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### **COLONIZING CRIMINAL LAW: TOWARDS NEW ARCHITECTURE OF CRIMINAL CODE**

*The transition from colonial criminal law to a new legal architecture is vital for societies in transition, requiring careful reform and inclusive dialogue. This study explores the urgent need to deconstruct and reform criminal law frameworks in a globally interconnected world, where national legal systems struggle to address cross-border crimes like cybercrime, terrorism, and human trafficking. Traditional national frameworks, driven by state sovereignty, often conflict with international mandates, leading to discrepancies in how crimes are prosecuted across jurisdictions. This selective enforcement fosters public disillusionment with the rule of law and reveals the limitations of national sovereignty in regulating transnational offenses. As globalization accelerates, the world faces increasing social and cultural fragmentation, exemplified by war conflicts, which expose the limitations of traditional legal frameworks in addressing contemporary criminal challenges. These evolving dynamics necessitate an urgent re-evaluation of the mechanisms governing criminal liability, as national criminal law systems often prove inadequate in a globalized world where cross-border criminal activities and transnational offenses are on the rise. National criminal law, historically driven by state sovereignty and often perfectionist in its approach to national interests, increasingly collides with international mandates and global legal norms. This collision results in selective enforcement of justice, leading to discrepancies between how crimes are defined and prosecuted across different jurisdictions. To address these challenges, the study proposes the "architectonics of criminal regulation", a multi-layered framework that integrates national, regional, and international legal systems. This approach seeks to create a universal platform for criminal law that*

*upholds human rights, promotes justice, and ensures consistent legal application across borders. The protection of human rights, especially in conflict zones, is central to this restructuring, with a focus on preventing abuses of power and ensuring accountability where local authorities have failed. In the context of transnational criminal law, the study emphasizes the importance of integrating international legal norms, such as those enshrined in the European Convention on Human Rights (ECHR), into the architectonics of criminal regulation. The ECHR provides a foundational legal framework that protects individual rights across member states, ensuring that any reforms to criminal law prioritize the protection of human dignity and justice. The architectonics approach builds on these principles by advocating for a unified legal platform that harmonizes national and international laws, allowing for effective prosecution of cross-border crimes while safeguarding human rights. This ensures that states adhere to a consistent standard of justice, even in the face of evolving global criminal challenges. By incorporating the ECHR's protections into transnational criminal law, the architectonics framework strengthens the legal mechanisms required to combat international crimes while upholding fundamental human rights. The proposed architectonics of criminal regulation serves as a foundational platform for bridging the gaps between national legal systems and global criminal justice, ensuring that criminal law is capable of addressing the challenges of an interconnected, complex, and increasingly fragmented world.*

**Key words:** *Criminal Law, Architectonics, Transnational Law, Human Rights, European Convention on Human Rights.*

**Introduction:** The transition from colonial criminal law to a new legal architecture is a critical process for societies in transition. It requires a thoughtful examination of the existing legal frameworks, a commitment to reform, and an inclusive dialogue among stakeholders to ensure that the new laws serve the interests of justice and reflect the values of the society they govern. This evolution is essential for fostering a legal system that is both effective and just in the contemporary world<sup>1</sup>. Nevertheless, some scholars criticize the need for decolonizing criminal law, emphasizing the importance of re-evaluating colonial influences to develop a more equitable and culturally relevant criminal code<sup>2</sup>.

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<sup>1</sup> Leslie, Sebba. (1999). The creation and evolution of criminal law in colonial and post-colonial societies. *Crime, history and societies*, 3(1), 71–91. doi: 10.4000/CHS.936.

<sup>2</sup> Shaila, Alam, Asha. (2018). Decolonizing criminal law: a critical appraisal. *Commonwealth Law Bulletin*, 44(4), 652-667. doi: 10.1080/03050718.2019.1669061.

But there is a gap from another side: Universal, transnational colonization through development.

In the current paradigm of human rights and rule of law, modern criminal law regulation aspires to universality and inclusivity, yet remains constrained by the boundaries of national sovereignty, cultural particularities, and legal traditions. Such limitations often result in conflicts between national criminal policies and the broader, transnational criminal justice framework. This study advocates for the establishment of a supra-national, universal platform for criminal law regulation, particularly for regions experiencing jurisdictional instability, such as conflict zones or regions with "virtual state" characteristics.

