



**PILPG**

*A Global Pro Bono Law Firm*



# Draft Law for a Ukrainian High War Crimes Court

---

*Prepared by the  
Public International Law & Policy Group*

# **DRAFT LAW FOR A UKRAINIAN HIGH WAR CRIMES COURT**

**PREPARED BY THE PUBLIC INTERNATIONAL LAW & POLICY GROUP**

## **Introductory Note**

The International Criminal Court (ICC) has opened an investigation and will likely prosecute a handful of high-level perpetrators of atrocity crimes committed in Ukraine. Since the ICC does not have jurisdiction over the crime of aggression with respect to Ukraine, there are proposals to establish a hybrid international or regional tribunal to prosecute high-level Russians for the crime of aggression currently under discussion. Because these international mechanisms are designed to prosecute a small number of individuals, there is recognition that most of the perpetrators will need to be prosecuted by domestic courts in Ukraine. Yet, history has shown that without international assistance and involvement it is inherently difficult to fairly and effectively prosecute foreign nationals and separatists in ordinary domestic courts during and in the aftermath of an armed conflict.

This draft Law, prepared by the Public International Law & Policy Group, Weil, Gotshal & Manges LLP, and a number of consulted experts, draws from the Law on the High Anti-Corruption Court of Ukraine and best practices of other States to provide the template for a Ukrainian High War Crimes Court to prosecute atrocity crimes committed in Ukraine since November 2013. It is a discussion draft intended to inform the formulation of a domestic prosecutorial mechanism that will complement the efforts by existing domestic courts, the ICC, and any future hybrid international tribunal for the crime of aggression.<sup>1</sup> The footnotes include options and explanations for the proposed provisions.

---

<sup>1</sup> Ukraine is not a member of the International Criminal Court (ICC); however, it has accepted the court's limited jurisdiction over alleged crimes committed on its territory since November 2013. The ICC could exercise jurisdiction over individuals accused of war crimes, crimes against humanity and genocide in cases in which domestic courts are unable or unwilling to prosecute, such as if high-level accused perpetrators are present in a third country which is unwilling to extradite him to Ukraine for prosecution. Because of its limited capacity and the number of other situations it is currently investigating and prosecuting, the ICC traditionally asserts jurisdiction over only a handful of the highest-level defendants, so there would still be a need for the High War Crimes Court of Ukraine to prosecute the next level of culpable civilian and military leaders. Further, the ICC would not have jurisdiction over the crime of aggression since the Russian Federation has not consented to jurisdiction over that crime pursuant to the 2010 Aggression Amendment to the Rome Statute.

# DRAFT LAW OF UKRAINE

## On the High War Crimes Court

### Contents

#### Chapter I.

Article 1. Definitions	4
Article 2. The status of the High War Crimes Court	4
Article 3. The language of the High War Crimes Court	5
Article 4. The legislative framework of the functioning of the High War Crimes Court.	5
Article 5. Objectives of the High War Crimes Court	5

#### Chapter II.

Article 6. Powers and Jurisdiction of the High War Crimes Court	6
Article 7. Composition of the High War Crimes Court	16
Article 8. The Chief of the High War Crimes Court, Deputy Chief, the Chief of the Appeal Chamber of the High War Crimes Court	16

#### Chapter III.

Article 9. Special requirements to a judge of the High War Crime Court	17
Article 10. Competition for the position of a judge of the High War Crimes Court	18
Article 11. The Public Council of International Experts	20
Article 12. International Legal Advisors	22

#### Chapter IV.

Article 13. Additional guarantees of safety of judges of the High War Crimes Court	23
Article 14. Enhancement of the professional competence of a judge of the High War Crimes Court	23
Article 15. Provision of housing to a judge of the High War Crimes Court	24

#### Chapter V.

Article 16. Financial support of the activity of the High War Crimes Court	24
Article 17. Requirements to the location of the High War Crime Court	24
Article 18. Organizational Support of the Work of the High War Crimes Court	25

Article 19. Protection of Victims and Witnesses	25
Chapter VI.	
Article 20. Enforcement	25
Chapter VII.	
Article 21. Independence of the High War Crimes Court	26
Article 22. The Right to a Fair Trial	26
Article 23. The Right to a Competent Court	26
Article 24. Equality Before the Law and the Court	26
Article 25. Professional Legal Assistance in the Implementation of the Right to a Fair Trial	26
Article 26. Transparency and Openness of Court Proceedings	26
Chapter VIII.	27

This Law determines the principles of the organization and functioning of the High War Crimes Court, special requirements to the judges of this court and the guarantees of their activity.

## Chapter I.

### GENERAL PROVISIONS

#### Article 1. Definitions

For the purposes of this legislation, the following terms shall mean:

Atrocity crimes: are those international crimes recognized in the Amended Statute of the International Criminal Court (“ICC”), namely war crimes, crimes against humanity, genocide, and crimes of aggression.

Gender: refers to the two sexes, male and female, within the context of society.

International armed conflicts: exist when two or more States resort to armed force.<sup>2</sup>

International humanitarian law: the set of rules seeking, for humanitarian reasons, to limit the effects of international armed conflicts and non-international armed conflicts. It protects persons who have not or are no longer participating in the hostilities and restricts the means and methods of warfare.<sup>3</sup>

Non-international armed conflicts: protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State party to the Geneva Conventions. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization.<sup>4</sup> Situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature are excluded.<sup>5</sup>

#### Article 2. The status of the High War Crimes Court

1. The High War Crimes Court is a highly specialized court in the judicial system of Ukraine, consisting of Trial Chambers and an Appeals Chamber similar to the High Anti-Corruption Court of Ukraine. It will have an initial duration of 10 years that may be extended in accordance with Ukrainian law.

---

<sup>2</sup> This definition was recommended by the International Committee of the Red Cross (ICRC) in its opinion paper “How is the Term ‘Armed Conflict’ defined in International Humanitarian Law? (March 2008), p. 5, available at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

<sup>3</sup> International humanitarian law is also known as the law of war or the law of armed conflict. This definition was taken from ICRC’s paper entitled *What is International Humanitarian Law?* (2004), available at: [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf)

<sup>4</sup> This definition was recommended by the ICRC in its opinion paper “How is the Term ‘Armed Conflict’ defined in International Humanitarian Law? (March 2008), p.1, p. 5, available at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

<sup>5</sup> This language is taken from Article 8(d) of the International Criminal Court (ICC) Statute.

2. The High War Crimes Court is a legal entity, has a seal with the National Emblem of Ukraine and its name on it.

3. The High War Crimes Court is located in the city of Kyiv, Ukraine. The Court may relocate to and conduct proceedings elsewhere in Ukraine when appropriate and feasible.

