



BLOG POST

Is Ukraine finally breaking its 24-year International Criminal Court commitment phobia?

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After decades of delays and debates, Ukraine is finally on the brink of joining the International Criminal Court. While the ratification of the Rome Statute is a significant step, the country still faces hurdles in implementing necessary domestic legislation to ensure full compliance with the treaty.

On 21 August 2024, [the Ukrainian Parliament ratified the Rome Statute](#) of the International Criminal Court (ICC). This is a significant step towards Ukraine becoming a member state of the ICC, and it aligns with Ukraine's commitments stemming from various international and European instruments, including the [EU- Ukraine Association Agreement](#).

On 24 August 2024, Ukraine's Independence Day, president Volodymyr [Zelensky symbolically signed the bill](#). However, the Rome Statute Ratification [Bill 3909](#) stipulates that its entry into force is [contingent](#) on the adoption of implementing legislation to bring Ukraine's Criminal Code ([CCU](#)) and Criminal Procedural Code ([CPC](#)) into conformity with the Rome Statute. This means that Ukraine has not yet deposited its ratification instrument with the United Nations Secretary-General, unlike other states, which ratified the Rome Statute without such contingencies.

Initially, this dependency between ratification and implementation raised uncertainty about how quickly Ukraine will become a state party to the Statute, especially as there were diverging opinions on the speed and scope of the necessary legislative changes. However, the last several weeks have shown that the aim is to ratify the implementation bill as soon as possible, in order to join the twenty-third session of the ICC Assembly of States Parties (ASP) as a member state in December 2024.

While beyond the scope of this blog post (for a detailed analysis see: [UKRINFORM](#); [Dannenbaum](#); [Heller](#); [Coalition for the ICC, Zimmermann](#)), a crucial point remains Ukraine's Article 124 Rome Statute Declaration. It is intended to temporarily restrict the jurisdiction of the ICC over war crimes committed (by its nationals) for seven years post-ratification, a question which ultimately will have to be decided by the Pre-trial Chamber of the ICC.

While many see this as a compromise to address domestic political and military apprehensions, others, including Deputy Head of the Office of the President, Iryna Mudra, have dismissed such interpretations as "fake news," emphasising that this does not equate to impunity, as Ukrainian and foreign law enforcement, under domestic and universal jurisdiction, can still investigate alleged crimes ([UKRINFORM](#)).

This blog posts draws insights from an online discussion held on 29 August 2024, involving legal experts and Ukrainian Members of Parliament (MPs), organised by the Asser Institute under the "Restoring Justice and Dignity in Ukraine" project. This initiative forms part of a year-long engagement with a multi-party group from the Law Enforcement Committee of the Ukrainian Parliament and legal experts, which has been aimed at developing a domestic implementation bill as an effective tool to address international crimes.

The seemingly endless road to ratification and implementation: propaganda, delays, declarations, and debates

For over two decades, Ukraine's path to ratifying the Rome Statute has been marked by hesitation and delays. Ukraine [signed](#) the Statute in 2000, but ratification faced immediate obstacles, beginning with a [2001 Constitutional Court ruling](#), which found that the ICC's principle of complementarity conflicted with the [Ukrainian Constitution \(Article 124\)](#), which does not allow supplementing its judicial system with international bodies. To address this, [constitutional amendments were introduced](#), which came into force in 2019, three years after the date of the official publication of the law, aligning with the timing of new elections, a delay seen by some as strategic ([Marchuk:2018, p. 379](#)). However, despite a parliamentary majority, the government did not immediately move towards ratification (see detailed discussion [here](#) and [here](#), pp. 745-746).

