

## **TERRITORIAL BOUNDARIES OF CRIMINAL JURISDICTION OF UKRAINE**

**Oleksandr Zhytnyi**

### **INTRODUCTION**

The idea about national criminal law as about spatial sphere and at the same time as a tool that serves to protect the most valuable public relations within the country, to maintain international law and order and international cooperation in the field of combating crime, and which can be applied to crimes committed both in the country and abroad, requires detailed legislative regulation of the limits of national criminal law (the research was conducted taking into account jurisdictional rescripts of the Criminal Code (CC) of Ukraine of 2001).

One of the most important aspects of this problem is the consideration of interaction and relationship between the criminal law of the country and the principles and norms of international law. In today's world, law enforcement agencies, when globalization becomes one of the tendencies of modern life in the world and a feature of most social practices (including criminal ones), are increasingly confronted with the need to apply the law to criminal acts committed on the territories of several states. This is due to the development of traditional and the emergence of new forms of transnational crimes, such as international drug crime, cybercrime, terrorism, trafficking in human beings, weapons, organs and tissues of the human body, antiques, stolen cars, etc. Besides, country's international obligations require it to implement the provisions of a number of international conventions on combating certain types of crime into national law. These circumstances require careful regulation by the national criminal law regarding the limits of the state's powers to apply.

### **1. National Criminal Jurisdiction in Regard to Crimes Committed on Ukraine's Territory: General Regulation Principles**

Territory is the necessary attribute of the state, the material basis of the life of its people. The Constitution of Ukraine links the assertion of national sovereignty and territorial supremacy of Ukraine with the territory of the state (Article 3)<sup>1</sup>. According to J. Brownlie, "The legal competence of states and the norms of their

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<sup>1</sup> Konstytutsiia Ukrainy [Constitution of Ukraine]. 1996, June 28. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].

protection depend on the presence and presuppose the existence of a stable, physically bounded territorial and political organism (*homeland*)”<sup>2</sup>.

The main principle of criminal jurisdiction is the fact that the state owns it fully within its territory. The legislation of Ukraine correlates to the territorial principle of the validity of the criminal law in space: all persons committed crimes on the territory of Ukraine are liable on the basis of the Criminal Code of Ukraine (Part 1 of the Art. 6 of the Criminal Code). It expresses the well-known idea of applying the law of the crime scene to the person who committed the crime.

The criminal law literature of Ukraine refers to several groups of objects, which are under the Criminal Code of Ukraine. The first group is objects that are part of the territory of Ukraine (for example, land within the state border of Ukraine). The second is objects that are not geographically within the territory of Ukraine but are equal to it (for example, warships or boats that navigate under the flag of Ukraine). The third is objects and spaces that equate to the territory of Ukraine in cases stipulated by international law (for example, the exclusive (maritime) economic zone of Ukraine)<sup>3</sup>. However, there are differences in the field of criminal science related to the recognition of certain objects that unconditionally belong to the territory of Ukraine or provisionally recognized by Ukraine in the interests of extending the criminal jurisdiction of Ukraine. For example, some attribute the continental shelf to the territory of Ukraine<sup>4</sup>, others call it as the object that is not the territory of Ukraine, but which, under certain conditions provided by international and national law, is within the scope of the Criminal Code of Ukraine<sup>5</sup>, and others do not mention it while revealing the constituent territories of Ukraine<sup>6</sup>.

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<sup>2</sup> Brounli, Ya. (1977). *Mezhdunarodnoe pravo [International law]*. Moskov: Progress [in Russian], p. 174.

<sup>3</sup> Malyarenko, V.T., Stashis, V.V., Tacyi, V.Y. (Eds.). (2004). *Kryminalnyi kodeks Ukrainy: naukovo-praktychnyi komentar [Criminal code of Ukraine: scientific and practical commentary]*. Kharkiv: Odyssey [in Ukrainian], p. 20–22; Melnyk, M.I., Khavroniuk, M.I. (Eds.). (2008) *Naukovo-praktychnyi komentar do Kryminalnoho kodeksu Ukrainy [Scientific and Practical Commentary to the Criminal Code of Ukraine]*. Kyiv: Yurydychna dumka Legal Opinion[in Ukrainian], p. 24–26; Andrushko, P.P. Honcharenko, V.H., Fesenko, Ye.V. (Eds.) (2009). *Naukovo-praktychnyi komentar do Kryminalnoho kodeksu Ukrainy [Scientific and Practical Commentary to the Criminal Code of Ukraine]*. Kyiv: Alerta ; KNT ; Tsentri uchbovoi literatury [in Ukrainian], C. 30–31.

