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Social and legal consequences of Ukraine's ratification of the Rome Statute of the International Criminal Court

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Abstract. Although the International Criminal Court opened an investigation when russia launched its aggression against Ukraine, numerous obstacles still hinder the restoration of justice and complicate the prosecution of those responsible. This study aimed to examine the challenges of harmonising domestic criminal and procedural law with international norms in the light of the social and legal repercussions of ratification. The research applied doctrinal, institutional and normative and legal analyses, together with comparative methods and case studies. The findings showed that, even though Ukraine's journey towards full membership of the Rome Statute culminated in ratification, effective harmonisation of national legislation remains incomplete. One explanation identified is inaccuracy in the official Ukrainian translation of the Statute. Consequently, several issues have emerged, including a legislative narrowing of

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the recognised forms of genocide and the incorrect use of formulaic expressions such as “crimes against humaneness”, among others. The study identified specific features of detention and captivity arising from differing legal grounds that determine the status of such individuals under the norms of international humanitarian law. It was concluded that the proper regulated operation of Joint Investigation Teams is essential for the admissibility of collected evidence, particularly concerning the qualification of the individuals involved, whose professional competence is crucial. It was demonstrated that the use of open-source digital information in the documentation of international crimes must comply not only with the Berkeley Protocol but also with the requirements of jurisdictional and national admissibility. The practical value of this research lies in its potential to serve as a reference point for national legislators in the pursuit of thorough and proportionate legal harmonisation, as well as for courts and other law enforcement bodies

Keywords: serious international crimes; international judicial body; international humanitarian and criminal law; restoration of international legal order

Introduction

Several factors underscore the importance of this subject. First, on 1 January 2025, Ukraine became a full State Party to the Rome Statute of the International Criminal Court (1998; 2021). Between 2013 and 2025, having recognised the International Criminal Court (ICC) jurisdiction, Ukraine took steps to strengthen cooperation; however, by 2025 the Statute had not yet entered fully into force at the national level, because – according to Letter of the Ministry of Foreign Affairs of Ukraine No. 72/14612-157225 (2024) – the amendments will take effect only on 25 October 2025. Second, although the ICC Prosecutor opened a full investigation following the large-scale invasion by the Russian Federation (Statement of ICC Prosecutor…, 2022a; 2022b) and the first ICC warrants have been issued (ICC condemns the issuance…, 2025; Issuance of Executive Order…, 2025), domestic legislation, as of mid-2025, still does not meet the standards of the Statute, international humanitarian law, international criminal law, or the related procedures. Third, the sanctions policy directed against the ICC, which intensified at the beginning of 2025 (Lohne, 2024; 2025), is hampering the Court’s ability to function effectively. These obstacles impede efforts to secure accountability before the ICC for aggression, war crimes, genocide, ecocide, and crimes against humanity. Collectively, these issues undermine the expectations of Ukrainian society – and of the international community as a whole – regarding the restoration of the international legal order.

A number of studies have already addressed various aspects of the Court’s operation. For example, serious international crimes codified in the Rome Statute of the International Criminal Court (1998; 2021) (hereinafter referred to as the Rome Statute or the Statute), viewed through the lens of “anti-human acts”, were systematised by K.M. Maloney *et al.* (2023), whose research was based on ICC case law. When examining war crimes as grave breaches of the Geneva Conventions and invoking the ICC’s universal jurisdiction, V.P. Pylypenko (2018) concluded that international criminal justice bodies play a decisive role in ensuring compliance with the norms of international humanitarian law. E.V. Shcherban (2019) explored the declared dilemma of complementarity as a constitutional and legal basis for incorporating the Statute into Ukrainian legislation, along with the challenges of bias in national judicial proceedings. It was emphasised that the Statute gives precedence to states in prosecuting serious international crimes, which must be criminalised at the national level. Only in cases where a state is unwilling or unable to carry out genuine criminal prosecutions of those responsible for such crimes may the ICC “complement national criminal justice systems” (Zuev *et al.*, 2022).

The issue of individual criminal responsibility for the crime of aggression was examined by N. Hussain *et al.* (2023), who concluded that individualisation is essential, even though command responsibility is among the specific features of liability for international crimes under the Statute. At the national level, I.V. Hloviuk (2024) compiled an original list of challenges stemming from the introduction of this legal innovation, also highlighting the domestic requirement for the individualisation of criminal liability. M. Buromensky and V. Gutnyk (2024) identified markers of the crime of genocide under the Statute and concluded that, in the ongoing war of aggression in Ukraine, the Russian Federation is committing genocide against the Ukrainian people. Although the crime of ecocide is still absent from the Rome Statute (1998; 2021), its potential future inclusion in ICC practice has been studied by D. Palarczyk (2023), who argued that ecocide should be added to the list of serious international crimes. As for the national context, K. Zadoya (2024) observed that the Ukrainian legislature has, unfortunately, chosen an inappropriate path for harmonising criminal law with international criminal law. Following ratification, harmonisation of national provisions with international standards – particularly in the area of human rights protection – is essential for reinforcing the global response to international crimes.

The politicisation of the International Criminal Court has also been the subject of academic inquiry. J. Bahreini and M.H. Ramezani Ghavam Abadi (2023) analysed the legal status of Palestine’s membership in the ICC, the potential for holding Israeli officials accountable, and the challenges associated with the Court’s jurisdiction. L. J. Gaynor (2024) examined how the entanglement of legal decisions with political and historical narratives undermines both the ICC’s deterrent capacity and the enforceability of its rulings. J. Grzybowski and F. dos Reis (2024), through the analysis of three ICC cases – concerning crimes committed by British forces in Iraq, the actions of the Taliban, government and US forces in Afghanistan, and both Israeli authorities and Palestinian groups in the West Bank, East Jerusalem, and Gaza – highlight the fluid boundaries between law and politics, and between international and domestic levels. They argue that the Court’s metapolitics shape its authority and contribute to the transformation of contemporary legal frameworks in the service of humanity. G. Turan (2024) asserted that the dominant focus on deterrence as the central aim of international law distorts its broader purpose, exposing links between the ICC’s activity, the global political economy, and capitalist expansion.

