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## **A NECESSITY OF RATIFICATION OF ROMAN CHARTER OF INTERNATIONAL CRIMINAL COURT**

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The Roman charter of the International criminal court (farther is a charter) is an international agreement that founded the International criminal court. A charter sets the circle of activity, jurisdiction and structure of court.

Accepted at diplomatic conference in Rome on July, 17, 1998 and entered into by July, 1, 2002. By the state on September, 2019 the Roman charter was signed in all 155 held (Ukraine - on January, 20 in 2000), but ratified 122 states (Ukraine did not ratify).[1]

An international criminal court is an international judicial body, that was created in 1998 for investigation and pursuit of the persons, accused of genocide, soldiery crimes and crimes against humaneness.

It is the first organ that operates on permanent basis. A court began work with July, 2002 since 60 countries ratified a charter. An international criminal court (farther is Court) exists from July, 2002 and located in city to Hague, Netherlands. A court can take shipping at three terms:

1. The state signed and ratified a charter.
2. Security council United Nations are a find true bill.
3. When the state-participant of charter initiates business in Court.

The obligatory condition of implementation of foregoing positions and implimentation of national legislation to the norms of international law and participating in activity of Court is passing of procedure of ratification. Ratification is a mechanism of approval by Verkhovna Rada of Ukraine of international agreement and consent to his obligatoryness for the state.

Ratification of charter will allow: to spread jurisdiction of Court on Ukraine and begin investigations of crimes, that came/true come true on territory of Ukraine.

On present time Ukraine did not ratify a charter until now, taking into account legal positions of scientific association, political істеблїшменту in relation to expediency of ratification it is possible to distinguish a few positions, why from 2000 it so not was carried out measures in relation to further імплементациї, namely:

- firstly, an obstacle to ratification of charter was a conclusion of the Constitutional court of Ukraine from July, 11, 2001 [2] that positions of charter, in accordance with that Court «complements the national organs of criminal justice», did not comport with Constitution of Ukraine, that does not envisage possibility of «addition of the judicial system of Ukraine».

This conclusion is debatable, in fact Court does not replace the national organs of criminal justice, does not become their part and does not interfere in their work. Principle of комплементарності provides for, that Court is authorized to take shipping only in the cases when the national system of justice is not able or not wishes to investigate international crimes that fall under jurisdiction of Court. The proper trial of business at national level does impossible her consideration of Cramps, such business becomes unacceptable to consideration of Cramps after the article 17 of the Roman charter. The same rules of acceptability provide for, that Court does not take shipping, that does not answer the criterion of sufficient seriousness, id est businesses, that, in opinion of Court, are insignificant, - for example, single incidents that does not have systematic or large-scale character.

This constitutional obstacle for ratification of charter was removed in 2019 with changes to the article of 124 Constitutions, that provides for in a new release, that «Ukraine can admit jurisdiction of the International criminal court on the terms certain the Roman charter of the International criminal court» [3];

- secondly, in May, 2022 the Verkhovna rada complemented the Criminal code of practice of Ukraine (farther is CCP) the new division of IX2 of «Feature of collaboration with the International criminal court». This division was entered in a legislation «exceptionally. with the aim of distribution of jurisdiction of Court on persons» that «were inferior та/або operated with the aim of realization of the armed aggression against Ukraine та/або on the basis of decisions... Russian Federation or other country that carried out aggression or assisted her realization against Ukraine» [4].

Erroneous is claim of political істеблїшменту, that the state can elect the circle of persons in relation to that to execute the obligations in relation to a collaboration from Cramps. Firstly, acknowledging jurisdiction of Court in the special order (as Ukraine did), the state can limit only sentinels and spatial limits of his jurisdiction. But the public prosecutor of Court however uses freedom of discretion in relation to crimes and persons that is subject to investigation, regardless of citizenship or belonging of person to the state-aggressor or to the state that suffers from aggression. Secondly, confession of jurisdiction of Court in the special order leads the way the obligation of Ukraine to cooperate from Cramps «without any exceptions», as it is marked in the article of a 12 (3) charter. Ukraine can not narrow this obligation a law: under right international law, a domestic law is not founding for non-fulfillment by the state of the obligations after an international law. Therefore an attempt to limit in КПК the circle of persons in relation to that Ukraine can cooperate from Cramps does not influence on the real volume of obligations of Ukraine in relation to it;

