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The ICC jurisdiction in Ukraine: challenges and opportunities in the fight against impunity

Юрисдикція МКС в Україні: виклики та можливості у боротьбі з безкарністю

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Abstract


This article examines the legal relationship between the International Criminal Court (ICC) and Ukraine, a non-party to the Rome Statute, focusing on the scope of the Court's jurisdiction to consider Ukraine's referrals regarding serious crimes committed on its territory since 2014. Discussions regarding the extension of the ICC's jurisdiction over Ukraine commenced in 2014-2015 following Ukraine's two requests for recognition of the ICC's ad hoc jurisdiction. Following the full-scale invasion in 2022, the ICC consolidated these proceedings with the ongoing investigation of crimes committed in Ukraine since 2014. This article analyzes how the ICC's jurisdiction applies to Ukraine, the challenges and prospects for cooperation between the ICC and Ukraine in investigating crimes committed by Russian forces, and the broader implications for the international criminal justice system. The


Анотація


У цій статті розглядаються правові відносини між Міжнародним кримінальним судом (МКС) та Україною, яка не є учасником Римського статуту, з акцентом на обсяг юрисдикції Суду щодо розгляду звернень України щодо тяжких злочинів, скоєних на її території з 2014 року. Обговорення щодо поширення юрисдикції МКС на Україну розпочалося у 2014-2015 роках після двох запитів України про визнання юрисдикції МКС ad hoc. Після повномасштабного вторгнення у 2022 році МКС об'єднав ці провадження з поточним розслідуванням злочинів, скоєних в Україні з 2014 року. У цій статті аналізується, як юрисдикція МКС застосовується до України, виклики та перспективи співпраці між МКС та Україною у розслідуванні злочинів, скоєних російськими військами, а також ширші наслідки для міжнародної системи

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authors analyze arguments for and against Ukraine's ratification of the Rome Statute, concluding that the ICC's jurisdictional framework, particularly concerning the crime of aggression, requires refinement.

Keywords: international law, human rights, war crimes, genocide, international responsibility, international sanctions.

Introduction

The security of individual states and international security as a whole directly depends on how quickly and efficiently the international community can respond to the commission of international crimes, including by bringing to justice those who order such crimes. The effective operation of criminal justice at the international level is designed not only to prosecute international crimes, but also to prevent international crimes in the future (Gutnyk, 2023). Unfortunately, humanity has not yet learned to solve geopolitical problems in a peaceful, diplomatic manner (Kaplina, 2022).

The armed aggression of the Russian Federation against Ukraine is forcing a rethinking of the international criminal justice system. Today, this system is undergoing a test of effectiveness (Gutnyk, 2023), and one of the pillars of the international criminal justice system is the International Criminal Court (ICC) (Ali Al Omar & Allwan Al Amery, 2024), established in accordance with the Rome Statute of the International Criminal Court in 1998 (United Nations, 1998).

The ICC is the only institution in the modern international legal system that can prosecute war crimes in Ukraine (Rynkun-Werner et al., 2023). The ICC is competent to implement the principle of inevitability of punishment for international crimes and to prevent similar crimes in the future (Gutnyk, 2023). The crimes under the jurisdiction of the ICC pose a threat to international peace and security (Pavlenko & Ohievich, 2020) - genocide, war crimes, crimes against humanity and the crime of aggression are recognised by the international community as the most serious crimes that should not go unpunished.

The creation of the ICC at the turn of the XX and XXI centuries marked the beginning of a new stage in the development of criminal justice (Smyrnov, 2023), the purpose of which is to bring to justice those responsible for the most serious crimes. The ICC is a form of international legal system that emerged when human society reached a certain stage of development (Geng, 2023), when information, as a dominant worldview element (Maraieva, 2022) became the main tool in the criminal investigation process, although the close connection between information, freedom, justice and law was noticed long ago (Gennadievich Danilyan et al., 2018).

Ukraine took an active part in the development of the Rome Statute, and a Ukrainian delegation participated in the Diplomatic Conference held in Rome on 15 June - 17 July 1998 (Drozdov et al., 2022). According to contemporaries of those events, the creation of the International Criminal Court is a historic phenomenon in efforts to bring to justice those guilty of the most serious international crimes, the victims of which are many innocent people (Syroid, 2009b). Today, 124 countries are parties to the Rome Statute (United Nations, 1998), which is recognised as a rather flexible document that allows to look for ways of convergence between national legislation and the Statute rather than contradictions (Drozdov et al., 2022).

After the beginning of the Russian military aggression in Ukraine, the regional military conflict has acquired the features of a global confrontation (Derviş, 2023), and the leaders of at least European countries and North America have reached a consensus on the need to bring the leaders of the Russian Federation to justice for the crimes committed in Ukraine (Heller, 2024). However, there is no consensus on how to bring the top Russian officials to justice (Heller, 2024). As a result of the full-scale invasion of the territory of Ukraine by Russian troops, ICC Prosecutor Karim Khan announced the opening of an investigation into potential war crimes committed in the context of the conflict (International Criminal Court, 2022).

