

Accountability for conflict-related crimes in Ukraine: legal responses



SYLLABUS

VU Graduate Winter School

16-20 January 2023



Any general questions for the Winter School support team? Contact graduatewinterschool@vu.nl.

Course Details

Title	Accountability for conflict related crimes in Ukraine: legal responses
Coordinator(s)	Gabriele Chlevickaite, g.chlevickaite@vu.nl
Other lecturers	Guest lecturers as listed in course schedule
Study credits	3EC
Form(s) of tuition	Online
Approximate contact hours	24
Approximate self-study hours	60

Course description

Even though the conflict in Ukraine has been ongoing since 2014, the invasion of Western Ukraine in February 2022 created unparalleled shockwaves in the Western world. The conflict has unleashed a wave of accountability efforts nationally and internationally, focusing on potential war crimes and their perpetrators, including individuals currently in power. The accountability landscape is increasingly complex: the Ukrainian government, UN bodies, national governments, the International Criminal Court and human rights organisations are in the process of collecting and preserving evidence for future criminal trials or other forms of accountability with unprecedented haste.

In this course, guided by prominent scholars and practitioners of international criminal law, students will examine the variety of legal and policy responses that have been deployed in response to the war in Ukraine, particularly focusing on the events of 2022. The aim of the course is twofold: (i) to examine the steps that have already been taken, and (ii) to think creatively of further avenues for accountability: where, when, and in what format could justice processes (not limited to criminal justice) take place?

This course discusses:

- The legal basis of (criminal) accountability efforts for conflict-related crimes in Ukraine.
- The compatibility (or lack thereof) of accountability efforts that have been launched to date.
- The challenges and opportunities of documentation and investigation specific to this conflict: citizen participation, open source investigations, digital evidence.
- The role of the International Criminal Court.
- Alternative avenues for justice: Ukraine tribunal, civil remedies, reparative and restorative justice.
- The potential use of the crime of aggression doctrine to prosecute state leaders.

Learning objectives

By the end of this course, students will be able to:

- Demonstrate knowledge of international criminal law as it applies to the Ukraine conflict, both at the domestic and at the international level.
- Understand the role of international and regional bodies in establishing accountability for conflict-related crimes in Ukraine.
- Critically assess ongoing legal and para-legal efforts at documenting conflict-related crimes in Ukraine.

Course Schedule

Day 1: Introduction to the course and how did we get here?	January 16
Class 1. The war in Ukraine: overview of legal responses to date. <i>Lecturer: dr Gabrielė Chlevickaitė, VU Amsterdam/NSCR</i>	10:00-12:00
Class 2. From protraction to re-escalation: understanding conflict dynamics in and around Ukraine before February 2022. <i>Lecturer: dr Oksana Myshlovska, University of Bern</i>	14:00-16:00

Day 2. Domestic accountability for international crimes.	January 17
<p>Class 3. Building domestic capacity and introducing hybrid models of criminal justice. Lessons learnt from the Bosnian War Crimes Chambers and the Special Court for Sierra Leone.</p> <p><i>Lecturer: dr Fidelma Donlon</i></p>	10:00-12:00
<p>Class 4. Conflict-related crimes in Ukrainian courts: the experiences from 2014-2022.</p> <p><i>Lecturer: Iryna Shapalova, International Development Law Organization</i></p>	14:00-16:00
Day 3. International avenues for legal accountability.	January 18
<p>Class 5. The Uneasy Relationship between Ukraine and the International Criminal Court</p> <p><i>Lecturer: dr Sergii Masol, University of Cologne</i></p>	10:00-12:00
<p>Class 6. ECHR in times of war: understanding <i>Ukraine v Russia</i></p> <p><i>Lecturer: dr Gaiane Nuridzhanian, The Arctic University of Norway / National University of Kyiv-Mohyla Academy</i></p>	14:00-16:00
Day 4. Domestic and regional responses	January 19
<p>Class 7. The Ukraine Crisis and the Role of the International Court of Justice</p> <p><i>Lecturer: dr Juliette McIntyre, University of South Australia</i></p>	10:00-12:00
<p>Class 8. Universal jurisdiction for conflict-related crimes in Ukraine.</p> <p><i>Lecturer: dr Dmytro Koval, National University of Kyiv-Mohyla Academy</i></p>	14:00-16:00
Day 5. Alternative avenues for justice and taking it forward.	January 20
<p>Class 9. Transitional and Transformative Justice for Conflict-Affected Ukraine and the Wider Region</p> <p><i>Lecturer: dr Kateryna Busol, National University of Kyiv-Mohyla Academy</i></p>	10:00-12:00
<p>Class 10. Pathways to synergy? Expert Roundtable on the conflict-related justice landscape for Ukraine.</p>	14:00-16:00