#### Article 3. The language of the High War Crimes Court

The official language of the Court shall be Ukrainian. Working languages of the Court shall include English and Ukrainian.<sup>6</sup> In the event of any discrepancies between documents, the Ukrainian version of the document will prevail.<sup>7</sup> The Court will make sure that the necessary translations of documents and simultaneous interpretations during oral proceedings are available.<sup>8</sup>

#### Article 4. The legislative framework of the functioning of the High War Crimes Court.

4. The legislative framework of the functioning of the High War Crimes Court consists of the Constitution of Ukraine, the Law of Ukraine “On the Judiciary and the Status of Judges,” this Law and other laws of Ukraine, international treaties in force, consented by the Verhovna Rada of Ukraine as binding.

5. Amendments to this Law may be made exclusively by laws on the introduction of changes to the Law of Ukraine “On the High War Crimes Court.”

#### Article 5. Objectives of the High War Crimes Court

6. The objective of the High War Crimes Court is the administration of justice in accordance with the principles and procedures of the judiciary prescribed by the law with the view to protect individuals and society from war crimes, crimes against humanity, genocide, the crime of aggression, and related crimes recognized by Ukraine. Additionally, the High War Crimes Court will have judicial oversight over pre-trial investigation of these crimes, and observance of rights, freedoms and interests of individuals in a criminal proceeding.

---

<sup>6</sup> Including English as a working language is justified by the fact that the Court will include foreign legal advisors and that evidence may have been gathered in the English language by international humanitarian agencies present in Ukraine.

<sup>7</sup> This is to address potential issues in the domestic legislation arising from having English as a working language of the Court.

<sup>8</sup> Article 12(3) of the Law of Ukraine on the Judiciary and Status of Judges reads: Courts shall use the official language in the course of the judicial proceedings and guarantee citizens' right to use their native language, or the language they speak, in the course of the proceedings.” With respect to whether this Article is limited to Ukrainian citizens, it appears it does not. According to Article 7(2) of the same law (the right to a fair trial), “[f]oreigners, stateless persons and foreign legal entities shall be entitled to judicial protection in Ukraine on equal basis with the citizens and legal entities of Ukraine.” In any case, the Court should have whatever translators necessary on its staff at all times to facilitate the smooth conduction of the proceedings. Further, According to the experience of the International Criminal Tribunal for Rwanda (“ICTR”), switching to simultaneous translation during oral proceedings (as opposed to consecutive interpretation), has resulted in a 25% time saving.

7. As a matter of policy,<sup>9</sup> the main purpose of the High War Crimes Court is to prosecute those persons most responsible for committing atrocity crimes in Ukraine since November 2013. For the purposes of this Law, “persons most responsible” means a person or persons who were knowingly responsible for any or all of the following acts: planning, instigating, inciting, funding, ordering or providing other logistics which directly or indirectly facilitated the commission of crimes falling within the jurisdiction of the Court; in determining whether a person or persons falls within this category for purposes of bringing charges, the Prosecutor<sup>10</sup> shall have regard to factors including the leadership role or level of authority or decision making power or influence of the person concerned and the gravity, severity, seriousness or scale of the crime committed.<sup>11</sup>

## Chapter II.

### ORGANIZATION OF THE FUNCTIONING OF THE HIGH WAR CRIMES COURT

#### Article 6 Powers and Jurisdiction of the High War Crimes Court

8. The High War Crimes Court shall:

administer justice as the first-instance and appeal court in criminal proceedings concerning crimes within its jurisdiction according to procedural law as well as by means of performing, in cases and pursuant to the procedure prescribed by the law, judicial oversight over observance of rights, freedoms and interests of individuals in such criminal proceedings; analyze judicial statistics, study and generalize judicial practice in criminal proceedings within its jurisdiction, inform the Supreme Court on the results of such generalization and provide it with proposals for conclusions on draft legislative acts pertaining to the organization and activity of the High War Crimes Court, special requirements to the judges of this court and guarantees of their activity, as well as publish them on its official website.

---

<sup>9</sup> It is envisioned that the Prosecutors’ Office will select which war crimes cases will be tried by ordinary Ukrainian courts and which will be directed to the High War Crimes Court.

<sup>10</sup> It is understood that the prosecutors acting before the High War Crimes Court are to be special prosecutors trained in international criminal law, and assisted by international experts. Such a category of special prosecutors shall be created within the General Prosecutor’s office by an amendment to the applicable law.

<sup>11</sup> This is the definition of the Special Tribunal for Kenya Bill of “persons bearing the greatest responsibility.” We understand that the “persons most responsible” is a broader concept targeting not only the top ranking officials but also middle level officials. We believe this definition, however, might be broad enough to accomplish such goal. The Kenyan Tribunal was never created but the bill was drafted following the experience of the Special Court for Sierra Leone (SCSL), which encountered various jurisdictional challenges based on the “persons bearing the greatest responsibility” language. In fact, in the context of the creation of the SCSL the United Nations’ Secretary-General suggested to the United Nations Security Council to use the alternative terms “persons most responsible” to replace the “greatest responsibility” language. He stated: “[w]hile those ‘most responsible’ obviously include the political or military leadership, others in command authority down the chain of command may also be regarded ‘most responsible’ judging by the severity of the crime or its massive scale. ‘Most responsible[.]’ therefore, denotes either a leadership or authority position of the accused, and a sense of the gravity, seriousness or massive scale of the crime. It must be seen, however, not as a test criterion or a distinct jurisdictional threshold, but as a guidance to the Prosecutor in the adoption of a prosecution strategy and in making decisions to prosecute in individual cases.” Taking all the above into account, the prosecution of the “most responsible” is included here in the objectives of the High Court as a matter of policy instead of in the article dealing with jurisdiction.

9. Territorial jurisdiction of the High War Crimes Court shall cover the entire territory of Ukraine.<sup>12</sup>

10. The Court shall have subject matter jurisdiction over atrocity crimes, in particular, the following:<sup>13</sup>

a) – The Crime of Genocide<sup>14</sup>

i. Article 442 of the Ukrainian Criminal Code defines genocide as “a willfully committed act for the purpose of total or partial destruction of any national, ethnic, racial, or religious group by extermination of members of any such group or inflicting grave bodily injuries on them, creation of life conditions calculated for total or partial physical destruction of the group, decrease or prevention of childbearing in the group, or forceful transferring of children from one group to another... and also making any materials with calls to genocide for the purpose of distribution, or distribution of such materials.”

ii. Under principles of international law recognized by the Ukraine contained in the Convention on the Prevention and Punishment of the Crime of Genocide, dated December 9, 1948, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- 1) killing members of the group;
- 2) causing serious bodily or mental harm to members of the group;
- 3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- 4) imposing measures intended to prevent births within the group; and
- 5) forcibly transferring children of the group to another group.

iii. The following acts shall be punishable:

- 1) genocide;
- 2) conspiracy to commit genocide;
- 3) direct and public incitement to commit genocide;
- 4) attempt to commit genocide; and

---

<sup>12</sup> This includes areas of Ukraine currently under the control of a foreign State.

