



Russia –Ukraine conflict and reproductive technologies: protecting surrogate-born children from crimes against humanity and war crimes

EL CONFLICTO ENTRE RUSIA Y UCRANIA Y LAS TECNOLOGÍAS REPRODUCTIVAS: PROTECCIÓN DE LOS NIÑOS NACIDOS POR SUBROGACIÓN FRENTE A CRÍMENES DE LESA HUMANIDAD Y CRÍMENES DE GUERRA

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ABSTRACT

This article examines the situation of surrogacy-born children in the Russia–Ukraine armed conflict through a complementary lens that brings together international humanitarian law, human rights law, and international criminal law, in order to assess the regulatory gaps that exacerbate their vulnerability. After outlining the applicable legal frameworks and their shortcomings, the analysis shows how the conflict heightens the risks of forced transfer, trafficking, and illicit adoption. On that basis, these acts are identified as potential crimes against humanity and war crimes under Rome Statute. Finally, the article present recommendations to remedy the absence of specific safeguards in the ICC Office of the Prosecutor’s Policy on Children and calls for greater attention and protection for this vulnerable group.

RESUMEN

Este artículo analiza la situación de los niños nacidos mediante gestación subrogada en el contexto del conflicto armado Rusia-Ucrania desde un enfoque complementario que integra el derecho internacional humanitario, los derechos humanos y el derecho penal internacional, a fin de evaluar los vacíos normativos que agravan su vulnerabilidad. Tras exponer los marcos jurídicos aplicables y sus brechas, el estudio muestra cómo el conflicto intensifica los riesgos de traslado forzoso, trata y adopción ilícita de estos menores. Con base en dicho análisis se tipifican las conductas que podrían constituir crímenes de lesa humanidad y crímenes de guerra conforme al Estatuto de Roma. Finalmente, el artículo presenta recomendaciones destinadas a subsanar la ausencia de medidas específicas en la Política sobre la Infancia de la Fiscalía de la CPI y aboga por una mayor atención y protección de este grupo vulnerable.

KEYWORDS

Children
Surrogacy
Russia–Ukraine
Armed conflict

PALABRAS CLAVE

Niños
Gestación subrogada
Conflicto armado
Rusia-Ucrania

I. INTRODUCTION

This article arises within the context of the public consultation initiated by the Office of the Prosecutor (OTP) of the International Criminal Court (ICC), aimed at revising and strengthening its policy on crimes against or affecting children. The objective of this contribution is to enhance the expansion of the OTP's Policy on Children by addressing the vulnerability and legal protection of children¹ born through surrogacy² in armed conflicts.

In addressing the question of the protection of those children, it is important to clarify that in times of peace, such arrangements do not inherently constitute a violation of international law, nor do they automatically trigger the commission of international crimes. Despite the serious risks involved in the sale or commodification of children³, surrogacy can, under certain and specific conditions –particularly in cases of altruistic surrogacy, and only when the best interests of the child and their right to identity are fully respected and guaranteed throughout the process– serve as a legitimate path to family formation. The critical factor lies in ensuring that surrogacy practices are subject to robust legal oversight and that the rights and best interests of the child remain central throughout the process⁴.

Despite the universal recognition that “*all human beings are born free and equal in dignity and rights*”⁵, children require targeted legal safeguards⁶ to ensure the full realization of their rights without discrimination⁷. Under international law, children

1. Convention on the Rights of the Child [UNCRC]. 20 November 1989, United Nations, Treaty Series, vol. 1577. Article 1: “A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

2. UNGA, Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/74/162 (July 15, 2019), para. 10. “Surrogacy refers to a form of third-party” reproductive practice in which the intending parent(s) and the surrogate mother agree that the surrogate mother will become pregnant, gestate, and give birth to a child”. This commercial arrangement includes the child’s legal and physical transfer to the intended parent.

3. Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, Rep. on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, U.N. Doc. A/HRC/37/60 (Jan. 15, 2018). “...commercial surrogacy commonly commodifies children and exploits surrogate mothers”.

4. OHCHR; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319; Committee on the Rights of the Child, Concluding observations on the second periodic report of the United States of America submitted under the Optional Protocol on the sale of children, child prostitution and child pornography, U.N. Doc. CRC/C/OPSC/USA/CO/2, para. 29 (June 25, 2013); Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of India, U.N. Doc. CRC/C/IND/CO/3-4, para. 57(d) (June 13, 2014); Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Mexico, U.N. Doc. CRC/C/MEX/CO/4-5, para. 69(b) (June 3, 2015); Committee on the Rights of the Child, concluding observations on the combined third and fourth periodic reports of the United States of America submitted under the Optional Protocol, U.N. Doc. CRC/C/OPSC/USA/CO/3-4 (Feb. 7, 2017).

5. Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948), art. 1.

6. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, preamble.

7. *Id.*, art. 2.

are recognized as a particularly vulnerable group whose protection demands special attention due to their evolving capacities and dependency on others to exercise their rights (*Syroid & Fomina, 2023, p. 7*). This vulnerability is marked by heterogeneity and intersectionality, encompassing diverse personal, social, and structural factors that compound exposure to harm in situations of risk and crisis (*Alenza García, 2019, p. 40*).

Among the various contexts in which such vulnerability becomes especially pronounced is that of surrogacy, defined as “a form of third-party reproductive practice in which the intending parent(s) and the surrogate mother agree that the surrogate mother will become pregnant, gestate, and give birth to a child”⁸. Currently, surrogacy, specially commercial arrangement raises critical legal and ethical concerns regarding the protection of children born through this practice (*Piersanti, Consalvo, Signore, & Del Rio, 2021*).

The 2018 and 2019 Special Rapporteurs’ reports highlighted that the vulnerability of children born through surrogacy is exacerbated by the fragmentation of national laws⁹—given that legal frameworks vary widely across jurisdictions and are, in many cases, altogether absent—as well as by potential conflicts in private international law¹⁰ (*Appleton, 1990; Trimmings & Beaumont, 2013*) and the lack of regulation in public international law (*United Nations Human Rights Council, 2018*).

