

Between Interests and Values

Ukraine's Contingent Acceptance of International Criminal Justice

Valentyna Polunina

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1. Introduction

'See you in The Hague!' This expression is popular amongst the politically active part of the Ukrainian general public who raise their voices online. Political leaders in Ukraine, including President Poroshenko and Prime Minister Yatsenyuk, use references to 'The Hague' in their interviews and social media posts, as the judicial instance of last resort when describing the future of the Russian leadership, the militants in parts of the Donbas region, and those responsible for the killings during the Maidan (or Euromaidan) protests (TSN, 2014). This narrative can be interpreted as a sign of support for the accountability for war crimes committed in Ukraine and of trust in international criminal justice, at least by a part of the Ukrainian population. Recent polls support this assumption. According to the Democratic Initiatives Foundation, most Ukrainians (67 percent) do not trust the judiciary, prosecutor's office (67 percent) and the police (57 percent) (Fond demokratychni initsiatyvy, 2015) and consider the anti-corruption reform and reforms of these institutions to be the main priority (ibid). Ukrainian legal and political experts interviewed for this study were unanimous that low trust in national judicial institutions may explain why big parts of the population turn their hopes to international justice mechanisms such as the International Criminal Court (ICC). According to a 2015 survey conducted by Amnesty International, 73 percent of Ukrainian citizens support the involvement of the ICC in investigations of the war crimes committed in Donbas, while 45 percent believe that the ICC alone should deal with international crimes committed in Ukraine and 21 percent support the complementarity approach (Amnesty International Ukraine, 2015). Only 17 percent of respondents support the idea of national courts dealing with international crimes (ibid). This is an important indicator of the ICC's legitimacy in Ukraine, and could have an impact on the government's decision making process regarding the ICC. Giving the population a more trustworthy alternative could be a useful tool to channel the dissatisfaction of the population with the national judiciary and the law enforcement system.

At the same time, the widespread use of such a vague term as 'The Hague' or 'The Hague tribunal', meaning the International Criminal Court, indicates a lack of understanding of how international justice institutions (and the ICC, in particular) work. The statistics also suggest that the population has little faith in the ability of the state to deal with crimes committed in relation to the annexation of Crimea and the war in eastern Ukraine (ibid).

¹ Valentyna Polunina is a doctoral candidate at the cluster of excellence 'Asia and Europe in a Global Context', at the University of Heidelberg, Germany.

Ukraine is not a party to the ICC's Rome Statute, despite the fact that it is one of the provisions of the association agreement between Ukraine and the European Union (EU). Although Ukraine signed the Rome Statute in 2000, in 2001 its Constitutional Court ruled that the Statute was incompatible with the Ukrainian Constitution, effectively preventing ratification ever since. On September 8, 2015, the Ukrainian government granted the ICC ad hoc jurisdiction over all international crimes that have taken place on Ukrainian territory since February 20, 2014. Ukraine's acceptance of the ICC's ad hoc jurisdiction opened the way for the prosecution of any war crimes committed in Ukraine since then. Apart from the murder of more than 100 Euromaidan protesters on February 20, 2014, the declaration of the government of Ukraine accepting the ad hoc jurisdiction of the ICC also covers 'crimes against humanity and war crimes committed by senior officials of the Russian Federation' and the leaders of the so-called Donetsk and Luhansk People's Republics (DPR and LPR), as well as the shooting down of the Malaysia Airlines flight over Ukrainian territory (International Criminal Court, 2015). The Ukrainian Prosecutor General's Office (PGO), the Ministry of the Interior of Ukraine (MoI), and the Ukrainian Security Service (SSU) are also dealing with crimes committed during the Maidan protests and the military conflict in south eastern Ukraine.

In light of the complicated political and institutional landscape in Ukraine with regard to international justice, it is important to understand how different actors related to the current situation in Ukraine see international justice, and to look at the reasons why they do or do not accept international courts and tribunals. This study provides an overview of the challenges connected to the prosecution of international crimes in Ukraine, as well as an analysis of the Ukrainian government's attitude towards the ICC. It also highlights areas that require further research in the future, something that is particularly important given the scarcity of academic literature or empirical studies on this topic.

