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# Peculiarities of legal assessment of aiding and abetting the aggressor state: National and international dimensions

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**Abstract**
The Ukrainian legislator's differentiation of criminal liability for certain manifestations of collaboration has led to unjustified competition and considerable difficulties in qualifying the relevant unlawful acts. The purpose of this study was to analyse the specific features of criminal liability for aiding and abetting the aggressor state in the national and international dimensions. To complete the tasks of this study, a set of scientific methods was employed: dogmatic – in the analysis of legal constructions of elements of collaboration and abetting the aggressor state; comparative legal – in the context of comparing the rules on liability for collaboration and the rules of international humanitarian law. The study showed that Ukrainian criminal law theory and court practice have not developed consistent approaches to the application of the rules on liability for collaboration. The study focused on the fact that the criminal legislation of Ukraine applies an approach whereby certain types of economic collaboration are factually identified with military collaboration, which does not follow international humanitarian law. It was concluded that when qualifying the transfer of material resources to representatives of the aggressor state, there is a competition between the provisions of Part 4 of Article 111-1 and Article 111-2 of the Criminal Code of Ukraine. In such a situation, it is reasonable to apply the rule on liability for collaboration. It was found that the payment of taxes, fees, and other mandatory payments to the

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Russian budget of any level, made in the occupied territory of Ukraine by a citizen of Ukraine, a foreigner, a stateless person for themselves and/or in the interests of legal entities registered in the territory of the Russian Federation cannot be covered by the objective side of abetting the aggressor state, as it does not follow international humanitarian law and does not contain such a feature as voluntariness, which is a mandatory feature of the crime under Article 111-2 of the Criminal Code of Ukraine. The practical significance of this study lies in defining certain rules for qualifying aiding and abetting the aggressor state which may be used by pre-trial investigation authorities in the legal assessment of such behaviour

**Keywords:**
crimes against the national security of Ukraine; qualification of a crime; collaboration; criminal liability; international humanitarian law; corpus delicti of a criminal offence

## Introduction

The Russian aggression against Ukraine has exacerbated various legal issues, including collaboration, which has long stayed without statutory regulation. Until 2014, Ukrainian criminal law doctrine did not analyse the behaviour of persons in the occupied territory. After 2014, the Ukrainian legislator made certain attempts (including seven unsuccessful ones) to counteract various manifestations of cooperation and other interaction, primarily of Ukrainian citizens with the occupiers, by criminal law. One of the most effective attempts took place on 3 March 2022, when the Ukrainian parliament adopted Law of Ukraine No. 2108-IX[1]. This law amends the Criminal Code of Ukraine[2] (CCU) and, specifically, introduces a new Article 111-1 "Collaboration Activities". This Article consists of eight parts (16 main and 1 qualified corpus delicti of criminal offences) and a 4-item note. Each part of Article 111-1 of the CCU[3] prescribes separate manifestations of collaboration. The next Law of Ukraine No. 2198-IX dated 14 April 2022[4], expanded collaboration activities by criminalising aiding and abetting the aggressor state, namely by adding a new Article 111-2 to the CCU. These legislative innovations, as evidenced by the analysis of both the positions of Ukrainian criminalists and the materials of investigative and judicial practice, did not solve all the problems of legal regulation of collaboration and considerably complicated the enforcement of the relevant criminal law provisions.

Ukrainian criminal law doctrine is dominated by the position that despite the current full-scale aggression of the Russian Federation (RF), Ukraine continues to implement criminal law policy, accommodating the needs of society and the state (Balobanova *et al*., 2022). This government policy is aimed at protecting the interests of Ukraine as an independent and sovereign state. The researcher states that such regulatory changes determine the vector of development of the law on criminal liability in the near future.

P. Digeser (2022), analysing the term "collaboration", defines its two substantive aspects. The first is cooperation, teamwork, or group effort. This is a positive understanding of the term. The second is a form of moral and political complicity of those who aided or abetted the brutal Nazi regime, betrayed their community, or served as accomplices in war crimes. This is a negative understanding of the term "collaboration". This position in the doctrine of law is also developed by other researchers. Specifically, they point out that "collaborationism" was not a recognised legal concept, but after 1945, when "collaborationism" acquired its conventional meaning, cooperation with representatives of the aggressor state began to be punishable as treason or a war crime (Bondarenko *et al*., 2022).

E. Pysmenskyi (2020) states that the Ukrainian criminal law doctrine has two approaches to the legal regulation of collaborative manifestations. The first is that the existing criminal law has sufficient tools to bring perpetrators to justice for collaboration. The second states the existence of a certain gap in the regulatory framework for criminal law counteraction to collaborationism.