<sup>13</sup> In addition to these four internationally recognized atrocity crimes, the High War Crimes Court would have jurisdiction over related crimes contained in the Criminal Code of Ukraine such as: Article 109 (actions aimed at forceful change or overthrow of the constitutional order or take-over of government), Article 110 (trespass against territorial integrity and inviolability of Ukraine), Article 110-2 (financing of actions committed for the purpose of forcible change or overthrow of the constitutional order or take-over of government, change of boundaries of the territory or state border of Ukraine), Article 112 (trespass against life of a statesman or a public figure), Article 155 (murder), Article 127 (torture), Article 146 (illegal confinement or abduction of a person), Article 146-1 (hostage taking), Article 152 (rape), Article 332-2 (illegal crossing of the state border of Ukraine), Article 349 (hostage taking of a representative of government authorities or a law enforcement officer), Article 437 (planning, preparation and waging of an aggressive war), Article 438 (violation of rules of the warfare), Article 439 (use of weapons of mass destruction), and Article 447 (use of mercenaries).

<sup>14</sup> The definition of the crime of genocide in this Law is based on Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide.



- 5) complicity in genocide.
- b) – Crimes against Humanity<sup>15</sup>
  - i. According to internationally recognized principles of customary international law codified in the Rome Statute for an International Criminal Court, and reflected in various provisions of the Ukraine Criminal Code, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
    - 1) Murder;<sup>16</sup>
    - 2) Extermination;<sup>17</sup>
    - 3) Enslavement;
    - 4) Deportation or forcible transfer of population;<sup>18</sup>
    - 5) Imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law;<sup>19</sup>
    - 6) Torture;<sup>20</sup>

---

<sup>15</sup> The definition of crimes against humanity in this Law is based on Article 7 of the ICC Statute, excluding the crimes of apartheid and enforced sterilization, which do not appear applicable in the context of the armed conflict in Ukraine. This definition is widely viewed as reflecting customary international law. The Criminal Code of Ukraine does not have a specific Article on Crimes Against Humanity, but various Articles of the Code do reflect the types of crimes recognized as a Crime Against Humanity when committed on a systematic and widespread basis. Nevertheless, it is recommended that the Criminal Code of Ukraine be amended to add a specific Article on Crimes Against Humanity so that Ukraine can satisfy the obligations it has undertaken to the International Criminal Court.

<sup>16</sup> Under Article 115 of the Ukrainian Criminal Code, murder is defined as the “willful unlawful causing death of another person.”

<sup>17</sup> The Nuremberg Tribunal held that if one murder is unlawful, then mass murder is also unlawful. Similarly, since Article 115 prohibits murder under Ukrainian law, then mass murder, or extermination, must also be unlawful under the current law of Ukraine.

<sup>18</sup> Article 146 of the Ukrainian Criminal Code forbids the illegal confinement or abduction of a person. Similarly, Article 147 of the Code prohibits hostage taking which it defines as the “[t]aking or holding a person as a hostage with the intent to induce relatives of the hostage, any government agency or other institution, business or organization, any natural person or any official to make or refrain from any action as a condition for release of the hostage.” Additionally, Article 149 of the Code proscribes the trafficking in human beings or other illegal transfer deals with respect to a human being. It defines the trafficking of human beings as the “[s]ale, other transfer for payment or any other illegal deals with regard to a person, involving legal or illegal movement of that person, with or without his/her consent, across the border of Ukraine for further sale or other transfer to any person (or persons) for the purpose of sexual exploitation, use in pornobusiness, engagement in criminal activities, peonage, adoption for commercial purposes, use in armed conflicts, labor exploitation...”

<sup>19</sup> Article 146 of the Ukrainian Criminal Code prohibits the illegal confinement or abduction of a person.

<sup>20</sup> The Ukrainian Criminal Code forbids battery and torture in Article 126. It defines such conduct as “[i]ntended blows, battery or other violent acts which caused physical pain but no bodily injury.” Article 127 of the Code further proscribes torture, defining it as the “willful causing of severe physical pain or physical or mental suffering by way of battery, martyring or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions.”

- 7) Rape,<sup>21</sup> sexual slavery, enforced prostitution,<sup>22</sup> forced pregnancy, or any other form of sexual violence of comparable gravity;
- 8) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Tribunal ;
- 9) Enforced disappearance of persons;<sup>23</sup> and
- 10) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

ii. For the purposes of paragraph i):

- 1) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph a) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- 2) “Extermination” includes the intentional infliction of conditions of life, such as the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- 3) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- 4) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

---

<sup>21</sup> Article 152 of the Ukrainian Criminal Code prohibits rape and defines it as “sexual intercourse combined with violence, threats of violence, or committed by taking advantage of the victim’s helpless condition.” The Code also outlaws the “violent unnatural gratification of sexual desire” in Article 153. It defines such conduct as the “[v]iolent unnatural gratification of sexual desire combined with physical violence, or threats of violence, or committed by taking advantage of the victim’s helpless condition.” Additionally, Article 154 proscribes “compulsion to sexual intercourse” which is defined as “compulsion of a female or male to natural or unnatural sexual intercourse by a person on whom such female or male is financially or officially dependent.” Article 155 of the Code further outlaws sexual intercourse with a sexually immature person.

<sup>22</sup> Article 303 of the Ukrainian Criminal Code outlaws prostitution or the “compelling to and engaging in prostitution.” It defines such conduct as the provision of “sexual services for a fee by use of violence or threats of violence or destruction or endamage of property, or by blackmail or deceit.”

<sup>23</sup> The Ukrainian Criminal Code proscribes the illegal confinement or abduction of a person in Article 146. Similarly, in Article 147 the Code prohibits hostage taking. It defines such conduct as the “[t]aking or holding a person as a hostage with the intent to induce relatives of the hostage, any government agency or other institution, business or organization, any natural person or any official to make or refrain from any action as a condition for release of the hostage.” The Code also outlaws the trafficking in human beings or other illegal transfer deals with respect to a human being. Article 149 defines such conduct as the “[s]ale, other transfer for payment or any other illegal deals with regard to a person, involving legal or illegal movement of that person, with or without his/her consent, across the border of Ukraine for further sale or other transfer to any person (or persons) for the purpose of sexual exploitation, use in pornobusiness, engagement in criminal activities, peonage, adoption for commercial purposes, use in armed conflicts, labor exploitation.”

- 5) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions;
  - 6) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; and
  - 7) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
- c) – War Crimes<sup>24</sup>

Article 438 of the Criminal Code of Ukraine on Violations of the Rule of the Warfare defines war crimes as consisting of “cruel treatment of prisoners of war or civilians, deportation of civilian population for forced labor, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare recognized by international instruments consented to by binding by the Verkhovna Rada (Parliament) of Ukraine, and also giving an order to commit any such actions.”

For the purposes of Article 438<sup>25</sup> of the Criminal Code “methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare recognized by international instruments consented to by binding by the Verkhovna Rada,” “war crimes” means:

- i. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - 1) Willful killing;
  - 2) Torture or inhuman treatment, including biological experiments;<sup>26</sup>

---

<sup>24</sup> The definition of war crimes in this Law is based on Article 8, paragraph 2, of the ICC Statute. This includes both war crimes committed in an international armed conflict (Article 8, paragraphs 2 (a) and 2(b)) and war crimes committed in an armed conflict not of an international character (Article 8, paragraphs 2 (c), 2 (d), 2 (e) and 2 (f)).