The war in Ukraine has brought global attention to this issue, as the country has long stood as one of the main international hubs for commercial surrogacy¹¹. Long before the conflict, substantial criticism had already been raised regarding the protection of children born through such arrangements, particularly in relation to the abandonment of children with disabilities, human trafficking, and the exploitation of surrogate mothers (*Lamberton, 2020; Sinanaj, 2024*).

Compounding these vulnerabilities, the outbreak of armed conflict can further destabilize this profound legal ambiguity and aggravate pre-existing risks. The apparent normative vacuum hinders national and international actors from identifying, protecting, and upholding the rights of these children. Despite mechanisms developed to enhance the protection of childhood, there has been a clear lack of attention to the specific ways in which children born through gestational surrogacy may become victims of international crimes during armed conflict¹².

8. UNGA, *Report on the Sale and Sexual Exploitation of Children*, supra note 4, para. 10.

9. *Special Rapporteur Report (2019)*, supra note 2. “Develop minimum safeguards for the protection of surrogate-born children to guide States in efforts to ensure that the best interests of the child are duly taken into consideration.” *Special Rapporteur Report (2018)*, supra note 3.

10. Hague Conference on Private International Law, *Report of the Experts’ Group on the Parentage / Surrogacy Project*, CGAP 2022 PREL. DOC. NO 2B (2022), available at <https://bit.ly/3qcOgjH>.

11. A/HRC/37/60 “One definition of commercial surrogacy, also known as “for-profit” or “compensated” surrogacy, focuses on the contractual and transactional – rather than gratuitous – relationship between the intending parent(s) and the surrogate mother”.

12. It must be noted that robust mechanisms have been developed to improve the protection and care of children in armed conflict. However, none address the specific situation of children born through surrogacy arrangements. See UNICEF, *25 years of children and armed conflict: Taking action to protect children in war* (2022), available at <https://uni.cf/3lwix30>; OHCHR, *War crimes, indiscriminate attacks on infrastructure, and systematic and widespread torture show disregard for civilians, says the UN Commission of Inquiry on Ukraine* (Mar. 16, 2023), available at <https://bit.ly/43avmYY>.

The legal status of surrogate-born children, as established in the foregoing discussion, is not adequately recognized. Similarly, in the academia, most scholarly work on surrogacy in times of war has focused primarily on the protection of women's reproductive rights (*Horse, Mahmoud, & Wade, 2025, pp. 1-22, Bromfield & Rotabi, 2014, pp. 123-135*) and the legal safeguards afforded to the parties involved in the surrogacy arrangement (*Chaitra & Hema, 2025, pp. 267-268, Stark, 2011, p. 372*).

Given this scenario the children surrogacy born not only face an intensify exposure due to their inherent physical and legal dependence, but they are also uniquely affected by legal uncertainties surrounding parentage, identity and nationality (*Dambach & Cantwell, 2024, p. 108-129; Achmad, 2017, pp. 520-521*). As Kismödi and Pitchforth (2022) observe in the context of the war against Ukraine, "the interests of the surrogate, the baby and the interests of the parents do not always align, and war can expose people to precarious situations that jeopardizes their safety, health and wellbeing". In these circumstances of vulnerability, such protection gaps can place them at risk of serious violations, including forced transfer, abduction, trafficking, and unlawful adoption (*Pardo, 2023*).

For instance, "Ukraine has been able to verify Russia's deportation of 19,456 children to date" (*Hird, 2025*). Unlike in other cases, the child's natural caregiver (the surrogate mother), has typically anticipated and accepted the child's separation as part of the gestational arrangement (*Marinelli, Del Rio, Straccamore, Negro, & Basile, 2022*). At the same time, the intending parents, often located in other countries, may be unable to reach or protect the child amidst the chaos of war (*Ferguson, 2022; Chung, 2022*). This dual absence of effective caregivers significantly increases the risk of abandonment (*Kismödi & Pitchforth, 2022*), leaving the child exposed to coercive practices by occupying forces or belligerent states. As a result, surrogate-born children in armed conflict settings face an elevated and often overlooked risk of becoming targets of the warfare. This highlight the urgent need to assess whether existing legal regimes sufficiently protect these group in the ongoing armed conflicts.

II. LEGAL BASIS AND PROTECTION MECHANISMS FOR CHILDREN IN ARMED CONFLICT UNDER INTERNATIONAL LAW

The international legal system governing the protection of children in armed conflict draws primarily from international humanitarian law, international human rights law, and international criminal law. Although historically treated as self-contained regimes, contemporary jurisprudence¹³, legal doctrine and practice increasingly recognize their complementarity (*Droege, 2007; Bethlehem, 2013*) rather than fragmentation.

13. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), Judgment, 2024 I.C.J. ¶175 (Nov. 12); Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 2024 I.C.J. ¶199 (July 19); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 106 (July 9), and Armed Activities on the Territory of the Congo (*Dem. Rep. Congo v. Uganda*), Judgment, 2005 I.C.J. 168 (Dec. 19).

In this sense, a dynamic and systemic interpretation of international law treats the regimes as a coherent whole rather than as a set of isolated silos¹⁴ (*Simma & Pulkowski, 2006, p. 492*). Indeed, the protections afforded by international humanitarian law do not displace the continued applicability of human rights law or the enforcement role of international criminal law and seeks to ensure their safeguard from violence, exploitation, abuse, and forced displacement (*Govender, 2024, p. 17*). An opposite interpretation, risks undermining their legitimacy and weakening their overall effectiveness (*Hampson, 2008, p. 550*).

Building upon this integrated framework, international humanitarian law provides a foundational set of protections for children in both international and non-international armed conflicts. The four Geneva Conventions of 1949 and their Additional Protocols emphasize the obligation of parties to conflict to ensure the care, aid, and protection of children affected by hostilities, particularly those who are separated from their families or lack legal guardianship, as reflected in Articles 24 and 50 of the Convention, Article 77(1) of Additional Protocol I, and Article 4(3) of Additional Protocol II.