While not an ICC state party, Ukraine has made two *ad hoc* declarations accepting the ICC jurisdiction for specific periods. The [first](#), deposited in 2014, covered alleged crimes during the Maidan protests (November 2013 – February 2014). The [ICC concluded there was insufficient evidence](#) to classify the alleged crimes as crimes against humanity. The [second](#) declaration,

deposited in 2015, accepted the ICC jurisdiction over crimes related to the annexation of Crimea and Eastern Ukraine from 20 February 2014 onwards, prompting an extended preliminary examination by the ICC. However, unlike state parties which participate actively in the ICC's governance, Ukraine's *ad hoc* declarations do not grant these rights. Membership of the ICC grants states the right to elect judges ([Article 36](#)), the Prosecutor ([Article 42](#)), and members of the Bureau of the ASP ([Article 112\(3\)\(a\)](#)), approve the ICC's budget ([Article 112](#)), propose amendments to the Rome Statute ([Article 121](#)), and influence policies, while states with *ad hoc* declarations lack these, and other powers, including being able to refer a situation to the Court ([Article 12\(3\)](#)).

Reforming domestic legislation

Alongside recognition of the ICC's jurisdiction over international crimes committed in Ukraine, there were multiple attempts at reforming domestic legislation. These legislative efforts, [Bill 2689](#) and [Bill 7290](#), aimed to implement international humanitarian law and international criminal law, including the Rome Statute but not limited to it, yet failed to progress (see, e.g., [GRC, Justice in Conflict, PGA](#)).

[Bill 2689](#), celebrated as a victory, was not signed into law by the President, a situation not unique to [Bill 2689](#), where [presidential inaction](#) can effectively block laws already passed by Parliament. Similarly, [Bill 7290](#), [criticised](#) for its limited scope, particularly its failure to adequately incorporate command responsibility, never advanced beyond its introduction to the Parliament.

These delays, debates, and false starts have been influenced by the prevalence of myths and propaganda about the Rome Statute and the ICC in Ukrainian political, military, and public circles. One concern is that ratification would expose Ukrainian soldiers to ICC prosecutions, but the ICC already has jurisdiction via Ukraine's prior declarations ([UKRINFORM](#)).

Some fear it undermines sovereignty, yet the ICC intervenes only when national courts are unwilling or unable to prosecute (complementarity principle). There are also misconceptions about retroactive justice and the scope of ICC prosecutions. Misinformation, partly from alleged Russian efforts, underscores the need for

public education on the ICC's true role and limitations ([UKRINFORM](#)). This is especially pertinent given that over one million Ukrainians serve in the armed forces, making this a deeply personal issue for many, as was put by one participant of the August discussion.

The implementation bill: comprehensive vs incremental reforms?

The debate over how to implement the Rome Statute reflects a tension in Ukraine between making a clear, comprehensive commitment to accountability and managing internal political and military concerns. Most MPs present at the August online discussion and, for the most part, the experts, argue that a comprehensive bill would be more effective, bringing all the necessary amendments into one cohesive piece of legislation. This approach, they argue, would send a strong signal of Ukraine's commitment to international justice and avoid the pitfalls of incremental changes that might lead to confusion and further complications for domestic justice actors who are faced with over 139,000 incidents of alleged war crimes (as registered in the Unified Register of Pre-trial Investigations).

On the other hand, the Office of the President appears to support a piecemeal approach. This strategy involves making smaller, more manageable legislative changes over time, starting with *some* of those recommended by the European Commission in its [Assessment Report](#) (p.30) "as a matter of urgency", including incorporating crimes against humanity and command responsibility.

The three key legislative proposals, [Bill 11484](#) (Presidential Bill), [Bill 11484-1](#), and [Bill 11538](#), each represents a different view on the implementation of international obligations.

Bill 11484: Incremental reforms with limited scope

[Bill 11484](#) takes a cautious, incremental approach to implementation. It introduces minimal changes to the CCU and CPC, focusing on addressing the most immediate concerns related to Ukraine's ratification of the Rome Statute while attempting to minimise the risk of political backlash and military pushback. The broadly formulated Article 438 of the CCU (violations of the laws and customs of war) remains unchanged, while its

heading will be changed to ‘war crimes’. Additionally, a separate provision on crimes against humanity will be introduced, and the concept of command responsibility will be included in a manner that does not align fully with the Rome Statute, an opinion shared by most experts at the August online discussion (see also, e.g., [Marchuk: Opinio Juris Blog](#)).