O. Dudorov & R. Movchan (2022a) believe that the introduction of criminal liability for aiding and abetting the aggressor state has affected both the conflict of law on criminal liability and the legal uncertainty of the law. Researchers propose to specify in Article 111 of the CCU the types of the most dangerous manifestations of collaborationism, while Article 111-2 of the CCU would stipulate only those acts that are not as dangerous (compared to high treason). V. Kuznetsov & M. Siyploki (2022) take an analogous position, who argue that certain collaborative manifestations require

[1]Law of Ukraine No. 2108-IX "On Amendments to Certain Legislative Acts of Ukraine on Establishing Criminal Liability for Collaborative Activities". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2108-20#Text.
[2]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4]Law of Ukraine No. 2198-IX "On the Introduction of Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding the Improvement of Responsibility for Collaborative Activities and the Features of the Application of Preventive Measures for Committing Crimes Against the Foundations of National and Public Security". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2198-20#Text.

some regulatory clarification or exclusion, as such forms of offence duplicate existing forms of treason.

N. Antonyuk (2022), analysing the opinions of researchers on the legal assessment of collaborationism and the relevant amendments to the CCU, concludes that criminal law is not entirely fair in differentiating between certain collaborative manifestations. For instance, the CCU recognises military, political, and administrative collaboration as especially grave crimes, economic and cultural collaboration as minor crimes, and domestic collaboration as a criminal misconduct. M. Owens (2022) concludes that during a military conflict, international companies, albeit operating in the occupied territory, do not contribute to aggression.

The researchers found that during the adoption of Law of Ukraine No. 2198-IX dated 14 April 2022, the people's deputies of Ukraine did not factor in the existence of Article 111-1 of the CCU. In modern studies, Ukrainian researchers cannot reasonably explain the presence of such a crime as voluntary collection, preparation, and/or transfer of material resources or other assets to representatives of the aggressor state in Article 111-2 of the CCU, which effectively duplicates the provisions of Part 4 of Article 111-1 of the CCU (transfer of material resources to illegal armed or paramilitary groups established in the temporarily occupied territory and/or armed or paramilitary groups of the aggressor state) (Dudorov & Movchan, 2022). M. Havronyuk (2022) originally describes this situation as a type of "violation of the principle of proportionality", when the legislator criminalises a certain act, ignoring the fact that criminal legislation already contains a provision on liability for such an act. In the theory of criminal law, the dominant position is that various manifestations of collaborationism cover an extremely wide circle of persons, which requires improvement of the relevant criminal law prohibitions (Mudretskyi, 2022; Bukreev *et al*., 2023). This leads to the conclusion that, for all intents and purposes, the criminal legislation of Ukraine applies an approach whereby certain types of economic collaboration are effectively equated with military collaboration, which is not in line with international humanitarian law. The cited studies have found that the application of international legal norms is practically necessary for civilians who find themselves in the territory occupied by the Russian Federation.

The purpose of this study was to investigate the legal construction of the crime "Abetting the aggressor State" under the CCU using the norms of the international humanitarian law.

## Materials and Methods

This study employed various methods, including general scientific and special methods of cognition. The dialectical method helped to cover the essence of the subject of collaboration with the aggressor state. The application of systemic and structural analysis helped to examine the internal structure of the system of criminal law provisions relating to criminal liability for collaborationism. The dogmatic method was used to analyse the objective and subjective signs of aiding and abetting the aggressor state. The comparative legal method was used to compare the criminal legislation of Ukraine, which prescribes liability for certain forms of collaboration, with international legislation in this area. The application of the methods of analysis, synthesis, induction, and deduction helped to draw reasonable conclusions regarding criminal law instruments for countering certain types of collaborationism. The application of the historical legal method helped to analyse the development stages of the legislative definition of criminal liability for collaborative acts.

Using the statistical method, the study analysed the information on the number of collaborative manifestations and concluded on the effectiveness of criminal legislation. Empirical methods of legal research were used to analyse the judicial practice materials available in the public domain under Articles 111-1, 111-2 of the CCU[1,2,3,4] from the Unified State Register of Court Decisions (n.d.), and provisions of the CCU[5], the Tax Codes of Ukraine[6] and the Russian Federation[7]. According to the General Prosecutor's Office (n.d.), 7,608 criminal proceedings under Article 111-1 of the CCU and 1,125 criminal proceedings under Article 111-2 of the CCU were registered (as of 19 March 2024). According to the State Judicial Administration of Ukraine (n.d.), in 2022, courts delivered 268 verdicts under Article 111-1 of the CCU. O. Syniuk & O. Lunova (2023) investigated about 700 verdicts under various parts of Article 111-1 of the CCU and seven verdicts under Article 111-2 of the CCU and pointed out the imperfection of the relevant provisions of criminal legislation in the qualification of crimes. The analysis of judicial and investigative