None of the existing researchers has comprehensively or prognostically addressed the question of the social and legal

consequences of Ukraine's ratification of the Rome Statute (1998; 2021) in the context of holding the russian federation accountable for international crimes. Therefore, this study aimed to identify the missteps and causes behind the slow pace of implementation and harmonisation processes, as well as to explore the social and legal implications of the Statute's ratification. The objectives of the study include: a retrospective analysis of events from the time Ukraine signed the Statute up to January 2025; identification and examination of the existing problems and social and legal consequences of its ratification; and the development of recommendations for harmonising Ukrainian criminal and criminal procedural law with international criminal and humanitarian law, and the Rome Statute.

Materials and methods

Doctrinal and institutional approaches have been employed to construct an original framework for presenting the material. This structure is based on key indicators relevant to international law, including the path taken by Ukraine towards ratification of the Rome Statute (1998; 2021), the underlying conditions and driving forces behind this process, and the setbacks and progress observed in implementation. The analysis has made it possible to identify both shortcomings and achievements in legislative practice that currently enable the investigation of crimes under the Criminal Procedure Code of Ukraine (2012) (CPC of Ukraine), while applying the legal definitions provided by the Criminal Code of Ukraine (2001) (CC of Ukraine) in the prosecution of war criminals. An institutional analysis has led to the conclusion that the large-scale russian invasion of Ukraine, together with the launch of a full investigation by the ICC Prosecutor, opened a new phase in the practical application of the Statute's provisions even before Ukraine ratified it. Comparative analysis was employed to support this finding.

A review of European Court of Human Rights (ECtHR) case law – Vasiliauskas v. Lithuania (2015), Koprivnikar v. Slovenia (2017), and Drėlingas v. Lithuania (2019) – alongside International Criminal Court decisions in Prosecutor v. Tolimir (2012), Prosecutor v. Ahmad Al Faqi Al Mahdi (2016), Prosecutor v. Mladic (2017), and Prosecutor v. Mahmoud al-Werfalli (2018) indicates that the ICC's current evidentiary approach to aggression, war crimes, genocide and crimes against humanity differs in several respects from domestic practice. Close study of the Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (1995) in Prosecutor v. Dusko Tadic a/k/a "Dule" suggests a set of fundamental questions – particularly those concerning jurisdiction and the legality of establishment – that could be raised when any future tribunal addressing the crime of russian aggression is challenged.

The methods described above were also applied when analysing domestic judicial decisions and separate opinions in cases No. 639/6389/24 (2024) and No. 415/2182/20 (2024), recorded in the Unified State Register of Court Decisions. This sample reveals divergent views among local-court and Supreme Court judges on the imposition and execution of sentences for offences against the foundations of national security and for crimes classified under Section XX of the CC of Ukraine (2001). Judicial interpretations are additionally presented on the questions of who may exercise control over the military or political actions of the aggressor state and on the scope of combatant immunity.

Results and Discussion

A retrospective on the ICC Statute's ratification. When discussing war, S. Malesevic (2010; 2012) views it not merely as an act of violence, but characterises it as a social phenomenon shaped by state institutions, ideology, and technological advancement. Most wars originate under the influence of state leaders and the ideologies embedded within a society's sociological fabric. S. Malesevic (2012) also stresses the value of integrating a sociological perspective into the study of warfare, highlighting its role as a driver of social change and identity formation. War inflicts profound suffering, yet simultaneously acts as a catalyst for societal transformation and for re-evaluating a nation's position within the international community. The Federal Republic of Germany serves as a prime example; following two World Wars, it re-evaluated its identity and its relationship with the world, emerging as a state committed to peace rather than aggression. Conflict or war is, therefore, one form of group social interaction (Roxborough, 2007).

Modern constitutional law scholarship, as asserted by Y. Barabash and H. Berchenko (2019), has developed the doctrine of "militant democracy" to prevent future wars and safeguard post-war values. This concept refers to a democracy that defends itself through active measures. Contemporary Ukraine can also be characterised as a state of "militant democracy", a notion enshrined in Article 17 of the Constitution of Ukraine (1996), which imposes on society the duty to uphold state sovereignty, including through the safeguarding of information security – one of the foundations of an "armed democracy". Nevertheless, despite the advancement of conflict resolution institutions and the existence of the doctrine of militant democracy, wars continue, often with new forms of violence and brutality. When a conflict acquires international dimensions, as V. Gutnyk (2023) rightly concludes, a body empowered to administer justice for violations of the international legal order must intervene to hold perpetrators accountable. One such institution is the ICC, which operates under the Rome Statute. The idea behind the establishment of the ICC is often regarded as "revolutionary". However, an analysis of the procedures for contesting jurisdiction and admissibility reveals that these stages within the ICC are complex (Sadat & Carden, 2003). Immunities or official status do not constitute obstacles to prosecution by the ICC (Gutnyk, 2023). Historical experience shows that, in addition to a properly compiled body of evidence, the prosecution of war criminals by the ICC also requires political will and coordinated efforts by States Parties to the Rome Statute, in order to restore justice and re-establish the disrupted international legal order (Lamb, 2024). It is worth noting in passing that the relationship between certain states that have not ratified the Statute and the Court has remained tense over an extended period (Scheffer, 1999). For example, in late 2024 and early 2025, the USA made active attempts (Lohne, 2024; 2025) and eventually imposed sanctions against the ICC and its Prosecutor, Karim Asad Ahmad Khan (Official website of the United States government, 2025). In response, the ICC condemned the actions and official statement of the USDT (ICC condemned…, 2025). In turn, russia placed ICC prosecutors on its wanted list after arrest warrants were issued for high-ranking russian "big fish" suspected of committing war crimes in Ukraine (Situation in Ukraine…, 2023; 2024).