<sup>25</sup>Article 438 of the Ukrainian Criminal Code states: Cruel treatment of prisoners of war or civilians, deportation of civilian population for forced labor, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare recognized by international instruments consented to by binding by the Verkhovna Rada (Parliament) of Ukraine, and also giving an order to commit any such actions, - shall be punishable by imprisonment for a term of eight to twelve years. 2. The same acts accompanied with a murder, - shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

<sup>26</sup>Article 127 of the Ukrainian Criminal Code defines torture as a “willful causing of severe physical pain or physical or mental suffering by way of battery, martyrizing or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions.”

- 3) Willfully causing great suffering, or serious injury to body or health;<sup>27</sup>
  - 4) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - 5) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
  - 6) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - 7) Unlawful deportation or transfer or unlawful confinement; and
  - 8) Taking of hostages.<sup>28</sup>
- ii. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- 1) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - 2) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - 3) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations or in a humanitarian assistance mission, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - 4) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - 5) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - 6) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
  - 7) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

---

<sup>27</sup> Article 121 of the Ukrainian Criminal Code defines intended grievous bodily injury as “a willful bodily injury which is dangerous to life at the time of infliction, or resulted in a loss of any organ or its functions, or caused a mental disease or any other health disorder attended with a persisting loss of not less than one-third of working capability, or interruption of pregnancy, or permanent disfigurement of face.”

<sup>28</sup> Article 147 of the Ukrainian Criminal Code defines hostage taking as “[t]aking or holding a person as a hostage with the intent to induce relatives of the hostage, any government agency or other institution, business or organization, any natural person or any official to make or refrain from any action as a condition for release of the hostage.”

- 8) The transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- 9) Intentionally directing attacks against buildings dedicated to religion,<sup>29</sup> education, art, science or charitable purposes, historic monuments,<sup>30</sup> hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- 10) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind that are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- 11) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- 12) Declaring that no quarter will be given;
- 13) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- 14) Declaring abolished, suspended or inadmissible in a court of law, or otherwise depriving, the rights and actions of the nationals of the hostile party;
- 15) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- 16) Pillaging a town or place, even when taken by assault;
- 17) Employing poison or poisoned weapons;
- 18) Employing asphyxiating, poisonous or other gasses, and all analogous liquids, materials or devices;
- 19) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- 20) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- 21) Committing rape,<sup>31</sup> sexual slavery, enforced prostitution,<sup>32</sup> forced pregnancy, or any other form of sexual violence of comparable gravity;

---

<sup>29</sup> The Ukrainian Criminal Code Article 197 prescribes punishment for “the illegal retention, desecration, or destruction of religious sanctities.”

<sup>30</sup> Article 289 of the Ukrainian Criminal Code prescribes punishment for “willful spoiling, destruction of or impairment of historical or cultural monuments.”

<sup>31</sup> Rape is defined as “sexual intercourse combined with violence, threats of violence, or committed by taking advantage of the victim's helpless condition” under Article 152 of the Ukrainian Criminal Code.

<sup>32</sup> Article 152 of the Ukrainian Criminal Code defines enforced prostitution as “provid[ing] sexual services for a fee by use of violence or threats of violence or destruction or endamage[m]ent of property, or by blackmail or deceit.”

- 22) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - 23) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - 24) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under international law; and
  - 25) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- iii. In the case of an armed conflict not of an international character, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- 1) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment<sup>33</sup> and torture;
  - 2) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - 3) Taking of hostages; and
  - 4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- iv. Other serious violations of the laws and customs of war applicable in armed conflict not of an international character, within the established framework of international law, namely, any of the following acts:
- 1) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - 2) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - 3) Intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations or in a humanitarian assistance mission, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

---

<sup>33</sup> Article 438 of the Ukrainian Criminal Code prohibits cruel treatment of civilians.

- 4) Intentionally directing attacks against buildings that are dedicated to religion,<sup>34</sup> education, art, science, or charitable purposes, historic monuments,<sup>35</sup> hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - 5) Pillaging a town or place,<sup>36</sup> even when taken by assault;
  - 6) Committing rape,<sup>37</sup> sexual slavery, enforced prostitution,<sup>38</sup> forced pregnancy, or any other form of sexual violence of comparable gravity;
  - 7) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - 8) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - 9) Killing or wounding treacherously a combatant adversary;
  - 10) Declaring that no quarter will be given;
  - 11) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind that are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - 12) Destroying or seizing the property of an adversary, unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
  - 13) Employing poison or poisoned weapons;
  - 14) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and
  - 15) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- d) – Crime of Aggression<sup>39</sup>

---

<sup>34</sup> Article 179 of the Ukrainian Criminal Code prescribes punishment for “the illegal retention, desecration, or destruction of religious sanctities.”

<sup>35</sup> Article 289 of the Ukrainian Criminal Code outlines punishment for “willful spoiling, destruction of or impairment of historical or cultural monuments.”

<sup>36</sup> Article 179 of the Ukrainian Criminal Code prohibits the “pillag[ing] of national treasures on occupied territories.”

<sup>37</sup> The Ukrainian Criminal Code defines rape in Article 152, as “sexual intercourse combined with violence, threats of violence, or committed by taking advantage of the victim's helpless condition.”

<sup>38</sup> Article 152 of the Ukrainian Criminal Code defines enforced prostitution as “provid[ing] sexual services for a fee by use of violence or threats of violence or destruction or endamage[ment] of property, or by blackmail or deceit.”

<sup>39</sup> The definition of the crime of aggression in this Statute is based on Article 8 of the ICC Statute.

- i. According to Article 437<sup>40</sup> of the Criminal Code of Ukraine on Planning, Preparation, and Waging of an Aggressive War– the “[p]lanning, preparation or waging of an aggressive war or armed conflict, or conspiring for any such purposes, - shall be punishable by imprisonment for a term of seven to twelve years” and “[c]onducting an aggressive war or aggressive military operations, - shall be punishable by imprisonment for a term of ten to fifteen years.”
- ii. In addition, under international law recognized by the Ukraine, the “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nation.
- iii. For the purpose of paragraph a), “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
  - 1) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
  - 2) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
  - 3) The blockade of the ports or coasts of a State by the armed forces of another State;
  - 4) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
  - 5) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
  - 6) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; and
  - 7) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

---

<sup>40</sup> Article 437 of the Ukrainian Criminal Code states that (1) “planning, preparation or waging of an aggressive war or armed conflict, or conspiring for any such purposes, - shall be punishable by imprisonment for a term of seven to twelve years” and (2) “conducting an aggressive war or aggressive military operations, - shall be punishable by imprisonment for a term of ten to fifteen years.”