[1]Verdict of Ivano-Frankivsk City Court of Ivano-Frankivsk Region No. 344/12085/23. (2023, October). Retrieved from https://reyestr.court.gov.ua/Review/114110442.
[2]Verdict of the Buryn District Court of the Sumy Region No. 574/369/22. (2022, December). Retrieved from https://reyestr.court.gov.ua/Review/107991214.
[3]Verdict of the Trostyanetsk District Court, Sumy Region No. 588/713/22. (2022, August). Retrieved from https://reyestr.court.gov.ua/Review/105808995.
[4]Verdict of the Lebedyn district court of Sumy Region No. 588/672/22. (2022, September). Retrieved from https://reyestr.court.gov.ua/Review/106096380.
[5]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6]Tax Code of Ukraine. (2010, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2755-17#Text.
[7]Tax Code of the Russian Federation. (1999, July). Retrieved from https://www.wipo.int/wipolex/en/text/586700.

practice regarding the qualification of aiding and abetting the aggressor state (29 sentences under Article 111-2 of the CCU have been established) and the comparison of the rules on liability for collaboration and the rules of international humanitarian law prompt to explore the specific features of legal assessment of aiding and abetting the aggressor state in the national and international dimensions.

## Results and Discussion

To identify problematic issues of law enforcement of certain manifestations of collaboration, it is necessary to provide a criminal law description of aiding and abetting the aggressor state. Article 111-2 "Abetting the aggressor state" of the CCU is a rule that prohibits assistance to the aggressor state from Ukrainian citizens, foreigners, or stateless persons, except for citizens of the aggressor state itself. This Article establishes liability for intentional actions aimed at abetting the aggressor state, its armed formations, or occupation administration, committed by citizens of Ukraine, foreigners, or stateless persons, except for citizens of the latter. This liability extends to actions aimed at harming Ukraine through the implementation or support of decisions and actions of the aggressor state, its armed forces or occupation administration, as well as the voluntary collection, preparation, or transfer of material resources or other assets to representatives of the aggressor state, its armed forces, or occupation administration[1]. The crime defined in Article 111-2 of the CCU is particularly grave due to the degree of public danger. This is conditioned by the respective severe penalty of imprisonment (10-12 years), and along with this, deprivation of the right to hold certain positions or engage in certain activities for 10-15 years, or without such right, as well as confiscation of property.

Aiding and abetting the aggressor state has as its object the national security of Ukraine, which is defined as the protection of the territorial integrity, sovereignty, democratic constitutional order, and any other national interests of Ukraine from any real and potential threats (Item 9, Part 1, Article 1 of the Law No. 2469-VIII)[2]. The main direct object of the crime under Article 111-2 of the CCU is the military security of Ukraine, as the protection of vital state interests from military threats (Item 2, Part 1, Article 1 of the Law No. 2469-VIII)[3].

The object of aiding and abetting the aggressor state (material resources and other assets) is a mandatory feature of the object of the crime only in the third form of unlawful acts. Notably, the theory of criminal law does not always address this feature of the object of the crime. The authors of the present study believe that the failure to consider or formally establish this feature will not allow the pre-trial investigation authorities to properly qualify such a crime.

The objective side of this crime involves, first of all, such a mandatory feature as an action (this is stated in the disposition of the norm). The unlawful act may take the following forms: support or implementation of decisions or actions of the aggressor state, specifically its military formations or administration in the occupied territories; assistance in the implementation of decisions or actions of the aggressor, its armed formations or occupation authorities; non-coercive, voluntary collection, preparation, and transfer of assets, material resources to the aggressor state, its representatives[4]. The procedure for implementing such actions is referred to in the legal literature as forms or methods of committing an offence.

Of importance is the hypothesis of M. Havronyuk (2022) that voluntariness is a property of the unlawful actions of the perpetrator and is inherent in all manifestations of this crime. This is conditioned by the focus of the subject's actions and the purpose of the criminal offence. This hypothesis can be supported by noting that voluntariness should be proved when qualifying aiding and abetting the aggressor state, which is a mandatory feature of the objective side of the crime under Article 111-2 of the CCU. In the theory of criminal law, a separate mandatory feature of the objective side of this unlawful act is the setting of the crime, since such actions can only be committed in the context of a military invasion of another state (in the current case, the Russian Federation) or in the presence of occupied territories (in the current case, the territories of Ukraine occupied by the Russian Federation) where the aggressor state has established illegal authorities (Bukreev *et al*., 2023). The third form of this crime prescribes specific addressees of abetting the aggressor state, including representatives of the aggressor state, armed formations, and the occupation authorities.

If a certain person interacts with a business entity of the aggressor state, there is no mandatory addressee prescribed in Article 111-2 of the CCU. Since the relevant business entities with which the potential offender interacts are not representatives of the aggressor state listed in Article 111-2 of the CCU. Therefore, when qualifying such behaviour of a potential offender, the fact of interaction between a business entity and representatives of the aggressor state must be thoroughly investigated and fairly assessed by the pre-trial investigation authorities. The completion of this crime is associated

[1]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[3]Ibidem, 2018.
[4]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

with the commission of actions, i.e., according to the construction of the objective side, aiding and abetting the aggressor state is a formal crime.