**Key Points: Globalization and Fragmentation:** The rise of "virtual states" and unstable jurisdictions shows the necessity of a global criminal law framework. **Justice Gaps:** International criminal justice does not universally apply to all situations, leading to perceived injustices. **Need for Change:** Modern society's transformations require a fresh approach to criminal law, one that addresses both global and local challenges. These areas, currently lacking adequate criminal law frameworks, require immediate international attention and coordination to prevent further exacerbation of human rights violations.

**Objectives:** The principal aim of this research is to underscore the necessity of dismantling outdated, heterogeneous criminal law systems. The objectives include:

1. Defining the role and influence of "colonizing" criminal law in the metamodern global society.
2. Establishing the urgent need for a supra-national criminal law framework, illustrated by the ineffectiveness of current legal structures in regions with unstable jurisdictions.
3. Identifying key developmental vectors and levels of criminal law communication within the context of a globally interconnected, metamodern information society.

**Methodology.** The research methodology for this study encompasses a structured approach comprising the following: a comprehensive analysis of the intricate interrelationships between developmental vectors and levels of criminal law interaction, and their consequential impact on the doctrinal, legislative, and law enforcement aspects of Ukrainian substantial criminal law, as well as supranational and international (transnational) criminal law. The research is grounded in the sociology of deviant behavior, utilizing general sociological dialectical methods to analyze social and legal phenomena in their development.

### **1. Colonizing Criminal Law in the Metamodern Era:**

The term "colonizing criminal law" is used to describe the persistent use of outdated, state-centric legal frameworks that reflect the dominance of elite structures within society. Historically, criminal law has been shaped by the power dynamics of states, where the ruling class imposed legal frameworks to maintain control and order. In contemporary society, however, these archaic frameworks are increasingly inadequate for addressing the complexities of modern criminal behavior, especially in the context of a globally interconnected world.

Scholars are increasingly debating whether global law represents a comprehensive model or simply a theoretical concept rather than an operational legal reality. In his book "Global Criminal Law", Adan Nieto Martín thoroughly examines two key pillars central to the development of global criminal law. The first concept is sovereignty, traditionally seen as the absolute authority of a state over its territory and internal affairs. Globalization, however, has complicated this idea by introducing transnational laws and regulations that often override national sovereignty, particularly in areas like human rights, environmental law, and global security.

The second concept, which Nieto Martín emphasizes, is security. He argues that security, especially in the context of global criminal law, serves as the driving force behind many contemporary legal frameworks. Security has evolved from a purely national concern into a binominal concept that links domestic and

international dimensions. In today's interconnected world, threats like terrorism, cybercrime, and organized crime often transcend borders, requiring a collective global response that complicates traditional views of sovereignty. Nieto Martín explores how countries now balance protecting their own citizens with contributing to global security, a dynamic that blurs the lines between national and international law. As such, the interdependence between domestic and foreign security has become a core focus in global criminal law<sup>3</sup>.

The tension between these two concepts—sovereignty and security—reveals the complexities of implementing global criminal law, where ensuring global security may sometimes require compromising traditional notions of state sovereignty<sup>4</sup>.

In the metamodern era, which represents a blend of modern and postmodern societal structures, criminal law must evolve to address the realities of a fragmented world. A key challenge in this era is the rise of "virtual states" – territories that, while existing geographically within the borders of a recognized nation-state, operate under their own jurisdictional frameworks due to political, social, or economic instability. Examples include the self-declared republics which function outside the purview of recognized state authority. In these virtual states, traditional criminal law enforcement mechanisms fail to deliver justice or maintain order, as there is no legitimate state authority to enforce the law. The absence of centralized control leads to a breakdown of legal norms, creating conditions where crimes often go unpunished. This highlights the inadequacy of "colonizing" criminal law, which relies heavily on state sovereignty and does not accommodate the realities of regions with unstable governance. The continued reliance on such frameworks results in a fragmented legal landscape where certain regions are effectively "lawless" zones. To address this, criminal law must evolve by integrating new principles that recognize

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<sup>3</sup> Adán Nieto Martín, *Global Criminal Law: Postnational Criminal Justice in the Twenty-First Century*, Palgrave Macmillan, (under exclusive license to Springer Nature Switzerland AG), 2022. ISBN 978-3-030-84830-9.