<sup>4</sup> Melnyk, M.I., Khavroniuk, M.I. (Eds.). (2008) *Naukovo-praktychnyi komentar do Kryminalnoho kodeksu Ukrainy [Scientific and Practical Commentary to the Criminal Code of Ukraine]*. Kyiv: Yurydychna dumka Legal Opinion[in Ukrainian], p. 24.

<sup>5</sup> Malyarenko, V.T., Stashis, V.V., Tacyi, V.Y. (Eds.). (2004). *Kryminalnyi kodeks Ukrainy: naukovo-praktychnyi komentar [Criminal code of Ukraine: scientific and practical commentary]*. Kharkiv: Odyssey [in Ukrainian], p. 21.

<sup>6</sup> Yatsenko, S.S. (Eds.). (2003). *Ugolovnyi kodeks Ukrainyi: nauchno-prakticheskiy kommentariy [Criminal Code of Ukraine: scientific and practical commentary]*. Kyiv: A.C.K. [in Ukrainian], p. 12.

Generalization of the constitutional and administrative legislation of Ukraine, as well as the norms of international law allows to conclude that we should understand the territory of Ukraine in the context of the provisions of the Art. 6 of the Criminal Code, as the natural spaces or artificial objects, where a crime may be initiated, continued, terminated or stopped. These include:

1) the state territory of Ukraine. It is the part of the globe that is under its sovereignty and whose outer borders are marked by the state border of Ukraine. The Law of Ukraine “On the State Border of Ukraine” defines it as a line and a vertical surface running along this line, which define the boundaries of the territory of Ukraine – land, water, subsoil, air space<sup>7</sup>;

2) spaces, natural and artificial objects permanently located outside the boundaries of the state border of Ukraine (continental shelf, exclusive maritime economic zone, submarine cables and pipelines belonging to Ukraine and passing along the bottom outside the territorial waters of any state). They are adjacent to the territory of Ukraine, but they are not part of it. The jurisdiction of Ukraine extends to them within the limits defined by the norms and principles of international law;

3) artificial objects, which due to their mobility, may be located anywhere outside the territory of Ukraine (military and non-military water and air vehicles launched in space by Ukraine), but are equated with it and are under the criminal jurisdiction of the country in accordance with international legal practice, under the flag or sign they stay. Such division of territories of the state is known for a long time. Thus, back in the XIX century specialists distinguished the *real* territory of the state (land, water, air space above them, which are under the supreme power of the state) and the *sham* territory, which may be wider or narrower than the real and is determined by international legislation and national law of the country<sup>8</sup>.

Besides, it should be noted that Ukraine, in accordance with the Law of Ukraine dated from April 15, 2014 No. 1207-VII “On Ensuring the Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine”, officially recognized Autonomous Republic of Crimea as the territory temporarily occupied by the Russian Federation<sup>9</sup>. In this

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<sup>7</sup> Zakon Ukrainy Pro derzhavnyi kordon Ukrainy [On the State Border of Ukraine]. (1991, April 4). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].

<sup>8</sup> Tagantsev, N. S. (1994). *Russkoe ugovnoe pravo [Russian criminal law]*. Moscow: Nauka [in Russian], p. 123-124.

<sup>9</sup> Zakon Ukrainy Pro zabezpechennia prav i svobod hromadian ta pravovyi rezhym na tymchasovo okupovaniu terytorii Ukrainy [On Ensuring the Rights and Freedoms of Citizens and

regard, we should follow the provisions of the Convention on the Protection of Civilians during the War dated from 12 August 1949 while dealing the issues of the criminal jurisdiction of Ukraine on this territory. The criminal law of the Occupied Territory in accordance with Part 1 of the Art. 64 of this Convention, remains in force, except cases, when its action is abolished or suspended by the occupying country, if such law constitutes the threat to the security of the occupying country or impedes the implementation of this Convention. In this regard, the Criminal Code of Ukraine is in force and acts concerning the crimes committed on the temporarily occupied territory of Ukraine<sup>10</sup>.

## **2. International Regulation of Boundaries and Types of the Country's Territory as a Spatial Basis of National Criminal Jurisdiction**

On the basis of the norms of international law, the criminal jurisdiction of the country extends to objects that are actually located outside this territory. Nowadays, there are generally recognized concepts within international law in regard to the territory, which is understood in the broad sense as the natural spaces of the Earth (land and water, seabed, subsoil), air space in its atmosphere, outer space, celestial bodies, artificial objects and structures (spacecrafts, fixed offshore platforms, etc.)<sup>11</sup>. There are several classifications of territory within international and legal literature. Thus, J. Brownlie distinguishes territorial sovereignty according to the regime of the territory; the territory not covered by the sovereignty of any state or a group of states and having its own status (e.g., trust areas); *res nullius*; *res communis*<sup>12</sup>. T. Syroid offered a clearer classification of territories: 1) state territory; 2) international public territory; 3) mixed-regime territory. The state territory means the territory that is under the sovereignty of a particular state, which exercises its territorial primacy within its boundaries. International Public Territory is areas not covered by the sovereignty of any state and which are in the common use of all states under international law (open sea, air space above it, international seabed). Mixed-regime territory is continental shelf, an exclusive economic zone and an adjoining zone – spaces that are not under the