The analysis seeks to assess the extent to which the Ukrainian government accepts the ICC, and what factors influence the decisions of the Ukrainian government with regard to their cooperation with it. The study begins with the conflict profile and a brief overview of international crimes possibly committed in Ukraine since November 2013. The establishment, characteristics, functions, operation, and constitution of institutions relevant to the international criminal justice processes in Ukraine will be followed by an analysis of different aspects and dynamics of acceptance of international criminal justice institutions in Ukraine. The analysis will focus on the cooperation of the Ukrainian government with the ICC, and the debates around the ratification of the Rome Statute. In this study I argue that the Ukrainian government adheres to a *contingent* acceptance of international justice – opportunistic use of ICC's ad hoc jurisdiction – only when the government assesses the involvement of the tribunal as reasonable in order to find a compromise between cooperating with the ICC and not disturbing the relationship with various internal and external interest groups who oppose such cooperation.

In the context of this study, acceptance is understood as the adoption and respect for international justice norms, full cooperation with international justice institutions, and adherence to these norms. Even if mere compliance with and tolerance of international justice norms and institutions can constitute a form of acceptance, in my opinion, genuine acceptance should feature an *active* approach to the international justice when actors accept it on their own initiative and not as a result of external pressure. The study draws on current sources such as

Ukrainian legislation, media outlets, accessible surveys, and NGO reports, as well as 23 oral and written interviews conducted in Kiev in autumn 2015 with local political actors, legal experts, and human rights activists. The focus of the chapter is on the political acceptance by the Government, leaving out important questions about the acceptance of international justice amongst the broader public in Ukraine. Understanding public attitudes towards international justice would potentially help the Ukrainian government, international justice institutions, and international organisations to develop a more effective and sustainable policy regarding transitional judicial measures in Ukraine that would take into account the interests of different societal groups and at the same time minimise the risks of undermining a peace process.

2. Recent Conflicts in Ukraine

In November 2013, relatively calm anti-government demonstrations (also referred to as Euromaidan) were held in Kiev after the Yanukovich government suspended preparations for signing the Ukraine–European Union Association Agreement. The protests continued on the agenda of anti-corruption and the non-adherence to human rights by the Ukrainian Government. They reached their climax in January and February 2014, leading to brutal clashes between riot police and some of the protesters. Ukrainian security forces used excessive and indiscriminate force against protesters and journalists covering the events (International Criminal Court, 2015, 20). In addition, protesters and other individuals participating in, or associated with the Maidan movement were violently targeted by pro-government groups of civilians – known as *titushki* – who coordinated their actions with the police (ibid). The heaviest clashes between February 18 and February 20 left at least 90 people dead, amongst them 17 police officers (Heidelberg Institute for International Conflict Research, 2015, 44). An investigation into the killings later initiated by the interim government resulted in the detention of three former riot police members, but the exact circumstances remained unclear (Reuters, 2014). According to the Coalition of Public Organisations and Initiatives for Combating Impunity of Crimes against Humanity, crimes committed during Euromaidan between November 2013 and February 2014 led to at least 114 deaths, including those of 94 Euromaidan activists, the detention of several hundred people, and physical injuries to over a thousand activists. The fate of 27 missing people is still unknown (Human Rights House Kiev, 2015).