<sup>4</sup> Tuliakov V. O. *Sovereignities and Criminal Law: a Research Hypothesis* *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції: матеріали Міжнародної науково-практичної конференції* (м. Одеса, 18 травня 2018 р.) У 2-х т. Т. 2 / відп. ред. Г.О. Ульянова. Одеса : Видавничий дім «Гельветика», 2018. С. 161–163.

the fluidity of sovereignty and the challenges posed by virtual states. This includes moving away from the rigid structures of traditional state-centric criminal law towards a more flexible, adaptive legal framework that can function in both stable and unstable jurisdictions. Moreover, in the context of global communication networks, where the dissemination of information occurs almost instantaneously, the failure of local legal systems to adapt to new realities is magnified. Public perception of injustice grows in regions where law enforcement is weak or absent, leading to further erosion of the legitimacy of criminal law. According to Michael Tonry, “in trying to understand and normatively evaluate crime control we need to talk about of prevailing sensibilities, of «timeless» human rights ideas, and of what we know about past interactions between sensibilities, circles of tolerance and public policies”<sup>5</sup>. Actually, the absence of such an approach in the understanding of criminal policy and the infantile attitude of many modern elites to the consequences of the value transformations of society’s assessments of political crime and the inquisitorial application of criminal law is the cause of the antagonisms of sovereignty.

## **2. The Necessity of a Universal Criminal Law Platform:**

The increasing interconnectedness of the global information society demands a universal approach to criminal law. Currently, criminal law is fragmented across jurisdictions, each state applying its own legal principles based on national interests, cultural values, and historical precedents. This fragmentation creates a situation where similar crimes are treated differently depending on the jurisdiction, leading to inconsistencies in the application of justice.

For instance, the treatment of cybercrime—particularly transnational offenses—varies significantly between jurisdictions. In some countries, certain forms of hacking are considered minor offenses, while in others, they are treated as serious crimes with severe penalties. The lack of a unified approach to such crimes enables

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<sup>5</sup> Michael Tonry (2004) *Thinking About Crime: Sense and Sensibility in American Penal Culture*. New York: Oxford University Press, 2004, 260 pp. P. 7.

offenders to exploit these legal loopholes by operating in jurisdictions with weaker penalties or enforcement mechanisms.

Next. The incorporation of AI in warfare demands a comprehensive review of current legal frameworks, possibly leading to new regulations. Several critical issues require attention. First, establishing accountability for actions performed by AI systems—especially autonomous weapons systems—presents challenges, suggesting that traditional command responsibility concepts may need to adapt to the semi-autonomous or fully autonomous characteristics of these systems. A superior may be held criminally responsible under that doctrine where, despite his awareness of involving autonomous or semi-autonomous AI systems activity into subordinates' war crimes, he culpably fails to fulfill his duties to prevent and punish these crimes<sup>6</sup>. Moreover, transparency and explainability are key concerns. As noticed Erik Luna and Paul G Cassell “A mandatory minimum deprives judges of the flexibility to tailor punishment to the particular facts of the case and can result in an unduly harsh sentence”<sup>7</sup>. The opaque nature of many AI algorithms complicates transparency in military decision-making, which is especially alarming for autonomous weapons. In such cases, understanding the reasoning behind targeting decisions can be problematic after the event.

Crime, Criminal responsibility, and Punishment will be considered from the limits of internationally recognized substantive forms of conduct that necessary to criminalize, margins of criminal responsibility and the nature of punishment in comparison with preventive detention, security measures and criminal restitution on international, different narrative and national level.

The necessity for a universal criminal law platform is further underscored by the rise of non-state actors who operate across borders, including terrorist organizations and transnational criminal networks. These entities often exploit gaps

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<sup>6</sup> Carlos Batallas (2024) When AI Meets the Laws of War – *IE insights*- October 3, 2024. URL: <https://www.ie.edu/insights/articles/when-ai-meets-the-laws-of-war>.

<sup>7</sup> Erik Luna, Paul G Cassell. Mandatory Minimalism. *Cardozo L. Rev.*, 2010. Vol 32. 83 p. URL: <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1095&context=wlufac>.

in national criminal law frameworks, moving freely between jurisdictions to evade prosecution. A universal platform would ensure that crimes such as terrorism, human trafficking, and money laundering are addressed consistently across borders, closing the legal gaps that currently allow such activities to thrive.

This universal platform must be built on a foundation of human rights and the rule of law, ensuring that justice is applied fairly and consistently, regardless of the jurisdiction in which a crime is committed. The European Court of Human Rights (ECHR) has played a pioneering role in this regard, establishing key legal principles that transcend national boundaries and prioritize the protection of fundamental human rights.

Orientation to the external, purely dogmatic side, or subjective political will does not provide an opportunity to understand the essence of phenomena that is criminalized. The key to this is a lot of gaps in advancing the ideas of "eternal" crimes, sometimes the collapse of the current system of legal norms in the field of combating crime in general. At the same time, the rise of the value of Human Rights and a new value system in general, makes obsolete structures of legal regulation dead and ideologically particularly unacceptable that inhibit the development of public relations and annoy society with inefficiency and clichés.

