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IMPLEMENTATION AND INTERPRETATION OF THE DEFINITIONS OF INTERNATIONAL CRIMES IN THE NATIONAL JURISDICTION OF UKRAINE

Abstract: *The article consists of two parts, the first of which discusses the problems associated with implementing the provisions of international law in the Ukrainian legal system regarding the understanding of the concept of "international crimes". It underscores that the different definitions are due to the fact that Ukraine is not a party to the Rome Statute. However, it should be noted that most provisions of international law regarding international crimes regarding war crimes, the crime of aggression and the crime of genocide are part of the Ukrainian legal system. At the same time, there are no crimes against humanity in Ukrainian national criminal law. The second part addresses the issues regarding Ukrainian courts' interpretation of the national criminal law and international treaties on international crimes: interpreting the provisions of United Nations acts and the Rome Statute, applying the principle of "nullum crimen sine lege" in the context of prosecuting the crime of Holodomor, interpreting the provisions of the European Convention on Human Rights in connection with the use of trial in absentia in the case of Russian war criminals and interpreting provisions regarding universal jurisdiction in Ukrainian law.*

Keywords: crime of aggression, international crimes, Ukrainian law, universal jurisdiction, war crimes

INTRODUCTION

In the context of Ukraine, aligning domestic criminal law with international standards regarding crimes such as genocide, war crimes, crimes against humanity and the crime of aggression is essential for ensuring accountability and justice. This

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article aims to examine whether and how the definitions of international crimes in Ukrainian law are implemented and interpreted consistently with international standards. It seeks to show the challenges and potential areas for improvement in ensuring alignment with international standards.

The article consists of two parts. In the first part, we explore the legislative measures taken by Ukraine to incorporate definitions of international crimes into its domestic legal system, and we examine the effectiveness of such measures in practice. In the second part, we address issues surrounding Ukrainian courts' interpretation of these definitions. Additionally, we analyse gaps or discrepancies between Ukrainian law and international standards, considering their implications for justice.

The research methodology for this article is based on the formal-dogmatic method. It encompasses not only the content of national and international legal acts, but also an analysis of doctrine and Ukrainian court rulings as elements of a unified system. Specifically, Ukrainian national law on the application of international law, criminal law regulations on responsibility for crimes defined in international law as international crimes and international law provisions defining international crimes are analysed. Ukrainian doctrine describing issues of implementing and interpreting laws on responsibility for crimes defined as international crimes is also examined. Additionally, Ukrainian court rulings regarding cases of international crimes are dealt with, using resources from the Unified State Register of Court Decisions.[1]

1. PROBLEMS WITH IMPLEMENTING INTERNATIONAL LAW ON INTERNATIONAL CRIMES INTO THE UKRAINIAN LEGAL SYSTEM

Although Ukraine is not a party to the Rome Statute, its criminal legislation is significantly integrated with international humanitarian and international criminal law. According to Art. 3 of the Criminal Code of Ukraine (CCU), the legislation on criminal responsibility is embodied in the CCU, based on the Constitution of Ukraine and universally recognised principles and norms of international law. Ukrainian laws on criminal responsibility are to be consistent with international treaties ratified by the Parliament of Ukraine.[2] International treaties of Ukraine, having been consented to by the Parliament of Ukraine, are part of the national

[1] In accordance with the Law of Ukraine of 22 December 2005 on Access to Court Decisions, No. 3262-IV. This is an automated system for collecting, storing, protecting, accounting, searching for and providing electronic copies of court decisions, available at: https://reyestr.court.gov.ua (accessed 30 August 2024).

[2] Criminal Code of the Republic of Ukraine, No. 2314-III, 1 September 2001, available at: https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf (accessed 30 August 2024).

law and are applied in accordance with the procedure prescribed for the norms of national law (Art. 19 of the Law on International Treaties of Ukraine[3]). Paragraph 2 of this provision establishes the primacy of international law over national law.[4]

The concept of an international crime can be understood *sensu largo* or *sensu stricto*. *Sensu largo*, it includes actions recognised as crimes under international conventions, such as terrorism,[5] money laundering,[6] drug crimes,[7] piracy,[8] genocide,[9] crimes against humanity, war crimes[10] etc. *Sensu stricto*, it refers to actions prosecuted by international courts. At present, these are "the most serious crimes of concern to the international community as a whole", as provided in the Rome Statute and covering (a) the crime of genocide; (b) crimes against humanity; (c) war crimes and (d) the crime of aggression.[11]

