

Why Ukraine is Left Without Missile Weapons to Deter the russian aggressor: Political and Legal Analysis

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The article examines political and legal issues of why Ukraine has been left without missile weapons. The authors summarize that Ukraine's international legal obligations limit Ukrainian missile builders to a potential capacity of producing ballistic missiles up to 500 km. However, this is not what is critical. After all, under martial law, Ukrainian legislation favors production of weapons in general and ballistic missiles in particular. However, there is no special public administration body in Ukraine that is responsible for coordinating and supporting Ukrainian private arms producers. The article concludes that the main reason why Ukraine has been left without missile weapons is the short-sightedness on the part of the officials of the Ministry of Defense of Ukraine, domestic financial and industrial groups, and civil society actors. The authors propose an investment paradigm that should guide domestic elites to invest in the production of Ukrainian weapons, in particular, Ukrainian ballistic missiles which could deter the Russian aggressor.

Keywords: ballistic missiles, deterrent weapons, international obligations, national legislation, legal restrictions, international law, Russian-Ukrainian war, arms trafficking.

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Introduction

In the context of the Russian-Ukrainian war, which has been going on since the beginning of 2014, and its most intense stage, which began on February 24, 2022, the problem of military missile production in the country and arms trafficking in general has risen to a new existential level. The production and sale of weapons has always been a very profitable business (Killer, 2019). Total arms sales of the world's largest arms and military services companies (SIPRI Top 100) amounted to \$592 billion in 2021, an increase of 1.9 percent compared to 2020 (Lopes et al., 2022). The top 5 countries with the highest profits from its sale include the United States, Russia, France, Germany, and China (Killer, 2019). Competition in this area also remains quite fierce, and the policies of the countries are rather inconsistent. Thus, some countries create some groups and oust their competitors (for example, the US military-industrial companies Martin Marietta and Lockheed merged into the modern Lockheed Martin Corporation, which can only be challenged by the Boeing Company, Northrop Grumman Corporation, Raytheon and General Dynamics (Lockheed, 2023), while others begin to demand the disarmament of other states for the sake of "peace" (Cranston, 2023).

With regard to Ukraine and its place in the arms trade market, it should be noted that for almost three decades in a row, it has been at the top of the list of the world's leading arms traders: 2012 – 4th place in the global arms trade ranking, 2015 – 9th place, 2018 – 11th place (Trends, 2018). But at the beginning of 2014, Ukraine was no longer among the top five, and in 2018 it was no longer even among the top ten. And this is only because the Russian-Ukrainian war has been going on since 2014. And first of all, this is due to the fact that Ukrainian arms manufacturers have had practically no new innovations (not related to the Soviet era).

The same applies to domestic short-range missile systems, which were developed, but none of them have been adopted by the Armed Forces of Ukraine (Halunko et al., 2023). As for longer-range missiles, Ukraine has voluntarily pledged not to develop or produce them (NATO, 2019).

It should be emphasized that legal restrictions on the creation and proliferation of weapons are one of the inherent objective components of missile weapons design that should not be ignored (Fidler, 2003). However, while fulfilling its international obligations, Ukraine remained virtually defenseless against a powerful aggressor, which in turn ignores all international obligations and does not comply with the international rules. So is it still necessary to comply with legal restrictions? We tried to answer this question in this article.

At the beginning of the article, it was proved that in the conditions of war, the Ukrainian people are not adequately protected from Russian ballistic missiles. It is concluded that it is necessary to finalize the projects and start producing Ukrainian missiles to deter the Russian aggressor immediately. The following section focuses on the analysis of the legal restrictions imposed by international and foreign national legislation on ballistic missile designers and manufacturers in Ukraine. It is summarized that Ukraine's voluntary international commitments limit Ukrainian business in the development and production of ballistic missiles with a range of more than 500 km. It has been established that compliance with such obligations in the context of a full-scale invasion of Ukraine by Russian-terrorist forces is meaningless, but it is not the main reason why the Armed Forces of Ukraine do not have effective missiles to deter the aggressor. It is proved that the main reasons for the unjustified sacrifice of the Ukrainian people from Russian missiles are the short-sightedness of officials of the Ministry of Defense of Ukraine, domestic financial and industrial groups, and civil society actors who invest hundreds of billions of hryvnias in the purchase of foreign weapons (which is justified for conventional weapons), but do not want to allocate a meager amount of this (tens of millions of hryvnias) to finalize domestic projects of operational and tactical systems with the ballistic missiles.