Given the current circumstances – including a full-scale war marked by serious international crimes as defined in the

Rome Statute (1998; 2021) and in light of global trends – the Ukrainian legislature proceeded with the Statute's ratification. On 24 August 2024, the President of Ukraine signed the Law of Ukraine No. 3909-IX (2024), and on 25 October 2024, Ukraine deposited its instrument of ratification with the depository of the Rome Statute of the International Criminal Court (1998; 2021). This formally concluded a long-standing ratification process, as Ukraine had signed the Statute as far back as 20 January 2000 (Popova, 2024). The 25-year period leading to the Statute's entry into force in Ukraine was both stagnant and eventful. Initially, ratification was hindered by the Opinion of the Constitutional Court of Ukraine in the Case No. 1-35/2001 "On the Rome Statute" (2001). The Court found that the Rome Statute (1998) was inconsistent with the Constitution of Ukraine (1996), particularly regarding the tenth paragraph of the preamble and Article 1, which stipulate that the International Criminal Court "shall be complementary to national criminal jurisdictions". In 2013, the events of the Revolution of Dignity became a catalyst for the Verkhovna Rada of Ukraine to refer to the International Criminal Court No. 790-VII (2014). Ukraine's renewed recognition of the ICC's jurisdiction was prompted once again by war crimes committed by the aggressor in Donbas. In response, the Resolution of the Verkhovna Rada of Ukraine 145-VIII (2015) was adopted.

After recognising the ICC's jurisdiction on two separate occasions, the previously stagnant debate in Ukraine regarding ratification of the Rome Statute entered a more active phase. It became evident that while Ukraine's declarations recognising the ICC's jurisdiction were significant acts of political will, they did not grant the country full membership – resulting in several adverse consequences. According to Article 18 of the Vienna Convention on the Law of Treaties (1969), a state that has signed but not ratified a treaty is obliged to refrain from acts that would defeat the treaty's object or purpose. K. Zadoya (2018; 2024) has repeatedly pointed to the limitations that Ukraine faces in the absence of full membership. This scholar also critically highlighted the confusion present in the Opinion on the Draft Law of Ukraine No. 7179 (2018), rightly stressing that, in the context of the Rome Statute, "the issue of ratification (acceptance, approval) of the Statute and that of cooperation with the ICC lie in different domains" K. Zadoya (2018). Within the framework of the Association Agreement between Ukraine and the European Union, Ukraine explicitly committed itself to ratifying the Rome Statute. However, this obligation was effectively disregarded for 25 years (Association Agreement between Ukraine…, 2014). On 23 June 2022, when Ukraine was granted EU candidate status, one of the seven conditions set out by the European Commission for the commencement of accession negotiations included the ratification of the Rome Statute. At the time of opening negotiations, however, this condition had not been fulfilled by the Ukrainian authorities, despite repeated warnings from the academic community (Call from leading universities…, 2023).

As of 2025, the ICC remains unable to prosecute the Russian Federation for the crime of aggression committed in Ukraine. This is due to the fact that, at the time of the full-scale invasion, Ukraine had not yet ratified the Rome Statute, and the legal consequences of full membership did not come into force until 1 January 2025. This legal limitation is a direct result of the 25-year delay in ratification. One of the most anticipated developments that could have paved the way for ratification occurred in 2016, when amendments were introduced to the Constitution of Ukraine (Law of Ukraine No. 1401-VIII, 2016). The revised version of Article 124(5) enabled Ukraine to recognise the jurisdiction of the ICC under the conditions of the Rome Statute. Nevertheless, this constitutional change did not become the catalyst for immediate ratification.

Only from 1 January 2025 – by the third year of the full-scale war – did Ukraine become the 125th state to join the ICC as a full State Party (Bondareva, 2025). This step was driven by the grave international crimes committed on Ukrainian territory, listed in the Rome Statute (1998; 2021). By the end of 2024, the ICC's Rome Statute boasted 124 other State Parties (from Africa, the AsiaPacific region, Eastern and Western Europe, Latin America, and the Caribbean, among others), all of whom are in the process of implementing the Rome Statute into their national legislation (Popova, 2024). It is also worth noting that only 42 UN member states (representing 41 jurisdictions) have criminalised all four serious international crimes, while 153 of the 193 member states have criminalised at least one (Popova, 2024).

It is important to draw attention to a controversial reservation that Ukraine expressed during its ratification of the Statute: "for seven years after its entry into force for Ukraine, we will not recognise the ICC's jurisdiction regarding crimes specified in Article 8 (as amended), if these crimes were presumably committed by our citizens" (Law of Ukraine No. 3909-IX, 2024). However, this reservation does not fully align with the provisions of Article 124 of the Rome Statute (1998;2021), as it omits the phrase "or on the territory of Ukraine". In this context, the conjunction "or" is not to be interpreted as presenting an alternative. The state is thus required to consider both conditions simultaneously. The reservation mentioned above, which imposes a seven-year limitation, is problematic due to its lack of clarity: it does not specify whether it applies to crimes committed within those seven years or only to those identified during that period. This ambiguity creates space for divergent interpretations and undermines the principle of legal certainty, thereby complicating the application of the law. The situation is further complicated by the fact that Ukrainian nationals may be fighting on the side of the aggressor state and may have committed war crimes prior to the ratification of the Statute. If such crimes are discovered within the specified seven-year period, the reservation could potentially shield these individuals from criminal responsibility. Another nuance is that Ukraine has already recognised the ICC's jurisdiction over crimes committed by its nationals through two official declarations (Statement of the Verkhovna Rada of Ukraine to the International Criminal Court No. 790-VII, 2014; Resolution of the Verkhovna Rada of Ukraine 145-VIII, 2015). This results in an unacceptable legal situation in which crimes committed between 21 November 2013 and 1 January 2025 fall under the ICC's jurisdiction, but those committed between 1 January 2025 and 1 January 2032 do not. The reservation also fails to account for repeated offences committed at different points in time. As a result, one offence may fall under ICC jurisdiction, while another – committed by the same individual – may not, thereby violating the principles of consistency and justice (Hloviuk, 2024). This analysis makes it clear that the reservation is flawed and counterproductive to effective future cooperation with the ICC.