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the Legal Regime in the Temporarily Occupied Territory of Ukraine]. (n.d.). *zakon3.rada.gov.ua* Retrieved from <http://zakon3.rada.gov.ua/laws/show/1207-18> [in Ukrainian].

<sup>10</sup> Konventsiiia pro zakhyst tsyvilnoho naseleattia pid chas viiny [Convention for the Protection of Civilian Persons in Time of War]. (n.d.). *zakon5.rada.gov.ua*. Retrieved from [http://zakon5.rada.gov.ua/laws/show/995\\_154/print1459194719931410](http://zakon5.rada.gov.ua/laws/show/995_154/print1459194719931410) [in Ukrainian].

<sup>11</sup> Buromensky, M.V. (Eds.). (2006). *Mizhnarodne pravo [International Law]*. Kyiv: Yurinkom Inter [in Ukrainian], C. 94; Baimuratov, M.O. (2002) *Mizhnarodne pravo [International Law]*. Kharkiv: Odyssey [in Ukrainian], p. 399.

<sup>12</sup> Brounli, Ya. (1977). *Mezhdunarodnoe pravo [International law]*. Moskov: Progress [in Russian], p. 179.

sovereignty of a particular country, located outside its borders, and which are simultaneously subject to international law (the United Nations Convention on the Law of the Sea of 1982), and, coastal state legislation on some issues<sup>13</sup>. Some other specialists offer a similar classification of territories<sup>14</sup>. M. Baimuratov also includes international streams and channels to the territories with mixed-regime<sup>15</sup>.

International law distinguishes the *conditional territory of the state* (“quasi-state territory”) – it is the territory of diplomatic missions of the state abroad, merchant ships in the high seas, aircrafts and spacecrafts under the flag or sign of this state, underwater pipelines and cables, surface structures in the high seas (above the shelf). Among these objects (also referred to as “floating”, “flying”, “space” territories, etc.) we distinguish absolute (warships equivalent to the territory of their state) and relative or conditional territory (e.g., transport of the head of a diplomatic mission)<sup>16</sup>.

Thus, the “territorial principle of the validity of the criminal law of Ukraine in space” extends criminal jurisdiction to places that are the state territory of Ukraine and to spaces that are recognized only by international agreements and are under the jurisdiction of Ukraine. However, the Ukrainian legislator covers all these places with the concept of “territory of Ukraine” in violation of the principles and criteria for the classification of territory within international law. Therefore, the Art. 6 of the Criminal Code in the current wording can be regarded as the norm with legal fiction.

Legal fiction is understood as such regulatory prescriptions as enshrined in legal acts and used in legal practice in the form of a specific mean (approach), which is expressed in a conditional declaration of an existing fact or other circumstances that did not actually take place or are not established<sup>17</sup>. Fictions are not something negative in law. Their use is conditioned by the intrinsic

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<sup>13</sup> Syroid, T. L. (2005). *Mizhnarodne publichne pravo [Public International Law]*. Kharkiv: Prometei-Pres [in Ukrainian], p. 75.

<sup>14</sup> Kalmakaryan, R.A., & Migachev, Y.I. (2004). *Mezhdunarodnoe pravo [International law]*. Moscow: Eksmo [in Russian], p. 465.

<sup>15</sup> Baimuratov, M.O. (2006) *Mizhnarodne pravo [International law]*. Sumy: University book; Odessa: Astroprint [in Ukrainian], p. 263; Ignatenko, G.V., & Tiunov, O.I. (1999). *Mezhdunarodnoe pravo [International law]*. Moscow: NORMA – INFRA [in Russian], p. 292.

<sup>16</sup> Baimuratov, M.O. (2002) *Mizhnarodne pravo [International Law]*. Kharkiv: Odyssey [in Ukrainian], p. 411; Matsko, A. (2003) *Mizhnarodne pravo [International Law]*. Kyiv: MAUP [in Ukrainian], p. 23; Kalmakaryan, R.A., & Migachev, Y.I. (2004). *Mezhdunarodnoe pravo [International law]*. Moscow: Eksmo [in Russian], p. 466.