After the 2014 protests, Russia refused to recognise the new interim government of Oleksandr Turchynov, calling the regime change a coup d'état, and it initiated a covert invasion of the Crimean Peninsula in Ukraine in late February 2014. After the quick annexation of Crimea, pro-Russian activists began to occupy regional state administration buildings in several eastern Ukrainian cities. As a result, the Ukrainian government launched a military offensive in April 2014 to regain control over the breakaway regions, leading to an increase in military activities and to heavy fighting. On May 2, 2014 clashes in the mainland Black Sea port city of Odesa left 42 people dead, most of them pro-Russian anti-Maidan protesters trapped in the burning Trade Unions House building (OSCE, 2014). A week later pro-Russian separatists in the Donetsk and Luhansk regions held unrecognised referendums and declared independence as the Donetsk and Lugansk People's Republics (DPR and LPR). On July 17, 2014 a civilian Malaysia Airlines flight en route from Amsterdam to Kuala Lumpur was shot down over rebel-held territory, claiming 298 lives (Malaysia Airlines, 2014).

A cease-fire agreement between the Ukrainian government and the separatists was reached on September 5, 2014 at negotiations in Minsk, Belarus, which reduced but did not stop the fighting. Additional protocols aimed at ensuring the implementation of the cease-fire were signed later, but have also failed to put an end to the hostilities. Most recently, on February 11, 2015, the 'Minsk II' protocol was signed by Ukraine, Russia, separatist forces, and the OSCE (OSCE, 2015). Although its provisions have not been fully implemented, it has significantly reduced the intensity of the fighting. Nonetheless, in some areas armed clashes continue and many fear that more intense fighting could recommence at any time (Amnesty International, 2015).

So far, more than 8,050 people have been killed as a result of the conflict, amongst them 2,500 civilians, and over a million have been displaced externally and 1.5 million internally (UN OCHA 2015). According to the UN Human Rights Monitoring Mission in Ukraine, an estimated three million people continue to live in the territories controlled by the pro-Russian separatists without protection from human rights violations and abuses by the armed groups and their supporters (ibid).

According to several human rights organisations including the International Partnership for Human Rights and Amnesty International Ukraine, there is a reasonable basis to believe that war crimes and crimes against humanity have been perpetrated in the conflict in eastern Ukraine. These crimes include: intentional attacks against civilians and civilian objects; deliberate killing of civilians and non-active combatants; the unlawful deprivation of liberty and denial of fair trial rights; torture and other cruel, inhuman and degrading treatment; pillage and appropriation and destruction of property; and persecution on politically and religiously motivated grounds. The documented crimes have mainly been perpetrated by separatist forces, but also by Ukrainian government forces and pro-Ukrainian paramilitaries (International Partnership for Human Rights, 2015).

3. Social and Political Context of Ukraine

For a full understanding of the acceptance dynamics in Ukraine, it is important to take into account the specific social and political settings in which this process takes place. There is an ongoing conflict, which is accompanied by an economic recession, devaluation of the national currency, and high levels of unemployment. The country is also going through one of the most extensive phases of institutional reforms in its history. Diverse attitudes towards the war in eastern Ukraine, political change, and foreign policy differences provoke divisions within society and among political leaders, and create different groups with their own interests. The majority of the interviewed experts and human rights activists point out that there was no real change of political leadership after the Euromaidan. Some politicians from Yanukovich's closest circle, who do not associate themselves with the ideas of the protest movement, remained in power, criticising current Ukrainian policy in Donbas. Their criticism, voiced at international level, is perceived by the new ruling circle as especially harmful since it 'discredits Ukrainian authorities [...] by presenting them as undemocratic.' (LB ua., 2015). Serhiy Lyovochkin, former head of the Presidential Administration of Ukraine for Viktor Yanukovych and now leader of the Opposition Bloc (former Yanukovich's Party of Region) wrote an article on September 29, 2015 in which he argued for local elections in the areas of Donetsk and Luhansk under Ukrainian control. This standpoint of the opposition is shared by a minority of Ukrainian citizens (at the last local

elections, which took place on October 25, 2015, the Opposition Bloc ended third, receiving 11.5 percent of the votes with most supporters from southern and eastern regions), an aspect that potentially can push the government to look for compromise when taking decisions on prosecuting international crimes.