It is critical to keep in mind that as civilians, children benefit from the full range of international humanitarian law guarantees, which must be interpreted considering the principle of the best interests of the child¹⁵. However, while robust on ink and paper, these legal safeguards must evolve to address the unique needs of children¹⁶ born through surrogacy in armed conflict, an emerging category whose status often falls outside conventional protection paradigms.

Regarding international human rights law, there is no specific normative framework regulating surrogacy. Nonetheless, universal¹⁷ and regional¹⁸ human rights treaties provide an understanding of rights and principles that are directly relevant to the protection of children born through surrogacy arrangements. Central among these is the Convention on the Rights of the Child, which recognizes every child's right to preserve their identity, to know and be cared for by their parents, and to acquire a nationality¹⁹.

14. See Int'l Law Comm'n, *Rep. on the Fragmentation of International Law*, U.N. Doc. A/CN.4/L.682, at 178 (Apr. 13, 2006).

15. International Committee of the Red Cross, *Children in war: Legal protection* (2020), available at https://www.icrc.org/sites/default/files/document/file_list/children-legal-protection-factsheet.pdf.

16. European Parliament. (2022, May). *Russia's war on Ukraine: The situation of children in and outside Ukraine* [Briefing]. <https://bit.ly/3oIEb35>

17. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

18. American Convention on Human Rights, Nov. 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123; African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); African Charter on the Rights and Welfare of the Child, July 11, 1990, O.A.U. Doc. CAB/LEG/24.9/49 (1990); European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, as amended by Protocols Nos. 11 and 14, 213 U.N.T.S. 222; Charter of Fundamental Rights of the European Union, Oct. 26, 2012, 2012 O.J. (C 326) 391.

19. *Convention on the Rights of the Child*, supra note 10, arts. 7–8; *Optional of Children*, supra note 4; *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, May 25, 2000, 2173 U.N.T.S. 222.

Nevertheless, the implementation of these rights becomes particularly intricate in the context of cross-border surrogacy (Correa da Silva, 2022), where questions surrounding legal identity may remain unresolved. This regulatory vacuum increases the risk of violations of the best interests of the child (UNICEF, 2022, Qi et al., 2023; Sharma, 2023; Cheney, 2023) through arrangements²⁰ often results in the transfer of the child governed by contractual terms rather than human rights standards (Correa da Silva, 2023), raising concerns over commodification and even the potential classification of such practice as the sale of children under international law. This despair set of standards has enabled contractual logic to override the child's human rights protections, creating potential tensions with the core principles of the Convention on the Rights of the Child and related instruments. Indeed, the inconsistent safeguards across jurisdictions compromise key rights such as dignity, identity and family life (Saxena, 2023). In response, soft law initiatives such as the Verona Principles²¹ aim to re-center the child's best interests by recommending guidelines for legal recognition, parentage, and the prevention of trafficking risks. Nevertheless, the lack of binding instruments continues to leave surrogate born children in a vulnerable legal and humanitarian limbo (Correa da Silva, 2023).

Moreover, although these principles are presented as child centered, critics argue that they may normalize and legitimize surrogacy practices that risk commodifying both children and women, particularly when power asymmetries and commercial interests are not adequately addressed (Abolition of Surrogate Motherhood, 2022). From this perspective²², the Verona Principles are seen not only as limited in scope, but also as potentially reinforcing the very practices they aim to regulate²³.

Additionally, regional human rights systems have progressively begun to address the complex legal and ethical dimensions of surrogacy. The European Court of Human Rights (ECtHR), in cases such as *Mennesson v. France*²⁴, *Labassee v. France*²⁵ (2014), and *C. v. Italy*²⁶ (2023), held that the refusal of national authorities to legally recognize the parent-child relationship established through lawful surrogacy arrangements abroad violated the European Convention. As noted by Petit de Gabriel (2022), "The ECtHR has always been concerned with the rights of the child born in a surrogacy relationship.

20. In some instances, even altruistic maternity surrogacy can meet the criteria for human trafficking in times of peace See: *Special Rapporteur Report (2018)*, *supra* note 3. "The development of organized surrogacy systems labeled "altruistic", which often involve substantial reimbursements to surrogate mothers and substantial payments to intermediaries, may blur the line between commercial and altruistic surrogacy. Therefore, labeling surrogacy arrangements or surrogacy systems as "altruistic" does not automatically avoid the reach of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography".

21. International Social Service (ISS), *The Verona Principles for the Protection of the Rights of the Child Born Through Surrogacy* (Feb. 25, 2021), https://www.iss-ssi.org/wp-content/uploads/2023/03/VeronaPrinciples_25February2021-1.pdf.

22. Coalition for the Abolition of Surrogate Motherhood, *A Feminist Critique of the Verona Principles*. (2022). <https://abolition-ms.org/en/our-actions/critical-document-on-the-verona-principles/>

23. UNICEF, *Key Considerations: Children's Rights & Surrogacy*. (2022) <https://www.unicef.org/media/115331/file>

24. *Mennesson v. France*, App. No. 65192/11, Eur. Ct. H.R. (2014).

25. *Labassee v. France*, App. No. 65941/11, Eur. Ct. H.R. (2014).

26. *C. v. Italy*, App. No. 12776/18 (Eur. Ct. H.R. 2023). The ECtHR concluded that there was a violation of Article 8 of the Convention with respect to the biological father.

Thus, the Court has underlined the need for protection of the child's right to an identity and a family, as per article 8 ECHR" (p.96).

While the Inter-American Court of Human Rights has not ruled directly on surrogacy, its jurisprudence consistently reinforces the primacy of the best interests of the child, the right to identity and family life, and the obligation of states to adopt measures of non-discrimination. These principles are articulated in the advisory opinion OC-17/02²⁷, contentious cases such *Gelman v. Uruguay*²⁸ (2011) and *Vera Rojas v. Chile*²⁹ (2021), among others. The Court also reaffirmed in *Artavia Murillo et al. v. Costa Rica*³⁰ (2012), the legitimacy of families formed through assisted reproductive technologies and reaffirmed the need to protect all children equally, regardless of their way of birth. Moreover, in *Contreras et al. v. El Salvador*³¹ (2012), Inter-American Court addressed the grave consequences of family separation during conflict, including the wrongful appropriation of children and the long-term violations of their rights to identity and family.