<sup>17</sup> Gorshenev, V.M. (1978). *Netipichnyie normativnyie predpisaniya v prave [Atypical regulatory requirements in law]*. *Sovetskoe gosudarstvo i pravo – Soviet state and law*, 3, 117–118 [in Russian], p. 117; Tsvik, M.V., Tkachenko, V.D., Petryshyn, O.V. (Eds.). (2002). *Zahalna teoriia derzhavy i prava [General theory of state and law]*. Kharkiv: Pravo [in Ukrainian], p. 287.

features of law as a regulator of social relations, in particular, as its property as formal certainty; the basis of the existence of fictions is the mismatch of the legal form and social content. The fictitious norms identify uncertainties for their object of regulation. They give them the forms of legal facts and are an extraordinary technical and legal decision of the legislator<sup>18</sup>. In our opinion, the existence of fictions is not justified in regard to the regulation of territorial jurisdiction within criminal law. It can be removed from the text of the criminal law. There are several reasons for this correction. First of all, the content of the concept of “territory of Ukraine”, as previously demonstrated, does not fully correspond to the understanding of the territory of the state in the criminal law (the Art. 6 of the Criminal Code) provided to it in international law. Secondly, the Art. 6 of the Criminal Code does not reflect the fact of the delimitation of the law in space in accordance with the full criminal jurisdiction of Ukraine and limited by such jurisdiction. It is very important issue in view of the mutual respect obligation of the subjects of international relations to the sovereignty and jurisdiction of other subjects. Thus, Ukraine has full, absolute criminal jurisdiction in respect to its state territory (spaces within its state border), in the sense that the crime and punishment of any acts committed in this space are determined in any case by the Criminal Code of Ukraine. However, in such areas as the continental shelf, the exclusive maritime economic zone this jurisdiction is limited<sup>19</sup>. It is applied only to offenses established by international law. In particular it is applied to the issues on realizing the right to biological and mineral resources and to the activities related to the exploration, development and conservation of such resources. Legal relations that arise in this connection are regulated by the laws of Ukraine. Ukraine also exercises national jurisdiction in regard to objects that are within its exclusive (maritime) economic zone (artificial islands, equipment, structures, etc.). In other matters, the norms and principles of international law act on the continental shelf and the exclusive (maritime) economic zone, and in some matters – the norms of law of foreign countries. Thus, according to the Art. 4 of the Law of Ukraine “On the Exclusive (Maritime) Economic Zone of Ukraine” Ukraine has sovereign rights in its exclusive (maritime) economic zone to explore, develop and conserve natural resources both living and inanimate in the waters covering the seabed, on the

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<sup>18</sup>Panko, K.K. (2004) Metodologiya i teoriya zakonodatelnoy tehniki ugolovnoogo prava Rossii [*Methodology and theory of the legislative technique of criminal law in Russia*]. Voronezh: Publishing house of Voronezh state University [in Russian]. p. 224–228.

<sup>19</sup> Moiseev, O.I. (2007) Kryminalno-pravova yurysdyktsiia Ukrainy shchodo zlochyniv, vchynenykh za yii mezhamy [*Criminal Law Jurisdiction of Ukraine on Crimes Committed Outside It*]. *Extended abstract of candidate's thesis*. Kharkiv: Yaroslav Mudryi National Law University [in Ukrainian].

seabed and in its depths, as well as to manage these resources and to undertake other economic exploration and development activities, including the generation of energy through the use of water, streams and wind; the jurisdiction provided by the relevant provisions of this Law and the norms of international law for the creation and use of artificial islands, installations and structures, the conduction of marine scientific research, the protection and conservation of the marine environment; other rights provided by this Law, other legislative acts of Ukraine and generally recognized norms of international law<sup>20</sup>. According to the wording of the Art. 6 of the Criminal Code, liability under this Code should be incurred for all crimes committed in a place, which this norm recognizes as the territory of Ukraine (including on the continental shelf and in the exclusive (maritime) economic zone). In fact, the jurisdiction of Ukraine in some territories extends only to certain crimes. Thus, if an act, related to the violation the norms and rules of the development and conservation of marine and mineral resources, was committed on board of a foreign vessel being in the economic zone of Ukraine, it may be qualified according to the Criminal Code of Ukraine and its perpetrators – should be responsible under this criminal law (for example, under the Art. 243 of the Criminal Code “Sea Pollution”). If, a foreign sailor on the same territory, causes personal injury to his compatriot, the offense is outside the criminal jurisdiction of Ukraine. This practice is generally accepted<sup>21</sup>.