The first major step taken by the ICC in relation to the war in Ukraine was unprecedented and groundbreaking (Rynkun-Werner et al., 2023) – on 17 March 2023, it issued arrest warrants for Russian

кримінального правосуддя. Автори аналізують аргументи за і проти ратифікації Україною Римського статуту, роблячи висновок, що юрисдикційна рамка МКС, особливо щодо злочину агресії, потребує уточнення.

Ключові слова: міжнародне право, права людини, воєнні злочини, геноцид, міжнародна відповідальність, міжнародні санкції.

President Vladimir Putin and the Children's Ombudsman of the Office of the President of the Russian Federation, Maria Alekseevna Lvova-Belova (International Criminal Court, 2022).

However, the ICC's investigation in Ukraine faces many obstacles, in particular because neither Ukraine nor Russia has ratified the Rome Statute. Although Ukraine has recognised the ICC's jurisdiction over certain situations, this gives legal grounds to assert that international crimes have been committed in Ukraine since 2014 (Schüller, 2023) and require further investigation. The purpose of this article is to determine how the ICC's jurisdiction extends to Ukraine, what legal mechanisms the court uses to investigate crimes in Ukraine in the absence of ratification, and what are the challenges and prospects for further cooperation between the ICC and Ukraine to investigate crimes committed by Russian troops in Ukraine.

To achieve the aforementioned goal, the following tasks are set forth in the research:

1. Determine the scope of the ICC's jurisdiction over Ukraine, under which principles and legal constructs the ICC's authority can be exercised.
2. Identify the main problems in applying the ICC's jurisdiction to legal relations arising from international crimes committed on the territory of Ukraine – the lack of ratification of the Rome Statute, the delimitation of jurisdiction between the ICC and other judicial institutions in investigating the crimes of Russian aggression in Ukraine, the application of the ICC's jurisdiction ad hoc – and outline ways to overcome them.
3. Determine the prospects for cooperation between Ukraine and the ICC to investigate crimes committed by Russian troops on the territory of Ukraine and assess the potential of Ukraine's ratification of the Rome Statute.

Thus, the structure of the article is built in such a way as to gradually answer all the tasks set and consists of:

- Introduction – provides a general overview of the issue under study,
- Methodology – the author describes the methodology and process of conducting this research,
- Results – the issues of Scope of the ICC's jurisdiction (1), Problems of applying the ICC's jurisdiction in Ukraine (2), Delimitation of jurisdiction between the ICC, the International Court of Justice, and the ECHR (3) are considered separately.
- Discussion – the prospects of applying the ICC's jurisdiction to investigate the crimes of aggression of the Russian military in Ukraine and the issue of Ukraine's ratification of the ICC Statute are considered.
- Conclusion – conclusions from this study are presented, indicating limitations and further directions of scientific development.

Methodology

To study the ICC's jurisdiction over Ukraine, a comprehensive approach was applied based on general scientific research methods: analysis, synthesis, comparison, analogy, and modelling. The method of comparison and analogy was used to develop Table 1, and the modelling method was used to compile the content of the ICC's jurisdiction, as shown in Figure 1.

Data collection

The scientific basis of the study is based on the works of scholars on the jurisdiction and powers of the ICC, the role of the ICC in the investigation of international crimes, published in the scientific and metric databases WoS, Science Direct, ResearchGate. The legal basis of the study is the 1998 Rome Statute of the ICC, the Constitution and laws of Ukraine. The source of up-to-date information on the status of the ICC's investigation of crimes in Ukraine was the official ICC web portal <https://www.icc-cpi.int/>

Data analysis

The author gathered over 50 articles from scientific metric databases on the given topic, published between 2018 and 2024. Among these, 30 scientific studies relevant to illuminating the scope of the ICC's jurisdiction, particularly in Ukraine after 2014, were selected. The method of legal analysis (of normative acts) and thematic analysis (of articles and publications) was used to process the information obtained. The

comparative legal method was used to delineate the jurisdiction of the ICC and other international judicial institutions. In general, the author has applied a comprehensive systematic approach to the study of this issue, which allows us to consider the obtained results of the scientific legal research to be reliable.

Results

Scope of the ICC's jurisdiction

In international law, the term “jurisdiction” can be applied to a state (national jurisdiction as a manifestation of state sovereignty) and to a court (international jurisdiction). The term “court jurisdiction” is defined as the power or competence of a court or judge to convict or award a remedy under the law (Black, 1968).

Based on this, the jurisdiction of the ICC should be interpreted as the authority to investigate and prosecute international crimes within the limits set out in its Statute. Gutnyk proposes to consider the jurisdiction of the ICC as a complex concept that includes “substantive (“ratione materiae”), personal or personality (“ratione personae”), temporal (“ratione temporis”) and spatial or territorial (“ratione loci”) jurisdiction” (Gutnyk, 2024), which is based on a number of jurisdictional principles (Geng, 2023). A visualization of the concept of the ICC's jurisdiction is presented in Figure 1.

