

Література:

1. Пилипенко В. Покарання осіб, винних у вчиненні злочину агресії проти України: проблеми міжнародно-правової юрисдикції. *Право України*. 2024. № 2. С. 86–95. DOI: <https://doi.org/10.33498/louu-2024-02-086>
2. Цветкова Ю. В. Спеціальний трибунал зі злочину агресії проти України: мета і перспективи створення. *Альманах права*. 2023. Вип. 14. С. 171–176. URL: <https://almanahprava.org/en/assets/images/issues/14/almanah-prava-14-2023.pdf#page=171>
3. Войціховський А. В., Бакумов О. С. Спеціальний міжнародний трибунал із розслідування злочину агресії Росії проти України: правовий аналіз, міжнародна юрисдикція та виклики. *Вісник Харківського національного університету внутрішніх справ*. 2023. № 3(102). С. 203–217. DOI: <https://doi.org/10.32631/v.2023.3.19>
4. Угода між Україною та Радою Європи про створення Спеціального трибуналу щодо злочину агресії проти України : ратифікована Законом України № 4518-IX від 15 липня 2025 р. URL: https://zakon.rada.gov.ua/laws/show/994_002-25#n492
5. Шуман Є. Так страчували головних нацистських злочинців. *DW*. 2021. 7 червня. URL: <https://www.dw.com/uk/tak-strachували-holovnykh-natsystskykh-zlochynstiv/a-57802914>

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UKRAINE'S POSITION AT WRC-27: SPECTRUM GOVERNANCE AS DE FACTO REGULATORY INTEGRATION WITH THE EU

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The ITU World Radiocommunication Conference 2027 (WRC-27), scheduled for Shanghai in October-November 2027, will consider revisions to the Radio Regulations – the binding treaty framework governing the use of the radio-frequency spectrum by all 194 ITU Member States [1]. Three agenda items carry particular significance for Ukraine: Agenda Item 1.5 on unauthorised non-geostationary satellite (NGSO) earth-station operations and territorial exclusion from service areas; Agenda Item 1.7 on possible IMT

identification in security-sensitive frequency bands; and, underlying both, the adequacy of Radio Regulation No. 4.4 as a legal basis for commercial satellite direct-to-device (D2D) services.

Pre-accession alignment in spectrum governance is a political and institutional practice. It has legal implications though: Ukraine's positions at WRC-27 will contribute to the formation of the Radio Regulations, which are binding treaty law.

The central thesis is that Ukraine's alignment with European spectrum positions at WRC-27 constitutes a form of pre-accession institutional alignment. Ukraine is embedded in the European preparatory architecture, applies European regulatory logic, and produces positions that converge with CEPT and EU outcomes – voluntarily, not under compulsion – that is both supported by treaty interpretation methodology and necessitated by wartime operational experience. The paper argues that disciplined application of the Vienna Convention on the Law of Treaties (VCLT) to the Radio Regulations produces conclusions that independently converge with CEPT and EU positions, and that this analytical compatibility, combined with Ukraine's institutional embedding in European preparatory processes, represents a concrete dimension of de facto regulatory integration that goes beyond legislative approximation.

Ukraine's Institutional Position and Wartime Experience

Following its withdrawal from the Regional Commonwealth in the Field of Communications (RCC) after Russia's invasion in 2022, Ukraine coordinates its WRC positions exclusively through CEPT and the European Conference Preparatory Group (CPG). While not bound by EU Council Decisions on WRC positions, Ukraine's CEPT membership aligns its preparatory work with the EU-CEPT framework [2]. At the domestic level, ongoing work on CEPT spectrum harmonisation – including satellite IoT regulation under RR No. 4.4 in the 862-870 MHz band – confirms that Ukraine's regulatory infrastructure is increasingly embedded in European coordination frameworks [3].

This institutional realignment occurs alongside unprecedented wartime experience with commercial satellite infrastructure. Ukraine's wartime Starlink experience – unlicensed deployment, reported use of terminals by Russian forces in occupied territory [4], and the military consequences of private geofencing decisions – constitutes diagnostic evidence of regulatory gaps rather than practice capable of generating general rules.

RR No. 4.4: Adaptive Derogation and the Limits of Subsequent Practice

Radio Regulation (RR) No. 4.4 permits frequency assignments in derogation from the Table of Frequency Allocations and other relevant provisions, but only on conditions of non-interference and non-protection [5].

Properly interpreted under VCLT Article 31, RR No. 4.4 operates as an adaptive derogation: legally available, but structurally precarious as a basis for scaled commercial D2D services. That conclusion is supported not only by the text of RR No. 4.4 itself, but also by the Rules of Procedure, which preserve notification obligations where harmful interference may be caused and require administrations using RR No. 4.4 to identify in advance measures to avoid and immediately eliminate harmful interference [8].

The interpretive element most likely to challenge this reading is subsequent practice under Article 31(3)(b). A critical methodological point must be established: this inquiry asks whether party practice establishes the agreement of the parties regarding interpretation – a shared interpretive understanding, not *opinio juris* in the customary law sense [6]. The existence of AI 1.13 on the WRC-27 agenda – supported by the administrations hosting the largest constellations reliant on RR No.4.4 – demonstrates that those administrations themselves do not regard RR No. 4.4 as a sufficient permanent basis. The RSPG has identified the gap explicitly: D2D constellations operate under No. 4.4 without any quantification of acceptable interference levels into terrestrial mobile networks [7, p. 4]. This is contested, not concordant, practice – it fails the ILC’s threshold for establishing party agreement [6].

This conclusion mirrors the RSPG and CEPT approach [2; 7], representing regulatory alignment at the level of legal reasoning – not merely policy preference – a form of *de facto* integration more substantive than legislative approximation alone.