However, in cases where parallel reality (augmented reality) of communicative images and Post-truth senses forms new opportunities for individual or collective behavior, traditional narratives of prohibitions do not act as effectively as before, and new waves of public opinion force the legislator to resort to spontaneous criminalization or decriminalization. The prohibition of criminal changes to its relative admissibility, and vice versa: decriminalization - to relative freedom, if the act does not contradict morality or tradition.

The content of guarded criminal legal relations covers only the relations between the state and the offender concerning the commitment of a criminal offense and a social reaction to it. However, society expects the criminal legal regulation of

modern decisions, in order to obtain for themselves proclaimed by EU Safety, Security and Justice.

In addition, the development of the impact of the right to social changes, or the development of legal institutions should stress the legitimization of responsibility in criminal relations. According to the Niklas Luhmann theory of binary code of communication<sup>8</sup> it will gain "Guilty / innocent", "state / offender", "victim / offender", "victim / state", "third parties (civil society) / offender", "third parties (civil society) / state" models, though, we hope, in the modern understanding of criminal legal aspects, we should talk about something else.

From our point of view, the effectiveness of criminal legal influence is related to the assessment of the communication effect of criminal-law regulation, the criminal-political situation, the peculiarities of law enforcement and law awareness at several levels of social interaction, corresponding to the sense of individual or network security of the subjects of criminal law relations. In particular, Johannes Andenaes wrote about the informational influence of punishment in 1974<sup>9</sup>. Is this information not the root of further narratives of the consequences of crime and criminal law behavior? Of course, yes, but the mission of such information is no longer intimidation, but corresponding to society, including all conditions and EU Safety, Security and Justice Area standards.

Thus, the "colonizing" criminal law loses its original pillars of dogmatics, and modern criminal justice platforms must satisfy Safety, Security and Justice Area not for the exclusive, but for all actors of the relevant society. Consequently, the platform of criminal law regulation of an open society is a theater of action, which houses all members of society, including the offender, the victim, and society, and the main role of such a production is given to a state that must meet the needs of the majority under the pressure of the human rights paradigm, justice and the rule of law.

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<sup>8</sup> Niklas Luhmann: *Soziale Systeme. Grundriß einer allgemeinen Theorie*, Frankfurt: Suhrkamp, 1984. 674 s.

<sup>9</sup> Johannes Andenaes. *Punishment and deterrence*. University of Michigan Press, 1974. 195 p.

However, creating a universal criminal law platform requires more than the mere harmonization of legal codes. It necessitates the adoption of a dynamic, adaptive framework that incorporates the realities of the modern information society. This includes the integration of Big Data analysis to monitor and predict criminal behavior, particularly in the digital realm, where crimes such as identity theft and cyber-attacks are becoming increasingly prevalent. Big Data can provide insights into the patterns of criminal behavior, allowing law enforcement agencies to develop more targeted and effective strategies for preventing and prosecuting crime. Social media, in particular, has become a crucial tool for understanding public perceptions of safety and security. Public outcry over perceived injustices can now spread globally within minutes, influencing both national and international policy decisions.

### **3. The Role of Human Rights and International Jurisprudence:**

Any universal criminal law framework must be firmly grounded in the protection of human rights. Over the past several decades, international legal institutions such as the ECHR have developed a body of jurisprudence that emphasizes the importance of safeguarding individual rights in the administration of justice. These legal principles must form the foundation of a global criminal law platform.

The ECHR has been particularly instrumental in setting precedents that protect individuals from abuses of power by the state. For example, in *S.V. and A. v. Denmark*<sup>10</sup>, the Court ruled that the deprivation of human rights, including the right to a fair trial and the right to liberty, must be subject to strict legal safeguards. The case highlighted the need for legal mechanisms that protect individuals from arbitrary detention and ensure that any restrictions on freedom are proportional and justified by legitimate state interests.

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<sup>10</sup> ECHR (2018) Case S., V. and A. v. Denmark (Application No. 35553/12, 36678/12 and 36711/12) 22/10/2018. URL: <https://hudoc.echr.coe.int/?i=001-187391>.