Since Ukraine is not a party to the Rome Statute, the overall structure of international crimes in national law is impacted. There is noticeable discrepancy between the provisions of the Rome Statute and the norms of Ukrainian law on international crimes. The CCU includes Chapter XX – "Crimes Against Peace, Security of Humanity, and International Order." This chapter specifically comprises the following crimes: propaganda of war (Art. 436); production and distribution of communist or Nazi symbols and propaganda of communist and national socialist (Nazi) totalitarian regimes (Art. 436-1); justification, recognition as legitimate or denial of the armed aggression of the Russian Federation against Ukraine or glorification of its participants (Art. 436-2); planning, preparation and waging of an aggressive war (Art. 437); violation of laws and customs of war (Art. 438); use of weapons of mass destruction (Art. 439); development, production, purchasing, storage, distribution or transportation of weapons of mass destruction (Art. 440); ecocide (Art. 441); genocide (Art. 442); crimes against the life of a foreign state

[3] Act of Ukraine of 29 June 2004 on International Treaties of Ukraine, No. 1906-IV.

[4] *Ibidem*.

[5] International Convention for the Suppression of the Financing of Terrorism (adopted on 9 December 1999, entered into force on 10 April 2002), 2178 UNTS 197.

[6] United Nations Convention against Transnational Organized Crime (adopted on 15 November 2000, entered into force on 29 September 2003), 2225 UNTS 209.

[7] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted on 20 December 1988, entered into force on 11 November 1990), 1582 UNTS 95.

[8] United Nations Convention on the Law of the Sea (adopted on 10 December 1982, entered into force on 16 November 1994), 1833 UNTS 3.

[9] Convention on the Prevention and Punishment of the Crime of Genocide (adopted on 9 December 1948, entered into force on 12 January 1951), 78 UNTS 277.

[10] Geneva Conventions and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted on 8 June 1977, entered into forve 7 December 1978), 1125 UNTS 609.

[11] Rome Statute of the International Criminal Court (last amended 2010) (signed on 17 July 1998, entered into force on 1 July 2002), 2187 UNTS 3.

representative (Art. 443); criminal offences against internationally protected persons and institutions (Art. 444); illegal use of symbols of the Red Cross, the Red Crescent or the Red Crystal (Art. 445); piracy (Art. 446); and recruiting, financing, supplying and training of mercenaries (Art. 447).

Therefore, we can classify as international crimes *sensu stricto* the following acts proscribed by the CCU:

- crime of aggression (Art. 437 – Planning, preparation and waging of an aggressive war)
- crime of genocide (Art. 442)
- war crimes (Art. 438 – Violation of laws and customs of war and Art. 441 – Ecocide).[12]

1.1. The crime of aggression

The Ukrainian criminal legislation includes terms such as "aggressive war" or "aggressive military actions", whilst in international law the term "aggression" is used.[13] The terms mentioned above were implemented into the CCU in Arts. 436, 436-2 and 437. In our opinion, aggression is explicitly criminalised in Ukraine's domestic criminal code, though the definition of Art. 437 differs significantly from that under international law.[14] Primarily, the Ukrainian legal definition of the crime is not limited to leaders. According to Art. 8*bis* of the Rome Statute, only "a person in a position effectively to exercise control over or to direct the political or military action of a State" may be responsible for the crime of aggression; the CCU does not contain such a norm. Moreover, the provision can be used to prosecute individuals, but can also have legal consequences for organisations, groups or structures that are guilty of the specified actions. This emphasises the importance of countering collective forms of aggression and terrorism.

Regarding the use of terms and their definitions, we can note the following. The definition of "aggressive war" is absent in the CCU, which distinguishes between two concepts: "aggressive war" and "military conflict".[15] In addition, in accordance with the Law on the Defence of Ukraine, armed aggression refers to the use of

[12] Ecocide is covered by the concept of a war crime; in particular, it is mentioned in Art. 8.2.b(IV) of the Rome Statute as: "severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."