Agenda Item 1.7: Article 48 and Security-Sensitive Bands

Agenda Item 1.7 considers possible IMT identification in the bands 4,400-4,800 MHz, 7,125-8,400 MHz, and 14.8-15.35 GHz [15]. NATO does not support identification in 4,400-4,800 MHz or 14.8-15.35 GHz, while conditionally admitting changes only in the narrow 7,125-7,250 MHz sub-band [11]. The RCC, by contrast, supports identification at 14.8-15.35 GHz and advances a “General Provisions” argument that IMT stations should not be constrained by stations in international airspace or waters whose frequency assignments are not recorded in the MIFR [10]. If accepted, that argument would strip protection from precisely those stations – including maritime, aeronautical, and defence-related systems – whose deployment in international spaces is operationally critical and not always amenable to ordinary registration logic.

Article 48 of the ITU Constitution is best read as a qualified reserved-domain clause internal to the ITU legal order. Article 48(1) preserves Member States' freedom with regard to military radio installations; Article 48(2) nonetheless requires such installations, so far as possible, to observe the measures necessary to prevent harmful interference and the relevant provisions of the Administrative Regulations; Article 48(3) requires general

compliance when those installations participate in public correspondence [9, p. 50]. Resolution 216 confirms that invocation of Article 48 is procedurally managed within the RR/MIFR framework and may trigger Bureau and RRB scrutiny [9, pp. 921-923]. Article 48 therefore does not create a general security exception for all strategic spectrum uses. It establishes a qualified constitutional reservation for military radio installations while keeping them inside the broader multilateral order.

The interaction between the ITU, the EU, and general international law on this issue is better described as managed pluralism than as full normative convergence. The EU's European Electronic Communications Code preserves Member State competence over defence spectrum [16], and the Union Secure Connectivity Programme treats governmental satellite communications as strategic infrastructure [17]. Those instruments support compatibility with protective treatment of security-sensitive bands, but they do not themselves determine the meaning of Article 48. Ukraine's alignment with NATO and CEPT on AI 1.7 is therefore best understood as accession-oriented compatibility with the EU's defence-spectrum framework, not as direct implementation of a specific accession obligation.

Conclusions

On RR No. 4.4, systematic application of VCLT Article 31 supports reading the provision as an adaptive derogation: legally available, but structurally precarious as a framework for scaled D2D, with the Rules of Procedure underscoring continuing notification, transparency, and immediate-elimination obligations [5; 8; 18].

Ukraine's contribution is specific and grounded in both legal analysis and wartime experience. Its positions are not borrowed from European actors but independently derived through treaty interpretation methodology that produces convergent results. For a state on an EU accession trajectory, this represents a dimension of de facto regulatory integration – alignment at the level of legal reasoning across multiple substantive issues, through active participation in European institutional processes – that conventional accounts of legislative approximation do not capture. WRC-27 preparation is not a peripheral technical exercise but a concrete site where Ukraine publicly demonstrates, the compatibility of its spectrum governance with the normative discipline of both the ITU order and its European trajectory.

Bibliography:

1. International Telecommunication Union. World Radiocommunication Conference 2023 (WRC-23): Final Acts. – Geneva: ITU, 2024.
2. Radio Spectrum Policy Group. Interim Opinion on WRC-27: RSPG25-022 FINAL. – Brussels: European Commission, 2025.

3. Тичинський А. В. Європейська система управління спектром: стратегічні пріоритети СЕПТ та розвиток гармонізації // ІКТК-2025: матеріали конф. – Харків, 2025. – С. 111–116.
4. Militaryni. Starlink on Russian Drones: How Ukraine Can Protect Its SatCom Domain? 24 December 2025. URL: <https://mil.in.ua>.
5. International Telecommunication Union. Radio Regulations: Edition of 2024. – Geneva: ITU, 2024.
6. International Law Commission. Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties // Yearbook of the International Law Commission. – 2018. – Vol. II, Part Two.
7. Radio Spectrum Policy Group. Opinion on D2D and Single Market Issues: RSPG25-020 FINAL. – Brussels: European Commission, 2025.
8. International Telecommunication Union. Rules of Procedure approved by the Radio Regulations Board. – 2025 ed. – Geneva: ITU, 2025.
9. Collection of the basic texts of the International Telecommunication Union adopted by the Plenipotentiary Conference. – Ed. 2023. – Geneva: ITU, 2023.
10. Проект позиції АС РСС по пунктам повестки дня ВКР-27: Док. РГ2027/140, Прил. 5. – [б. м.]: РСС, 2025.
11. NATO. Preliminary NATO Position on WRC-27 Agenda Items: Presentation. – Joint EC-CEPT Workshop on WRC-27, 20 November 2025.
12. International Law Commission. Draft Articles on Responsibility of States for Internationally Wrongful Acts // Yearbook of the International Law Commission. – 2001. – Vol. II, Part Two.
13. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion // ICJ Reports. – 2004. – P. 136.
14. UN General Assembly. Resolution ES-11/4: Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations, 12 October 2022. – UN Doc. A/RES/ES-11/4.
15. СЕПТ. Draft СЕПТ Brief on WRC-27 Agenda Item 1.7: Doc. ECC PT1(25)016. – Edinburgh, 2025.
16. Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) // Official Journal of the European Union. – L 321. – 17.12.2018.
17. Regulation (EU) 2023/588 of the European Parliament and of the Council of 15 March 2023 establishing the Union Secure Connectivity Programme for the period 2023–2027 // Official Journal of the European Union. – L 79. – 17.3.2023.
18. Vienna Convention on the Law of Treaties, 23 May 1969 // United Nations Treaty Series. – Vol. 1155. – P. 331.