The incorporation of human rights into criminal law is essential for maintaining the legitimacy of legal systems, particularly in regions where state authority is contested or weak. In areas of conflict, where "virtual states" often arise, the absence of clear legal frameworks often leads to severe human rights abuses, including extrajudicial killings, torture, and arbitrary detention. A universal criminal law platform must prioritize the protection of these rights, ensuring that all individuals, regardless of their geographic location or political affiliation, are afforded the protections enshrined in international human rights law. From the other side, as Adan Nieto Martin noted: "Individuals can exercise their right to self-determination in areas other than the state and a pre-established community. This is why a stateless criminal law can exist"<sup>11</sup>. Moreover, the rule of law must be upheld in all criminal proceedings. This includes ensuring that individuals accused of crimes are given a fair trial, have access to legal representation, and are not subjected to excessive punishment. The principle of proportionality, which requires that punishments correspond to the severity of the crime, must be consistently applied across all jurisdictions.

In this context, the development of a universal criminal law platform must also address the growing influence of the "Post-Truth" era, where facts are increasingly contested, and public opinion is shaped by misinformation and disinformation. Criminal law must adapt to this new reality by ensuring that legal decisions are based on objective evidence and adhere to the principles of fairness and justice.

As the landscape of criminal law continues to evolve, principles such as equality, legal certainty, proportionality, predictability, subsidiarity, and legality must be reframed within the context of human rights and the security of victims. Striking a balance between coercion and compensation, restitution, rehabilitation, and the prevention of future harm to victims becomes a pivotal endeavor. In addition,

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<sup>11</sup> Adán Nieto Martín, *Global Criminal Law: Postnational Criminal Justice in the Twenty-First Century*, Palgrave Macmillan, (under exclusive license to Springer Nature Switzerland AG), 2022. ISBN 978-3-030-84830-9.-p.86.

the development of the European Strategy on Criminal Justice envisages consideration of issues related to combating family violence, environmental crimes, and corruption offenses, as well as cooperation in the field of justice through mutual recognition and protection of the rights of victims of crime. This is linked to the developments in justice (child-friendly and victim-centered justice), society (e.g., increased need for a coordinated approach to ensure constant availability of the victims' support services during crises (such as health crises), and developments of technology (digitalization, and availability of new technologies to victims' support, protection, and access to justice). In the context of the approximation of EU and EU law to Ukrainian criminal legislation, it becomes obvious that modern criminal law should primarily serve as a fundamental tool for the protection of human rights and constitutional principles of state-building. These theoretical principles are in line with the recommendation CM/Rec (2023)2 of the Committee of Ministers of the Council of Europe<sup>12</sup>, which emphasizes the paramount importance of protecting individual human rights. Therefore, Member States should ensure that the rights of victims are effectively recognized and respected concerning their human rights; they must, in particular, respect the liberty, security, property, dignity, and private and family life of victims and recognize the negative impact of crime on victims. Hence, a crime can be seen as an unlawful act against society and a violation of human rights: this fundamental principle, taken in the dynamics of development from the 'offense' in antiquity, emphasizes the dual nature of criminal acts and the genesis of the attitude from full and limited talion, absolutization of the ultima ratio to the victim-centered model of the present. Given the departure from a purely normative definition, crimes in the context of the mainstream criminal policy of EU and COE are considered as an offense not only against the state or society or 'federation' but primarily as a violation of the rights of individual victims. Thus, the concept of

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<sup>12</sup> Recommendation CM/Rec2(2023) of the Committee of Ministers to member States on rights, services, and support for victims of crime (2023) (Adopted by the Committee of Ministers of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies). URL: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680aa826](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa826).

‘crime’ in modern criminal law should cover both the public dimension of social harm and the personal dimension of the violation of the victim's rights<sup>13</sup>.

The next step should be the implementation of the bilateral Ljubljana-the Hague Convention on MLA<sup>14</sup>. This document as a milestone step in mutual legal assistance and prosecution of international crimes after the Rome Statute represents a significant development in the realm of international legal assistance and extradition, addressing crucial gaps in this field. The convention underscores a victim-centric perspective within international criminal law while upholding the principles of equitable justice for those accused of criminal wrongdoing. Central to its mandate is the elucidation of procedural intricacies, the delineation of substantive content, and the delimitation of the scope of legal assistance. Furthermore, the Convention categorically prohibits the provision of amnesty in cases involving international crimes. Due to conventional understanding and rules “Victims” means natural persons who have suffered harm because of the commission of any crime to which this Convention applies. “Victims” may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art, science, or charitable purposes, or their historic monuments, hospitals, and other places and objects for humanitarian purposes. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation, including ill-treatment, to victims and witnesses and, as appropriate, their relatives or representatives, experts as well as any other persons participating in or cooperating with any investigation, prosecution, or other proceedings within the scope of this Convention. Each State Party shall, subject to its domestic law, ensure that the victims of a crime to which the State Party applies

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<sup>13</sup> Tuliakov V. (2023-1) Approximation of the Criminal Law of Ukraine in the Context of the EU Legislative Work: Prospects and Methods [Апроксиматіія кримінального права України у контексті законодавчої роботи ЄС: перспективи та методи.] *Bulletin of the National Academy of Legal Sciences of Ukraine* / editors: V. Zhuravel et al: Law, 2023. Vol. 30, No. 3. P. 323–335.