Part 7 of Article 9 of the Law of Ukraine No. 1906-IV (2004) stipulates that if the ratification of an international treaty requires the adoption of new laws or amendments to existing legislation, draft laws must be submitted to the Verkhovna Rada of Ukraine together with the draft ratification law and adopted simultaneously. In Ukraine's case, however, the situation has unfolded somewhat differently – and not altogether favourably, as will be discussed in detail later. While Law of Ukraine No. 4012-IX (2024) was formally adopted, proposals were actively discussed concerning the removal of the provision in the Law of Ukraine No. 1906-IV "On International Treaties" (2004), which requires implementation measures to be completed before the ratification law enters into force. In the authors' view, such an approach is risky, as it threatens to undermine the legislature's obligation to introduce the necessary amendments to national legislation. This could result in numerous legal inconsistencies, of which there are already many. At the same time, the primacy of international law does not resolve this issue.

The full-scale Russian invasion and the ICC prosecutor's investigation. On 24 February 2022, the Russian Federation launched a full-scale invasion of Ukraine. Just four days later, on 28 February 2022, ICC Prosecutor Karim Khan announced his decision to open an investigation into the situation in Ukraine, relying on the preliminary findings of his Office and encompassing any additional alleged crimes falling within the ICC's jurisdiction (Statement of ICC Prosecutor…, 2022a). He stressed that Ukrainian membership of the ICC – and, accordingly, compliance with Article 14 of the Rome Statute (1998; 2021) – would have accelerated the Office's investigative work. On 2 March 2022, following referrals received on 1 March from thirty-nine States Parties, the Office of the Prosecutor formally opened an investigation covering the period from 21 November 2013 onwards (Statement of ICC Prosecutor…, 2022b). Japan, North Macedonia, Montenegro and the Republic of Chile joined this collective referral on 11 March, 21 March and 1 April 2022. Subsequently, the ICC issued its first arrest warrants for the Russian dictator, his close associate and other high-ranking Russian officials (Situation in Ukraine…, 2023; Situation in Ukraine…, 2024).

Despite the fact that the Statute had not yet been ratified, and the aggressor nation was accelerating its commission of serious international crimes against Ukrainians – as evidenced by the aggregated data from the Office of the Prosecutor General (2025), which registered 50,913 victims of violations of the laws and customs of war (Article 438 of the CC of Ukraine) in January-December 2022, 72,728 in January-December 2023, and 40,594 in January-December 2024 – Ukraine's active cooperation with the ICC persisted throughout this period. In parallel, Ukraine's criminal and criminal procedural legislation underwent amendments and revisions, which will be discussed in the following section. A. Popova (2024) also draws attention to key developments in this area. In March 2023, the Cabinet of Ministers of Ukraine approved an agreement establishing an ICC field office in Kyiv – an important step in strengthening the Court's institutional presence in the country. The ICC office in Kyiv was officially opened in September, staffed by 25 personnel. In October, Europol joined the Joint Investigation Team, highlighting the importance of international coordination in investigating war crimes committed in Ukraine. On 5 March and 24 June 2024, Pre-Trial Chamber II of the International Criminal Court issued arrest warrants for Russian nationals. The suspects are also held responsible for crimes against humanity – specifically, "other inhumane acts intentionally causing great suffering, or serious injury to body or mental or physical health" – as defined under Article 7(1)(k) of the Rome Statute (Situation in Ukraine…, 2023; Situation in Ukraine…, 2024).

Thus, Ukraine's chosen course toward ratifying the Rome Statute, implementing its approaches and provisions, and, as a result, harmonising national legislation, must be regarded as a sound and necessary strategy. This conclusion becomes particularly clear when contrasted with the opposite examples. For instance, due to non-ratification by Kazakhstan and China – largely for political reasons – their domestic legal systems remain unaligned with international standards in the areas of the rule of law and human rights protection. Moreover, the absence of ratification has weakened global efforts to address crimes that threaten peace and security.

Harmonisation of Ukrainian criminal and criminal procedure legislation with international criminal and humanitarian law and the Rome Statute of the ICC. Ukraine's legislative experience reveals that amendments and additions to its laws – including criminal and criminal procedure legislation – are not always of high quality or feasible in practical terms. K. Zadoya (2024) aptly compares the harmonisation process to the "birth of a cargo cult", noting that modern harmonisation increasingly resembles a ritual "where the process becomes more important than the outcome and takes on the characteristics of a dubious competition, in which the subjective and pragmatic completely overshadow the legal, and where complex problems are met with simple and superficial solutions".

As previously noted, amendments were made to the CPC of Ukraine (2012) and the CC of Ukraine (2001) in connection with the ratification of the Rome Statute and its amendments. These changes contain several positive elements already highlighted by researchers, including: "the introduction into Ukrainian criminal law of the doctrine of command responsibility (Article 31-1 of the CC of Ukraine); the recognition of crimes against humaneness as a distinct category of criminal offence under Ukrainian criminal law (Article 442-1 of the CC of Ukraine); and the adjustment of the legal definition of genocide (Article 442 of the CC of Ukraine) to bring it more closely into line with international law" (Zadoya, 2024). Nevertheless, there remain more critical shortcomings than achievements. Attention should be paid to the revised Part 2 of Article 8 of the CC of Ukraine (2001), particularly when compared with Article 14 of the Ljubljana-Hague Convention (2024), which Ukraine has also signed (Zelenov & Brynzaska, 2024). The Convention introduces the wellestablished principle of *aut dedere*, *aut iudicare* ("extradite or prosecute"), which is a fundamental tenet of international criminal law. However, the legal construction proposed in the revised Part 2 of Article 8 of the CC of Ukraine (2001) prioritises the approach "attempt to extradite first, and only prosecute if that fails". This has already attracted criticism in academic discourse and prompted proposals for revising the article (Drozdov & Kovtun, 2023).