Despite these evolving standards in universal and regional framework protection, the absence of specific, binding international human rights norms on surrogacy continues to leave children born through such arrangements in a situation of legal uncertainty and heightened vulnerability, particularly in cases of displacement, statelessness, or armed conflict, where their protection is often subordinated to jurisdictional and procedural inconsistencies. Considering this normative gap, it is unequivocal that, the issue must be handled and complemented from a child human rights approach. The *pro persona* principle is a widely recognized transversal axis that could enlighten and strengthen the path to protect these group.

Concerning, international criminal law, this set of rules provides a powerful structure for addressing dreadful violations perpetrated against children, particularly within armed conflict. The Rome Statute of the ICC explicitly codifies core crimes including unlawful deportation, forced transfer, enslavement, and other inhumane acts, provisions that courts have increasingly interpreted through a child-protection lens.

This evolution began with groundbreaking jurisprudence from the International Criminal Tribunal for Rwanda (ICTR), which established foundational precedents regarding crimes against children in conflict zones³². The ICC has subsequently built upon these principles, as evidenced in landmark cases such *Thomas Lubanga Dyilo*³³, where the Court specifically addressed the conscription and use of child soldiers, and

27. *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17 (Aug. 28, 2002).

28. *Gelman v. Uruguay*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011)

29. *Vera Rojas et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 439 (Oct. 1, 2021)

30. *Artavia Murillo et al. v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012)

31. *Contreras et al. v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011)

32. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, Int'l Crim. Trib. for Rwanda (Sept. 2, 1998),

33. *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, Case No. ICC-01/04-01/06-2842, Int'l Crim. Ct. (Mar. 14, 2012).

*Dominic Ongwen*³⁴, which confronted the complex issues of child abduction and sexual enslavement. Collectively, the progressive jurisprudential development by the ICC reflects an emerging child-sensitive approach within international criminal justice that acknowledges the distinctive and profound harm experienced by children in conflict zones, including their exploitation in hostilities and traumatic displacement from protective environments.

This evolution materializes concretely in the OTP innovative *2016 Policy on Children*³⁵, which established a comprehensive framework for investigating and prosecuting³⁶ crimes that specifically target or disproportionately impact children. The subsequent revised *2023 Policy*³⁷ represents another significant advancement by explicitly adopting a child rights-based approach³⁸ and recognizing the complex intersectional vulnerabilities³⁹ that children face in conflict settings, including their heightened exposure to displacement, trafficking⁴⁰, attacks against buildings dedicated to education and health care, torture and related ill-treatment, persecution, and sexual and gender-based violence, abduction, enslavement⁴¹, among other crimes.

Despite these important developments, a critical gap remains neither iteration of the policy addresses the particularly vulnerable situation of children born through surrogacy arrangements within conflict zones. These children occupy precarious legal gray zones, an omission that becomes increasingly problematic as surrogacy practices might soon emerge in some jurisdictions characterized by fragile governance structures or potential for armed conflict, creating major safeguard challenges. The ongoing conflict in Ukraine starkly exposes these normative deficiencies (*Lamberton, 2020*) and raised urgent questions regarding the adequacy of existing protection mechanisms (*UNICEF, 2022*).

III. SURROGACY AMID HOSTILITIES: CHILDREN BORN INTO THE CROSSFIRE OF THE RUSSIA-UKRAINE CONFLICT

As previously established, Ukraine is internationally recognized for its surrogacy industry (*König, 2023*), attracting intended parents from around the world due to its permissive regulatory framework (*Moskalenko, 2023; Everingham & Whittaker, 2023*), relatively low costs, and robust clinical infrastructure (*Jacobson, König, & Majumdar, 2024*).

34. *Prosecutor v. Dominic Ongwen*, Judgment pursuant to Article 74 of the Statute, Case No. ICC-02/04-01/15-1762-Red, Int'l Crim. Ct. (Feb. 4, 2021). Also see: *Prosecutor v. Bosco Ntaganda*, Judgment pursuant to Article 74 of the Statute, Case No. ICC-01/04-02/06-2359, Int'l Crim. Ct. (July 8, 2019).

35. Office of the Prosecutor, *Policy on Children*, International Criminal Court (Nov. 2016), <https://www.icc-cpi.int>

36. *Id.* at 33. The policy includes the regulatory framework, the phases of the preliminary examination, mechanisms of cooperation and external relations, institutional development and the policy implementation.

37. Office of the Prosecutor, *Policy on Children*, International Criminal Court (Dec. 2023), <https://www.icc-cpi.int>.

38. *Id.* at 23-26.

39. *Id.* at 27-28.

40. *Id.* at 24 ¶40.

41. *Id.* at 28 ¶51

Remarkably, despite the ongoing war, the surrogacy hub has continued to operate (*Tondo & Mazhulin, 2023*). According to Horsey (2024), approximately one thousand children born through such arrangements only between 2022 and 2023. Notwithstanding, the instrumentalization of surrogacy during wartime imposes severe burden on the surrogacy infrastructure (*Marinelli et al., 2022*) and their children (*Correa da Silva, 2022; Everingham et al., 2023*). The battlefield realities, such as occupation, displacement, and the breakdown of institutional protection, may give rise to conduct falling within the scope of international crimes, potentially supporting an eventual examination and further investigation under international criminal law.

Certainly, when one or more States are engaged in the use of armed force against another State, children born through altruistic gestational surrogacy and international commercial surrogacy arrangements may become an easy target for the perpetrators of international crimes. This concern is not merely theoretical, according to a 2024 Caritas Ukraine's report:

In 2023 a large-scale scheme of trafficking newborns abroad under the guise of surrogacy was exposed. The investigation established the facts of illegal transfer of 8 babies abroad and prevented an attempt to take another child abroad during martial law. Information on about 40 cases of transfer of newborn children from Ukraine abroad in violation of the current legislation is being checked. Criminal organization used vulnerable state of women for recruitment and further exploitation (Caritas Ukraine, 2024).