<sup>14</sup> The Ljubljana-The Hague MLA convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and Other International Crimes of 26.05.2023 (2023). URL: <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/The-Ljubljana-The-Hague-MLA-Convention-English-v6.pdf>.

this Convention, have the right to reparation for harm consisting of but not limited to, as appropriate, restitution, compensation, or rehabilitation insofar as either: the crime has been committed in any territory under the jurisdiction of that State Party, or that State Party is exercising its jurisdiction over the crime. Each State Party shall, subject to its domestic law, establish procedures, as appropriate, to permit victims to participate in and enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights of the defendant. Each State Party shall, to the extent provided for in its domestic law and if so requested, give effect to a judgment or order in criminal proceedings, issued by the domestic law of the requesting State Party, to provide restitution, compensation, or rehabilitation to victims of crimes to which they apply this Convention. Of note is the Convention's commitment to streamlining various aspects of asset management. It introduces simplifications in the processes associated with the freezing, seizure, confiscation, and conversion of assets. Additionally, the Convention contains explicit provisions concerning the disposal of such assets, with a specific emphasis on the interests of victims of international crimes<sup>15</sup>. It also addresses identifying and tracing property or proceeds linked to criminal activities. Importantly, the treaty acts as a consolidating force, transforming established practices in asset management into a comprehensive legal framework. This framework fills a void that has persisted for an extended period, enabling individual states and associations to circumvent asset confiscation based on its prior absence.

Mostly it will give a new theoretical landscape to criminalize unified crimes against humanity and war crimes in national substantial criminal legislation.

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<sup>15</sup> Tuliakov V. O. (2023-2) War, Crime, Victimology, Human Rights and Criminal Justice Holistic Approach *The Challenges and Opportunities in Law: Ukrainian Case under the Conditions of War: monograph* / edited by: Tomas Davulis, Ligita Gasparėnienė. Kraków: Księgarnia Akademicka Publishin - Chapter 7. P. 635–650. DOI: <https://doi.org/10.12797/9788381388887.07>; Tuliakov Viacheslav (2023-3) Victims of international crimes through the war in Ukraine: human rights discourse / *Victimología y violencia: conectar con las víctimas. / Victimology and violence: connecting with victims*. Thomson-Reuters(Aranzadi), 2023, p.p. 23–34.

#### **4. Addressing Injustices in Regions with Unstable Jurisdictions:**

The proliferation of virtual states and territories with unstable governance presents one of the most pressing challenges to the global criminal law framework. These regions, often characterized by ongoing conflict or political instability, operate outside the control of recognized state authorities, creating significant gaps in the enforcement of criminal law. This lack of legal oversight results in widespread human rights violations and allows criminal activity to flourish unchecked. International law, as it currently stands, is ill-equipped to address the unique challenges posed by these virtual states. While the International Criminal Court (ICC) has jurisdiction over certain types of crimes, such as genocide and war crimes, its reach is limited by the political realities of international diplomacy. Many states are reluctant to grant the ICC jurisdiction over their territory, and in regions where state sovereignty is contested, such as in the case of virtual states, the ICC has no clear mandate.

To address these challenges, the research advocates for the establishment of a global legal framework that specifically targets regions with unstable governance. This framework would operate under the auspices of the United Nations or another international body, providing legal oversight and ensuring that fundamental human rights are protected<sup>16</sup>. It would also facilitate cooperation between states and international organizations to prosecute crimes committed in these regions, including war crimes, human trafficking, and other forms of organized crime.

#### **5. The Collapse of Traditional Criminal Law in a Changing World:**

The traditional framework of criminal law, based on state sovereignty and rigid legal structures, is no longer sufficient to address the realities of a rapidly changing world. Domestic conflicts, hybrid warfare, and the rise of non-state actors have fundamentally altered the nature of criminal behavior, making it increasingly difficult for traditional legal systems to maintain order.