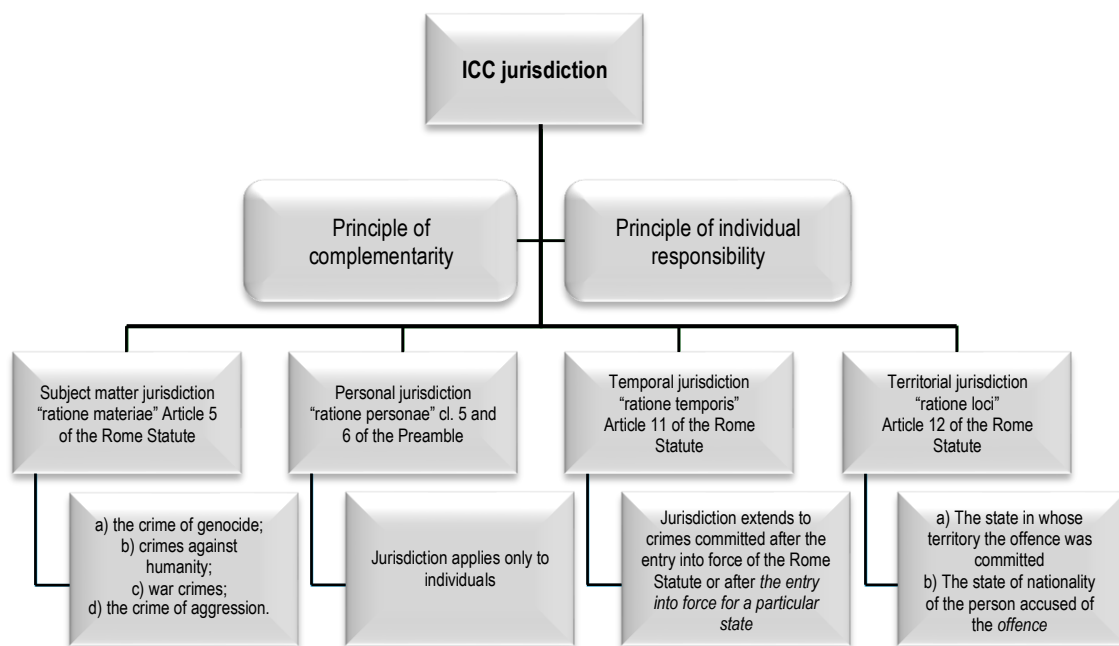


Figure 1. Contents of the ICC's jurisdiction.

Source: authors’ elaboration based on Part II of the Rome Statute (United Nations, 1998), Drozdov et al. (2022), Gutnyk (2024).

An important issue for determining the ICC's jurisdiction is the admissibility of a case, which, according to the Rome Statute, is decided on the basis of the principle of complementarity provided for in paragraph 10 of the Preamble and in Articles 1 and 17: the ICC “complements national criminal justice authorities” (United Nations, 1998), and is a court of last resort (DROZDOV et al., 2022). The application of the principle of complementarity creates a special order of relations between national and international jurisdictions (Smyrnov, 2023). This means that the ICC complements the national criminal justice systems of a state (United Nations, 1998). The general rule is that the ICC has no right to replace or substitute national courts, the role of the ICC is complementary (Rynkun-Werner et al., 2023).

Furthermore, the ICC should only deal with the most serious crimes, which requires an assessment of the gravity of the crime, which is carried out in both quantitative and qualitative terms, with attention to the nature, scale and method of the crime and the impact of its harmful consequences (Rynkun-Werner et al., 2023). In a situation where the jurisdiction of national courts and the International Criminal Court overlap,

the general rule is to give priority to the former, with the jurisdiction of the ICC recognised on a supplementary basis (Rynkun-Werner et al., 2023).

In addition to the principle of complementarity, the ICC's jurisdiction is based on the principle of individual criminal responsibility (Smyrnov, 2023), which means that the court can only prosecute individuals whose actions are qualified as crimes by the court, and the court does not have the power to prosecute the state. At the same time, the state cannot grant immunity to the president, prime minister, cabinet minister or parliamentarian who are subject to criminal liability under the Rome Statute (Rynkun-Werner et al., 2023).

The problems associated with the application of the ICC's jurisdiction over Ukraine stem from several reasons.

1. Ukraine signed the Rome Statute on 20 January 2000, but it has not yet ratified it, although this issue has been raised on several occasions, especially in light of the events after 2014 (annexation of Crimea and the start of the Anti-Terrorist Operation in eastern Ukraine).