[13] S. Denisov, K. Kardash, *Viznačennâ ponâttâ agresivna vìjna u krimìnal'nomu pravì Ukraïni* [Definition of the Concept of Aggressive War in the Criminal Law of Ukraine], 3 Bulletin of Luhansk State University of Internal Affairs named after EO Didorenko 96 (2012).

[14] F. D'Alessandra, *Pursuing Accountability for the Crime of Aggression Against Ukraine*, 5 Revue Européenne du Droit 60 (2023).

[15] Y. Kamardina, S. Kovaliov, *Sutnìst' ponât' "agresivna vìjna" ì "voênnij konflìkt": spìvvìdnošennâta mìžnarodnopravovij aspekt* [The Essence of the Concepts "Aggressive War" and "Military Conflict": Relationship and International Legal Aspect], 15 Bulletin of Mariupol State University, Series: Law 82 (2018).

armed force by another State or group of States against Ukraine. It encompasses several actions: invasion or attack by another State's armed forces, occupation or annexation of Ukrainian territory, blockade of ports, coastline or airspace, violation of communications, attacks on Ukrainian military or civilian fleets, sending armed groups to commit acts of force against Ukraine, allowing one's territory to be used by another State for aggressive actions and misuse of armed forces stationed in Ukraine according to international treaties.[16] This definition corresponds to that in Resolution of the UN General Assembly (UNGA) 3314 (XXIX).

According to the literature, there are several approaches in defining aggression and aggressive war: both terms can be seen as identical, or aggression may be read as a broader term that includes aggressive war as a type.[17] It is also believed that in order to clarify the definition of "aggressive war" in accordance with national law, it is necessary to use the one in international law.[18] This concept is used by national courts when considering cases under Art. 436 CCU. For example: "Aggressive war and military conflict are types of aggression. The definition of aggression is given in the resolution of the XXIX session of the UN General Assembly dated December 14, 1974, namely aggression should be understood as the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state or in any other way that is incompatible with the UN Charter."[19] In another cases it was stated that

> [a]ggressive war and military conflict are types of aggression. Aggressive war is determined by the scale of actions, the combination of the use of armed forces with other means of struggle, the formulation and implementation of certain political tasks: the seizure of foreign territory, enslavement, etc.[20]

1.2. The crime of genocide

In contrast to the previous provision, the definition of the crime of genocide (Art. 442 CCU) in Ukrainian criminal law almost fully corresponds to and reproduces the norms of international law. Under Art. 442:

[16] The Act of Ukraine of 6 December 1991 about Defence of Ukraine, No. 1932-XII as amended.

[17] H. Oliynyk, *Ctan teoretičnogo doslìdžennâpitan' krimìnal'noï vìdpovìdal'nostì za propagandu, planuvannâ, pìdgo* [The State of Theoretical Research of the Issues of Criminal Liability for Propaganda, Planning, Preparation and Waging of Aggressive War], 8 Bulletin of LTEU. Legal Sciences 117 (2019).

[18] A.M. Boyko, Y.M. Mazunin, *Scientific and Practical Commentary on the Criminal Code of Ukraine*, Legal Opinion, Kyiv: 2012.

[19] Dissenting Opinion of the Judge of the Slovyanskyi City District Court of the Donetsk Eegion in Case No. 243/4702/17, 1 June 2017.

[20] Dissenting Opinion of the Judge on the Judgment of the Krasnoarmy City and District Court in Case No. 235/9442/15-k, 22 September 2017.

> [g]enocide (...) is a willfully committed act for the purpose of total or partial destruction of any national, ethnic, racial, or religious group by extermination of members of any such group or inflicting grievous bodily injuries on them, creation of life conditions calculated for total or partial physical destruction of the group, decrease or prevention of childbearing in the group, or forceful transferring of children from one group to another.