*Thirdly*, some objects are considered to be Ukrainian territory only if it is recognized by international law (this statement is applied to quasi-state territory). These are, in particular, space objects launched by Ukraine into space. According to the Art. VIII of the Treaty on the Principles of the Activities of States for the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (entered into force on October 10, 1967, for Ukraine – October 31, 1967) a State Member to the Treaty, which register contains the object launched into outer space retains jurisdiction and control over such object and over any crew of that object during their stay in outer space, including on celestial body<sup>22</sup>. Therefore, according to the norms of international space law, the crime and punishment of an act committed on a

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<sup>20</sup> Zakon Ukrainy Pro vykliuchnu (morsku) ekonomichnu zonu Ukrainy [On the exclusive (maritime) economic zone of Ukraine]. (1995, Maj 16). *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*. Kyiv: Parlam. vyd-vo [in Ukrainian].

<sup>21</sup> Malinin, V.B. (Eds.). (2005). Entsiklopediya ugolovnogo prava [*Encyclopedia of Criminal Law*]. SPb.: Izdanie professora Malinina [in Russian], P. 188-189.

<sup>22</sup> Dohovor pro pryntsyypy diialnosti derzhav po doslidzhenniu i vykorystanniu kosmichnoho prostoru, vkluchaiuchy Misiats ta inshi nebesni tila [Treaty on the Principles of the Activities of States for the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodie]. (n.d.) *zakon4.rada.gov.ua*. Retrieved from [http://zakon4.rada.gov.ua/laws/show/995\\_480](http://zakon4.rada.gov.ua/laws/show/995_480) [in Ukrainian].

spacecraft's board should be determined by the Criminal Code of Ukraine, if it is the state of registration of this object. If there is no such a norm, the surface and interior premises of such a device after leaving the state territory of Ukraine would not be considered as places, where its criminal jurisdiction is exercised.

The same is applied to the so-called “floating” and “flying” quasi-state territory. Thus, the International Convention on the Unification of Certain Rules on Criminal Jurisdiction in Cases of Vessels Collision and Other Incidents Related to Navigation of 1952 stipulates that, in case of a collision or any incident in the field of shipping, which is connected with marine vessels and incurs criminal or any other liability of the captain or other person serving on the vessel, criminal or disciplinary prosecution can be initiated only by the state authorities under whose flag the vessel was at the time of the incident (the Article 1), except cases of collisions and other incidents related to shipping that have occurred in ports, raids or inland waters (the Article 4)<sup>23</sup>. The United Nations Convention on the Law of the Sea (the Art. 97) provides a similar norm for navigation incidents in the high seas<sup>24</sup>.

The International Convention on offenses and certain other actions committed on board aircraft of 1963 establishes a general rule that the state of registration of an aircraft exercises its jurisdiction over criminal offenses and acts that may endanger the safety of the aircraft or persons or property on its board, or which threaten in keeping law and order committed during the flight of such aircraft, or on the surface of the water, or on any other surface outside the territory of any state. At the same time, this rule is not applied to aircrafts used for military, customs or police service<sup>25</sup>.

### **3. Perspectives of Improving Normative Regulation of Boundaries of National Criminal Jurisdiction**

As one can see from the above, experts, explaining the opinion of the legislator, expressed in the Art. 6 of the Criminal Code, either have a tendency

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<sup>23</sup> Mezhdunarodnaya konventsiya ob unifikatsii nekotoryih pravil ob ugolovnoy yurisdiktzii po delam o stolknovenii sudov i drugih proisshestviy, svyazannyih s sudohodstvom [International Convention on the Unification of Certain Rules on Criminal Jurisdiction in Cases of Collisions and Other Accidents Related to Shipping] (n.d.). [zakon1.rada.gov.ua](http://zakon1.rada.gov.ua/laws/show/995_564) Retrieved from [http://zakon1.rada.gov.ua/laws/show/995\\_564](http://zakon1.rada.gov.ua/laws/show/995_564) [in Ukrainian].

<sup>24</sup> Konventsiia Orhanizatsii Obiednanykh Natsii z morskoho prava [The United Nations Convention on Law of the Sea]. (n.d.). [zakon4.rada.gov.ua](http://zakon4.rada.gov.ua) Retrieved from [http://zakon4.rada.gov.ua/laws/show/995\\_057](http://zakon4.rada.gov.ua/laws/show/995_057) [in Ukrainian].