In order to implement the provisions of the Rome Statute into Ukrainian legislation, the President of Ukraine submitted a petition to the Constitutional Court of Ukraine on the compliance with the provisions of the Constitution of Ukraine. As a result, on 11 July 2001, the Constitutional Court issued its opinion that the Rome Statute does not comply with the provisions of the Constitution of Ukraine in terms of “the provisions of paragraph 10 of the Preamble and Article 1 of the Statute, according to which the International Criminal Court ... shall complement national criminal justice authorities” (Verkhovna Rada of Ukraine, 2001). This decision of the Constitutional Court has been repeatedly criticised by the Ukrainian scientific community and recognised as an erroneous interpretation of the provisions of the Rome Statute (Drozdov et al., 2022; Gutnyk, 2024).

In order to resolve this conflict, the Constitution of Ukraine was amended in 2016 to Section VIII “Justice”, Article 124 was supplemented with part six “Ukraine may recognise the jurisdiction of the International Criminal Court under the conditions set out in the Rome Statute of the International Criminal Court” (Verkhovna Rada of Ukraine, 1996). However, even after this provision came into force in 2019, the Rome Statute was not ratified. According to Smyrnov, one of the reasons for the lack of ratification of the Rome Statute is the complementary nature of the ICC's jurisdiction (Smyrnov, 2023). Another reason for the delay is the Ukrainian authorities' fear of interference with the sovereignty of the state, but in international law, states are usually forced to self-restrict their sovereign rights, but without losing their sovereignty (Bytyak et al., 2017).

With the beginning of the full-scale invasion, the focus was again on the ratification of the Rome Statute. In May 2022, the Verkhovna Rada of Ukraine amended the Criminal Procedure Code of Ukraine by adding Section IX⁻² “Peculiarities of Cooperation with the International Criminal Court”, which extends the jurisdiction of the ICC to Ukrainian citizens, foreign citizens and stateless persons who committed a crime with the aim of armed aggression against Ukraine on the basis of decisions of authorised persons of the Russian Federation or another country that committed aggression or facilitated aggression against Ukraine (Verkhovna Rada of Ukraine, 2012). This section establishes the rules of interaction between the criminal justice authorities of Ukraine and the ICC in matters of investigation, trial and execution of the ICC judgements (Smyrnov, 2023).

2. The fact that Ukraine has not ratified the provisions of the Rome Statute does not prevent Ukraine from applying to the court and conducting investigations into the crimes under Article 5. The Rome Statute, in particular Article 12, provides for the possibility for a state to recognise the jurisdiction of the ICC over certain matters without ratifying it (United Nations, 1998). Ukraine has twice applied to the ICC under the legal mechanism of “limited ratification” (Smyrnov, 2023) in 2015, with an application for recognition of its jurisdiction over crimes against humanity and war crimes committed by officials of the Russian Federation and leaders of the terrorist organisations “DPR” and “LPR”, which led to particularly grave consequences and massacres of Ukrainian citizens (Verkhovna Rada of Ukraine, 2015) and with an application for crimes against humanity committed by senior officials of the state, which led to particularly grave consequences and massacres of Ukrainian citizens during peaceful protests between 21 November 2013 and 22 February 2014 (Verkhovna Rada of Ukraine, 2014).

In these applications, the ICC's substantive jurisdiction is limited - the investigation is conducted within the crime of genocide, crimes against humanity and war crimes, and cannot be conducted in relation to the crime of aggression, as this crime is subject to a special procedure for recognising jurisdiction under Articles 15 bis and 15 ter of the Statute (United Nations, 1998).

Also, the ICC's territorial jurisdiction is limited, the investigation can be carried out in the alleged territories of the crimes – the territory of Ukraine, including the temporarily occupied territories of Donetsk and Luhansk regions and the Autonomous Republic of Crimea.

The ICC's jurisdiction to investigate these applications has a time limit: in relation to the events on Euromaidan - from 21 February 2013 to 22 February 2014, in relation to the armed conflict - from 20 February 2014 without a deadline; the ICC's jurisdiction in these situations is retroactive.

The ICC's jurisdiction is not limited in terms of the range of persons, the court can prosecute both citizens of Ukraine and Russia and other states or stateless persons; the ICC Prosecutor will decide who to prosecute (Marchuk & Wanigasuriya, 2022).

After several years of preliminary checks, the ICC Prosecutor's Office decided in 2020 to launch an investigation, emphasising that additional resources would be required (SCHÜLLER, 2023). It is obvious that in the vast majority of cases, the Rome Statute places the burden of proof on the Prosecutor, who must respond in a timely manner to the commission of serious international crimes (Syroid, 2009a). Following the full-scale invasion of Ukraine by Russian troops, the ICC Prosecutor announced that Ukraine's application regarding the events in the 'DPR' and 'LPR' since 2014 and the investigation into the events after 24 February 2022 would be merged into a joint proceeding (International Criminal Court, 2022). Thus, in the period from 2016 to 2022, the Ukrainian authorities took significant steps to bring national legislation in line with the Rome Statute (Murachov, 2023).

