulted in high death tolls: *ibid.*, at 664.

\(^4\) Sight must not be lost of the fact that albeit not in the context of occupation, in the same period, the Chechynyans, the Crimean Tatars and the Volga Germans were all uprooted from their native homelands and forcibly sent to slave labour camps in Siberia or Central Asia.


\(^6\) During World War II, hundreds of thousands of Koreans and Taiwanese civilians, who were colonial subjects of the Imperial Japan, were also forced to work in Japanese factories and mines virtually as slave labourers, often in extremely dangerous and appalling conditions with high mortality rates.

\(^7\) This point is recognised in the *Simić* case: ICTY, *Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić*, Judgment of Trial Chamber, 17 October 2003, IT-95-9-T, para. 133.