It is unequivocal that armed conflicts introduce additional risk factors that may transform the growing practice of engaging surrogate mothers⁴² in States with humanitarian needs (*Marinelli et al., 2022*) into a form of human trafficking, confinement, or exploitation of children (*Rotabi et al., 2017*). In this situation, defenseless children could lead to the sale, exploitation, abduction⁴³, forced adoption and deportation to the enemy territory, among other inhumane acts (*Hird, Kagan, Stepanenko, & Barros, 2022*).

On the one hand, this condition is aggravated by the systematic inability⁴⁴ of Ukrainian State authorities to effectively investigate and prosecute crimes committed under their jurisdiction, particularly when such crimes involve the forced transfer or exploitation of surrogacy born children, whose records are often incomplete or inaccessible. As noted by Lamberton (2020), even under normal conditions, "data surrounding surrogacy is minimal, as companies are not required to register surrogacy births. Similarly, data on exploitation and criminal activity is inadequate". Without proper registration and accountability, children born through cross-border surrogacy become administratively

42. European Parliament Res. 2022/2633(RSP) on the impact of the war against Ukraine on women (5 May 2022). <https://bit.ly/3MNk1Zj>.

43. Secretary-General, *Report on Children and Armed Conflict: Report of the Secretary-General*, U.N. Docs. A/59/695-S/2005/72 (Feb. 9, 2005) "Abduction refers to the unlawful removal, seizure, capture, apprehension, or enforced disappearance of a child either temporarily or permanently"; *Convention on the Rights of the Child*, supra note 10, art. 35.

44. *European Parliament Briefing*, supra note 18. Despite "the numerous orphans and children born through surrogate mothers in Ukraine, who have not been picked up by their parents, also face an increased risk of neglect, abduction or forced adoption".

invisible, undermining their right to identity (*CRC Art. 8; General Comments No. 5 and No. 14*) and leaving them without effective protection.

In this circumstance, the State under attack may be structurally incapable of protecting this category of children due to the constraints of armed conflict. Belton and Korolchuk (2025) report that the U.S. decision to reverse the mass abduction tracking program of Ukrainian children by Russian forces, severely hinders efforts to monitor and document these violations. This broader landscape of impunity must be considered when evaluating the accountability gap concerning surrogate-born children.

For instance, the Ukrainian Commissioner for Children's Rights point out that at least 180,000 children were illegally transferred to a territory under the effective control of the belligerent State⁴⁵. Despite Ukraine condemned the appeals of the Russian authorities to change the citizenship of children living in occupied territories and was determined to counteract these violations of children's rights⁴⁶, there is a tremendous gap between knowing the number of surrogated children abducted.

This regulatory challenge becomes significantly more complex given the substantial dearth of verifiable empirical data⁴⁷ on surrogacy arrangements within active conflict zones. Specifically, three major concerns arise: (i) the difficulty of assessing the precise number of children born through surrogacy during the war, due to Ukraine's constrained ability to monitor their welfare; (ii) the lack of accurate information on the *status* of children born through surrogacy who are under the effective control of the Russia, even when they may not technically hold Ukrainian nationality⁴⁸; and (iii) the urgent need to identify and relocate undocumented children who remain lost in the middle of the conflict.

Notably, the situation involving the unlawfully transferred children from Ukraine has already initiated proceedings through the OTP and the Pre-Trial Chamber of the ICC, which issued arrest warrants in 2023 regarding the deportation of children from occupied territories⁴⁹. In this circumstance, where a State is invaded and its children become direct targets of an occupying power, the inability to prevent or respond to such violations may constitute a circumstance precluding wrongfulness under international law, such as force majeure or state of necessity⁵⁰. Consequently, at first glance, the focus of any international state responsibility and the separate international criminal responsibility inquiry should not be misdirected toward the Ukrainian authorities, but rather toward those perpetrators, namely, the alleged Russian decision-makers implicated.

Nevertheless, this approach can be further nuanced by considering the extent to which the invaded State's capacities to respond are identified and the availability of

45. *Id.*, at 5.

46. OHCHR, *Experts of the Committee on the Rights of the Child Commend Ukraine on its Commitment to Child Rights, Ask about the Mental Health of Children in Light of the War and the Evacuation of Children with Disabilities* (Aug. 31, 2022), <https://www.ohchr.org/en/press-releases/2022/08/experts-committee-rights-child-commend-ukraine-its-commitment-child-rights>

47. *Special Rapporteur Report* (2018), *supra* note 3. "The obligation to register births is essential to prevent the abduction, sale of or traffic in children".

48. Civil Code of Ukraine. (2003, January). Post Art. 281.7. In: <https://bit.ly/3ofRd2l>

49. International Criminal Court. (2023, March 17). ICC issues warrant of arrest against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. <https://www.icc-cpi.int/news/>

50. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 23 & 25, in [2001] 2 Y.B. *Int'l L. Comm'n*. In: <https://legal.un.org/ilc/texts/2001>

resources, rather than attributing responsibility solely to the invading State. In situations where a State is under invasion, its ability to prevent and protect may be significantly compromised due to the challenges in maintaining control and resources, which should also be factored into the analysis of state responsibility.

While the primary responsibility for the unlawful transfer and deportation of children lies with the occupying power, whose acts may constitute grave breaches of international humanitarian law, crimes against humanity and war crimes, this does not entirely absolve the victim State from its own obligations. Even in the context of limited territorial control, international law requires that States adopt all feasible measures to prevent and protect against violations of children's rights. As established by the Inter-American Court in *Velásquez Rodríguez v. Honduras*, States must act with due diligence to prevent reasonably foreseeable harm, particularly when it affects vulnerable populations such as children⁵¹. This standard has been echoed by the ECHR in *Ilascu and Others v. Moldova and Russia*, which has held that, even in situations of limited territorial control, States are required to take "all the measures in their power"⁵² to secure the rights of persons under their jurisdiction. Likewise, the ICJ in the *Genocide Convention case, 2007* has emphasized that a State must act within the limits of its available means and according to its capacity⁵³.