Further concerns have been raised regarding Article 31-1 of the CC of Ukraine (2001), which governs the responsibility of military commanders and those in equivalent

positions. While the introduction of command responsibility into Ukrainian criminal law has received positive assessments (Zadoya, 2024), some scholars argue that this provision should be separated into a distinct criminal offence under the Special Part of the CC of Ukraine (2001). This approach is reflected in the Draft of the new Criminal Code of Ukraine (2024), particularly in Articles 11.4.6 and 11.4.7. The draft has been supported by several academics, including T.D. Lysko and D.O. Kozinska (2022), who contend that the current wording of Part 3 of Article 31-1 of the CC of Ukraine (2001) creates a conceptual conflict between "involvement in a criminal offence" and "complicity", thereby overstating the perceived social danger of both the offender and the act. This state of affairs only exacerbates social tension, while new legal inconsistencies are both untimely and unnecessary, as highlighted in the ECtHR ruling in Koprivnikar v. Slovenia (2017). From the legislative perspective, under the current construction of Part 3 of Article 31-1 of the CC of Ukraine (2001), the notion of "condonation" – that is, a person's failure to fulfil duties aimed at preventing or halting a crime – is effectively omitted. O. Omelchuk and V. Zakharchuk (2023) propose distinguishing between complicity and indirect perpetration. The issue of fair punishment also arises: military commanders bear heightened responsibility due to their significant influence over the criminal actions of subordinates, which underscores the distinct social danger posed by their conduct. The proposed legal framework does not require establishing a causal link between a commander's actions and those of subordinates, which in effect diminishes the relevance of this element of the objective side of a criminal offence. Moreover, it fails to consider the commander's actual capacity to prevent the unlawful acts of subordinates – an aspect essential to the legal qualification of the crime. I.V. Hloviuk (2024) argues that establishing the liability of a person equivalent to a commander – or of the commander themselves – requires a comprehensive approach through determining the *actus reus* of the core offence. The researcher reasonably leaves open the question of whether identifying the specific perpetrator is necessary.

The implementation law that entered into force on 24 October 2024 amended only the titles of Articles 437 and 438 of the CC of Ukraine (2001). Their dispositions, however, remain problematic for practical application. In its Resolution of the Grand Chamber of the Supreme Court of 28 February 2024 in case No. 415/2182/20 (paragraphs 140-142), the Court had already drawn attention to the importance of clearly defining the category of persons capable of committing the acts provided for in Article 437 of the CC of Ukraine (2001). However, several separate opinions were issued in this case. In one such opinion, judges of the Supreme Court maintained that the question of who may exercise control over the military or political actions of the aggressor state should be resolved based on the specific facts of the case (Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, 2024a). Another concurring opinion addressed the crucial issue of combatant immunity (Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, 2024b). In a dissenting opinion, a judge of the Grand Chamber agreed with the legal classification adopted by the courts of first instance and appeal under Part 2 of Article 27, Part 2 of Article 28, and Part 2 of Article 437 of the CC of Ukraine (Separate Opinion of the Judges of the Grand Chamber of the Supreme Court in Case No. 415/2182/20, 2024c). The requirements of the Rome Statute indicate that no individual can be held criminally responsible for the serious international crime of aggression in isolation. M. Antonovych (2017), echoing H.H. Koh and T.F. Buchwald (2015), emphasised that accusing an individual of committing the crime of aggression necessitates a prior determination that the state itself committed the act. This determination is typically made by the UN Security Council. Another aspect of Article 437 of the CC of Ukraine (2001) warrants attention. Article 8 bis of the Kampala Amendments (2013), which contains the compromise definition of the crime of aggression agreed upon in Kampala, offers an interpretation that differs from the Ukrainian one. Among other requirements, it provides that an act of aggression must amount to a manifest violation of the Charter of the United Nations (1945) in terms of its character, gravity and scale. Demonstrating this element is crucial during the evidentiary phase; otherwise, a situation could arise similar to the hearings on the former Yugoslavia, when the defence in Prosecutor v. Dusko Tadic a/k/a "Dule" (1995) contested the tribunal's legality. The Appeals Chamber ultimately held that, although the Security Council has primary competence to assess acts of aggression, its discretion is not unfettered and is limited to the measures set out in Articles 41 and 42 of the United Nations Charter (1945).

It is also important to highlight the challenges related to the application of Article 438 of the CC of Ukraine (2001), which lacks mandatory references to the provisions of the Geneva Conventions and other international treaties – many of which have not been ratified by Ukraine – when qualifying violations. In accordance with the *non bis in idem* principle, breaches of international humanitarian law should not be prosecuted simultaneously under multiple articles of the Criminal Code. However, a different approach was adopted in the Resolution of the Grand Chamber of the Supreme Court in Case No. 415/2182/20 (2024). It is clear that such a situation should be promptly rectified by the Grand Chamber itself.

Furthermore, an analysis of the title and content of the newly introduced Article 442-1 of the CC of Ukraine (2001) once again illustrates the influence of a flawed official Ukrainian translation of the Statute, which was used as a basis for its implementation in national criminal law. Although Article 442-1 establishes liability for "crimes against humaneness", this phrasing is inaccurate. In the most recent official version of the Rome Statute of the International Criminal Court (2021), such crimes are defined as "crimes against humanity". In addition, the official Ukrainian version of the Rome Statute (1998) omits references to the crime of apartheid and does not include the terms "murder" and "extermination" – offences actively committed by the aggressor on Ukrainian territory. As a result, these specific forms of crimes against humanity have not been reflected in the criminalisation set out in Article442-1 of the CC of Ukraine (2001).