However, there are lexical differences that can create certain problems in practice. First of all, the national law (i.e. Art. 442 CCU) does not use the term "serious", but "grievous" bodily injuries. We cannot but agree that the concept of serious injuries is a broader category than grievous injuries.[21] Accordingly, in practice such a situation may arise when the injury will not be grievous in accordance with Art. 442 CCU, but will qualify as serious according to the international definition of genocide.[22] Another difference is that the CCU did not include as a way of committing of genocide "causing serious (...) mental harm", which is enshrined in the Genocide Convention and the Rome Statute.[23]

1.3. The problem of criminalising crimes against humanity

A significant issue in Ukrainian legislation is the lack of a category for "crimes against humanity". Consequently, Ukrainian courts often address actions that could be categorised as such under Art. 438 CCU. However, this approach fails to consider the absence of a direct link to armed conflict, neglecting the aspect of crime as a tool to further the objectives of such conflicts.[24] In 2019, the draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law No. 2689 dated 27 December 2019 was registered, which proposed adding a provision to Art. 442-1 that would provide for responsibility for crimes against humanity. According to the Explanatory Note, the authors of the draft law justified the importance of the changes by the fact that

> other types of international crimes are committed in the occupied territories of Ukraine – the so-called crimes against humanity. There are thousands of victims of these crimes. However, the perpetrators of most of them currently manage to avoid criminal prosecution, which, among other things, is due to the inconsistency of Ukrainian legislation on criminal responsibility with the provisions of international criminal

[21] *Genocide in Ukraine: Legal Analysis*, Regional Center for Human Rights, available at: https://rchr.org.ua/analytics/genoczyd-v-ukrayini-yurydychnyj-analiz/ (accessed 30 August 2024).

[22] *Ibidem*.

[23] *Ibidem*.

[24] Y. Orlov, *Ctan teoretičnogo doslìdžennâpitan' krimìnal'noï vìdpovìdal'nostì za propagandu, planuvannâ, pìdgo* [Crime and its Counteraction in the Conditions of War: Criminal Law and Criminological Dimensions: A monograph], Pravo, Kharkiv: 2023, p. 100.

> and humanitarian law. In other words, due to the absence of the composition of the relevant crime in the Criminal Code of Ukraine as a basis for criminal liability.[25]

However, in the conclusion to the above-mentioned draft, presented by the Main Scientific and Expert Administration, it was indicated that such acts are already provided for in other articles of the CCU as independent crimes, and that the punishments for them are more severe.[26] In our opinion, we cannot agree with this conclusion since the CCU does not contain special components of crimes against humanity, for which the presence of a special feature is necessary. That is why the Ukrainian legislation is not adapted to effectively prosecute and adjudicate in cases related to the aggression of the Russian Federation against Ukraine.[27]

1.4. War crimes

As for war crimes, it can be noted that the term is absent from the CCU;[28] instead, such socially dangerous actions are criminalised in Art. 438 CCU ("Violation of the laws and customs of war"), which includes

> [c]ruel treatment of prisoners of war or civilians, deportation of civilian population for forced labor, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare recognized by international instruments consented to by binding by the Verkhovna Rada (Parliament) of Ukraine, and also giving an order to commit any such actions.

The main problem is the blanket nature of this article, namely the fact that its disposition refers to international treaties on the "laws and customs of war", the consent to the binding nature of which was granted by the Verkhovna Rada of Ukraine.[29] Thus, a specific list of war crimes is not regulated, but it is determined that war crimes are all violations of the laws and customs of war enshrined in the

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[25] Draft Act on Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law of 27 December 2019, No. 2689, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804 (accessed 30 August 2024).

[26] *Ibidem*.

[27] Orlov, *supra* note 24, p. 100.

[28] O. Cherviakova, *Vìdpovìdal'nìst'* za *voênnìzločini: mehanìzmi ta procesi vìdnovlennâ suverenìtetu ta bezpeki Ukraï'n* [Responsibility for War Crimes: Mechanisms and Processes of Recovery of Ukraine's Sovereignty and Security], 61(2) Forum Prava 150 (2020), p. 154.

