

# Deportation, Forcible Transfer, Assigned Residence and Ethnic Cleansing in International Humanitarian Law

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## Deportation and Forcible Transfer

Deportation and forcible transfer refer to forced displacement of civilians in or from occupied territory. The difference between the two terms is that *deportations* are to outside the occupied territory and *forcible transfers* are to another part of the occupied territory.

Both deportation and forcible transfer are **illegal** under international humanitarian law (IHL). The key provision is Article 49 of the Fourth Geneva Convention. Article 49(1) provides,

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

Article 49(2) recognizes that forced displacement may be permitted for two reasons:

- The security of the occupied population; or
- Imperative military reasons.

The International Criminal Tribunal for the former Yugoslavia has made clear that, in this context, the term “forced” movement must be understood in a broad sense:

“the term ‘forced’, when used in reference to the crime of deportation, is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”<sup>1</sup>

It has also found, for instance, that,

“Serb municipal authorities and Serb forces created severe living conditions for Muslims and Croats which aimed, and succeeded, in making it practically impossible for most of them to remain.”<sup>2</sup>

Article 147 of the Fourth Geneva Convention defines as a ‘grave breach’ the “unlawful deportation or transfer” of a protected person. Article 146 places on all High Contracting Parties the duty to provide effective penal sanctions for persons responsible for such a ‘grave breach’. It obliges each High Contracting Party to search for such persons and to bring them to justice. Granting them amnesty would be contrary to these obligations.

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<sup>1</sup> *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Appeals Chamber, Judgement, 22 March 2006, para. 281.

<sup>2</sup> *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Chamber I, Judgement, 27 September 2006, para. 729.

## Assigned Residence

“Assigned residence” is when the Occupying Power commands a civilian to live in a designated place, out of the way, where surveillance is more easily exercised.

Assigned residence is **legal** under IHL. The key provision is Article 78 of the Fourth Geneva Convention. Article 78(1) provides,

“If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.”

The fact that a civilian may be moved out of the way makes it similar to forcible transfer. However, measures of assigned residence must respect a number of conditions:

- They must be taken for “imperative reasons of security”, when no other less severe means are available to achieve the same goal.
- The place of assigned residence cannot be outside the frontiers of the occupied territory.
- Measures of assigned residence must be taken on an individual basis.
- The Occupying Power must ensure, to the extent necessary, the support of the person placed in assigned residence and that of his or her dependants.
- Regular procedure (due process) must be respected.

## Ethnic Cleansing

No IHL conventions refer to “ethnic cleansing.” The term was born out of the war in the former Yugoslavia in the early 1990s. However, its legal meaning is not clear. One definition would be to *render an area ethnically homogenous by using force or intimidation to remove persons of a certain ethnic or religious group.*

In a resolution about the war in the former Yugoslavia, the United Nations Security Council said that it,

“Strongly condemns any violations of international humanitarian law, including those involved in the practice of “ethnic cleansing.”<sup>3</sup>

The Security Council has linked this practice to acquisition of territory by threat or use of force<sup>4</sup>, and forced evacuation of the civilian population<sup>5</sup>, and deemed it to be a grave breach of the Geneva Conventions<sup>6</sup>, as well as an international crime for which the perpetrators should be held responsible.<sup>7</sup>

It seems that “ethnic cleansing” is a composite term that covers various violations of IHL, such as the grave breach of “unlawful deportation or transfer” of a civilian (Article 147 of the Fourth Geneva Convention).

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<sup>3</sup> Resolution 771, adopted on 13 August 1992, operative paragraph 2.

<sup>4</sup> Resolution 819, adopted on 16 April 1993, operative paragraph 5.

<sup>5</sup> Resolution 819, adopted on 16 April 1993, operative paragraph 6.

<sup>6</sup> Resolution 787, adopted on 16 November 1992, operative paragraph 8.

<sup>7</sup> Resolution 819, adopted on 16 April 1993, operative paragraph 7.