A number of additional shortcomings in the implementing law have been extensively addressed by K. Zadoya (2024). In particular, the rationale behind the expansion of liability for commanders in Ukrainian criminal law – specifically regarding inaction that led to crimes committed by subordinates – remains unclear when compared with the provisions of international law. K. Zadoya (2024) rightly criticises the "compromise formulations" found in the new Article 442-1 of the CC of Ukraine (2001), which are

inconsistent with international legal standards and the established understanding of crimes against humanity – especially with regard to acts such as torture and other inhumane acts of a similar nature. Furthermore, the current Ukrainian criminal legislation has not successfully incorporated a correct understanding and the necessary elements of the crime of aggression, especially considering the definition of aggression approved by UN General Assembly Resolution No. 3314 (XXIX) (1974). International law also does not recognise certain peculiar legal constructions introduced by the national legislator, such as "aggressive armed conflict" and "aggressive military actions", both of which appear in Article 437 of the CC of Ukraine (2001). K. Zadoya (2024) also offers well-founded criticism of the amendments to Article 438 of the CC of Ukraine (2001), noting that they appear so flawed that aligning them with international law was seemingly not even intended. Numerous inconsistencies can be identified – for example, the legislator's inclusion of the phrase "the same acts, if they caused the death of a person". This aggravating element, under the current CC of Ukraine (2001), typically presumes "causing death through negligence", which contradicts the nature of international criminal law. The legislator's decision to reduce the punishment for war criminals "to the maximum limit of the sanction provided in the new version of Part 1 of Article 438 of the CC of Ukraine (2001), namely to twelve years of imprisonment" is equally unjustified.

As for the genocide committed and continuing to be committed against Ukrainians, V. Shepitko (2024) argues that the acts of genocide against the Ukrainian people are recurring. It must be acknowledged that, in this regard as well, the national legislator has failed to establish an adequate legal framework for criminal prosecution. Article 442 of the CC of Ukraine (2001) also presents several shortcomings. The problematic nature of this article's legal construction has been repeatedly discussed. At present, in addition to the existing inconsistencies between Article 442 of the CC of Ukraine (2001) and the provisions of the Rome Statute (2021), Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and the Elements of Crimes (2011) adopted by the Assembly of States Parties to the Rome Statute – which supplement the Statute and are applied by the ICC in interpreting its provisions – there is now a further narrowing by the national legislator of the recognised forms of genocide in Ukrainian criminal law. Among other issues, the legislator failed to take into account the ongoing instances of the forced displacement of Ukrainians to russia. The problems with the analysed article of the CC of Ukraine (2001) are, therefore, far from exhausted (Zadoya, 2024). Regarding the case law of the ECtHR on this matter, in Drėlingas v. Lithuania (2019), the subjective element of the crime incorporated a political dimension. The extermination of partisans resisting Soviet occupation was found to correspond with the international definition of groups protected under Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), and the applicant was convicted of genocide. There is also the judgment of the Grand Chamber of the ECtHR in Vasiliauskas v. Lithuania (2015). However, neither the Statute nor the current version of Article 442 of the CC of Ukraine (2001) addresses this dimension, despite the existence of doctrinal research that could significantly improve legislative efforts in this area (Antonovych, 2017; Zadoya, 2024; El-Affendi, 2024). As for the most recent procedural developments in the effort to prosecute the crime of genocide under the Rome Statute (1998; 2021), the NGO "Kharkiv Human Rights Protection Group" submitted a communication to the ICC regarding the alleged commission of the crime of genocide by Russian actors in the city of Mariupol (Submission to the Office of the Prosecutor ICC, 2023).

Therefore, based on the analysis conducted, it is reasonable to support the conclusion of K. Zadoya (2024) that the harmonisation of Ukrainian criminal legislation with international criminal and humanitarian law, including the Statute, remains far from complete. The Law of 9 October 2024 has not created conditions that would prevent perpetrators of crimes under international law from avoiding real and adequate punishment. There is little point in referring to the role of Article 75 of the CC of Ukraine (2001); it is enough to examine domestic judicial practice concerning crimes against national security – case No. 639/6389/24 (2024), for instance, where the individual was once again released from serving a sentence and instead placed under certain obligations. Nevertheless, it must be acknowledged that the harmonisation of legislation is a "legal puzzle" not only for Ukraine but also for many other countries that have ratified the Statute.

Attention should also be given to the pressing need for the criminalisation of ecocide under the Rome Statute of the International Criminal Court (1998; 2021). The Court's current anthropocentric framework presents difficulties in addressing environmental cases. The legal norms of international environmental law, human rights law, and humanitarian law could be integrated into the ICC's jurisdiction. Specific recommendations from foreign experts (Gillett, 2024; Arifin *et al.*, 2024) may contribute to more consistent, coherent, and stable rulings by the Court. The risk of judicial overreach is best addressed through the application of four key principles: judicial coherence, effectiveness, substantive proximity, and the de-fragmentation of international law (Gillett, 2024). Introducing such a provision into the Statute and thereby establishing international criminal liability for ecocide could help restore global ecological balance. Recognising ecocide as a crime could have a deterrent effect and contribute to raising awareness of environmental responsibility. The legal establishment of international criminal liability for ecocide would also promote sustainable development. However, implementing this idea faces significant challenges, such as defining the boundaries of ecocide and establishing the criteria for criminal liability. A broad consideration of diverse geopolitical contexts is essential for holding individuals, corporations, and states accountable (Arifin *et al.*, 2024).

In the context of Ukrainian criminal law, although Article 441 of the CC of Ukraine (2001) was not introduced as a result of Ukraine's ratification of the Rome Statute (1998), it remains relevant in light of the anticipated amendments currently under discussion. The provision is also highly pertinent in view of ongoing events in Ukraine, as the crime of ecocide has become especially pressing during the war. The Russian invasion has caused significant damage to natural resources, notably through the destruction of the Kakhovka Hydroelectric Power Plant, which led to the flooding of settlements and the destruction of biodiversity. The constant threat to the safety of the Zaporizhzhia Nuclear Power Plant remains acute (Kharytonov *et al.*, 2024).

T. Duiunova *et al.* (2024) emphasise that the initiative to criminalise ecocide under international law must be advanced in the interests of long-term national and global well-being. Such efforts could ultimately create a legal basis for holding the russian federation accountable not only for ecocide but also for agroecocide – a category of offence increasingly recognised by scholars as warranting distinct legal classification (Kurman, 2023).