In the case of Ukraine, this would include actions such as documenting the identities of children, preserving family links, collaborating with international mechanisms, and facilitating repatriation when possible. At the same time, the occupying State, in this case the Russian Federation, holds direct and aggravated responsibility for orchestrating and executing such transfers in violation of international law. Therefore, while state responsibility and criminal responsibility must be primarily attributed to the perpetrating power, the victim State's duty of protection under human rights law remains relevant and must be assessed in terms of its capacity and efforts, rather than in absolute terms.

Nonetheless, the situation of children born through surrogacy has not been expressly addressed by the OTP, States party referrals or the belligerent States, despite growing concerns in the escalation of the Russia-Ukraine conflict. It must be highlighted that the ongoing war starkly exposes surrogacy-born children, some of whom may be among those unlawfully transferred and subjected to forced adoption in the Russian Federation. It should not be overlooked that a number of these children could be among those reportedly confined in one of the 43 Russian facilities used for the "re-education" and adoption of Ukrainian children (*Raymond, Hathaway, Howard, & Hoshnood, 2024*).

As Khoshnood (2023) has observed, "Russia's federal government is operating a large-scale, systematic network of camps and other facilities that have held at least 6,000 children from Ukraine within Russia-occupied Crimea and mainland Russia." The report also references U.S. estimates suggesting that as many as 260,000 children may have been taken from Ukrainian territory. In these conditions, the legal and humanitarian

51. Velásquez Rodríguez Case, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988).

52. Ilascu & Others v. Moldova & Russia, 2004-VII Eur. Ct. H.R. 179, ¶ 332

53. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), Judgment, 2007 I.C.J. Rep. 43, ¶ 430 (Feb. 26).

blind spots surrounding surrogacy can be strategically exploited, turning surrogacy-born children into targets of acts that may amount to core international crimes.

Moreover, in the context of armed conflict, surrogacy may transform the child into a symbolic and tactical weapon on the battlefield, becoming a military objective used to erode morale and inflict long-term psychological harm on the adversary. This is especially risky in the case of unregistered surrogacy-born children, who often remain outside legal and humanitarian protection frameworks. Unquestionably, these practices represent not only dreadful human rights violations, but also constitute operational methods of warfare against Ukraine.

This emerging pattern of conduct required deeper scrutiny within the framework of international criminal law, particularly concerning the crimes codified in the Rome Statute. Such an examination becomes essential as scholars and practitioners grapple with the unprecedented intersection of surrogacy and armed conflict, compelling us to consider whether current legal categories can adequately capture and redress the distinctive harm faced by surrogate-born children in wartime conditions.

IV. SURROGACY AND CONTESTED INDIVIDUAL RESPONSIBILITY: CRIMES AGAINST CHILDREN UNDER THE ROME STATUTE

Children born through surrogacy in the context of armed conflict enjoy the same rights as any other children, as holders of individual entitlements and as members of intragenerational communities⁵⁴. In such circumstances, the principle of the child's best interests must prevail⁵⁵. The legal framework established by the Rome Statute⁵⁶ provides the basis to investigate and prosecute those responsible for the forced transfer, forced adoption, or trafficking of surrogacy-born children, where such acts may constitute crimes against humanity under Articles 7(1)(d) and 7(1)(k), or war crimes under Article 8(2)(b)(viii).

Article 7(1)(d) of the Rome Statute targets the deportation or forcible transfer of populations as a crime against humanity when undertaken systematically against civilian populations. In the Ukrainian context, the forced removal of surrogate-born children from their birthplace to foreign jurisdictions, particularly their placement in Russian-controlled adoption and care systems, may qualify within the scope of this provision. To determine individual criminal responsibility under this article, several cumulative legal elements must be established.

The removal must involve coercive methods and lack any justification under international law. In this context, the displacement of children, whether through

54. ICC, *Policy on Children*, *supra* note 7 and note 8, following UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (Feb. 2007), <https://bit.ly/42WbHMh>.

55. CRC. General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14 (29 May 2013). Para. 55, p. 13.

56. *Rome Statute of the International Criminal Court*, July 17, 1998, 2187 U.N.T.S. 3 (entered into force July 1, 2002); *Amendment to Article 8 of the Rome Statute of the International Criminal Court*, June 10, 2010, 2868 U.N.T.S. 195; *Amendments on the Crime of Aggression*, June 11, 2010, 2922 U.N.T.S. 9 (entered into force July 17, 2018)

threats, deception, or the manipulation of legal and administrative processes, meets this threshold, particularly when it leads to permanent separation from their intended families or from the surrogates who carried them. The organized relocation of children from occupied territories into the Russian Federation have been documented (*Caritas Ukraine, 2024*), often under reclassification or forced adoption schemes, indicating a deliberate and systematic apparatus of removal.

Specifically, the forcible transfer in the case at hand, when analyzed under Article 7(1)(d) of the Rome Statute, appears to meet at least five legal criteria. First, there is a physical transfer of the child, without legal grounds, to the Russian State or another location. Second, the transfer is carried out through coercive means, including abduction or deceptive administrative procedures. Third, the perpetrator is aware of the factual circumstances that establish the child's lawful presence in the occupied territory or area under effective control. Fourth, the act forms part of a widespread or systematic attack directed against the civilian population, in this case, surrogate-born children. Fifth, the perpetrator acts with intent, being aware that the abduction constitutes part of the broader attack and desiring the consequences of the transfer. In scenarios involving transnational criminal networks, a sixth aggravating element may also be present: the exchange of, or payment for, the transfer, thereby introducing a commercial and exploitative dimension to the crime.

The systematic nature of the operation is equally notable in the ongoing conflict. This is not a case of isolated state action; rather, the removals appear to follow a deliberate, widespread and structured pattern, consistent with other documented deportations of Ukrainian children. The issuance of arrest warrants by the Pre-Trial Chamber II for crimes related to the transfer of children from occupied territories strengthens the legal foundation for considering such conduct as part of a broader attack against the civilian population. When surrogacy-born children are targeted precisely because they are vulnerable and easily removed, their status as victims of a widespread or systematic attack becomes even more apparent.