<sup>25</sup> Konventsiya o pravonarusheniyah i nekotoryih drugih deystviyah, sovershennyih na bortu vozdushnogo sudna [Convention on Offenses and Certain Other Acts Committed on Board Aircraft]. (n.d.). [zakon4.rada.gov.ua](http://zakon4.rada.gov.ua). Retrieved from [http://zakon4.rada.gov.ua/laws/show/995\\_244](http://zakon4.rada.gov.ua/laws/show/995_244) [in Russian].



to teleological interpretation of this provision, taking into account the objectives and reasons that led to the creation of this prescription, or apply an extended interpretation of the provisions of the Art. 6 of the Criminal Code in terms of understanding the category of “territory of Ukraine”. As a result, the criminal law has actually established the view, which is based on the fact that the jurisdiction of the state has extraterritorial properties to some extent, within the territorial principle of the law on criminal liability in space. Such *extraterritoriality* exists on the basis of international treaties, the provisions of which are developed within national law. At the same time, teleological interpretation as an approach of the latter should be applied along to the application of the laws of formal logic, as well as systematic and historical interpretation. In this regard, it should be noted that other norms regulating the validity of the national criminal law in space refer to the commission of a crime “outside” Ukraine (the Articles 7, 8, Part 1 of the Art. 9) and “beyond” Ukraine (the Art. 10 of the Criminal Code). Considering the fact that the boundaries of Ukraine, as noted above, are determined by the state border, then the relevant provisions of these Articles should be interpreted by using the systematic method like “committing a crime beyond (outside) the borders of Ukraine”. At the same time, beyond the state border, as also noted above, there are many objects, where the commission of the crime, according to the established understanding of the Art. 6 of the Criminal Code and the territorial principle of the validity of the criminal law in space, is the basis for recognizing the territory of Ukraine as a crime scene. Thus, there is a conflict, where different ways of solving the same issue are established in one institution for national criminal law. For example, if a foreigner commits a crime while staying within Ukraine (territory that does not go beyond the state border), the issue of his liability under the Criminal Code of Ukraine is resolved according to the rules of territorial principle of its validity (the Art. 6 of the Criminal Code). If this person commits a crime outside (beyond the state border) Ukraine, the solution of the issue of the possibility to apply to the Criminal Code of our state to the committed crime is no longer so decisive. At the same time, if we rely on the traditional interpretation of the content of the territorial principle, we should consider the fact whether the crime scene outside Ukraine belongs to objects (territories, spaces) that are under the sovereignty of our state (for example, it is a deck of a warship sailing under the flag of Ukraine) and in the affirmative answer to this question requires to extend the criminal law of Ukraine on the committed action. At the same time, the Art. 8 of the Criminal Code allows to doubt on the correctness of this conclusion, since it states, in particular, that foreigners (as well as stateless persons who do not reside in Ukraine permanently) who have committed crimes abroad are subjects to criminal liability in Ukraine according to the

Criminal Code in cases stipulated by international treaties. Of course, this can also be understood in such a way that acts committed outside Ukraine (outside its State border) are prosecuted under the Criminal Code of Ukraine only in cases stipulated by international treaties. At the first glance, we can conclude: since the extension of the criminal jurisdiction of Ukraine to certain territories beyond its geographical borders is provided by international treaties (for example, by the provisions of the United Nations Convention on the Law of the Sea on the Immunity of Warships, which means the location of their territories under the criminal jurisdiction of their state, regardless their actual place of stay), then the issue of liability for such crimes should be solved on the basis of the Art. 8 of the Criminal Code. However, this conclusion is contrary to the legal nature of the principle of universal jurisdiction, which (along with the real principle) is enshrined in this norm of national criminal law. We later paid attention to the analysis of the universal principle of the validity of national criminal law in space. Now, let us note that universal jurisdiction is primarily based on the nature of a crime, but not on the nationality of a person or place of the act's commission, and the relevant principle is considered in the world jurisprudence as an important mean of ensuring the inevitability of responsibility for crimes that violate international law and order<sup>26</sup>. Then it is not correct to solve the conflicts between the Art. 6 of the Criminal Code and the Art. 8 of the Criminal Code, referred to in this case, by appealing to the universal principle of the validity of the criminal law in space.

The material stated in previous paragraphs demonstrates that *the territorial principle of the validity of the law of Ukraine on criminal liability in space is regulated not only by national law, but also by the norms of international law*. At the same time, considering the fundamental importance of the problem for the harmonious functioning of the criminal justice system of Ukraine, there are grounds to conclude that the provisions of the Criminal Code on the spatial limits of the national criminal law in terms of formulating this principle should be clarified. There are several ways to make such clarifications. *The first one* is to implement the proposition available in scientific research to replace the term of the “territory of Ukraine” in the Art. 6 of the Criminal Code of Ukraine by the phrase “the territory of Ukraine, as well as the territories and objects, which are subjects of the criminal