11. The Court shall have jurisdiction for crimes committed in Ukraine since November 2013..

12. In interpreting the crimes within its jurisdiction, theories of liability, evidentiary matters, and standards for sentencing, the Court may consider rulings of international courts to help inform their decision.

#### Article 7 Composition of the High War Crimes Court

13. The number of judges of the High War Crimes Court shall be determined in accordance with the Law of Ukraine “On the Judiciary and the Status of Judges” keeping in mind the financial means of the High War Crimes Court, and include a specific number of judges for the Appeal Chamber of the High War Crimes Court.<sup>41</sup>

14. In order to perform judicial oversight over observance of rights, freedoms and interests of individuals in criminal proceedings within the jurisdiction of the High War Crimes Court, investigative judges shall be elected from among the staff of this court for the period of one year without the right to be re-elected for the position of the investigative judge two years in a row.

15. A judge of the Appeal Chamber of the High War Crimes Court may not be elected for the position of the investigative judge.

16. Determination of the number of investigative judges in the High War Crimes Court, their election, performance of duties of a judge of the first instance in the High War Crimes Court shall be carried out pursuant to the procedure prescribed by the Law of Ukraine “On the Judiciary and Status of Judges” for the purposes of determination of the number of investigative judges, their election and performance of duties of a judge in local courts.

#### Article 8 The Chief of the High War Crimes Court, Deputy Chief, the Chief of the Appeal Chamber of the High War Crimes Court

17. The Chief Judge of the Appeal Chamber of the High War Crimes Court shall be the Chief of the High War Crimes Court. He or she exercises administrative powers prescribed by the Law of Ukraine “On the Judiciary and Status of Judges” and this Law.

18. The Chief of the High War Crimes Court shall have one deputy exercising administrative powers determined by the Chief of the High War Crimes Court.

---

<sup>41</sup> With regard to the number of chambers of the Court, Article 31 of the Law of Ukraine “On the Judiciary and Status of Judges” reads: “[t]he decision on establishing a judicial chamber, its composition and on election of the Secretary of the Chamber shall be adopted by the meeting of judges of the respective high specialized court, upon the proposal of the Chief Judge.” With regard to the term of the Chief judges, Article 20 of Section 2 Chapter 1 of the Law of Ukraine “The Chief Judge of the trial court, their Deputy, Chief Judge of the appellate court, their Deputies, Chief Judge of the high specialized court and their Deputies shall be elected to their position by meeting of judges by secret ballot by a majority of the judges of a relevant court for a three-year term but not exceeding the term of office of a judge within the procedure established by law.”

19. The position of the Chief or Deputy Chief of the High War Crimes Court shall not grant a judge of the High War Crimes Court relief from exercising the powers of a judge prescribed by the law nor suspend this judge from work in the respective judicial chamber or duties of the secretary of a judicial chamber of the High War Crimes Court.

20. The Chief Judge of the Appeal Chamber of the High War Crimes Court and the Chief Judge of the trial court of the High War Crimes Court shall be elected pursuant to the procedure and exercise powers prescribed by the War Crimes “On the Judiciary and Status of Judges.”

### Chapter III.

## PROCEDURE OF TAKING THE POSITION OF A JUDGE OF THE HIGH WAR CRIMES COURT

### Article 9 Special requirements to a judge of the High War Crime Court

21. An individual complying with the requirements to the candidates for the position of a judge defined by the Constitution of Ukraine and the Law of Ukraine “On the Judiciary and Status of Judges”<sup>42</sup> as well as additional special requirements established by this article may be a judge of the High War Crimes Court.

22. A citizen of Ukraine may be appointed for the position of a judge of the High War Crimes Court if he or she complies with the requirements to the candidates for the position of a judge specified in the Law of Ukraine “On the Judiciary and Status of Judges” and possesses knowledge and practical skills necessary for performing judicial functions in international humanitarian law, international law or human rights related cases, as well as complies with any of the following requirements:

- a) has at least five years of experience as a judge;
- b) holds a law degree and has at least seven years of scholarly experience in law;
- c) has at least seven years of professional experience as a defense attorney, including representation in court and/or defense from criminal charges;
- d) has at least seven years of total experience of work (professional activity) for items a-c of this paragraph.

23. For the purposes of paragraph 2 of this Article, the terms “professional experience in law,” “scholarly experience,” “degree” are used in the meaning prescribed in Article 69, paragraph 6, of the Law of Ukraine “On the Judiciary and Status of Judges.”

24. An individual shall not be eligible for the position of a judge if:

- a) within the ten years prior to the appointment, this individual:  
has worked (served) in bodies of interior affairs of Ukraine, the Armed Forces of Ukraine, the National Police of Ukraine, the State Investigation Bureau, other law enforcement agencies, tax police, the Security Service of Ukraine, customs bodies, the National War Crimes Bureau of Ukraine, has held political office or a representative mandate.

---

<sup>42</sup> Chapter 4 Section 2 of the Law of Ukraine “On the Judiciary and Status of Judges” is devoted to “High specialized courts,” including the High Anti-Corruption Court.

- b) within the past five years, the individual has been among the top management of a political party or had labor or other contractual relationship with a political party;
- c) the individual has been a member of the High Qualification Commission of Judges of Ukraine or the High Council of Justice before the Law of Ukraine “On the Restoration of Trust in the Judicial Power in Ukraine” came into effect;
- d) a court verdict which came into force and prohibits the individual to hold office or engage in activity connected with the performance of functions of the state of local self-government (with the exception of rehabilitated individuals) regardless of such a conviction having been expunged or removed from official records, or if the individual had a criminal record for any intentional crime regardless of such a conviction having been expunged or removed from official records.

#### Article 10 Competition for the position of a judge of the High War Crimes Court

25. The competition for the position of a judge of the High War Crimes Court shall take place pursuant to the procedure determined by the Constitution of Ukraine and the Law of Ukraine “On the Judiciary and Status of Judges,” taking into account the peculiarities prescribed by this Article.

26. The transfer of judges of other courts to the positions of judges of the High War Crimes Court without competition or within disciplinary measures shall not be permitted.

27. To be admitted to the qualification assessment to participate in the competition for the position of a judge of the High War Crimes Court pursuant to the special procedure, a candidate for the position of a judge submits to the High Qualification Commission of Judges of Ukraine, in addition to the documents defined by the Law of Ukraine “On the Judiciary and the Status of Judges,” documents confirming the compliance with the requirements provided in Article 10, paragraph 2 of this Law as well as a statement on the absence of circumstances stated in Article 10, paragraph 4 of this Law.