The subject of aiding and abetting the aggressor state under Article 111-2 of the CCU is a general one, which in the theory of criminal law means an individual of sound mind who is at least sixteen years old. Such an entity may be a citizen of Ukraine, a citizen of another country (except for a citizen of the aggressor state, according to the disposition of the relevant criminal law provision)[1], or a stateless person.

The subjective side of this crime textually implies an indication of the intentional form of guilt and the purpose of causing damage to Ukraine[2]. The criminal law theory is rightly dominated by the position that establishing guilt, its type, and form is an essential prerequisite for a correct legal assessment of the subjective side of a criminal offence. The Supreme Court (and previously the Supreme Court of Ukraine) has systematically addressed the attention of lower courts to the need to scrutinise all the circumstances of the case that legally affect the establishment of guilt, its form, type, and content (Us, 2022).

In the theory of criminal law, there are two positions on the type of intent inherent in aiding and abetting the aggressor state (Myslyvyi & Grachova, 2022). O. Kravchuk & M. Bondarenko (2022) believe that, according to the subjective side, this criminal offence can be committed with different forms of intent, i.e., the possibility of direct or indirect intent is allowed. Another position is that a criminal offence under Article 111-2 of the CCU can only be committed with direct intent (Bukreev *et al*., 2023). This opinion is more reasonable because it is based on two arguments. Firstly, the criminal law doctrine defines the presence of a mandatory purpose of a criminal offence as an indicator of direct intent in the commission of an act. Secondly, although there are different positions in the science of criminal law regarding the content of intent in criminal offences with formal elements, there is a tendency to believe that criminal offences that are considered completed from the moment of direct commission of the act (formal elements of a criminal offence) can be committed exclusively with direct intent (Us, 2022).

To qualify this crime with direct intent, the pre-trial investigation authorities must establish that the person: firstly, was aware of the dangerous nature of their actions for society (was aware of both the factual (objective) signs of the actions committed and their social harm); secondly, foresaw its dangerous consequences (inevitability or potential possibility of their occurrence); thirdly, desired their occurrence (Part 2, Article 24 of the CCU)[3].

The purpose of a criminal offence is recognised as a mandatory element of a crime only if it is expressly prescribed in the disposition of the provision of the CCU or unambiguously follows from its text. The analysis of the disposition of Article 111-2 of the CCU suggests that this crime is committed with the mandatory purpose of causing damage to Ukraine. A mandatory feature of each of the above forms of crime is the focus (defined in the doctrine of criminal law as the concentration of the subject's volitional efforts to commit an unlawful act, due to a certain motivation) of the perpetrator's actions on assisting the aggressor state.

Considering the criminal law analysis of Article 111-2 of the CCU, it is now necessary to identify the controversial issues of law enforcement and distinguishing the crime under study from related corpus delicti of criminal offences. The analysis of judicial and investigative practice has shown that the problem of distinguishing between Part 4 of Article 111-1 and Article 111-2 of the CCU, namely, in qualifying the transfer of material resources to representatives of the aggressor state, is extremely complex. O. Dudorov & R. Movchan (2022b) believe that the fact of transferring material resources to the relevant representatives of the aggressor state should be legally assessed through the application of Part 4 of Article 111-1 of the CCU, while the pre-trial investigation authorities should not additionally establish the purpose of causing damage to Ukraine. An analysis of the provisions of the above criminal law norms suggests that the following circumstances should be considered when distinguishing them: unlawful acts under Part 4 of Article 111-1 of the CCU is characterised by voluntariness, while aiding and abetting the aggressor state also includes the forced transfer of property in the absence of circumstances of extreme necessity; the list of items that may be transferred when aiding and abetting the aggressor state is somewhat wider, since, apart from material resources, it may include "other assets", which is not prescribed under collaborationism; aiding and abetting the aggressor state in terms of the objective side of the crime covers a wider scope of actions than the manifestation of collaboration under Part 4 of Article 111-1 of the CCU; collaboration in certain forms, unlike abetting the aggressor state, can also be carried out by a citizen of the state that committed military aggression located on the territory of Ukraine (Pavlykivskyi & Yashchenko, 2023). According to criminologists O. Kravchuk & M. Bondarenko (2022), when distinguishing between these crimes, attention should be paid to the addressees: both manifestations of collaboration activities indicate the transfer of resources to the relevant representatives of the aggressor state, and therefore there is a conflict of criminal law.

[1]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]Ibidem, 2001.
[3]Ibidem, 2001.

Whereas in the case of transfer of these assets to the armed or paramilitary formations of the aggressor state, which were formed in the temporarily occupied territory, such illegal actions should be qualified under Part 4 of Article 111-1 of the CCU[1].