These issues can all bear on the Ukrainian government's search for a new national idea. The current war, perceived as a fight for independence, is the cornerstone of this idea accompanied by addressing unresolved issues of the totalitarian Soviet past that have remained largely ignored since the independence of Ukraine in 1991 (Nuzov, 2014). The broad spectrum of opinions challenges the government's task to find common ground, and the aspect of prosecution of war criminals is not an exception. Even if there is strong support for accountability among the population,² it does not necessarily mean that there is a common view of who the victims and perpetrators are.

Another important nation building narrative is Ukraine's move to a more democratic system. When asked about possible reasons why the government decided to cooperate with the ICC, interviewees from political circles pointed out that it would indicate to the international community that Ukraine supports the rule of law, opposes impunity, recognises international legal standards, and is striving to become a member of the community of progressive democracies. While signing the EU-Ukraine Association Agreement, Ukraine made a commitment to ratify and implement the Rome Statute. Although the Rome Statute is still not ratified, a partial ad hoc acceptance of the ICC could signify the willingness to do so in the future. Current cooperation with the ICC is an important foreign policy tool; it is needed to sustain good relations with the EU and securing financial and political support. International support of the post-Maidan government would also contribute to its legitimisation, and the involvement of the ICC in Ukraine could help strengthen the official version of the situation in Ukraine in its propaganda war with Russia.

Due to the lack of experience of Ukrainian national courts in prosecuting international crimes and the general lack of confidence in the judiciary, the ICC may be an important transitional justice mechanism in Ukraine.³ The potential inclusion of Ukrainian victims into the ICC reparations system is another factor that could trigger the government's acceptance as it is currently unable to offer reparations due to its financial situation.

² Just 2.7 percent of Ukrainian citizens support amnesties for those who participated in the fighting in Donbas, according to a study conducted by Fond demokratychni initsiatyvy in October 2015.

³ More on ICC's role in Ukrainian transitional justice process in Lachowski, 2015.

4. National Prosecution of International Crimes in Ukraine

According to the Criminal Procedure Code of Ukraine, the Prosecutor General's Office, the Ministry of the Interior, and the Security Service of Ukraine are in charge of investigation of international crimes and they are the main partners of the ICC in investigating offenses referred to in Article 5 of the Rome Statute.⁴ Maidan-related investigations fall within the competence of the MoI and the PGO. Since the change of government in February 2014, the PGO has undergone structural and staff changes. On December 8, 2014 the Special Investigations Division (SID) was authorised to carry out investigations into Maidan cases, as well as into allegations of unlawful seizures of power and the embezzlement of state funds by the former Government. In August 2015, the PGO established a military prosecutor's office of the anti-terror operation (ATO) forces that investigate crimes committed by the Ukrainian military in eastern Ukrainian Luhansk, Donetsk, Kharkiv and the Zaporizhia regions. In September 2015, the Prosecutor's Office established a 'Department on investigating crimes against peace, security of the humankind and international legal order' in which 34 experts exclusively deal with 'the Russian aggression against Ukraine and assistance to terrorist organisations' (Radio Svoboda, 2015). The SSU has investigative jurisdiction over crimes against national security, peace, crimes against humanity and international order, cases concerning trafficking and terrorist acts, as well as crimes of treason, spying and disclosure of state secrets, and crimes relating to the production and use of weapons of mass destruction. On November 12, 2015 the State Bureau of Investigations was created which is in charge of, amongst other things, conducting investigations of war crimes and crimes committed by state officials holding particularly high ranks.

Despite these initiatives, interviewed experts continue to find the national prosecution of crimes committed during the Maidan protests as well as in the east of Ukraine, inadequate. There has been an excessively complex division of labour between the PGO and MoI, with both offices investigating the same events from different angles. The International Advisory Panel, established by the Council of Europe, concluded that 'the MoI attitude to the PGO has been uncooperative and, in certain respects, obstructive [and that there are] strong grounds to believe that this attitude of the MoI has had a seriously negative impact on the investigations' (Council of Europe, 2015, 77). This could be explained by the fact that the change of government after Maidan did not lead to changes of staff of the three bodies (the MoI, SSU, and PGO), which are in charge of the investigations. Some of the officers of these bodies also risked being accused of Maidan related crimes themselves.