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<sup>26</sup> Tkachevsky, Y.M., & Safarov N.A. Tkachevskiy, Yu. M. (2005). Nekotorye problemy primeneniya universalnoy yurisdiktsii v mezhdunarodnom ugolovnom prave i natsionalnom zakonodatelstve [Some problems of the application of universal jurisdiction in international criminal law and national legislation]. *Vesnik Mosk. un-ta. Ser 11. Pravo – Bulletin Mosk. un-ta. Vol. 11. Law, 1, 27–47* [in Russian], p. 31.

jurisdiction of Ukraine in accordance with international law or the laws of Ukraine”<sup>27</sup>. The disadvantage of this proposition is the need to introduce the category of “criminal jurisdiction of Ukraine” into the text of the criminal law, which has no normative consolidation, is used today only in the doctrine of criminal law and is still under development. *The second* is to supplement the dispositions of Part 1 of the Art. 6 with the general reference to the norms of international law. This method seems to be unsuitable in terms of practical use. The international and legal system contains hundreds of documents, the research of which may address the executor of law in the course of solving the issue on the possibility to apply the Criminal Code of Ukraine to a crime committed outside its borders. *The third* – is to restore the list of objects in the disposition of the Art. 6 of the Criminal Code, which according to the norms of international law, are under the criminal jurisdiction of Ukraine in case of committing crimes there. We can see relevant examples in the criminal law of foreign states, where references to international law in some of them specify the content of the territorial principle of the validity of the criminal law in space<sup>28</sup>. M. Khavroniuk correctly paid attention to this fact in his dissertation research, and demonstrated that the Criminal Codes of many European countries admit crimes committed on the territory of the respective state, if they are committed on territorial waters, air space, on the continental shelf of the state, in its exclusive economy zone, on a ship of this state, at the residence of its diplomatic and consular missions<sup>29</sup>.

As we know there are no such provisions in the Criminal Code of Ukraine, although references to the norms of international law are common in the theory of national criminal law, while covering the territorial principle of the validity of the criminal law in space<sup>30</sup>. In this regard, it is appropriate to

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<sup>27</sup> Moiseev, O.I. (2007) Kryminalno-pravova yurysdyktsiia Ukrainy shchodo zlochyniv, vchynenykh za yii mezhamy [Criminal Law Jurisdiction of Ukraine on Crimes Committed Outside It] *Extended abstract of candidate's thesis*. Kharkiv: Yaroslav Mudryi National Law University [in Ukrainian], P. 8, 9.

<sup>28</sup> Zhytnyy, O.O. (2012) Intehratsiia norm mizhnarodnoho prava ta Zahalnoi chastyny natsionalnoho kryminalnoho zakonodavstva (zarubizhnyi dosvid) [Integration of International Law and the Common Part of National Criminal Law (Foreign Experience)]. *Naukovyi visnyk Dnipropetrovskoho derzhavnogo universytetu vnutrishnikh sprav – Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs*, 2 (59), 361–368 [in Ukrainian], p. 361–368.

<sup>29</sup> Khavroniuk, M.I. (2007). Kryminalne zakonodavstvo Ukrainy ta inshykh derzhav kontynentalnoi Yevropy: porivnialnyi analiz, problemy harmonizatsii [Criminal law of Ukraine and other continental European states: comparative analysis, problems of harmonization]. *Extended abstract of Doctor's thesis*. Kyiv: National Academy of Internal Affairs [in Ukrainian], P. 11.

<sup>30</sup> Stashis, V.V., Tacyi, V.Y. (Eds.). (2010). Kryminalne pravo Ukrainy: Zahalna chastyna [Criminal law of Ukraine: Common part]. Kharkiv: Pravo [in Ukrainian], P. 63; Melnyk, M.I., Khavroniuk, M.I. (Eds.). (2008) Naukovo–praktychnyi komentar do Kryminalnoho kodeksu

cite the position of A. Naumov, who provided the norm in the Theoretical Model of the General Part of the Criminal Code in the draft Article on the territorial principle of the validity of the law in space of the following content: “Liability for a crime committed on an aircraft, sea or river vessel outside the USSR under the flag or sign of the USSR shall come under this Code if a ship assigned to a port is located on the territory of the USSR<sup>31</sup>. We should pay attention to some provisions of the Model Criminal Code for Member States to the Commonwealth of Independent States (1996), which may be, with some refinement, as models for further improvement of the Art. 6 of the Criminal Code of Ukraine. The draft stipulated, in particular, that the validity of the criminal law of the state extended to crimes committed on its continental shelf or in its exclusive economic zone in cases provided by international treaties (Part 4 of the Art. 13). It also stipulated that a person who had committed a crime on a ship being in the high seas or in the open air was liable under the criminal law of the state, which flag it had, unless otherwise provided by international treaties; a person who had committed a crime on a military river, sea or aircraft of this state, regardless of the place of stay (Part 5 of the Art. 13) was liable under the criminal law of the state<sup>32</sup>. Therefore, in such cases, the norms of international law should be implemented to the norm on the validity of the law in space.