- thirdly, there are fears, that ratification of charter will spread jurisdiction of Court on the action of Armed forces of Ukraine (farther - AFU). Not quite faithful interpretation, taking into account the following. Expansion of jurisdiction will not be on that reason, that Court already has such jurisdiction from 2014, on the basis of confession of jurisdiction of Court Ukraine in the special order. However Ukraine - that now, that after ratification of charter - has the opportunity to do impossible investigation of businesses in Court. On the basis of foregoing it is possible to come to the conclusion, that for ratification of charter, Ukraine must be interested in these actions. Firstly, that with tacking to jurisdiction of Court, Ukraine will not get new risks. Secondly, that with ratification we will get new possibilities, and without her - will lose.

Although, regardless of whether we are under jurisdiction by special order or by the fact of ratification of the statute, the prosecutor of the Court in theory has the right to start an investigation against Ukrainians, if they ever commit war crimes that will pass the filter of the International Criminal Court. However, the fact that the Court has such jurisdiction does not mean that it will exercise it. This means that Ukraine can prevent the exercise of the Court's jurisdiction, due to the principle of complementarity and the rules of admissibility of cases concerning the soldiers of the Armed Forces, simply by conducting a proper investigation at the national level, if the need arises. Furthermore, if our country does not want to risk an investigation by the Court, then the civilized way to achieve this is, of course, to continue to abide by the laws and customs of war and to avoid actions that may constitute international crimes. On the other hand, the refusal to ratify the statute does not achieve this goal and can only raise questions about whether Ukraine is trying to hide some actions and intentions.

At the same time, without ratification, Ukraine loses the rights and opportunities that the charter would grant it. First, ratification will give Ukraine the right to participate in the work of the Court. Secondly, it will strengthen Ukraine's position regarding membership in the European Union (hereinafter - the EU) and on the international arena in general, namely:

- participation in the work of the supervisory and legislative bodies of the Court. The International Criminal Court is not only a court in the narrow sense of the word, it is a separate international organization with various structural units, including the prosecutor's office and trial chambers. There is an assembly of participating states, which is the supervisory and legislative body of the Court. The Assembly plays an extremely important role in the work of the Court, because it is

the participating states that exercise administrative supervision over the work of the Court, decide on budgetary issues and elect judges, prosecutors, and deputy prosecutors of the Court.

The assembly also develops and approves changes to the normative acts on the basis of which the Court conducts investigations of international crimes and trials of cases against the accused. It has the right to review and amend the statute itself (this has already happened, in particular, when the statute was supplemented with the crime of aggression), the Rules of Procedure and Evidence, and the Elements of Crimes (a document that guides the Court in determining the composition of crimes under its jurisdiction). Recognizing the jurisdiction of the Court in a special order, as now, Ukraine only has to comply with the orders of this body. By becoming a full-fledged participant, Ukraine will be able to influence the work of the Court;

- EU membership. Ukraine has an obligation to ratify the statute in accordance with the Association Agreement. The implementation of the Agreement became especially relevant with the submission of Ukraine's application for EU membership in February 2022 and the subsequent grant to Ukraine of the status of a candidate for EU accession. In principle, it is impossible to acquire membership in the EU without ratifying the statute. All 27 EU member states are parties to the statute. The EU believes that supporting the international criminal justice system is one of the ways to ensure international peace and strengthen the international legal order.

In the fight against Russian aggression, Ukraine uses not only weapons, but also international mechanisms of legal protection. Ukraine is enlisting international support to hold Russia's leadership and its military accountable for international crimes. International solidarity with Ukraine is largely based on the fact that the war that Russia has waged against Ukraine is a gross violation of international law. At the same time, Ukraine's delay in ratifying the RS sends a negative signal about Ukraine's selective attitude to the norms of international law. Seeking support from other states, Ukraine itself must demonstrate true commitment to these norms.

Ratification of the statute will strengthen the position of Ukraine in the international arena as a rule of law state that supports the system of international criminal justice not only for its own interests, but also for the purpose of strengthening the international legal order in general.

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