[29] D. Koval, *Sources of interpretation of Article 438 of the Criminal Code of Ukraine*, Truth Hounds, 22 September 2023, available at: https://truth-hounds.org/en/cases/sources-of-interpretation-of-article-438-of-the-criminal-code-of-ukraine/ (accessed 30 August 2024).

above-mentioned international treaties.[30] The approach needs to be changed because not every violation of the laws and customs of war is considered a war crime in international law. According to Art. 8-2 of the Rome Statute, individuals are only responsible for "grave breaches" or "serious violations". Additionally, it is essential for the court in each case to explicitly point to the treaty clauses that may be deemed criminally punishable under Art. 438. Furthermore, when ruling, it is necessary to find and designate supplementary sources for interpreting the above-mentioned article, such as international treaties or even relevant international case law.[31]

2. PROBLEMS WITH INTERPRETING PROVISIONS OF UKRAINIAN LAW ON INTERNATIONAL CRIMES

During this research, we analysed the judicial practice of Ukraine regarding the application Art. 437 – Planning, preparation and waging of an aggressive war, Art. 442 – Genocide and Art. 438 – Violation of rules of the warfare of the CCU. For this purpose, the information system of the Unified State Register of Court Decisions was used.

In the period 2022–2023, 41 judgments were issued in war crimes cases and one in a case for the crime of genocide (incitement to the crime of genocide). The reasoning in the majority of the judgments in cases of war crimes was largely based on the norms of international law. In particular, whilst defining the status of the Russian aggression, courts referred to it as an international armed conflict. In doing so, the courts invoked:

1. The Charter of the United Nations, signed on 26 June 1945 (emphasising that Ukraine, the Russian Federation and 49 other founding countries, as well as other countries worldwide, are members of the UN).
2. Declaration of the UNGA No. 36/103 of 9 December 1981, on the inadmissibility of intervention and interference in the internal affairs of states.
3. UN Resolutions:
   - No. 2131 (XX) of 21 December 1965, containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty.
   - No. 2625 (XXV) of 24 October 1970, containing the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.

[30] O. Cherviakova, *Voênnì zločini: problemiregulûvannâ v zakonodavstvì Ukraï'ni* [War Crimes: Problems of Regulation in the Legislation of Ukraine], in: A. Hetman, B. Golovkin (eds.), *Digitization and Security*: *Materials of the International Science and Practice Conference*, Yaroslav Mydryi National Law University, Kharkiv: 2020, p. 380.

[31] Koval, *supra* note 29.

- No. 2734 (XXV) of 16 December 1970, and No. 3314 (XXIX) of 14 December 1974, containing the Declaration on Strengthening International Security.
- No. 3314 (XXIX) of 14 December 1974, Definition of Aggression.

Those international documents establish the obligation of States to refrain from armed intervention, subversive activities, military occupation or encouragement of or support for separatist activities, and to prevent training, financing and recruiting mercenaries or sending mercenaries to the territory of another state. The decisions contain conclusions that the conflict between the Russian Federation and Ukraine is an ongoing international armed conflict. References are made to the four 1949 Geneva Conventions, among others.[32]

Moreover, in their decisions Ukrainian courts refer to the provisions of the Rome Statute, although Ukraine has not ratified it. The relevant provisions of the Rome Statute are used to determine which acts should be classified as war crimes or in order to interpret such acts.[33] The case law of international criminal courts, e.g. the International Criminal Tribunal for the former Yugoslavia (ICTY), is also cited by the Ukrainian courts when interpreting international crimes.

2.1. The problem of applying the principle of *nullum crimen sine lege*

When applying the principle of *nullum crimen sine lege* to justify the judgments of Ukrainian courts in cases of international crimes, references are made to Art. 7(2) of the European Convention on Human Rights, according to which this principle shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognised by civilised nations.[34] In particular, the decision of the Appeal Court of Kyiv of 13 January 2010, in a genocide case (Holodomor), emphasises this point.[35]

[32] Decision of Chernihiv District Court of Chernihiv Region of 10 January 2023, No. 748/2272/22, available at: https://reyestr.court.gov.ua/Review/108302451 (accessed 30 August 2024).

[33] Decision of the Desnyan District Court of Chernihiv of 11 April, 2023, No. 750/6470/22, available at: https://reyestr.court.gov.ua/Review/110135338; Decision of the Ivankiv District Court of the Kyiv Region of 28 June 2023, No. 366/869/23, available at: https://reyestr.court.gov.ua/Review/111894270; Decision of the Saksagan District Court of Kryvyi Rih of 10 October 2023, No. 522/3868/23, available at: https://reyestr.court.gov.ua/Review/111894270 (all accessed 30 August 2024).