Since the criminal law should provide citizens with information about the limits of what is allowed and should serve as a clear source for law enforcement and judicial agencies of the state, which regulates their activity in the field of criminal justice, in our opinion, we should use the third method out of the offered above, stating the list of objects and spaces in the Art. 6 of the Criminal Code, which are equated to the territory of Ukraine according to the legislation of Ukraine and international law, in case of committing a crime on this territory by any person. Besides, it is advisable to make a general reference to international law there, leaving this list open. It is necessary because there is no possibility to provide the exhaustive list of such objects, and these lists will be changed over time.

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Ukrainy [*Scientific and Practical Commentary to the Criminal Code of Ukraine*]. Kyiv: Yurydychna dumka Legal Opinion[in Ukrainian], P. 25-26.

<sup>31</sup> Kudryavtsev, V.N., Kelina, S.G. (Eds.). (1987). *Ugolovnyy zakon. Opyit teoreticheskogo modelirovaniya* [Criminal law. The experience of theoretical modeling]. Moskov: Nauka [in Russian], P. 32.

<sup>32</sup> Modelnyiy ugolovnyy kodeks dlya gosudarstv – uchastnikov Sodruzhestva Nezavisimyyh Gosudarstv [Model Penal Code for the Member States of the Commonwealth of Independent States]. *Informatsionnyiy byuleten – Newsletter*, 10. Retrieved from <http://www.iacis.ru/html/?id=22&pag=30&nid=1> [in Russian].

## CONCLUSIONS

The conducted study allows to make a number of conclusions and suggestions. Considering the fundamental importance of quality regulation of the national criminal jurisdiction for the harmonious functioning of the criminal justice system of Ukraine and for the implementation of national criminal policy, there are grounds for concluding that it is necessary to clarify the provisions of the Criminal Code on the limits of the validity of the national criminal law (and, accordingly, on the limits of national criminal jurisdiction). In our opinion, the Art. 6 of the Criminal Code has contained the list of the objects and spaces which, according to the legislation of Ukraine and international law, equate to the territory of Ukraine in case of committing a crime there. Besides, it should also contain a general reference to the norms of international law, leaving this list open (it is necessary, since such objects can not be exhaustively enumerated, and these lists will be changed over time).

In regard to the mentioned above, it is offered to have the following wording of the Art. 6 of the Criminal Code:

*“The Article 6. Validity of the law on criminal liability according to the crime scene*

*1. Persons who have committed crimes on the territory within the limits determined by the state border of Ukraine shall be criminally liable under this Code.*

*2. In cases envisaged by international treaties, where their mandatory consent has been given by Verkhovna Rada of Ukraine, the validity of this Code shall extend to persons, who have committed crimes on the continental shelf of Ukraine or in the exclusive (maritime) economic zone of Ukraine or on other territories, beyond state border of Ukraine.*

*3. Persons who have committed crimes on a ship assigned to the Ukrainian port shall be criminally liable under this Code, unless otherwise provided in international treaties, where their mandatory consent is provided by Verkhovna Rada of Ukraine. Persons who have committed crimes on a warship assigned to the Ukrainian port shall be criminally liable under this Code.*

*4. The crime is admitted as committed on the territory specified in paragraphs 1–3 of this Article, if it was started, continued or terminated on this territory.*

*5. The crime is admitted as committed on the territory specified in paragraphs 1–3 of this Article, if its perpetrator or at least one of the accomplices acted on this territory”.*

## SUMMARY

This work contains analysis of the problem of regulating territorial boundaries of criminal jurisdiction. The study has been conducted on the basis of the regulation of the validity of the criminal law in regard to crimes committed in Ukraine. The importance of the territory of the state in criminal law is considered. The content of the territorial principle of the validity of the criminal law of Ukraine in space has been considered. The author has analyzed the regulation of the territory of the state within national and international legal systems. He has pointed out the inconsistency with the principles of establishing the limits of state jurisdiction within international law. A new wording of the Art. 6 of the Criminal Code of Ukraine has been offered.

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**Information about the author:**

**Oleksandr Zhytnyi,**

Doctor in Law, Professor,

Head of Criminal and Legal Disciplines Department

of the Law Faculty,

V.N. Karazin Kharkiv National University

6, Svobody sq., Kharkiv, 61022, Ukraine

ORCID ID: [orcid.org/0000-0003-0795-626X](https://orcid.org/0000-0003-0795-626X)