Today, based on the principle of separation of powers (KUMAR, 2021), several international tribunals can play a role in reviewing Russia's actions in Ukraine and punishing those responsible for committing crimes, primarily the International Court of Justice (ICJ), the International Criminal Court (ICC) and the European Court of Human Rights (ECtHR) (Congressional Research Service, 2023), each of which has initiated proceedings on Ukraine's applications against Russia. In this regard, the jurisdiction of these courts is delineated in Table 1.

Table 1.
Delimitation of jurisdiction of the ICC, the International Court of Justice and the ECtHR.

Basis for comparison	ICC	International Court of Justice	ECHR
Date of creation	July 2002	June 1945	1959 year
The reason for creation	Rome Statute of the International Criminal Court	United Nations Charter Chapter XIV	European Convention on Human Rights Section II
Location	Hague, The Netherlands	Hague, The Netherlands	Strasbourg, France
Subject matter jurisdiction	<ul style="list-style-type: none"> Genocide, War crimes, Crimes against humanity, Crimes of aggression. 	all matters referred by the parties and all matters specifically provided for in the UN Charter or in applicable international treaties and conventions	Cases of violation of human rights enshrined in the European Convention on Human Rights
Territorial jurisdiction	States parties to the Rome Statute, other countries under special conditions	UN countries, other countries in exceptional cases	Countries of the Council of Europe
Personal jurisdiction	Investigations of individuals responsible for the most serious crimes	Settlement of disputes between UN states; between other states in exceptional cases	Consideration of applications by individuals against a Council of Europe member state

Source: authors' development on the basis of the Rome Statute (United Nations 1998), International Court of Justice (1945), European Convention on Human Rights (1950)

Ukraine actively uses all three international institutions to punish those responsible for crimes committed on its territory. However, as can be seen from Table 1, only the ICC has the competence to prosecute the most serious crimes committed in wartime.

3. The ICC's jurisdiction to prosecute the crime of Russian aggression against Ukraine.

Based on the above, the ICC's jurisdiction extends to cases where a state has referred a specific situation to the court, or such a situation has been referred to the court by the UN Security Council, or an investigation has been initiated by the ICC Prosecutor (Drozdov et al., 2022). The latter case became the basis for the actions of the ICC Prosecutor Kareem Khan after 24 February 2022.

However, in accordance with Article 15 bis (4 and 5) of the Rome Statute, Karim Khan's actions do not apply to the investigation of a crime of aggression - in the case of an act of aggression committed by a state that, like the Russian Federation, has not acceded to the Rome Statute, the initiation of an investigation differs from the procedure for cases of genocide, war crimes and crimes against humanity (Kress et al., 2023).

In this regard, the question of bringing the Russian authorities to justice for the crime of aggression, which is also a violation of one of the pillars of the UN Charter, the prohibition of the use of force, remains controversial. Since 2018, the ICC has had the power to prosecute the crime of aggression, but there is an exception to this crime that does not apply to the other three core crimes, as Article 15 bis (5) of the Rome Statute requires that the aggressor state must also be a party to the Rome Statute (United Nations, 1998), or under the condition of a referral by the UN Security Council, which is not a viable option in this situation, as Russia will not vote for such actions (Schüller, 2023). Therefore, Prosecutor Khan has no choice but to abstain from considering charges of crimes of aggression. This means that he is forced to conduct his investigations in a limited manner (Kress et al., 2023).

Discussion

The prospect of Ukraine's ratification of the Rome Statute remains open, and Ukraine's position on its intention to ratify the Rome Statute is rather inconsistent and contradictory, reinforced by the latent conflict between civil society organisations and the political authorities in contemporary Ukrainian society (Udzhmadzhuridze et al., 2019).

Proponents of Ukraine's accession to the Rome Statute argue that it will “bring Ukraine closer to the universally recognised standards of the UN, the Council of Europe and the European Union in the fight against the most serious crimes that are of concern to the entire international community”. In arguing for the need for Ukraine to ratify the Rome Statute, Marchuk (2021) draws an analogy with Ukraine's ratification of the European Convention on Human Rights, on the basis of which it recognises the judgments of the ECtHR. In this context, the question arises as to how the ICC proceedings differ from the ECtHR proceedings from the point of view that both courts are international judicial institutions that perform a complementary function to the Ukrainian judicial system - they consider cases when all national judicial means have been exhausted or cannot be applied (Marchuk, 2021).

Opponents of Ukraine's accession to the Rome Statute argue that the ICC will not be effective in investigating crimes and punishing those responsible among the Russian leadership (Mcdougall, 2023), ICC has no jurisdiction to investigate crimes of Russian aggression in Ukraine (Dannenbaum, 2022). Establishment of a special international tribunal is considered to be the only viable way to prosecute crimes of aggression committed against Ukraine (Mcdougall, 2023). The new international tribunal is needed because the ICC is currently unable to adjudicate on the crime of aggression committed by Russia, and national courts will struggle in the face of such obstacles as the immunity of the highest authorities of the Russian Federation (Grzebyk, 2023).