Invited speakers: Kristina Nechayeva, International Committee of the Red Cross; Maksym Vishchyk, Global Rights Compliance; TBA

Assignments

Participation and preparation

The course is a 3EC course, with a study load of 84 hours. Everyday, students will have two interactive lectures. Presence at the lectures is mandatory. In order to attain course certificate, you can miss no more than 1 lecture/workshop without a justifiable excuse.

Assignments

Since we aim for students to have some familiarity with the conflict and the legal concepts (it is not an introductory course to ICL), we require a preparatory note. Preparatory note of 1.000 words will count towards 30% of the grade. The final assessment is a paper of approx. 2.500 words, which will count towards 70% of the grade.

Assignment 1: Preparatory note

In preparation for this course, you are required to be (or become) familiar with major principles of international criminal law in general, and specifically how it applies or might apply to the Ukraine situation currently. Hence, you are asked to write a short (max 1,000 words, excluding bibliography) preparatory note answering the question: “Which aspects or principles of international (criminal) law are currently most relevant to addressing the conflict-related crimes in Ukraine?”. You can focus on the legal definitions of the crimes, specific statutes, or general principles in answering this question. Course literature will be of use here, please consult the reading list.

Assignment 2: Research paper

As a final assignment, you can choose of two topics to draft research paper (max 2,500 words, excluding bibliography).

Option 1: Alternative/future justice for conflict-related crimes in Ukraine (and beyond). Consider alternative avenues for accountability efforts in Ukraine, by proposing a potential for transitional, criminal, or civil justice response to be developed in the upcoming years. You are free to be creative, however, your proposal should be realistic, i.e. within the norms of international and/or domestic law applicable to the conflict.

Your paper should cover:

- Description of this new accountability avenue and its goals;
- The legal and policy framework of this body;
- The prospective challenges this body will face in achieving its goals;
- The prospective opportunities this body will bring to ongoing accountability efforts.

Option 2: Critical evaluation of ongoing accountability work. Alternatively, you can write your paper on one of the ongoing accountability efforts, e.g. International Criminal Court, Ukraine's justice system, UN bodies, etc., and critically analyse the challenges and opportunities of the chosen body in (contributing to) bringing those accountable for the conflict-related crimes to justice.

If you choose this option, your paper should cover:

- Description of the chosen accountability body and their work in relation to Ukraine to date;
- The legal and policy framework of this body;

- The (prospective) challenges this body (will) face in investigation and/or prosecution of international crimes;
- The (prospective) opportunities for investigation and/or prosecution of international crimes.

Grading

Both assignments will be graded on the following criteria:

1. Structure/Line of argument: Logical structure within and across individual sections; consistent and connected whole
2. Analysis and Argumentation: Problem well-identified; critical evaluation; arguments persuasive
3. Sources/Literature: Adequate use of relevant literature; own further research for new sources
4. Form: No excessive spelling/grammar mistakes; appropriate style of writing, consistent formatting
5. References: Adequate referencing and consistent application of a referencing system of choice

The following grades can be awarded for academic performances, in accordance with the Examination Regulations of the Faculty of Law:

- whole numbers ranging from 1.0 to 10;
- the intermediate half numbers, such as 6.5, with the exception of 5.5.

No grade of less than 1.0 is awarded.