[34] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos 11 and 14 (signed on 4 November 1950, entered into force on 3 September 1953), 2889 UNTS 221.

[35] Decision of the Court of Appeal of Kyiv of 13 January 2010, No. 1-33/2010, available at: https://reyestr.court.gov.ua/Review/9470003 (accessed 30 August 2024).

2.2. Trial in absentia

Ukrainian courts in their judgments often refer to Resolution (75)11 of the Committee of Ministers of the Council of Europe "On Criteria Governing the Proceedings held in Absentia" dated 19 January 1973, and the case law of the European Court of Human Rights that justifies the consideration of cases in absentia.

For example, the courts indicate that according to the recommendations of the Committee of Ministers, an important condition for applying special pre-trial investigation and special judicial proceedings is to ensure the procedural rights and guarantees of those participating in criminal proceedings, including the right of the accused to be properly informed of the date of the hearing and the right to legal or other representation in court.[36]

When justifying the need to apply detention in a case held in absentia, the court stated:

> The risk envisaged in Part 1 of Article 177 of the Criminal Procedure Code of Ukraine is justified by the fact that the suspect is a military of the Russian Armed Forces and a citizen of the Russian Federation, a state that: 1) is recognized as an aggressor country according to the Law of Ukraine On the Features of State Policy to Ensure the State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions No. 2268-VIII of January 18, 2018; 2) according to Article 12 of the Geneva Convention on the Treatment of Prisoners of War, is responsible for the treatment of prisoners of war, regardless of the responsibility that the suspect may bear; 3) systematically violates the norms of international law (confirmed, in particular, by resolutions of the United Nations General Assembly, for example, A/RES/75/192 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine" of December 16, 2020); 4) systematically denies the committed military crimes on the territory of Ukraine by representatives of the units of the armed forces and other law enforcement agencies of the Russian Federation.[37]

2.3. The problem with interpreting provisions regarding universal jurisdiction

The issue of universal jurisdiction is regulated by Art. 6 CCU, according to which foreigners or stateless persons who do not permanently reside in Ukraine and who

[36] Decision of Chernihiv District Court of Chernihiv Region of 17 February 2023, No. 748/1824/22, available at: https://reyestr.court.gov.ua/Review/109074116 (accessed 30 August 2024).

[37] Ruling of the Investigating Judge of the Solomyanskyi District Court of Kyiv of 20 November 2023, No. 760/27024/23, available at: https://reyestr.court.gov.ua/Review/115095136# (accessed 30 August 2024) (emphasis added).

have committed criminal offences outside its borders are subject to responsibility in Ukraine under its Code in cases provided for by international treaties.

Consequently, it follows that Ukraine, as a party to most international treaties in the field of international humanitarian law and international criminal law, can implement the principle of universal jurisdiction concerning foreigners who have committed crimes against the international legal order outside the territory of Ukraine. Among such international treaties, in particular, are the four Geneva Conventions of 1949[38] and the Protocols,[39] as well as other treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide (signed 9 December 1948) and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (adopted and opened for signature, ratification and accession by General Assembly Resolution 2391 (XXIII) of 26 November 1968).

In the Ukrainian criminal law doctrine, there are opinions that the content of this article needs to be specified more clearly, prescribing exactly which types of crimes are subject to universal jurisdiction.[40] The following amendments were proposed in the draft law on Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law, which we mentioned earlier in the article.[41] According to the proposed changes to the article establishing the principle of universal jurisdiction:

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[38] The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 970; the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 971; the Third Geneva Convention relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 972; and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 973.

[39] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 17512; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 17513; and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Protocol III) (adopted 8 December 2005, entered into force 14 January 2007) 2404 UNTS 43425.

[40] M. I. Paškovs'kij, *Okremì aspekti reglamentacìï ìnstitutu ûrisdikcìï v mìžnarodnomu pravì* [Certain Aspects of the Regulation of the Institution of Jurisdiction in International Law], in: M.I. Paškovs'kij (ed.), Legal life of modern Ukraine: Mater. International of science conf. prof.-lecturer composition (Odessa, 20–21 April 2012), Odessa Law Academy, Odessa: 2012; M. Pashkovsky, *Universal Criminal Jurisdiction in Ukraine*, Institute For War & Peace Reporting, 22 September 2022, available at: https://iwpr.net/global-voices/universal-criminal-jurisdiction-ukraine (accessed 30 August 2024).