However, this proposal also did not receive unequivocal assessments. For example, researchers argue that such a court will go down in history as a special court created for one specific situation, rather than as applicable to others, especially if it includes trials in absentia while there is a permanent international criminal court.

The only way to resolve the legitimacy issue is to expand the ICC's jurisdiction over the crime of aggression by amending the Rome Statute accordingly. Instead of a one-off ad hoc court, the ICC should be given jurisdiction to deal with similar future situations of crimes of aggression. Only such a step could stabilise the global legal order, rather than further fragment it by doing the bidding of stronger states (Schüller, 2023).

In addition, due to the severe negative impact of hostilities on Ukraine's environment, which was characterised as unsatisfactory even before the war began (Kovaliuk et al., 2020), the discussion on the extension of the ICC's substantive jurisdiction to include the crime of ecocide has become relevant (Shumilo, 2021). The conflict in Ukraine is an opportunity to improve the Rome Statute and ensure that anyone who commits a crime of aggression does not go unpunished in the future (Moreno Ocampo, 2023).

In the light of Ukraine's potential accession to the Rome Statute, other problems of the ICC's functioning arise, including the lack of expected effectiveness, initiation of proceedings, obstacles to the transfer and referral of cases to the court (Ali Al Omar & Allwan Al Amery, 2024), the duration of the proceedings, as well as the issue of proper cooperation between the ICC and states, as cooperation is the main form of enforcement of ICC decisions (Matkovskiy, 2023). There are some serious problems related to the issue of an enforcement mechanism for States Parties that refuse to cooperate with the court, and there is no such mechanism yet. In general, these issues are beyond the scope of this study and may be the subject of further research.

Given the unique course of international criminal proceedings, this study has certain limitations, motivated by the ongoing active investigation of the ICC, on the one hand, and the duration of hostilities, respectively - the commission of new crimes against humanity, war crimes, and crimes of aggression by Russian troops on the territory of Ukraine, on the other hand. Limitations in the research are caused, in addition to the above, by the lack of access to information about the progress of the investigation, except for that officially published on the ICC website. This issue has great research potential, as the application of the ICC's jurisdiction in Ukraine creates a precedent for the application of international law for future generations.

Conducting scientific research on current events as they unfold also carries certain risks regarding the author's impartiality and the objectivity of information available in open sources. This phenomenon, in light of the criminal proceedings regarding the investigation of crimes committed by Russian troops on the territory of Ukraine since 2014, is one of the possible directions for further scientific research.

Conclusions

International law and cooperation between states and international organisations will play a crucial role in the fight against impunity for the most serious crimes against the Ukrainian population (Lanza, 2022). In the current international system, the ICC is the most advanced institutional model of the existing international criminal justice bodies (Smyrnov, 2022). The ICC's jurisdiction extends only to crimes specified in the Rome Statute, with an extremely limited scope, and the explicit consent of the countries concerned is usually required for the ICC to exercise its jurisdiction.

As of today, Ukraine has found a legal way to recognise the jurisdiction of the ICC over crimes committed and still being committed on its territory, which gives hope for a fair trial and prosecution of the perpetrators, but the issue of ratification of the Rome Statute remains relevant. The Ukrainian authorities should be commended for taking the first positive steps in this direction, including amendments to the Constitution and the Criminal Procedure Code of Ukraine. At the same time, the very system of determining the ICC's jurisdiction enshrined in the Rome Statute, in particular with regard to the crime of aggression, needs to be improved in order to more effectively prosecute the most serious crimes.

The novelty of this study lies in summarizing possible scenarios for cooperation between the ICC and Ukraine to investigate the crimes of the Russian military on the territory of Ukraine. The author's identification of all problematic aspects of Ukraine's ratification of the Rome Statute deserves special attention, as well as the legal analysis of the current algorithm of cooperation between Ukraine and the ICC in the absence of ratification.

The issues of limiting the ICC's jurisdiction in Ukraine, the procedure for enforcing ICC decisions for Ukraine and Russia are potential areas of scientific research. Also, the issue of delimiting the jurisdiction of the ICC and other international judicial bodies regarding the investigation of war crimes and crimes of aggression committed on the territory of Ukraine from 2014 to the present, the beginning of which is laid in this work, requires further doctrinal development.