Regarding the human rights violations in south eastern Ukraine, the MoI, since the launch of the security operation by the government on April 14, 2014, has opened more than 6,000 criminal investigations into the killing and injuring of civilians and Ukrainian military personnel in the affected areas of Donetsk and Luhansk (UN OHCHR, 2015, 27). The MoI and SSU have initiated investigations into cases of the indiscriminate shelling of residential areas by armed groups under Article 258 of the Criminal Code (acts of terrorism). They have also continued to investigate crimes related to the unlawful deprivation of liberty and the ill-treatment of civilian and military detainees by the armed groups. No further progress has been reported in these

⁴ Article 5 refers to the crimes within the jurisdiction of the Court.

cases, with perpetrators still to be brought to account for these crimes at the time of writing. The main impediments to investigations are the lack of access to crime scenes due to the ongoing hostilities, and the difficulty of identifying and locating suspects and evidence.

Little progress has been made concerning the investigations of human rights violations committed by the Ukrainian armed forces and law enforcement agencies. Victims of human rights violations alleged to have been committed by members of the Ukrainian military or law enforcement agents have been reluctant to file complaints, fearing persecution if they remain in government controlled territory. Or they have been simply unable to file a complaint from the territories controlled by the armed groups in the absence of functioning postal services (UN OHCHR, 2015, 28).

In an interview, Roman Romanov, Human Rights and Justice Program Initiative director at the International Renaissance Foundation (Ukraine) pointed out that, despite some recent positive changes, Ukrainian authorities do not possess sufficient capacity to ensure the effective and impartial investigation of all reported cases of war crimes and crimes against humanity in south eastern Ukraine. In particular, he pointed to obstacles, such as the lack of transparency of the actions of Ukrainian authorities on separatist-controlled territories, the highly politicised context of investigations and entrenched problems in the functioning of the Ukrainian justice system.

It is not only Ukrainian law enforcement agencies that influence the acceptance of the ICC in Ukraine. The Russian government has also used accusations of human rights violations as a tool of political pressure on the Ukrainian government, and in order to damage Ukraine's image on the international stage. Russian actions cause the Ukrainian government to look for closer cooperation with the ICC in order to establish facts and neutralise Russian attacks, but the Ukrainian government can become more reluctant to accept international justice, fearing that the accusations will be accepted by the ICC. The investigative committee of the Russian Federation (RF), directly subordinate to the President of the RF, proclaimed universal jurisdiction on Ukrainian territory and, according to an official statement, is investigating 54 cases of 'numerous killings of civilians, use of prohibited means and methods of warfare, genocide of a national group of Russian-speaking persons, kidnapping, obstructing the work of journalists, and their murder' (Sledstvennyy komitet Rossiyskoy Federatsii, 2015). The investigations are conducted by an office especially created for that purpose. High profile cases such as that of Ukrainian pilot Nadiya Savchenko, charged in a Russian court with the killing of two Russian journalists, or Ukrainian film director Oleh Sentsov and left-wing activist Oleksandr Kolchenko from the Crimea, accused of 'plotting acts of terrorism' and sentenced by a Russian court to 20 and 10 years in prison respectively (Kharkiv Human Rights Protection Group, 2015), are used in order to support the official Russian propaganda narratives.