As for criminal procedural harmonisation, it is evident that an entire procedure cannot simply be transplanted from another legal system or specific jurisdiction. Nonetheless, it is logical that the implementing law and the processes preceding it have had an impact on criminal procedural legislation. For instance, the legislator incorporated new articles – 437, 438, 439, 440, 441, 442, and 442-1 of the CC of Ukraine (2001) – into certain lists within the criminal procedural norms. Amendments were made to Part 6 of Article 176 of the CPC (2012), which now establishes the mandatory use of pre-trial detention as a preventive measure for individuals suspected of committing the aforementioned criminal offences during martial law. Similarly, paragraph eight of Part 4 of Article 183 of the CPC (2012), which allows the court not to set bail in cases where such offences are committed under martial law, was updated to include these articles. The first sentence of Part 8 of Article 214 of the CPC (2012) was also supplemented with the relevant list. Investigators or prosecutors are now obliged to immediately enter information into the Unified Register of Pre-Trial Investigations regarding a legal entity that may be subject to criminal-law measures, once an individual is served notice of suspicion for committing a crime on behalf of and in the interests of such a legal entity. Amendments to Part 2 of Article 216 of the CPC (2012) have assigned jurisdiction over these criminal offences to investigative bodies of the Security Service of Ukraine. Amendments were also made to Part 2 of Article 297-1 of the CPC of Ukraine (2012), allowing for special pre-trial investigations in relation to the aforementioned offences. In addition, the controversial note to Section IX-2 (Specifics of Cooperation with the ICC) of the CPC (2012) was removed. However, this list does not cover all aspects of the necessary amendments to the criminal procedural legislation. It is evident that further improvements are needed and could be grouped into several categories, including:

1) the case law of the Court of Justice of the EU should be incorporated into the list under Part 5 of Article 9 of the CPC of Ukraine (2012), alongside the case law of the ECtHR, for use in the application of criminal procedural norms;

2) the precedent-based jurisprudence of the ICC must be taken into account and applied by national courts in proceedings involving the prosecution of offences criminalised under the Rome Statute;

3) military courts, along with military police and military prosecutors, should be re-established and made operational. It is evident that in a country engaged in active defensive military operations for over three years, this issue is inherently urgent. Substantive arguments in support of restoring an effective system of military justice can be found in the studies of Y. Galaevsky (2023), O. Shamary (2024), and other scholars;

4) legislative authorisation to involve international experts in criminal proceedings concerning suspected or alleged offences under Articles 437–442-1 of the CC of Ukraine (2001) is both timely and necessary. Relevant amendments to Part 1 of Article 69 of the CPC of Ukraine (2012) are both prudent and in demand. These proposals are supported by solid academic grounding (Yurchyshyn & Koropetska, 2024). It is recommended that amendments to the criminal procedure law include the recognition of such experts' conclusions as admissible sources of evidence in national courts, as well as clear mechanisms for their involvement in criminal proceedings (Yurchyshyn & Koropetska, 2024; Shepitko, 2024);

5) working with open-source digital information during the documentation of serious international crimes must adhere to both the rules of the Berkeley Protocol (United Nations, 2022) and the principles of jurisdictional and national admissibility. The requirements of the current CPC of Ukraine concerning relevance, admissibility, reliability, and sufficiency, along with other Protocol requirements for collecting, storing, and evaluating digital information from open sources, enable such information to gain the status of open-source evidence (Gavrilyuk *et al.*, 2024). The ICC has taken varying approaches to the evidentiary weight of such material in different cases, including Prosecutor v. Tolimir (2012), Prosecutor v. Ahmad Al Faqi Al Mahdi (2016), Prosecutor v. Mladic (2017), Prosecutor v. Mahmoud al-Werfalli (2018), as highlighted by L.V.Gavrilyuk *et al.* (2024) and O.O. Torbas (2024). The trend has shifted from the extensive use of such evidence in criminal proceedings to a more balanced approach. This evolution, already comprehensively discussed by various scholars, is also reflected in Ukrainian criminal procedure law, which stipulates that evidence must be assessed in its entirety (and that such a body of evidence must be duly compiled during the investigative process), with no individual piece of evidence granted predetermined weight or dominance. In relation to the investigation of serious international crimes committed by russia in Ukraine and the collection of the corresponding digital evidence, in 2023, the ICC Prosecutor announced and launched an expanded platform – OTPLink – for the submission of such materials (ICC Prosecutor Karim…, 2023);

6) criminal procedural detention, as opposed to capture in wartime, has a different legal basis; consequently, the legal status of individuals is determined both within the proceedings and under the norms of international humanitarian law (Ablamskyi *et al.*, 2023; Ponomarenko, 2023);

7) national evidentiary standards in the examined criminal proceedings require the incorporation of evidentiary standards applied by international tribunals (Mamedov, 2024);

8) the issue of joint investigative teams, as defined in Article 571 of the CPC of Ukraine (2012), also requires resolution. This includes aspects such as the formation of team composition, the scope of powers and the appointment of team leaders, and the mutual exchange of information – points already emphasised by scholars (Ablamskyi *et al.*, 2023; Hloviuk, 2023). It is important to consider the correlation between this provision and the procedural code of the Rome Statute, particularly Article 41 of the Ljubljana-Hague Convention (2024). It is clearly necessary to develop a dedicated chapter within the CPC of Ukraine to regulate pre-trial investigations conducted in the framework of international cooperation on serious international crimes. This issue cannot be adequately addressed by inserting a few additional articles into the existing code. Thus, in discussing the harmonisation of Ukrainian criminal and

criminal procedural legislation with international criminal and humanitarian law, including the Rome Statute, it must be acknowledged that the process remains incomplete and requires continued, coordinated efforts from scholars, legislators, and practitioners.