Comparing collaboration and aiding and abetting the aggressor state, A. Plotnikova (2022) concludes that they have the same generic object of a criminal offence, as well as similar definitions of the objective side of criminal offences, which leads to competition of criminal law provisions, which in the future threatens to create corruption risks for government officials. This leads to a logical conclusion based on both the constitutional principle that all doubts about the proven guilt of a person are interpreted in their favour and the principle of legal certainty: the transfer of material resources to the armed forces of the aggressor state should be qualified under Part 4 of Article 111-1 of the CCU.

An analysis of the literature and analytical reports found that representatives of law enforcement agencies, enterprises, institutions, and organisations have different positions on the organisation of future activities in the occupied territories of Ukraine and noted the need to improve criminal liability for collaboration (Bukreev *et al*., 2023). However, there are criminal proceedings and one court verdict under Article 111-2 of the CCU for paying taxes to the Russian budget in the occupied territory of Ukraine. In other words, the law enforcement agencies of Ukraine charge perpetrators of tax evasion to the aggressor state with a form of crime such as voluntary collection, preparation, and/or transfer of material resources or other assets to representatives of the aggressor state.

Thus, by the verdict of the Ivano-Frankivsk City Court of Ivano-Frankivsk Region dated 12 October 2023, the perpetrator was convicted of a crime under Part 1 of Article 111-2 of the CCU[2] and sentenced to twelve years of imprisonment with disqualification to hold any position in local government for fifteen years with confiscation of property[3]. The perpetrator committed the following intentional actions aimed at assisting the aggressor state to harm Ukraine, including the implementation or support of decisions and actions of the aggressor state and the occupation administration of the aggressor state. For instance, the perpetrator implemented the decision of the occupation administration of the aggressor state and in August 2022 voluntarily registered the Slobozhanskyi agricultural production and service cooperative with illegal authorities. This cooperative, according to Russian legislation, began paying taxes to the budget of the "LPR", i.e., voluntarily transferred assets to representatives of the aggressor state. Expressing solidarity with the activities of the aggressor state, on 11 August 2022, the perpetrator publicly supported them on the Russian video hosting site Rutube and announced the establishment of new ties with the enterprises of the "LPR" for further cooperation with the aggressor state, expressing gratitude to the Minister of Agriculture of the "LPR" and the leadership of the "LPR" for their support in the activities of the economy. Notably, when qualifying such actions, the pre-trial investigation authorities establish the anti-Ukrainian nature of the perpetrator's behaviour. This is confirmed by the following evidence obtained by law enforcement agencies: public statements by the perpetrator that they cooperated with the enterprises of the "LPR" in favour of the aggressor state, which were posted on various websites and on the Russian video hosting site Rutube.

When qualifying such situations, it is vital to establish both objective and subjective signs of the relevant crime. The payment of taxes as a form of collaboration is not prohibited by international humanitarian law. Such a manifestation of aiding and abetting the aggressor state is more difficult to measure in terms of legal assessment. Since its humanitarian nature, namely, ensuring the livelihoods of the civilian population of the territories occupied by the Russian Federation, and solving the everyday problems of such persons, in our opinion, indicates its insignificant social danger, unlike "wartime collaboration". To be fair, it can be argued that the payment of taxes in the occupied territory with certain conditions does not differ substantially from the normal labour activity of the civilian population prior to the occupation. Such economic activities and forced "cooperation" with the occupation authorities are forced due to the certain influence of the general labour duty and life circumstances. Therefore, E. Pysmenskyi (2020) and A. Politova (2022) suggest that these civilians who formally cooperate with the occupation authorities should not be considered collaborators in the usual sense of the term. Effectively, national legislation has introduced a mechanism whereby certain types of economic collaboration are effectively equated with wartime collaboration, which is not in line with international humanitarian law.

The above suggests that collaboration activities cannot be assessed one-sidedly. Based on the analysis of judicial practice, the study found that the broad scope of criminal liability for acts of collaboration, the presence of evaluative features (specifically, the regulatory vagueness of the term "material resources", which leads to a broad interpretation by the courts), which is typical for corpus delicti, make it difficult to determine the boundaries between Articles 111-1 and 111-2 of the CCU. For instance, a person was convicted for

[1]Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]Ibidem, 2001.
[3]Verdict of Ivano-Frankivsk City Court of Ivano-Frankivsk Region No. 344/12085/23. (2023, October). Retrieved from https://reyestr.court.gov.ua/Review/114110442.

actions that, due to their insignificance, should not have been considered a crime. For example, the convict, as a stoker, worked on the territory to which he had to pass through the checkpoint of the occupation forces, and to facilitate the passage of the checkpoint, he handed over water, cigarettes, and a SIM card of the mobile operator "VF Ukraine" to the occupation forces, which the court recognised as "material resources"[1]. At the same time, this complicates the process of imposing an adequate punishment. For example, a man who personally slaughtered two sheep and handed over their carcasses to the occupiers, thus contributing to their occupation activities, was sentenced to one year and three months in prison, disqualification from holding office for ten years and confiscation of property[2]. At the same time, a person who provided free material resources to the military personnel of the Russian occupation forces, such as cooking, washing clothes, and transferring sheep carcasses to the occupiers free of charge, was punished with a fine of UAH 17,850, a ban on holding elected office and confiscation of property[3]. An analysis of international humanitarian law shows that the humanitarian component of voluntary cooperation between civilians and representatives of the aggressor state has a different legal meaning, which should be considered upon the criminal law qualification of such actions (Zhidkov, 2023).