Bibliographic References

- Ali Al Omar, B.A., & Allwan Al Amery, A.S. (2024). The challenges of filling cases to the international criminal court. *Randwick International of Social Science Journal*, 5(1), 137-146. <https://doi.org/10.47175/rissj.v5i1.897>
- Black, H. C. (1968). *Black's Law Dictionary*, 2nd Ed. West publishing CO. URL: <https://heimatundrecht.de/sites/default/files/dokumente/Black%27sLaw4th.pdf>
- Bytyak, Y., Yakovyuk, I., Tragniuk, O., Komarova, T., & Shestopal, S. (2017). The State sovereignty and sovereign rights: the correlation problem. *Man In India*, 97(23), 577-588.
- Congressional Research Service (2023). *The role of international tribunals in the response to the invasion of Ukraine*. URL: <https://crsreports.congress.gov/product/pdf/LSB/LSB10704> Accessed: 24 Apr. 2024.
- Dannenbaum, T. (2022). A special tribunal for the crime of aggression? *Journal of International Criminal Justice*, 20(4), 859-873. <https://doi.org/10.1093/jicj/mqad047>
- Derviř, L. (2023). Transformation of geopolitical perceptions in the Russian-Ukrainian war: impact on regional relations in the future. *Futurity of Social Sciences*, 1(1), 21-34. <https://doi.org/10.57125/FS.2023.03.20.02>
- Drozdov, O.M., Drozdova, O.V., Karpenko, M.O., & Zuev, V.V. (2022). Cooperation with an International Criminal Court: organizational, jurisdictional and criminal procedure aspects. *Juridical Scientific and Electronic Journal*, 8, 484-492. http://lsej.org.ua/8_2022/110.pdf
- European Court of Human Rights (1950). *European Convention on Human Rights*. URL: <https://www.echr.coe.int/european-convention-on-human-rights>
- Geng, Z. (2023). An exploration of selective justice in the International Criminal Court. *SHS Web of Conferences*, 178, 02019. <https://doi.org/10.1051/shsconf/202317802019>
- Gennadievich Danilyan, O., Petrovich Dzeban, A., Yurievich Kalinovskiy, Y., Anatolievich Kalnytskyi, E., & Borisovna Zhdanenko, S. (2018). Personal information rights and freedoms within the modern society. *Informatologia*, 51(1-2), 24-33. <https://doi.org/10.32914/i.51.1-2.3>
- Grzebyk, P. (2023). Crime of aggression against Ukraine. *Journal of International Criminal Justice*, 21(3), 435-459. <https://doi.org/10.1093/jicj/mqad035>
- Gutnyk, V. (2023). The development of international criminal justice: Expectations and reality. *Right*, 126, 101-115. <https://doi.org/10.15388/Teise.2023.126.7>
- Gutnyk, V.V. (2024). The international criminal court: Current problems and ways of their solution. *Uzhhorod National University Herald. Series: Law*, 3(81), 251-257, <https://doi.org/10.24144/2307-3322.2024.81.3.37>
- Heller, K.J. (2024). Options for prosecuting Russian aggression against Ukraine: A critical analysis. *Journal of Genocide Research*, 26(1), 1-24. <https://doi.org/10.1080/14623528.2022.2095094>
- International Criminal Court (2022). *Situation in Ukraine ICC-01/22*. Available at: <https://www.icc-cpi.int/situations/ukraine>
- International Court of Justice. (1945). *Statute of the International Court of Justice*. https://www.icj-cij.org/statute#CHAPTER_II
- Kaplina, O. (2022). Prisoner of war: special status in the criminal proceedings of Ukraine and the right to exchange. *Access to Justice in Eastern Europe*, 4-2(17), 8-24. <https://doi.org/10.33327/AJEE-18-5.4-a000438>
- Kovaliuk, T., Kobets, N., Ivashchenko, D., & Kushnarov, V. (2020). Environmental monitoring and population protection from environmental factors. In *Information Technology in Disaster Risk Reduction: 4th IFIP TC 5 DCITDRR International Conference, ITDRR 2019, Kyiv, Ukraine, October 9-10, 2019, Revised Selected Papers 4* (pp. 55-66). Springer International Publishing. https://doi.org/10.1007/978-3-030-48939-7_6
- Kress, C., Hobe, S., & Nußberger, A. (2023). *The Ukraine war and the crime of aggression: How to fill the gaps in the international legal system*. Just Security. <https://acortar.link/Mn0YbB>
- Kumar, A. (2021). Analysis of the principle of subsidiarity as a principle of EU law: Future perspectives. *Futurity Economics&Law*, 1(4), 18-27. <https://doi.org/10.57125/FEL.2021.12.25.03>
- Lanza, G. (2022). The fundamental role of international (criminal) law in the war in Ukraine. *Orbis*, 66(3), 424-435. <https://doi.org/10.1016/j.orbis.2022.05.010>
- Maraieva, U. (2022). On the formation of a new information worldview of the future (literature review). *Futurity Philosophy*, 1(1), 18-29. <https://doi.org/10.57125/FP.2022.03.30.02>
- Marchuk, I. (2021). Ukraine and the international criminal court: implications of the ad hoc jurisdiction acceptance and beyond. *Vanderbilt Law Review*, 49, 323. <https://scholarship.law.vanderbilt.edu/vjtl/vol49/iss2/2>