In addressing the protection of children, the OTP and the ICC Pre-Trial Chamber II have moved toward issuing a warrant of arrest for Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, showing a new momentum in international criminal law. However, there is no reference to the specific situation of children born by surrogacy arrangements in the conflict. The focus should be on protecting their rights too, ensuring their well-being, and addressing any potential violations of international humanitarian law or human rights law by the parties involved in the conflict.

Although the 2023 Policy on Children adopted by the Office of the Prosecutor⁵⁷ makes clear that the ICC takes seriously the full spectrum of harms inflicted upon children, including non-physical forms of abuse. Surrogacy-born children, when targeted for removal, assimilation, or exploitation, may thus become victims of international crimes not because of their origin per se, but because the circumstances of their birthplace place them at the margins of legal visibility and protection. Their invisibility, in this sense, becomes a tool for impunity.

57. ICC, *Policy on Children*, *supra* note 8.

From the trafficking and abduction of children born by surrogacy arrangement as a crime against humanity, the context of an armed conflict may lead to taking advantage of by State aggressor or even international criminal organizations to relocate this vulnerable group. The risks children born through surrogacy face expose them to perpetrators of crimes against humanity under Article 7 of the ICC Statute.

Therefore, the Rome Statute provides a robust framework to capture and prosecute these forms of violence against surrogacy-born children, both as deportation or forcible transfer under Article 7(1)(d), and as inhumane acts causing serious suffering under Article 7(1)(k).

It must be recalled that early childhood is a critical stage of human development, during which children form the foundations of their identity, personality, and emotional security⁵⁸. Any disruption at this stage, particularly in the context of displacement, separation from parents or surrogate mother, or the loss of cultural and legal identity, can result in long-term psychological harm. In this light, the forced removal or confinement of surrogacy-born children during international armed conflicts may constitute inhumane acts under Article 7(1)(k) of the Rome Statute, provided the legal elements are satisfied.

According to the Elements of Crimes adopted by the Preparatory Commission for the ICC, the act must inflict great suffering or serious injury to an individual's body, mental health, or physical well-being⁵⁹. It must also be of a character comparable to other enumerated crimes against humanity, such as torture, sexual violence, or enforced disappearance. The removal of children from their families, intended parents, or surrogates may well meet that threshold (*American Bar Association, 2019; Society for Research in Child Development, 2018; De Witte, 2018; National Child Traumatic Stress Network, 2015*). The current instances perpetrated by Russian authorities are not merely administrative or incidental; they unfold within broader contexts of violence, occupation, and cultural suppression, with the effect of erasing the child's identity and profoundly disrupting their psychological development.

Importantly, the targeting of children born through surrogacy, precisely because they lack formal parental protection or legal documentation, amplifies the cruelty of the conduct. These children become invisible, disconnected to their family, community, and identity, their vulnerability is exploited through mechanisms that purport to "protect" or "rescue" them, but in fact constitute grave violations of their rights and dignity. In such settings, the infliction of severe mental suffering may be both intentional and instrumental, aimed at altering demographic realities or asserting ideological control, making prosecution under Article 7(1)(k) not only appropriate, but necessary.

As Villegas Delgado (2022) rightly observes, the final codification of Article 7 reflects a series of political and legal compromises that have considerably narrowed its scope. To overcome this limitation, it is now more vital than ever to adopt a dynamic and evolutive interpretation, one capable of addressing the complex vulnerabilities faced by children born through assisted reproductive technologies and caught amid armed conflict.

58. Organización de los Estados Americanos (OEA) & CEREBRUM, *Primera infancia: Una mirada desde la neuroeducación* 19 (2010), <https://bit.ly/3IBQPC7>.

59. U.N. Preparatory Commission for the International Criminal Court, *Finalized Draft Text of the Elements of Crimes*, Addendum, Part II, U.N. Doc. PCNICC/2000/1/Add.2 (Nov. 2, 2000), <https://bit.ly/45th3Ay>.

Equally important in this context is Article 8(2)(b)(viii) of the Rome Statute, which defines as a war crime the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, as well as the deportation or transfer of all or parts of the population of the occupied territory within or outside that territory. This provision reflects long-standing prohibitions under international humanitarian law, particularly those established in Article 49 of the Fourth Geneva Convention.

In the context of the armed conflict between Russia and Ukraine, children born through surrogacy arrangements clearly fall within the scope of the civilian population entitled to protection. In light of the vulnerabilities discussed in the preceding sections, they are particularly susceptible to unlawful transfer or deportation.

To qualify as a war crime under Article 8(2)(b)(viii), specific elements must converge. First, the perpetrator must have carried out, or participated in, the unlawful transfer or deportation of civilians from occupied territory. In the case of surrogacy-born children, this includes individuals or groups, whether military personnel, administrative authorities, or affiliated actors who organize, facilitate, or execute the removal of these children from Ukrainian territories under occupation or to Russian territory.

Second, conduct must occur in the context of an international armed conflict, involving hostilities between at least two States. The classification of the situation as such is uncontested and is clearly satisfied by Russia's occupation of Crimea, Donetsk, Luhansk, Zaporizhzhia, and Kherson, as well as by the full-scale invasion launched on 24 February 2022. This classification is relevant for the purposes of applying international humanitarian law and the Rome Statute.

Third, the perpetrator must have been aware of the factual circumstances establishing the existence of the armed conflict and the nature of their actions within that context. The organized nature of the transfers, often accompanied by the erasure of identity, denial of repatriation, and integration of children into the population of the occupying power strongly suggests such awareness and intent.

Moreover, the transfer of surrogacy-born children may be both direct and indirect. It can be direct, in the form of physical relocation carried out by occupying forces or State agents; or indirect, when policies and administrative frameworks enable the loss of legal identity, the denial of access to intended parents, or the imposition of citizenship and guardianship by the occupying power.