An analysis of law enforcement practice has shown that threshold situations often arise in the occupied territory of Ukraine when Ukrainian citizens deliberately violate national legislation to avoid reprisals by the aggressor state. The international practice of legal assessment of persons in the occupied territory also suggests that it is sometimes difficult to distinguish between legitimate activities and collaborationism (Galvis, 2022), which indicates the need to change the paradigm of the state's attitude towards collaboration and clarify not only its forms, but also the conditions of commission and potential consequences. Another important issue, as noted by V. Bauer *et al*. (2022), is the provision of security guarantees for persons in the occupied territory who are forced to cooperate with the aggressor state. On the one hand, the Ukrainian authorities are trying to resolve certain problems related to the legal protection of persons who have found themselves in the temporarily occupied territories of Ukraine and are resisting the Russian aggressor by regulatory means[4,5]. On the other hand, it can be stated that there are only prohibitive norms regarding the civilian population under occupation and forced to cooperate with representatives of the aggressor state.

Decisive for the legal assessment of such behaviour should be the regulations in the field of international humanitarian law that govern the legal status of civilians in the occupied territories (Bogoniuk *et al*., 2022). Such documents are known to include the Geneva Conventions and their Additional Protocols, the Hague Conventions and their annexes, as well as customary law and other sources of such law. For instance, Article 48 of Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land prescribes that if a representative of the aggressor state collects relevant tax payments determined by the state in the occupied territory, they shall do so, if possible, under the applicable taxation rules. As a result, they are obliged to bear the costs of governing the occupied territory to the same extent as the legitimate government[6].

Thus, international humanitarian law regulates the procedure for taxation of income of persons in the occupied territory. Such activities are considered acceptable by the occupation authorities. If the taxation of income in the occupied territory is legitimate from the standpoint of international conventions, then paying taxes is certainly a legitimate activity. If this provision is ignored, all citizens of Ukraine living in the occupied territory (the Autonomous Republic of Crimea, eastern and southern regions of the country) automatically become potential offenders from the standpoint of Ukrainian criminal legislation. This is certainly not in line with the social purpose of the CCU and Ukraine's international obligations. Ukrainian legislation affirms the primacy of international law. This is reflected in Article X of the Declaration of State Sovereignty

[1]Verdict of the Buryn District Court of the Sumy Region No. 574/369/22. (2022, December). Retrieved from https://reyestr.court.gov.ua/Review/107991214.
[2]Verdict of the Trostyanetsk District Court, Sumy Region No. 588/713/22. (2022, August). Retrieved from https://reyestr.court.gov.ua/Review/105808995.
[3]Verdict of the Lebedyn district court of Sumy Region No. 588/672/22. (2022, September). Retrieved from https://reyestr.court.gov.ua/Review/106096380.
[4]Resolution of the Cabinet of Ministers of Ukraine No. 1451 "Procedure for Compensation for Damages in Connection with Detention, Arrest or Conviction by Illegal Bodies or Formations Formed in the Temporarily Occupied Territories of Ukraine, or by Bodies or Formations of a Country that Carries out Armed Aggression Against Ukraine, to Persons Involved in Confidential Cooperation with the Forces of Special Operations of the Armed Forces". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1451-2021-п#Text.
[5]Resolution of the Cabinet of Ministers of Ukraine No. 1452 "Procedure for Granting the Status of a Participant in Hostilities to Persons Involved in Confidential Cooperation who Took Part in the Performance of the Tasks of the Resistance Movement in the Temporarily Occupied Territory of Ukraine, in the Area of ATO/OCF, or in Other Territories where Hostilities were Conducted". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1452-2021-п#Text.
[6]Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land. (1907, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_222?lang=en#Text.

of Ukraine, which states that Ukraine recognises the primacy of international law over national norms[1]. Article 9 of the Constitution of Ukraine states that international agreements in force and ratified by the Verkhovna Rada of Ukraine form an integral part of national legislation. The conclusion of international treaties that contradict the Constitution of Ukraine is possible only after the relevant amendments to the Fundamental Law of Ukraine[2] are introduced. The provisions contained in Article 19 of the Law of Ukraine No. 1906-IV dated 29 June 2004 should also be considered. According to this Article, if an international treaty of Ukraine, which has entered into force following the established procedure, establishes rules other than those prescribed in the relevant act of national legislation, the rules of the international treaty shall apply[3].