[41] Draft Act on Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law of 27 December 2019, No. 2689, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804 (accessed 30 August 2024).

> Foreigners or stateless persons who do not permanently reside in Ukraine, who have committed any of the crimes provided for in Articles 437-438[5], 442, 442[1] of this Code outside of Ukraine, are subject to liability in Ukraine in accordance with this Code, regardless of the cases (conditions) provided for in the first part of this article, if such persons are in the territory of Ukraine and cannot be extradited (transferred) to a foreign state or an international judicial institution for criminal prosecution or if their extradition (transfer) was refused.[42]

However, the changes were not adopted, and the draft law has not been signed by the President of Ukraine.

CONCLUSIONS

1. The following acts stipulated by the CCU can be classified as international crimes *sensu stricto*: crime of aggression (Art. 437 – Planning, preparation and waging of an aggressive war), crime of genocide (Art. 442) and war crimes (Art. 438 – Violation of rules of the warfare and Art. 441 – Ecocide).
2. National legislation establishes definitions which to some extent correspond to the interpretation of international crimes – namely, the crime of aggression, war crimes or genocide – but still require relevant modifications.
3. Ukrainian criminal law lacks the concept of "crimes against humanity" and thus a relevant specialised provision providing for responsibility for such crime. Whilst a draft law has been proposed to address this gap, it has not been adopted. However, without distinct provisions for crimes against humanity, Ukraine's legal framework remains unprepared to address the full scope of atrocities, particularly those related to the Russian aggression against Ukraine. Therefore, there is a pressing need for legislative reform to align Ukrainian law with international standards and effectively prosecute perpetrators of such acts.
4. Whilst the concept of the crime of genocide fully reproduces the definition of genocide found in international conventions, the provision imposing responsibility for war crimes (Art. 438 – Violation of rules of the warfare) contain blanket norms that do not provide a clear list of actions that constitute such a crime. The CCU addresses war crimes under Art. 438, but rather than explicitly list war crimes, it refers to international treaties on the "laws and customs of war", which can lead to ambiguity. To align with international standards, a more precise definition of war crimes is necessary, one that focusses on "grave breaches" or "serious violations", as outlined in the Rome Statute.

[42] *Ibidem*.

5. Aggression is explicitly criminalised in the CCU, though the definition in Art. 437 differs significantly from "aggression" under international law. The analysis of Ukrainian criminal legislation shows discrepancies in terminology and definitions compared to international law standards. Whilst terms like "aggressive war" and "aggressive military actions" are present in the CCU, their definitions diverge from those outlined in international legal frameworks. Moreover, the absence of a specific definition for "aggressive war" in Ukrainian law complicates its interpretation. That is why courts refer in their decisions to the concept of aggression defined in international law. To address these discrepancies, it is recommended that Ukrainian legislation aligns its definitions with international law, facilitating coherence and clarity in legal interpretations.
6. In interpreting the provisions of international law, Ukrainian courts refer to UN acts, particularly the Geneva Conventions (1949) and their Protocols, to substantiate the circumstances of violations of the laws and customs of war. Ukrainian courts also invoke the Rome Statute, even though Ukraine is not a party to it, with the purpose of interpreting certain definitions, such as "plunder" or "war crime", among others. Additionally, there are instances of referring to the jurisprudence of international criminal courts, such as the ICTY.
7. At the moment, there are no decisions from Ukrainian courts in which the CCU provisions regarding universal jurisdiction are interpreted (Art. 6). However, when considering this problem in the context of prosecuting international crimes, attention should be paid to the fact that the principle of universal jurisdiction in Ukrainian law can cover those crimes provided for by international treaties: war crimes are provided for in the Geneva Conventions (1949) and the crime of genocide is in the Convention on the Prevention and Punishment of the Crime of Genocide (1948). Holding foreigners responsible for other international crimes (aggression and crimes against humanity) committed outside the borders of Ukraine will be problematic, as at the moment Ukraine has not ratified international treaties under which it would commit to prosecuting the crime of aggression and crimes against humanity.