28. In order to assist the High Qualification Commission of Judges of Ukraine in the establishment of compliance of the candidates for the positions of judges of the High War Crimes Court with the criteria of integrity (moral, honesty, incorruptibility) for the purposes of qualification assessment, namely in terms of lawfulness of the origin of sources of the candidate’s property, correspondence of the standard of living of the candidate or his or her family members with the declared income, correspondence of the candidate’s lifestyle to his or her status, knowledge and practical skills that the candidate possesses for the consideration of cases within the jurisdiction of the High War Crimes Court, the Public Council of International Experts shall be formed. The Public Integrity Council, established and acting in accordance with the Law of Ukraine “On the Judiciary and the Status of Judges,” shall not be involved in the establishment of compliance of the candidates for the positions of judges of the High War Crimes Court to the criteria prescribed by the Law for the purposes of qualification assessment for the duration of activity of the Public Council of International Experts.

29. Upon initiative of at least three members of the Public Council of International Experts, the question of compliance of any candidate for the position of a judge of the High War Crimes Court with the criteria established in paragraph 4 of this Article, shall be reviewed at a special

joint meeting of the High Qualification Commission of Judges of Ukraine and the Public Council of International Experts. The decision on compliance of this candidate with these criteria shall be approved by the majority of the joint composition of the High Qualification Commission of Judges of Ukraine and the Public Council of International Experts provided that at least half of the members of the Public Council of International Experts voted in favour of it. Shall such a decision not be taken, the candidate is considered to cease participation in the competition. Such special joint meeting shall be held no later than thirty days from the day of announcement of the examination results taken by the candidates for the establishment of their compliance with the professional competence criteria for the position of a judge.

At the request of at least three members of the Public Council of International Experts, before the special joint meeting of the High Qualification Commission of Judges of Ukraine and the Public Council of International Experts, a prior interview may be held with the candidates for the position of a judge of the High War Crimes Court, in which at least six members of the High Qualification Commission of Judges of Ukraine shall take part.

30. In case of the same position in the ranking compiled on the basis of the qualification assessment for participation in the competition for the position of a judge of the Appeal Chamber of the High War Crimes Court, preference shall be given to the participant who has received a greater score for the practical part of the exam taken as part of the qualification assessment, and if the score is identical, as a rule, to the participant who has more work experience on the position of a judge of an appeal or cassation court. If participants of the competition for the position of a judge of the Appeal Chamber of the High War Crimes Court have equal experience on the position of a judge in appeal or cassation courts or do not have any such experience, preference shall be given to the candidate who has more experience on the position of a judge, if experience on the position of a judge is equal for both participants – to the participant who holds a scholarly degree, if both have it or neither does – to the participant with greater professional experience in law.

In case of the same position in the ranking compiled on the basis of the qualification assessment for participation in the competition for the position of a general judge of the High War Crimes Court, preference shall be given to the participant who has received a greater score for the practical part of the exam taken as part of the qualification assessment, and if the score is identical, as a rule, to the participant who has more work experience on the position of a judge. If the participants of the competition for the position of a judge of the High War Crimes Court have equal experience on the position of a judge or do not have any such experience, preference shall be given to the participant who holds a scholarly degree, if both have it or neither does – to the participant with greater professional experience in law.

31. At every stage of the qualification assessment of the candidates for the position of a judge of the High War Crimes Court and during the assessment of the results of such qualification assessment by the secretariat of the High Qualification Commission of Judges of Ukraine, video and audio recording and live broadcast of the respective meetings of the High Qualification Commission of Judges of Ukraine shall be published on the official website of the High Qualification Commission of Judges of Ukraine, and those of the Public Council of International Experts – on the official website of the State Judicial Administration of Ukraine.

32. When the High Council of Justice reviews the matter of the submission of a motion on the appointment of a judge of the High War Crimes Court to the President of Ukraine and takes a

decision concerning the candidate for the position of a judge of the High War Crimes Court, video and audio recording and live broadcast of the respective meetings of the High Council of Justice shall be published on the official website of the High Council of Justice provided by the secretariat of the High Council of Justice.

#### Article 11 The Public Council of International Experts

33. The Public Council of International Experts shall be formed for the period of six years by the High Qualification Commission of Judges of Ukraine to facilitate it in the preparation of decisions on the appointment of judges of the High War Crimes Court and shall be a subsidiary body.

34. The Public Council of International Experts shall exercise its powers in the composition of six members appointed by the High Qualification Commission of Judges of Ukraine exclusively based on the nominations of international organizations with which Ukraine cooperates in the area of international humanitarian law, human rights and international peace and in accordance with international treaties of Ukraine.<sup>43</sup>

Every such international organization may suggest to the High Qualification Commission of Judges of Ukraine at least two candidates to the Public Council of International Experts.

The High Qualification Commission of Judges of Ukraine shall decide on the appointment of the members of the Public Council of International Experts if the number of nominated candidates to the Public Council of International Experts at least twice exceeds the number of vacant positions.

Decision on the appointment of the members of the Public Council of International Experts shall be taken at the meeting of the High Qualification Commission of Judges of Ukraine.

35. Citizens of Ukraine or foreigners with impeccable business standing, high professional and moral qualities, respect in the society, at least five years of experience in other countries in procedural management, support of public prosecution in court or administration of justice in international war crimes and crimes against humanity-related cases may be members of the Public Council of International Experts.

36. Individuals who fail to comply with the requirements provided in Article 9, paragraph 4 of this Law may not be members of the Public Council of International Experts.

37. Members of the Public Council of International Experts shall be appointed for the term of office of two years and may not be reappointed.

38. For the period of participation of the members of the Public Council of International Experts in the procedure of the selection of candidates for the positions of judges of the High War Crimes Court they shall be assigned compensation in the amount of the fixed official salary

---

<sup>43</sup> Examples of such organizations are the United Nations, the International Committee of the Red Cross (ICRC), Council of Europe, and International Federation for Human Rights (FIDH).

of a Supreme Court judge. Members of the Public Council of International Experts who do not reside in Ukraine shall have the right for refund of their transport and accommodation expenses.

39. Powers of a member of the Public Council of International Experts shall be terminated early in case of:

- a) submission of a personal letter of resignation from the position of a member of the Public Council of International Experts;
- b) submission of a proposal on premature termination of powers of a member by the Public Council of International Experts;
- c) entrance into force of a court's verdict against her/him;
- d) recognition of the member of the Public Council of International Experts as legally incapable or gone missing;
- e) discovery of failure of the member of the Public Council of International Experts to comply with the criteria established by this Law;
- f) his or her death;
- g) end of term prescribed in paragraph 5 of this Article.

40. The decision on the removal of a member of the Public Council of International Experts shall be taken by the High Qualification Commission of Judges of Ukraine, which, within ten days after taking it, shall take measures to appoint a new member of the Public Council of International Experts.

41. The Public Council of International Experts shall:

- a) collect, verify and analyze information on candidates for the positions of judges of the High War Crimes Court;
- b) provide the High Qualification Commission of Judges of Ukraine with information on candidates for the positions of judges of the High War Crimes Court;
- c) participate in a special joint meeting in situations prescribed by this Law;
- d) take measures to protect personal data, information with restricted access that came to the knowledge of the Public Council of International Experts and its members in connection with their professional activity.

42. In order to exercise powers established by this Article, the members of the Public Council of International Experts shall be entitled to access open state registers for free.