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<sup>16</sup> Victor, Tadros. (2009). The Architecture of Criminalization. *Criminal Justice Ethics*, 28(1): 74–88. doi: 10.1080/07311290902831433.

Virtual states, in particular, represent a significant challenge to the traditional criminal law framework. These territories, which operate outside the control of recognized states, have developed their own legal systems that often conflict with international norms. In some cases, these legal systems are used to justify human rights abuses and the suppression of political dissent. For example, in Northern Cyprus, which declared independence in 1983 but remains largely unrecognized by the international community, the legal system operates independently of both Turkey and the Republic of Cyprus. While Northern Cyprus maintains a functioning legal system, it is not subject to the same international oversight as recognized states, creating a legal gray zone where crimes may go unpunished.

We argue that the collapse of traditional criminal law in such regions necessitates a new approach that recognizes the fluidity of state sovereignty and the need for flexible, adaptable legal frameworks. This includes the development of a "multi-layered" approach to criminal law, which takes into account the unique social, political, and legal contexts of each region. By adopting a more holistic approach, criminal law can better address the complex realities of regions with unstable governance while maintaining the principles of justice and human rights.

#### **6. Reforming Criminal Law Through the Complementarity Principle:**

The principle of complementarity, which asserts that seemingly contradictory elements can be reconciled to create a more coherent whole, is essential for the future of criminal law. In the context of global criminal law, this principle can be applied to reconcile the punitive and rehabilitative functions of the law, ensuring that justice is both fair and effective.

The research posits that the punitive nature of criminal law must be balanced by its protective function, safeguarding fundamental human rights while maintaining social order. This requires a shift away from the purely punitive approach that has historically dominated criminal law towards a more restorative model that emphasizes rehabilitation, restitution, and social reintegration.

In this context, the complementarity principle can be used to harmonize the competing interests of the state, the individual, and society. By recognizing that the protection of society does not necessitate the excessive punishment of offenders, criminal law can evolve into a more balanced system that promotes justice for all parties involved.

Furthermore, the complementarity principle must guide the development of new criminal law platforms that operate at both the national and international levels. These platforms must be flexible enough to accommodate the unique legal, social, and cultural contexts of different regions while maintaining the core principles of human rights and the rule of law.

**Conclusion:** This research concludes that the future of criminal law lies in the creation of a universal platform, one that transcends national boundaries and adapts to the realities of an interconnected, metamodern world. This new framework must prioritize the protection of human rights, integrate modern social narratives, and respond to the unique challenges posed by "virtual states" and regions of unstable jurisdiction. Only through the adoption of a multi-layered, complementarity-based approach to criminal law can justice, safety, and security be achieved in the 21st century. As the landscape of criminal law continues to evolve, principles such as equality, legal certainty, proportionality, predictability, subsidiarity, and legality must be reframed within the context of human rights and the security of victims. Striking a balance between coercion and compensation, restitution, rehabilitation, and the prevention of future harm to victims becomes a pivotal endeavor. In addition, the development of the European Strategy on Criminal Justice envisages consideration of issues related to combating family violence, environmental crimes, and corruption offenses, as well as cooperation in the field of justice through mutual recognition and protection of the rights of victims of crime. This is linked to the developments in justice (child-friendly and victim-centered justice), society (e.g., increased need for a coordinated approach to ensure constant availability of the victims' support services during crises (such as health crises), and developments of

technology (digitalization, and availability of new technologies to victims' support, protection, and access to justice). In the context of the approximation of EU and EU law to Ukrainian criminal legislation, it becomes obvious that modern criminal law should primarily serve as a fundamental tool for the protection of human rights and constitutional principles of state-building. These theoretical principles are in line with the recommendation CM/Rec (2023)2 of the Committee of Ministers of the Council of Europe, which emphasizes the paramount importance of protecting individual human rights. Therefore, Member States should ensure that the rights of victims are effectively recognized and respected concerning their human rights; they must, in particular, respect the liberty, security, property, dignity, and private and family life of victims and recognize the negative impact of crime on victims. Hence, a crime can be seen as an unlawful act against society and a violation of human rights: this fundamental principle, taken in the dynamics of development from the 'offense' in antiquity, emphasizes the dual nature of criminal acts and the genesis of the attitude from full and limited talion, absolutization of the ultima ratio to the victim-centered model of the present.

Given the departure from a purely normative definition, crimes in the context of the mainstream criminal policy of EU and COE are considered as an offense not only against the state or society or 'federation' but primarily as a violation of the rights of individual victims. Thus, the concept of 'crime' in modern criminal law should cover both the public dimension of social harm and the personal dimension of the violation of the victim's rights.