The voluntary nature of the relevant actions is of practical importance for the qualification of this form of abetting the aggressor state. This sign means that a person consciously performs certain actions without any coercion (physical or mental). Voluntariness is interpreted as the participation of a subject in an act that is carried out of their own free will and initiative (Pysmenskyi, 2020). There is no doubt about the opinion of M. Rubashchenko (2019), who fairly notes that under occupation, the civilian population is in an environment of constant real or potential violence. Clearly, the civilian population of the Russian-occupied territory of Ukraine is under the full control of the overwhelming number of armed war criminals. Representatives of the Ukrainian authorities are effectively deprived of the opportunity to provide assistance to such persons. Therefore, according to M. Rubashchenko (2019), even the "voluntary" economic activity of the civilian population under such conditions ceases to be voluntary in its real meaning. Thus, if a Ukrainian citizen in the occupied territory pays taxes, fees, and other mandatory payments to the Russian budget at any level, the question arises whether they do so voluntarily. As is known, in Ukraine, the obligation to pay taxes is stipulated in Article 67 of the Constitution of Ukraine as an unconditional requirement of the state, and Article 57 of the Constitution of the Russian Federation states that everyone shall pay legally established taxes and fees. It is also necessary to consider the features of the concept of taxes and duties as defined in Article 8 of the Tax Code of the Russian Federation. According to this Article, a tax or fee is a mandatory and individual gratuitous payment. This payment is levied on individuals and legal entities in the form of alienation of their funds for the purpose of financial support of the activities of the state and/or its municipalities[4].

Article 6 of the Tax Code of Ukraine defines the following regulatory features of a tax: 1) mandatory payment; 2) unconditional payment; 3) payment to the relevant budget or to a single account; 4) payment levied on taxpayers according to the Tax Code of Ukraine[5]. In financial law, the characteristics of a tax are as follows: mandatory, unconditional, revenues to the relevant budget, established by an act of a public authority, non-targeted and individually free and monetary, and irrevocable.

It is an apparent fact that a citizen of Ukraine living in the occupied territory cannot avoid paying taxes. Because the aggressor state will force people to pay taxes through repressive mechanisms for failing to perform this constitutional obligation (since it actually controls the occupied Ukrainian territory and considers it its own). In addition, the definition of the term "tax" in Russian legislation implies that it is a payment levied on individuals and legal entities in the form of transferring their funds to meet the financial needs of the state and/or municipalities[6]. That is, it is not a person's right to pay tax liabilities, but an obligation not to obstruct the collection of funds to the Russian budget.

Furthermore, the payment of funds to the Russian budget on the territory of Ukraine temporarily occupied by the Russian Federation may also contain signs of an act committed under the influence of physical or mental coercion, and therefore meet the conditions of extreme necessity. In addition, it follows from the term "tax" prescribed in Article 8 of the Tax Code of the Russian Federation that it is a payment levied on legal entities and individuals for the purpose of financial support of the activities of state bodies and local self-government[7]. In other words, even if the Russian legislation does not define the criminal purposes for which such payments may be made, an individual or legal entity cannot be aware of the concrete purposes for which such payments will be transferred. It can be stated that when qualifying such a crime, the pre-trial investigation authorities will be unable to clearly establish that the funds recovered from the Russian budget are used for criminal purposes, and not, for example, for the maintenance of public utilities or payment of pensions. As noted above, one of the features of a tax is its non-designated nature, i.e., tax revenues are not intended for concrete public expenditures, and public expenditures cannot be conditioned by the receipt

[1]Declaration on State Sovereignty of Ukraine. (1990, July). Retrieved from https://zakon.rada.gov.ua/laws/show/55-12#Text.
[2]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/card/254%D0%BA/96-%D0%B2%D1%80.
[3]Law of Ukraine No. 1906-IV "On International Treaties of Ukraine". (2004, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1906-15#Text.
[4]Tax Code of the Russian Federation. (1999, July). Retrieved from https://www.wipo.int/wipolex/en/text/586700.
[5]Tax Code of Ukraine. (2010, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2755-17#Text.
[6]Tax Code of the Russian Federation. (1999, July). Retrieved from https://www.wipo.int/wipolex/en/text/586700.
[7]Ibidem, 1999.

of funds from taxation (Kucheryavenko, 2016). When qualifying the crime under Article 111-2 of the CCU, the pre-trial investigation authorities should clearly formulate the purpose (to harm Ukraine) (describe how personalised tax payments harm the interests of Ukraine) and not be abstract.