43. A member of the Public Council of International Experts shall be obliged:

- a) to participate in its work personally without the right to delegate his or her powers to other individuals, including other members of the Public Council of International Experts;
- b) not to use personal data and other information that became known to him or her in connection with the work in the Public Council of International Experts for any other purposes than the professional duties as a member of the Public Council of International Experts. Any violation of this requirement shall entail responsibility prescribed by the law;
- c) to refuse to participate in the collection of information on the candidate, reviewing the compliance of a candidate for the position of a judge of the High War Crimes Court with the criteria established in Article 10, paragraph 4 of this Law if the

member of the Public Council of International Experts has or had any personal or business relationship with the candidate for the position of a judge of the High War Crimes Court, is involved in cases that are or were reviewed by the judge who is a candidate for the position of a judge of the High War Crimes Court and/or in the event of any other conflict of interest or circumstances which may affect the objectivity and impartiality during the decision-making process by the member of the Public Council of International Experts concerning the candidate for the position of a judge of the High War Crimes Court.

44. Organizational and technical support of the activity of the Public Council of International Experts shall be provided by the State Judicial Administration of Ukraine. The activity of the Public Council of International Experts may be financed with the help of international technical assistance and through a special donors committee established in accordance with this Law.

## Article 12 International Legal Advisors

44 In addition to the duties in Article 41, the Public Council of International Experts shall facilitate the appointment of International legal advisors in the field of international humanitarian law and international criminal law. The advisors shall assist and advise the court on matters concerning international humanitarian law, international criminal law, and the experience of similar tribunals (whether international or otherwise) at all stages of the proceedings. To that effect, the international legal advisors shall conduct any research, assist with the drafting of decisions, and provide assistance during trials and appeals to the judges of the High War Crimes Court. The Public Council shall propose a list of legal advisors to the Chief of the High War Crimes Court.

45. The Chief of the High War Crimes Court shall select from the selected list of nominees at least one international legal advisor per chamber of the court, or in their discretion as many advisors as they see fit depending on the caseload and needs of each chamber but in each case at least one advisor.<sup>44</sup> The same method shall be used to appoint international advisors for the investigative judges, the prosecution, and the defense. The Chief of the High War Crimes Court shall guarantee that the prosecution and the defense in each case have their own respective international advisors. Specifically, international advisors shall assist prosecutors with research, drafting indictments, motions, opening and closing arguments, questions for witnesses, and appellate briefs. The international advisors shall be persons of high moral character, impartiality, and integrity. Preference shall be given to international advisors with the following experience: (i) experience in either a judicial, prosecutorial, or defense capacity in his or her respective country, or (ii) experience in international war crimes trials or tribunals.

---

<sup>44</sup> The revised statute for the Iraqi High Criminal Court (IHCC) allows for the discretionary appointment of non-Iraqi experts to act in advisory capacities. It defined their role as providing “assistance with respect to international law and the experience of similar Courts (whether international or otherwise).” M. Cherif Bassiouni, *Ceding the High Ground: The Iraqi High Criminal Court Statute and the Trial of Saddam Hussein*, Case Western Reserve Journal of International Law, Volume 39 Issue 1 2006-2007, at p.58, available at: <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1302&context=jil>

46. International legal advisors to the High Crimes Court shall provide impartial and confidential consultations and recommendations. International legal advisors assigned to the defense shall not perform any service that may result into a relationship, such as a relationship between an attorney and his or her client, or accused individual, or to represent any individual in any proceedings before the High War Crimes Court.

## Chapter IV.

### PECULIARITIES OF THE STATUS OF JUDGES OF THE HIGH WAR CRIMES COURT

#### Article 13 Additional guarantees of safety of judges of the High War Crimes Court

48. The judges of the High War Crimes Court, in connection with the administration of justice in the criminal proceedings concerning war crimes and crimes against humanity related offenses shall be provided, alongside the guarantees established by the Constitution of Ukraine and the Law of Ukraine “On the Judiciary and the Status of Judges,” with additional guarantees of their personal security as well as personal security of their family members and preservation of their property.

49. A judge of the High War Crimes Court and, if necessary upon the judge’s motion, his or her family members, shall be provided with round-the-clock security escort. At the motion of a judge of the High War Crimes Court, round-the-clock guard force shall be provided to the personal or official residence of the judge.

50. The home of a judge shall be equipped with security alarm and panic buttons.

51. Security of a judge of the High War Crimes Court, his or her family members and home shall be provided by the Judicial Security Service.

52. If the life or health of a judge of the High War Crimes Court or his or her family members come into jeopardy, the Judicial Security Service, at the request of the judge, shall provide temporary housing of such individuals in places where their safety can be guaranteed.

53. Official premises of the High War Crimes Court shall be equipped with modern security measures which guarantee judges’ personal safety, preservation of documentation of the High War Crimes Court, prevention of illegal access to the premises.

#### Article 14 Enhancement of the professional competence of a judge of the High War Crimes Court

54. Judges of the High War Crimes Court, alongside the measures of maintenance of professional qualifications of judges set forth in the Law of Ukraine “On the Judiciary and the Status of Judges,” shall be provided with conditions for satisfaction of the individual needs for personal professional growth, increasing the level of professional competence on justice in the area of crimes against humanity, new international War Crimes standards and best practices in the area of international justice.



55. A judge of the High War Crimes Court shall regularly, but no less than once a year, undergo obligatory further training on the judiciary in the area of crimes against humanity and war crimes.

56. The National School of Judges of Ukraine shall organize regular training for judges of the High War Crimes Court in order to solidify and update necessary knowledge and skills, deliver workshops to study up-to-date international practices of the judiciary in the area of war crimes and crimes against humanity, including those involving representatives of international organizations and foreign educational institutions.

#### Article 15 Provision of housing to a judge of the High War Crimes Court

57. A judge of the High War Crimes Court who is not provided with housing shall be provided by the government with official accommodation for the term of office.

58. Housing allocated for judges of the High War Crimes Court shall be state-owned. Removal of the premises provided to the judges of the High War Crimes Court for the term of office from the list of official housing and their alienation shall not be permitted.

### Chapter V.

#### SPECIAL SUPPORT OF ACTIVITY OF THE HIGH WAR CRIMES COURT

#### Article 16 Financial support of the activity of the High War Crimes Court

59. The High War Crime Court shall be the principal manager of the funds of the national budget of Ukraine allocated for financial support of its activity and the special donor committee created for this purpose.

60. The expenses for maintenance of the Appeal Chamber of the High War Crime Court shall constitute a separate item in the national budget of Ukraine and the special donors committee created for this purpose.

61. The Special Donors Committee shall be permitted to accept international donations to support the operation of the Court subject to ensuring the Court maintains absolute judicial independence and integrity. The Special Donors Committee shall have an Oversight Board made up of an international chair and representatives from the Ukrainian Bar, Parliament, and civil society.

#### Article 17 Requirements to the location of the High War Crimes Court

62. The Appeal Chamber of the High War Crime Court and the judicial chambers of the High War Crimes Court for administration of justice in the first instance may not be located in the same building.