The article concludes by analyzing the legislation in force under martial law and concludes that the Parliament and the Government of Ukraine have established good tax conditions for the production of weapons in general and ballistic missiles in particular. As for the organizational aspects of coordination and support of Ukrainian private arms producers, we emphasize that effective public administration as such is practically absent in Ukraine. In this aspect, the establishment of the Ukrainian Defense Industry Joint Stock Company does not solve this problem. After all, the functions of the newly created state institution are mainly aimed at the issues of the state-owned arms production sector.

In general, it is concluded that using the good conditions for the production of ballistic missiles created by the Parliament of Ukraine, private investors and volunteer organizations should unite in order to provide a financial support for the completion of the design and production of Ukrainian ballistic missiles with a short range of up to 500 km. After all, only with Ukrainian missiles will the Armed Forces of Ukraine be able to destroy military targets in Russia, a country recognized by the international community, without asking permission from its partners.

Armed immunity, or can we do without weapons?

Let's start our scientific reflections by analyzing the neutral status of the Swiss Confederation and the level of its armament. Ever since the Middle Ages, the Swiss cantons have been

skillfully defending their well-being. After all, Switzerland adheres to the special concept of “armed neutrality.” It provides for the possibility of armed defense in the event of a targeted attack by any country. To this end, Switzerland has always maintained its defense capabilities at a high level. As a result, consistent adherence to the principles of neutrality, readiness to defend its territory, and respect for this status by other states have allowed the confederation to protect itself from various wars and conflicts for a long time (Relevance, 2021).

Thus, the weapon of defense and deterrence of the aggressor is an integral factor, a regulator of good and pragmatic relations in the modern world. It should be noted that Ukraine does not have Swiss welfare. For a long time, Ukrainian citizens have been electing populists of various formats to the Parliament and other representative bodies of Ukraine. One of the consequences of their policy is the failure to adopt a law on weapons. After the beginning of the full-scale invasion of the Russian terrorist forces, the distribution and legalization of weapons in Ukraine were carried out in conditions of extreme necessity. For example, in Kyiv alone, in the first days of the war, more than 18,000 assault rifles were distributed to the Ukrainian citizens, as tens of thousands of volunteers went to defend their homeland with weapons in their hands (Martynets, 2022). At the same time, the crime rate in Ukraine in the first half of 2022 decreased by 25% compared to the previous period (Dziubynskyi, 2022).

Therefore, an effective law on arms trafficking in Ukraine must be adopted. After all, both Ukrainian and international practice show that the presence of firearms among a wide range of citizens is a factor in reducing of a criminal activity and an effective factor in providing armed resistance to an external aggressor. In turn, the uncontrolled (illegal) proliferation of weapons leads not only to instability and armed conflicts, but also disrupts a fragile balance in the global arms market, which is bad for business. In addition, one must also balance on the edge of ethical considerations, which is not something that mafia members are prone to, but which ordinary citizens, for whom the whole world is family, children, relatives, and home, are prone to.

It is necessary to state that Ukraine’s security in the context of the war is caught between “two fires”: the need for weapons and restrictions on their production. It may seem that Ukraine does not have to produce its own weapons. It can be obtained from partners or purchased. However, the practice of this war has shown that stocks of weapons tend to decrease and disappear altogether. Therefore, it is necessary to have the potential to produce weapons at least to replenish its arsenal (Kulichenko et al., 2022).

The political inclination of the partners is volatile. Even now, they will not allow its use against military targets in Russia. Short-range missiles, which essentially are contact weapons, should be singled out as a separate category of weapons because they are used on the battlefield. Medium- and shorter-range missiles are tactical, they can hit enemy decision-making centers, and military bases and interfere with enemy logistics. Strategic missiles could become a deterrent against any aggressor for Ukraine (Halunko et al., 2023). Thus, there is a need to start developing our own missile industry, for which Ukraine has a proper potential.

Analysis of current legal restrictions regarding production of missile weapons

Any attempts by private initiatives to produce missile weapons always encounter some national and international opposition, and not without reason, as there are objective factors for their restrictions. These restrictions were adopted to prevent the supply of weapons to terrorist organized groups and state sponsors of terrorism. It also should be mentioned that the

international community is wary of other states, including democracies, which develop their own missile technology but are in a state of military conflict with another state.