The foregoing indicates that the payment of taxes, duties, and other mandatory payments to the Russian budget of any level in the territory of Ukraine occupied by the Russian Federation, made by a citizen of Ukraine, a foreigner, or a stateless person for themselves or on behalf of and in the interests of legal entities registered in the territory of the Russian Federation, cannot be considered as a voluntary collection, preparation, or transfer of assets, material resources to representatives of the Russian Federation, its armed forces and/or the occupation administration. This is because, firstly, it does not follow the international humanitarian law, specifically Article 48 of Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land[1] and, secondly, it does not contain such a feature as voluntariness, which is a mandatory feature of a crime under the CCU.

## Conclusions

Russian aggression has led to the transformation of criminal law policy in the field of combating crimes against national security. The criminalisation of various manifestations of collaboration (Articles 111-1 and 111-2 of the CCU), on the one hand, allowed for differentiation of criminal liability for different forms of cooperation with the aggressor state; on the other hand, it created unjustified competition between the provisions and complicated law enforcement. The study concluded that the new criminal law prohibitions apply to an extremely wide circle of persons due to the new approach of Ukrainian criminal law, which effectively equates certain types of humanitarian collaboration with military collaboration, which does not follow the international humanitarian law. An analysis of law enforcement practice has shown that threshold situations often arise in the occupied territory of Ukraine when Ukrainian citizens deliberately violate national legislation to avoid reprisals by the aggressor state. The specific features of the construction of these manifestations of collaboration do not allow for a clear distinction between legitimate activities and collaboration, which indicates the need to change the paradigm of the state's attitude towards collaboration and clarify not only its forms, but also the conditions of commission and potential consequences. It was found that the application of international humanitarian law in this area is crucial for the civilian population under occupation. Decisive for the legal assessment of such behaviour should be the regulations in the field of international humanitarian law that govern the legal status of the civilian population in the occupied territories. Such documents include the Geneva Conventions and Additional Protocols thereto; the Hague Conventions and their annexes; customary law and other sources of such law. The study provided a legal assessment of a common typical situation when, first of all, a citizen of Ukraine, staying in the territory occupied by the Russian Federation, pays taxes, fees, and other mandatory payments to the Russian budget of any level. It is concluded that such activities do not constitute aiding and abetting the aggressor state, as they do not follow the international humanitarian law (specifically, Article 48 of Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land) and do not contain such a feature as voluntariness, which is a mandatory element of the crime under Article 111-2 of the CCU.

Prospects for further research in this area are to investigate other manifestations of corrupt practices, to define clear algorithms for their qualification, and to identify model structures for improving criminal legislation.

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## Conflict of Interest

The authors of this study declare no conflict of interest.

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# Особливості правової оцінки пособництва державі-агресору: національний та міжнародний виміри

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**Анотація**
Здійснена українським законодавцем диференціація кримінальної відповідальності за окремі вияви колабораційної діяльності спричинила невиправдану конкуренцію та значні складнощі під час кваліфікації відповідних протиправних діянь. Мета статті – аналіз особливостей кримінальної відповідальності за пособництво державі-агресору в національному та міжнародному вимірах. Для досягнення завдань статті було використано комплекс наукових методів: догматичний – під час аналізу юридичних конструкцій складів колабораційної діяльності та пособництва державі-агресору; порівняльно-правовий – у межах зіставлення норм про відповідальність за колабораційну діяльність і норм міжнародного гуманітарного права. Дослідження засвідчило, що в українській кримінально-правовій теорії та судовій практиці не сформовано узгоджені підходи до застосування норм, що стосуються відповідальності за колабораційну діяльність. У статті акцентовано на тому, що в кримінальному законодавстві України застосовують підхід, за якого окремі види економічного колабораціонізму фактично ототожнюються з воєнним колабораціонізмом, що не відповідає нормам міжнародного гуманітарного права. Сформульовано висновок, що під час кваліфікації передачі матеріальних ресурсів представникам держави-агресора виникає конкуренція норм – ч. 4 ст. 111-1 і ст. 111-2 Кримінального кодексу України. У такій ситуації видається доцільним застосовувати норму про відповідальність за колабораційну діяльність. Встановлено, що сплата податків, зборів й інших обов'язкових платежів до російського бюджету будь-якого рівня, вчиненого на окупованій території України, громадянином України, іноземцем, особою без громадянства за себе та/або в інтересах від імені юридичних осіб, які зареєстровані на території Російської Федерації, не можуть бути охоплені об'єктивною стороною пособництва державі-агресору, оскільки це не відповідає нормам міжнародного гуманітарного права й не містить такої ознаки, як добровільність, що є обов'язковою ознакою злочину, передбаченого ст. 111-2 Кримінального кодексу України. Практичне значення статті полягає у визначенні певних правил кваліфікації пособництва державі-агресору, які можуть бути використані органами досудового розслідування під час здійснення правової оцінки такої поведінки

**Ключові слова:**
злочини проти національної безпеки України; кваліфікація злочину; колабораційна діяльність; кримінальна відповідальність; міжнародне гуманітарне право; склад кримінального правопорушення