63. The High War Crimes Court, its chambers and its administration may not be located in the same building as other courts, national agencies, their territorial, structural units, representative offices, bodies of local self-government, institutions, and organizations.

64. The building housing the High War Crimes Court should be reinforced to the greatest extent possible so as to be strong enough to resist the impact and explosive force of bombs or shells.

#### Article 18 Organizational Support of the Work of the High War Crimes Court

65. Organizational support of the work of the High War Crimes Court shall be provided by the administration of the High War Crimes Court in accordance with the Law of Ukraine “On the Judiciary and the Status of Judges.”

66. A separate structural unit shall be established in the administration of the High War Crimes Court for organizational support of the work of the Appeal Chamber of the High War Crimes Court.

67. The Chief of the Appeal Chamber of the High War Crimes Court shall control the efficiency of activity of the separate structural unit providing organizational support to the work of the High War Crimes Court, submit proposals on the appointment of the chief of this unit and authorize his or her dismissal, submit motions on his or her recognition or application of disciplinary measures in accordance with the law, approve draft regulation on this structural unit and amendments to this regulation.

#### Article 19 Protection of Victims and Witnesses

68. The High War Crimes Court shall provide for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity.<sup>45</sup>

### Chapter VI. Enforcement

#### Article 20 Enforcement<sup>46</sup>

71. Imprisonment shall be served in prisons in Ukraine. In the case that is not feasible, sentences may be served in any state on a list of states that have indicated their willingness to accept persons convicted by the Court that meet Ukrainian standards.

72. No authority outside the High War Crimes Court of Appeal may grant a pardon or mitigate the punishment issued by the Court.

### Chapter VII. Core Principles of the High War Crimes Court

---

<sup>45</sup> This is separated into its own section in order to highlight its importance, rather than including it in the section on rights of the judges, where it seems out of place.

<sup>46</sup> Penalties shall be in accordance with Ukrainian law. It is understood that the highest enforcement for war crimes is a life sentence (See: Criminal Code of Ukraine, Article 12, Classification of Criminal Offenses). If Ukrainian Law is amended to provide for confiscation and forfeiture as a penalty for the crimes within the jurisdiction of the High War Crimes Court, that penalty shall also be an option in cases before the High War Crimes Court.

## Article 21 Independence of the High War Crimes Court

73. In exercising justice, the Court shall be independent of any improper influence, and administer justice proceeding from this Law and the laws of Ukraine.

74. The Court shall not consider appeals to the court by citizens, organizations, or officials who are not party to the trial.

75. Interference with the Court's administration of justice, or influence on the Courts or Judges shall be prohibited.

76. In order to protect professional interests of judges and address issues of internal functioning of courts in accordance with this Law, judicial self-government shall operate.

## Article 22 The Right to a Fair Trial

77. Every person shall be guaranteed protection of their rights, freedoms and interests within reasonable time frames by an independent, impartial and fair trial, established by this Law and Ukrainian law.

78. Accessibility of justice shall be ensured under the purview of the Court.

## Article 23 Equality Before the Law and the Court

79. Justice shall be exercised based on the principles of equality of all parties in a trial before the law and the court, regardless of race, color, political, religious and other beliefs, gender, ethnic or social origin, property status, residence, language and other characteristics.

80. The Court shall establish an environment where each party to a proceeding is guaranteed equality in the exercise of the granted procedural rights and in the performance of judicial duties, as determined by the procedural law.

## Article 24 Professional Legal Assistance in the Implementation of the Right to a Fair Trial

81. Every person shall have the right to professional legal assistance.

82. The accused may employ their own private legal counsel at their cost, or select from the Court's roster of available defense counsel free of charge.

## Article 25 Transparency and Openness of Court Proceedings

86. Court decisions, hearings and information on cases considered by the High War Crimes Court shall be open. No one may be restricted in their right to receive in-hearing oral or written information about the results of consideration of their trial. All parties shall be entitled to free access to the judgment in the manner specified by Ukrainian law.

87. Consideration of cases before the High War Crimes Court shall be open, except in cases stipulated by Ukrainian law. Any person may be present at an open hearing. However, where a

person has committed acts demonstrating disrespect to the Court or to parties to a case, such person, upon a substantiated decision of the Court, shall be removed from the courtroom.

88. The High Court Judges shall promulgate rules guiding the televising of proceedings, and retain discretion to close the proceedings from the public for good cause where publicity would prejudice the interests of justice.

89. The Court shall allow the presence of international observers provided by the international community. Such international observers shall monitor the protection by the Court of general due process of law standards.

## Chapter VIII. Final and Transitional Provisions

90. This Law shall come into force on the next day after its publication.

91. The following changes shall be made in the following legislative acts of Ukraine: [To be drafted by specialized Ukrainian legislative council at the appropriate time.]

92. Within 12 months after this law comes into force, the following shall be done:

- a) the High War Crimes Court shall be formed according to the procedure and in the composition stipulated by this law;
- b) a competition for the vacancies of judges of the High War Crimes Court's Appeal Chamber and other judges of the High War Crimes Court shall be announced and held according to the law of Ukraine "On the Judiciary and Status of Judges" and according to this law. As a result of this competition, judges of the High War Crimes Court shall be appointed.
- c) a new class of prosecutors with international criminal law knowledge shall be authorized to bring criminal proceedings before the High War Crimes Court. To that effect, a new Office of Prosecutors for the High War Crimes Court shall be created within the Department of War of the General Prosecutor's Office of Ukraine. The Office shall be assisted by international experts consistent with the other provisions of this law.
- d) The day when the High War Crimes Court, in the composition determined by this law, starts its operation shall be determined by the decision of a meeting of this court, and the decision shall be published on the judiciary web-portal and in *Holos Ukrainy* paper.
- e) The High War Crimes Court shall start its operation provided at least [number] of judges of the High War Crimes Court have been appointed based on the results of the competition held in accordance with the Law of Ukraine "On the Judiciary and the Status of Judges" and this Law, including at least [number] judges of the Appeal Chamber of the High War Crimes Court.
- f) Within thirty calendar days of the day of appointment of the judges of the High War Crimes Court in the number specified in item d) of this chapter, the oldest judge of the High War Crimes Court shall convoke a meeting of judges of the High War Crimes

Court to decide on the day of the start of operation of the High War Crimes Court, resolve organizational issues of the court's activity and elect investigative judges.

g) If investigative judges are not elected before the day when the High War Crimes Court starts its operation, their duties shall be performed by three judges of the High War Crimes Court selected by means of drawing lots at a meeting of judges of the High War Crimes Court. Judges of the Appeal Chamber of the High War Crimes Court shall not participate in such drawing of lots.

h) The President of Ukraine shall be proposed to submit a draft law on the creation of the High War Crimes Court in accordance with the established procedure.

**President of Ukraine**

**V. ZELENSKYY**

**Kyiv**

**[date]**

**No. [ ]**