National and international non-governmental organisations have taken over parts of the government's task in investigating international crimes. They are also the most active advocates of cooperation with the ICC and ratification of the Rome Statute. Organisations such as the Ukrainian EuroMaidan SOS and the Centre for Civil Liberties, or international ones such as International Partnership for Human Rights (IPHR) systematically collect evidence of war crimes and crimes against humanity committed during Maidan and in east Ukraine in order to submit it to the ICC. Sometimes their information is even more comprehensive and reliable than

the evidence provided by the Ukrainian authorities. Apart from those organisations, Amnesty International Ukraine, Ukrainian Helsinki Human Rights Union, Human Rights Watch, and the Coalition for the ICC have regularly published on human rights violations in Ukraine in connection with the war, and repeatedly called on the Ukrainian government to refer to the ICC in regard to the crimes committed in Ukraine. Other groups including the International Advisory Panel of the Council of Europe, the United Nations Human Rights Monitoring Mission in Ukraine, and the OSCE Monitoring Mission to Ukraine have also collected valuable information on human rights violations in Ukraine and presented it to the international community, thereby increasing the pressure on the government to prosecute these violations.

5. Contingent Acceptance of International Justice in Ukraine

4.1 Cooperation with the ICC

In September 2015, the Ukrainian government granted the ICC ad hoc jurisdiction over all international crimes that have taken place on Ukrainian territory since February 20, 2014, even though the resolution itself was adopted by Parliament in February 2015. The Ukrainian government's declaration names the actors they consider responsible for crimes against humanity and war crimes, namely 'senior officials of the Russian Federation' and the leaders of the so-called DPR and LPR (International Criminal Court, 2015). This is the second such declaration lodged by Ukraine since April 17, 2014, when the government recognised the court's jurisdiction over crimes committed in Ukraine between November 21, 2013 and February 22, 2014. Pavlo Klimkin, Ukrainian Minister of Foreign Affairs, described Kiev's recognition of the court's jurisdiction as an 'historic moment', adding that granting such jurisdiction was Ukraine's 'moral responsibility' and highlighting that 'Ukraine will cooperate with the Court without delay or exception' (International Criminal Court, 2015).

Ukraine accepting the ICC's ad hoc jurisdiction does not mean that the Court will automatically undertake an investigation. The ICC's prosecutor will determine, based on all available information, whether or not to request authorisation from the Court to open a formal investigation. The preliminary analysis of the Office of the Prosecutor issued on November 12, 2015, states that the criteria established by the Rome Statute for the opening of an investigation are not met with regard to the acts of violence committed during the Euromaidan protests (International Criminal Court, 2015, 21-25). Despite the fact that the 'acts of violence allegedly committed by the Ukrainian authorities between November 30, 2013 and February 20, 2014 could constitute an "attack directed against a civilian population" under article 7(2)(a) of the Statute' (International Criminal Court, 2015, 22), the Office of the Prosecutor considers that 'there is limited information at this stage to support the conclusion that the alleged attack carried out in the context of the Maidan protests was either widespread or systematic' (International Criminal Court, 2015, 23). This means that, for the time being, and until more evidence is received, there will be no formal investigations of the Maidan events. Nevertheless, the Office of the Prosecutor still intends to look into the cases of alleged crimes committed across Ukraine, including in Crimea and South eastern Ukraine (International Criminal Court 2015, 23). The ICC will also 'closely follow the progress and findings of the national and international investigations into the shooting down of Malaysia Airlines flight 17 aircraft in July 2014' (International Criminal Court, 2015, 25).

The initial refusal of the ICC to open an investigation into the Maidan killings before it receives further evidence on the widespread and systematic nature of the crimes can be a sign that the Ukrainian government's cooperation with the ICC has thus far been limited. In its declarations about cooperation with the ICC, the government not only tried to restrict the timeframe of the ICC jurisdiction, but also tried to dictate whom the ICC should prosecute. A resolution of the Parliament of Ukraine that became the basis of one of the declarations limits the group of potential war criminals to Russian state officials and the leaders of the separatists, leaving out any potential perpetrators amongst the Ukrainian military and political leadership. Why then does the Ukrainian government opt for the contingent acceptance of international justice and not ratify the Rome Statute of the ICC?

4.2 Ratification of the Rome Statute

Ukraine is not a party to the ICC Rome Statute, although it signed it in 2000. The ratification has been blocked by a decision of the Constitutional Court from 2001, which ruled that the Statute was incompatible with the Ukrainian Constitution. In 2014 and again in January 2015, Members of Parliament put forward proposals for a constitutional amendment to allow Ukraine to join the Statute, but these amendments include a provision to postpone the ratification of the Rome Statute by three years.