Conclusions

Thus, the development of social and legal institutions for resolving conflicts of various kinds (including international), doctrinal anti-war principles and mechanisms for deterring aggression, and a high level of civilisational progress in society are not sufficient to shield modern civilisation from bloody wars. This is evidenced by ongoing conflicts that have claimed, and continue to claim, hundreds of thousands of lives. Based on the totality of the circumstances examined, it has been demonstrated that the 25-year period taken by Ukraine to ratify the Rome Statute was marked by both stagnation and a series of trials and errors, the reassessment of which remains highly relevant. It has been established that Ukraine's dual recognition of the ICC's jurisdiction moved the ratification discourse out of a prolonged state of stagnation and into an active phase. The recognition of jurisdiction based on Ukraine's declarations to the ICC was a deliberate and sovereign act; however, Ukraine did not acquire full membership, which has led to a number of negative consequences. One of the most significant is the inability of the ICC to hold russia accountable for the crime of aggression in Ukraine, as the Rome Statute had not yet been ratified by Ukraine at the time of Russia's full-scale invasion. Normative and legal analysis confirms the controversial nature of the reservation made by Ukraine during the ratification process, in which it declared a seven-year period of non-recognition of the Court's jurisdiction over Ukrainian nationals. Institutional analysis has further shown that the full-scale invasion of Ukraine by Russia and the initiation of a formal investigation by the ICC Prosecutor marked a new stage in the practical implementation of the Rome Statute's provisions, even prior to Ukraine's formal ratification. Only from 1 January 2025 – effectively in the third year of the full-scale war – did Ukraine become the 125th state to gain full membership in the ICC.

It has been emphasised that the implementation of the Rome Statute has been a demanding task for legal professionals in every member state. For Ukraine, the harmonisation of its criminal and criminal procedural legislation with international criminal and humanitarian law, and with the Rome Statute, has thus far been only partially successful. One of the fundamental challenges lies in the flawed official Ukrainian translation of the Rome Statute of the ICC. As a result, certain issues have emerged in the national legal framework – for instance, the narrowing of legally recognised forms of genocide by legislators, and the inaccurate use of terms such as "crimes against humaneness". Several inconsistencies and legal contradictions have been identified: 1) the introduction of the concept of "command responsibility" has raised concerns about the fairness and proportionality of punishment for individuals guilty of committing aggression, war crimes, genocide, ecocide, and crimes against humanity; 2) the mere renaming of Articles 437 and 438 of the CC of Ukraine, without amending their legal structure. Their dispositions remain problematic for practical application, as confirmed by analysis of national court practice. Article 8 bis of the Rome Statute presents a definition of the crime of aggression that differs significantly from the Ukrainian interpretation. Additional issues have been identified regarding the application of Article 438 of the CC of Ukraine, which lacks mandatory references to the Geneva Conventions and other international treaties – not all of which have been ratified by Ukraine – when classifying violations. Additional shortcomings in the legislation have also been identified, including such constructs as "aggressive armed conflict" and "aggressive military actions", violations of the *non bis in idem* principle, inconsistencies between Article 442 of the CC of Ukraine and the provisions of the Rome Statute, and the narrowing of the legally recognised forms of genocide within the criminal law framework.

This study substantiates the necessity of implementing international standards into Ukraine's criminal procedural law, in particular through the integration of the case law of the Court of Justice of the EU and the precedents of the ICC into the national judicial system. The establishment of military courts, prosecution services, and law enforcement is viewed as a crucial step towards effective justice during wartime. Strengthening international cooperation requires the involvement of foreign experts in the investigation of war crimes, as well as the regulation of the use of open-source digital materials in accordance with international protocols. A key aspect involves the adoption of evidentiary standards used by international tribunals, and the legal distinction between criminal detention and prisoner of war status in line with international humanitarian law. In the long term, a necessary solution would be the introduction of a separate chapter in the CPC of Ukraine to regulate pre-trial investigations in cooperation with the ICC and other international justice bodies. This would respond to ongoing crimes and contribute to restoring the international legal order.

Future research should focus on building a robust academic foundation for the effective harmonisation of national criminal and criminal procedural legislation. This is essential to ensure justice, the inevitability of punishment for russia and its nationals for committing serious international crimes against Ukrainians, and the restoration of the disrupted international legal order.

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Анотація. Не зважаючи на той факт, що із початком агресії росії проти України Міжнародним кримінальним судом було розпочато етап розслідування, наявна низка перешкод, які не сприяють відновленню справедливості та ускладнюють притягнення винних до відповідальності. Метою дослідження було вивчення проблем гармонізації національного кримінального та процесуального права із міжнародним в контексті соціально-правових наслідків

ратифікації. У дослідженні використано доктринальний, інституційний та нормативно-правовий, порівняльний аналізи та кейс-стаді. Було доведено, що шлях України до повноправного членства у Римському Статуті хоча і завершився його ратифікацією, однак якісна гармонізація національного законодавства відсутня. Серед наявних причин було проаналізовано неточності офіційного перекладу Статуту. Узагальнено, що відповідно наслідковими проблемами стали: звуження законодавцем у кримінальному законодавстві існуючих форм геноциду; невірне вживання кліше на кшталт «злочини проти людяності» тощо. Виявлено такі особливості затримання та взяття у полон, які слідують із різного правового підґрунтя, що визначає статуси таких осіб за нормами міжнародного гуманітарного права. Зроблено висновок, що належно регламентована робота Спільних слідчих груп є запорукою прийнятності здобутих доказів за ознакою суб'єкту, фаховість якого є визначальною. Доведено, що робота з відкритими джерелами цифрової інформації у перебігу документування міжнародних злочинів, має слідувати, як із правил Протоколу Берклі, так із юрисдикційної та національної прийнятності. Практична цінність роботи полягає у тому, що отримані результати мали б стати орієнтиром для національного законодавця на шляху якісної та домірної гармонізації, а також для суду та інших органів правозастосування

Ключові слова: тяжкі міжнародні злочини; міжнародний судовий орган; міжнародне гуманітарне та кримінальне право; відновлення міжнародного правопорядку