Despite these limitations, especially the lack of attention paid to the alignment of war crimes legislation, [Bill 11484](#) has already passed its first reading in Parliament and will be the basis for the final implementation legislation.

Bill 11484-1: A middle-ground approach

[Bill 11484-1](#), proposed by MP Oleksandr Bakumov and several MPs, offered a more balanced approach between the minimal changes in [Bill 11484](#) and the comprehensive reforms needed for full compliance with the Rome Statute. For instance, unlike [Bill 11484](#), [Bill 11484-1](#) introduced the principle of universal jurisdiction, allowing Ukraine to prosecute war crimes, genocide, crimes against humanity and the crime of aggression committed by foreigners outside Ukraine if they are present on Ukrainian territory and cannot be extradited. However, despite its slightly more ambitious goals, [Bill 11484-1](#) was rejected during the Law Enforcement Committee review stage on 17 September 2024.

Bill 11538: a comprehensive approach

[Bill 11538](#)¹, the third proposed bill, drafted by Prof. Yurii Ponomarenko (Yaroslav Mudryi National Law University), and [co-sponsored](#) by a group of 43 MPs from the factions Servant of the People, Holos, Batkivshchyna, the Trust group, and independents, with MP Oleksandr Bakumov as the first signatory, represents the most comprehensive approach to implementation.

[Bill 11538](#) seeks to consolidate all amendments required to fully align Ukrainian law with the ICC statute in a single legislative act. It introduces several key amendments, including incorporating detailed provisions for war crimes, crimes against humanity, genocide, and the crime of aggression. Additionally, it

aims to ensure clarity and consistency across the CCU and CPC, removing ambiguities and establishing clear jurisdictional guidelines to facilitate cooperation with the ICC. Supporters of [Bill 11538](#) argue that a unified approach would mitigate the risks associated with partial reforms that might fail to achieve full compliance with the Rome Statute and leave the domestic system continuing to struggle with the effective and efficient handling of international crimes.

However, it is important to note that not all of the recommendations put forward were implemented in [Bill 11538](#). Despite extensive collaboration and thorough efforts to make the bill as comprehensive as possible and ensure it meets international standards fully, several crucial elements remain to be addressed including with regards to the over-criminalisation of speech acts (e.g., Article 19, Article 27) and the lack of alignment with several Rome Statute definitions (e.g., lacking the “manifest” threshold in the definition of the crime of aggression).

At this stage, the Parliament through a separate procedural vote also instructed the Law Enforcement Committee to consider at its next meeting [Bill 11538](#) alongside [Bill 11484](#) before the second reading, suggesting that elements of both proposals may be integrated to form a more balanced legislative package. However, it appears unlikely that significant amendments will be introduced due to the government’s aforementioned focus on meeting tight deadlines for the December 2024 ICC ASP session. Nonetheless, it is vital that at least a few key amendments are introduced, namely, incorporating a definition of command responsibility in line with [Article 28](#) of the Rome Statute that captures the accurate *mens rea* (intent) requirement to establish legal culpability. Additionally, the war crimes provision must be revised to align with the full scope of [Article 8](#) of the Rome Statute and, at a minimum, explicitly addressing major war crimes. These amendments are critical to ensuring that Ukraine’s legal framework fully complies with international standards and enables effective prosecution of international crimes domestically.

Conclusion

After over two decades of debates and delays, and years of extensive discussions with Ukrainian military

representatives to mitigate fears and reassure them that the ICC's focus would be on the most serious crimes and those bearing the greatest responsibility, the time has finally come for Ukraine to move beyond symbolic

gestures of ratification "happening in the media," (as one participant of the August online discussion described it), and to advance with real, substantive legal reforms that align with international justice standards