Despite numerous appeals from civil society and the international community to the Ukrainian government to ratify the Statute, which is also a requirement of the Association Agreement with the EU, it remains reluctant to do so, and prefers to call on the ICC selectively when it seems to improve the Ukrainian case in the ongoing propaganda war between Ukraine and the Russian Federation. At the same time, statements by Members of Parliament from President Poroshenko's party or members of the Council on Security and Defence demonstrate their lack of political will and understanding of international criminal justice mechanisms. In particular, there is a fear that Ukraine will be a target of Russian attacks in the ICC, and that Ukraine will not be able to counter these attacks effectively as Russia is not a party to the ICC (Espresso TV, 2015). It is assumed that Russia will use the tactics that were deployed against Georgia, meaning that Russia 'floods the international court with thousands of lawsuits against Georgia and Georgians cannot react in the same way, because Russia has not signed the Rome Statute' (Radio Svoboda, 2016). In this case, 'the ratification of the Rome Statute is expedient only in a situation of the simultaneous adoption of the Statute by Russia' (Den' 2015).

Another possible reason is that the Ukrainian government is afraid to displease nationalist groups in Ukraine, which could in turn jeopardise the peace process. This seems plausible when considering the violent protests of right wing and nationalist groups who expressed their disagreement with changes to the Constitution or the prosecution of members of some right wing movements. Possible prosecutions of Ukrainian military personnel who are seen as heroes and patriots could further destabilise the already unstable situation in Ukraine. This argument is supported by the recent statement of the Deputy Head of the Presidential Administration, Oleksy Filatov, who claimed in the Constitutional Court that 'recognition of the jurisdiction of the International Criminal Court will have certain potentially positive effects as well as some risks for Ukraine, particularly for the Ukrainian military servicemen who are forced to participate in the military conflict' (UNIAN, 2016).

6. Conclusion

The acceptance of the ICC by the Ukrainian government should be seen in the broader context of an ongoing conflict, propaganda wars and the politicisation of justice. Despite the recent steps towards acceptance that can be seen as a signal of the government's commitment to accountability for grave crimes, the lack of political will and understanding of the ICC's work and attempts to balance the interests of different actors has created a situation in which the ICC's mechanisms are used selectively as a political tool.

Different factors influence the acceptance of the ICC by the Ukrainian government, such as the popular demand for accountability and the involvement of the ICC in the Ukrainian situation, as well as the pressure of human rights activists, legal experts, and international partners such as the EU. The actions of the Russian Federation such as the collection of evidence of war crimes allegedly committed by the Ukrainian military, and the politicised trials of Ukrainian citizens, have had a considerable impact on the government's acceptance. The Ukrainian government has been forced to cooperate with a reputable institution such as the ICC in order to strengthen its version of the happenings in Ukraine in the propaganda war with Russia. Considering the EU-Ukraine agreement, the acceptance of the ICC could also contribute to good relations with the EU, and secure financial and political support, and such international support for the post-Maidan government would contribute to its international legitimisation. At the same time, the Ukrainian government is concerned that it will be vulnerable to Russian diplomatic attacks after the ratification of the Rome Statute.

One of the most plausible explanations of the contingent acceptance of the ICC by the Ukrainian government is its fear that the ICC will open investigations against the Ukrainian military. This would cause a serious damage to Ukraine's image, negatively affect the country's international support, and damage the peace process. The resistance of full acceptance with the ICC by the government can be the result of a poor understanding of the Court's mechanisms and an inability to distinguish between conventional and international crimes.

To conclude, one could raise broader questions for further debate on whether efforts to prosecute perpetrators of mass atrocities can coincide with a peace process, or how to balance the need for peace with the importance of accountability, considering that a certain degree of impunity might be required in order to conclude a peace deal.

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