Given the scope and gravity of these practices, and the degree to which they are coordinated and politically endorsed, they may fall squarely within the definition of war crimes under Article 8(2)(b)(viii). In such cases, criminal responsibility may attach to those individuals who knowingly participate in or facilitate the transfer of children from occupied territories, particularly when such acts are committed in disregard of legal protections afforded to civilians under international law.

In assessing the abduction of children born by surrogacy as a war crime, the child remains in a scenario of hostility that does not always allow them access to the protection of national institutions, leaving the children born through surrogacy unprotected and facing extreme vulnerability to confront abductions, trafficking, or human trafficking in times of war. Notwithstanding, it is crucial to mention that those crimes are clearly recognized as serious breaches of the four Geneva Conventions 1949. In consequence, state actors involved in such crimes must be accountable.

The war crime of unlawful confinement⁶⁰ involves as the first element of the crime that the perpetrator confined or continued to confine one or more children to a specific location or facility, such as re-educational camps or concentration camps. The second element refers to the special protection confided to the child as members of the civilian population by the Geneva Conventions of 1949, the Additional Protocol I to the Geneva Convention, the international customary law, and the OPAC. The third element refers to the perpetrator acknowledging the child's protected status. The fourth element is related to the perpetrator knowing that the child victim belonged to an adverse party in an international armed conflict. Another element to consider before unlawful confinement is the perpetrator's acknowledgment of the ongoing armed conflict when the abduction occurred.

Considering the obligation to uphold the best interests of the child when addressing crimes against humanity and war crimes affecting surrogate-born children, the OTP should integrate previously discussed vulnerabilities of surrogate-born children in the investigation process.

V. ADDRESSING THE OTP'S SHORTFALLS ON SURROGACY AND CHILDREN'S RIGHTS WITH STRATEGIC RECOMMENDATIONS

This section outlines actionable proposals aimed at strengthening the responsiveness of the ICC's Office of the Prosecutor (OTP) to the complex challenges associated with investigation and protection of surrogate-born children during armed conflicts. These recommendations draw upon the best interests of the child principle, as enshrined in the CRC, and the evolving legal and ethical standards concerning surrogacy in conflict-affected settings.

1. **Definition and Scope:** The OTP's policy could include a clear definition of surrogate gestation and how the best interest principle applies to those born through this method in armed conflict.
2. **Prevention and Awareness:** Under its Policy, the OTP should raise awareness about the heightened vulnerabilities of surrogate-born children in conflict zones. Additionally, coordinated educational initiatives should specifically address the risks of trafficking, abduction, and forced adoption affecting this population, thereby preventing their legal invisibility and enhancing their protection under international criminal law.
3. **Substantive Inclusion of Surrogacy-Related Crimes:** In a further reassessment the OTP could include surrogate-born children as potential victims of international crimes. The policy should also promote capacity-building initiatives for early risk detection and prevention.
4. **Early Identification and Child Human Rights Protection Measures:** During preliminary examinations and investigations, the OTP should establish early detection protocols to identify surrogate-born children and ensure their inclusion

60. Article 8 (2) (a) (vii) ICC Statute

in ICC protection frameworks, including psychosocial support, registration, and visits to surrogacy facilities.

5. State Cooperation and Data Transparency: The OTP should request active cooperation from States where surrogacy arrangements are permitted. This includes the provision of up-to-date civil registration data on children born through surrogacy, their legal status, and current location to prevent trafficking or disappearance.
6. Registration and Traceability Standards: The OTP Children's Policy should include a clear and effective standard for registering children subrogated, incorporating the identification of the intermediary companies and the surrogate mothers, ensuring that the registration process is accessible to children before and during an eventual international criminal procedure.
7. Promotion of Legal Safeguards and Regulatory Oversight: The OTP should encourage transparency in the States where surrogacy takes place, promoting the regulation and strengthening the legal framework over intermediaries and private surrogacy companies to prevent potential crimes during an armed conflict.
8. Monitoring and reporting for surrogate-born children in conflict: Monitoring, reporting, and verification mechanisms must specifically address the vulnerabilities of surrogate-born children, who face risks such as exploitation and legal ambiguity. Independent, conflict-sensitive monitoring systems should be implemented to ensure transparency in surrogacy agreements and protect children from unlawful transfers or trafficking. These mechanisms should also facilitate international cooperation to track the welfare of these children and uphold human rights standards, ensuring that children's best interests are prioritized despite the conflict.

VI. CONCLUSIONS

This contribution demonstrates that while international humanitarian, human rights, and criminal law provide an integrated protective framework for children in armed conflict, these instruments still fall short when confronted with the complex realities surrounding surrogacy-born children. This legal invisibility is exacerbated by the lack of specific regulation and the failure to integrate reproductive technologies into child protection mechanisms.

The analysis of Ukrainian case reveals how surrogate-born children are not only at risk of abandonment or loss of identity but may also be subjected to crimes such as unlawful transfer, trafficking, or forced adoption, acts which can constitute crimes against humanity and war crimes under the Rome Statute. These acts are not incidental but often facilitated by the very legal and humanitarian gaps that surrogacy currently inhabits in conflict contexts.

This article emphasizes that surrogate-born children may be systematically targeted as part of broader assaults on civilians, and encourages a more dynamic interpretation of Articles 7(1)(d), 7(1)(k), and 8(2)(b)(viii) of the ICC Statute. It argues that international legal standards must evolve to capture the unique harms faced by these children and to ensure accountability for such heinous crimes.

The current analysis engages with the ICC's 2023 Policy on Children, welcoming its child-rights-based approach, but urging that future updates explicitly address the status of surrogate-born children. Given their heightened risk of marginalization, these children must be brought within the visibility of international criminal processes, particularly in contexts where States are unable or unwilling to protect them.

Finally, this article advocates for the recognition of surrogacy as a relevant factor in the interpretation and application of international criminal law. In doing so, it calls upon both the OTP and the broader legal community of practice to treat surrogate-born children not as a fringe issue, but as a pressing matter of protection, justice, and accountability. Addressing this gap is not only necessary for the effective implementation of the child's best interests, but also for ensuring the integrity and responsiveness of international criminal justice in the face of contemporary warfare and technological change.

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