- Marchuk, I., & Wanigasuriya, A. (2022). The ICC and the Russia-Ukraine war. *American Society of International Law*, 26(4). <https://www.asil.org/insights/volume/26/issue/4>
- Matkovskiy, A.A. (2023). The problem of execution of judgments of the International Criminal Court by Ukraine. *Law and Society*, 3, 380-389. http://pravoisuspilstvo.org.ua/archive/2023/3_2023/57.pdf
- McDougall, C. (2023). The imperative of prosecuting crimes of aggression committed against Ukraine. *Journal of Conflict and Security Law*, 28(2), 203-230. <https://doi.org/10.1093/jcsl/krad004>
- Moreno Ocampo, L. (2023). *Ending selective justice for the international crime of aggression*. Just Security. <https://acortar.link/VSHZ2A/>
- Murachov, R. (2023). Peculiarities of interaction between Ukraine and the international criminal court: Legal aspects. *Analytical and Comparative Jurisprudence*, 5, 654-658. <https://doi.org/10.24144/2788-6018.2023.05.115>
- Pavlenko, I.V., & Ohievich, S.M. (2020). Peculiarities of international jurisdiction of the International Criminal Court on human crimes: theoretical-legal aspect. *Scientific Notes of Taurida National V.I. Vernadsky University*, 3(2), 207-212. <https://doi.org/10.32838/2707-0581/2020.2-3/33>
- Rynkun-Werner, R., Kozicki, B., Zekowski, J., & Krzew, D. (2023). Jurisdiction of the international criminal court in the Hague and war crimes in Ukraine in the face of security. *Journal of Security and Sustainability Issues*, 13(1), 325-336. <https://doi.org/10.47459/jssi.2023.13.34>
- Schüller, A. (2023). *What can('t) international criminal justice deliver for Ukraine?* Verfassungsblog. <https://verfassungsblog.de/justice-ukraine/>
- Shumilo, O. M. (2021). Prospects of determining the International Criminal Court jurisdiction regarding ecocide. *Actual Problems of Native Jurisprudence*, 5(5), 106-112. <https://doi.org/10.15421/392207>
- Smyrnov, M.I. (2023). Conceptual issues of ratification of the Rome statute of international criminal court and Ukraine's cooperation with international criminal court in the context of Russian's military aggression against Ukraine. *Juridical Scientific and Electronic Journal*, 1, 542-546. http://lsej.org.ua/1_2023/125.pdf
- Smyrnov, M. I. (2022). Prospects and legal consequences of Ukraine's ratification of the Rome Statute of the International Criminal Court in the context of Russian's military aggression against Ukraine. *Juris Europensis Scientia*, 6, 98-102. http://jes.nuoua.od.ua/archive/6_2022/19.pdf
- Syroid, T.L. (2009a). *Legal standards and role of the prosecutor in international criminal trials*. Kharkiv National University of Internal Affairs. <https://acortar.link/fSfGFX>
- Syroid, T.L. (2009b). Procedure for recognizing individuals as victims in international criminal proceedings. *Newsletter of the Academy of Mine Service of Ukraine. Series: "Law"*, 2(3). https://biblio.umsf.dp.ua/jspui/bitstream/123456789/3376/1/vamsup_2009_2_29.pdf
- Udzhmadzhuridze, H., Bilan, S., & Kryvoshein, V. (2019). Individual significance of political participation in today's Ukrainian society: The case of Dnipro city. *Economics & Sociology*, 12(1), 193-207. <https://doi.org/10.14254/2071-789X.2019/12-1/11>
- United Nations (1998). *Rome Statute of the International Criminal Court*. United Nations Treaty Collection. <https://acortar.link/tNixUE>
- Verkhovna Rada of Ukraine (1996). *Constitution of Ukraine*. Official website of the Parliament of Ukraine. <https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text>
- Verkhovna Rada of Ukraine (2012). *Criminal Procedural Code of Ukraine*. <https://zakon.rada.gov.ua/laws/show/en/4651-17#Text>
- Verkhovna Rada of Ukraine (2001). *Constitutional Court of Ukraine Conclusion in the case on the constitutional submission of the President of Ukraine on the provision of an opinion on the compliance of the Constitution of Ukraine with the Rome Statute of the International Criminal Court (the case of the Rome Statute)*. URL: <https://zakon.rada.gov.ua/go/v003v710-01>
- Verkhovna Rada of Ukraine. (2014). *Statement of the Verkhovna Rada of Ukraine. To the International Criminal Court on recognition by Ukraine of the jurisdiction of the international criminal court to commit crimes against humanity by senior officials of the state, which led to particularly serious consequences and the mass murder of Ukrainian citizens during peaceful protests at November 21, 2013 to February 22, 2014*. <https://zakon.rada.gov.ua/laws/show/790-18#Text>
- Verkhovna Rada of Ukraine. (2015). *Statement of the Verkhovna Rada of Ukraine "On recognition by Ukraine of the jurisdiction of the International Criminal Court of crimes against humanity and war crimes by senior officials of the Russian Federation and leaders of terrorist organizations "DPR" and "LPR" which led to particularly serious consequences and mass murder of Ukrainian citizens."* <https://zakon.rada.gov.ua/laws/show/145-19#Text>