Like the Spanish Penal Code Preamble reflects the idea of the Code as a 'Negative' Constitution, new architectonics should be based on human rights law as architectonics of criminal regulation. We must consider this dual nature of crime when developing theories of punishment, deterrence, and rehabilitation in Ukrainian criminal justice and substantial criminal law. The future trajectory of criminal law will be influenced by localized traditions and the convergence of coercive measures

drawn from diverse cultures based on a human rights victim-oriented approach and secure policy of the state.

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**Туляков В. О., Савінова Н. А. Колонізація кримінального права: до нової архітектури кримінального кодексу**

*Перехід від колоніального кримінального права до нової правової моделі є критично важливим процесом для суспільств у транзиції. Він вимагає ретельного вивчення існуючої правової бази, прихильності до реформ та інклюзивного діалогу між зацікавленими сторонами для забезпечення того, щоб нові закони слугували інтересам правосуддя та відображали цінності суспільства, яким вони керують. Проте існує й інша модель, пов'язана із колонізацією на кшталт глобалізації. У цьому дослідженні розглядається нагальна необхідність деконструкції та реформування кримінально-правових рамок у глобалізованому світі, де національні правові системи стикаються з труднощами у вирішенні таких транскордонних злочинів, як кіберзлочинність, тероризм та торгівля людьми. Традиційні національні правові рамки, підкріплені суверенітетом держави, часто вступають у конфлікт із міжнародними мандатами, що призводить до відмінностей у тому, як злочини визначаються і переслідуються у різних юрисдикціях. Така вибірковість у застосуванні закону підриває довіру до верховенства права і виявляє обмеженість національного суверенітету у врегулюванні транснаціональних злочинів. Зі зростанням глобалізації світ стикається з дедалі більшими соціальними та культурними розмежуваннями, зокрема через воєнні конфлікти, що демонструють недоліки традиційних правових рамок у*

реагуванні на сучасні кримінальні виклики. Ця мінлива динаміка вимагає термінового перегляду механізмів кримінальної відповідальності, оскільки національні кримінально-правові системи часто виявляються недостатніми в умовах глобалізованого світу, де зростає кількість транскордонних злочинів і транснаціональних правопорушень. Історично національне кримінальне право, орієнтоване на суверенітет держави та національні інтереси, все частіше вступає в конфлікт із міжнародними мандатами та глобальними правовими нормами. Це призводить до вибіркості в правосудді, що породжує розбіжності у визначенні та переслідуванні злочинів у різних юрисдикціях.

Для вирішення цих проблем дослідження пропонує "архітектоніку кримінального регулювання" – багаторівневу структуру, яка інтегрує національні, регіональні та міжнародні правові системи. Цей підхід спрямований на створення універсальної платформи для кримінального права, що захищає права людини, сприяє справедливості та забезпечує послідовне застосування правових принципів у різних країнах. Захист прав людини, особливо в зонах конфліктів, є центральним елементом цієї перебудови, акцентуючи увагу на запобіганні зловживанням владою та забезпеченні відповідальності там, де місцева влада зазнає невдач.

У контексті транснаціонального кримінального права дослідження наголошує на важливості інтеграції міжнародних правових норм, таких як ті, що закріплені в Європейській конвенції з прав людини (ЄКПЛ), у архітектоніку кримінального регулювання. ЄКПЛ забезпечує основоположну правову основу для захисту прав людини серед держав-членів, гарантуючи, що будь-які реформи кримінального права будуть спрямовані на захист гідності та справедливості. Архітектонічний підхід розвиває ці принципи, пропонуючи створення єдиної правової платформи, яка гармонізує національне та міжнародне законодавство, дозволяючи ефективно переслідувати транскордонні злочини, забезпечуючи при цьому захист прав людини. Це гарантує, що держави дотримуються єдиних стандартів правосуддя, навіть в умовах глобальних викликів кримінального характеру. Інтеграція захисту ЄКПЛ у транснаціональне кримінальне право зміцнює правові механізми, необхідні для боротьби з міжнародними злочинами, при цьому захищаючи фундаментальні права людини. Запропонована архітектоніка кримінального регулювання слугує основою для подолання розривів між національними правовими системами та глобальним кримінальним правосуддям, забезпечуючи здатність кримінального права вирішувати проблеми взаємопов'язаного, складного та дедалі більш фрагментованого світу.

**Ключові слова:** кримінальне право, архітектоніка, транснаціональне право, права людини, європейська конвенція з прав людини.