For example, after the Israeli War of Independence in 1950, the Tripartite Declaration was signed, which limited arms supplies from the United States, France, and the United Kingdom. At that time, Israel had two strategies available to it: purchasing abroad or developing its own defense production. Due to the lack of funds and time for development and production, the country's leadership decided to focus on improving imported weapons. This was also based on the capabilities of the Israeli scientific and engineering community and the realization of how negative the consequences of dependence on imports could have been. At that time, Israel focused on improving and modernizing foreign weapons in which other states had invested countless sums of funds (Plakhuta, 2022).

This is a good example to follow for Ukrainian officials from the Ministry of Defense, who are begging exclusively for weapons from foreign partners and have practically left domestic arms manufacturers without government contractors. If this applies to the weapons that Ukraine's partners transfer to Ukraine without any reservations, then this is to some extent justified. After all, the Armed Forces of Ukraine need it today and right now. However, as for ballistic missiles and long-range cruise missiles, no one will ever provide them to Ukraine. They need to be produced independently, and Ukraine has the design and some production potential to do so. Conventionally, the entire array of legal restrictions can be classified into: 1) international; 2) interstate; 3) national. So let us briefly analyze them.

International agreements limiting proliferation of missile technology

The main international document regulating relations on the production of weapons of mass destruction, which include ballistic missiles, is the Missile Technology Control Regime (MTCR). This regime was initiated by the US government and some other countries in 1987, and 34 states, including Ukraine, signed on to it. The reason for the adoption of the MTCR was growing proliferation of weapons of mass destruction in the world: nuclear, chemical, and biological (Missile, 2023).

One way to counter this threat is to maintain close oversight of the transfer of equipment, materials, and technologies that could be used in weapons of mass destruction delivery systems. Twenty countries are currently engaged in global production of missiles that can deliver a "payload" in the form of a warhead. Missile systems usually consist of four elements: 1) a payload or warhead; 2) a propulsion system that accelerates a payload to the desired speed; 3) a guidance and control system that guides the missile along a programmed trajectory to its destination; and 4) a missile structure that combines all the elements. Both the rocket itself and all its components, manufacturing technologies, process equipment, software, electronic equipment, heat protection, materials, etc., are the subjects to control.

At the same time, the MTCR controls atmospheric unmanned aerial vehicles (including cruise missiles, radio-controlled target aircraft, and radio-controlled reconnaissance aircraft) capable of delivering a "payload" of at least 500 kg to a "range" of at least 300 km. The main task is to narrow the circle of users of missile technologies without proliferating them beyond the MTCR partners (Missile, 2022).

It should be noted that not all the states with ballistic missile production facilities are MTCR partners. For example, the People's Republic of China, the DPRK, the Islamic Republic of Iran, and Pakistan are such countries. To cooperate with them on specific projects, it is

necessary to obtain consent from all MTCR partners. Ukraine adheres to its partnership in the MTCR. There are no proven cases of violation of the MTCR by Ukraine. This is not the case, for example, with Russia, which is a partner of the PRC, the DPRK, and the Islamic Republic of Iran (Levenko, 2020).

In addition, international arms trade uses an Export License, which is a permit issued by an export authority that allows a recipient to export, re-export or perform other regulated actions specified in the application. In the international legal field, these and other similar restrictions are in line with the WA – the Wassenaar Agreement. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a multilateral regime aimed at ensuring regional and international security by promoting transparency and increasing accountability in the international transfer of conventional arms and dual-use goods and technologies (Wassenaar, 1996).

So, in general, it should be noted that the Missile Technology Control Regime does not formally prevent Ukraine from developing of the design, testing and production of missiles with a range of up to 500 km for domestic use and 300 km range missiles built for export.

Interstate agreements among individual states with the participation of Ukraine

Interstate agreements between individual countries on missile technology and missile arms reduction emerged during the Cold War. The main signatories to such agreements were the United States and the USSR. However, given that some USSR republics had their own representation in the UN, including Ukraine, the Soviet republics were also members of such agreements. After the collapse of the USSR, legal obligations remained with the successor countries of the Soviet republics.

Ukraine supports the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles Between the United States and the United States of America (INF Treaty) at the legislative and executive levels. This treaty banned all US and Soviet missiles with a range of 500 to 5,500 kilometers. The treaty resulted in the destruction of 430 US missiles and 979 Soviet missiles that had been in storage or otherwise had not been deployed. The treaty hindered the planned deployment of new ready-to-use missiles in the Netherlands, the United Kingdom, Belgium, Germany, and Italy. In addition, the Pershing missile system, which was under a joint US-German control and not formally subject to the INF Treaty, was eliminated by an agreement between the United States and Germany (Missile, 2022).

Ukraine remains a member of the INF Treaty even though the United States officially withdrew from it on August 2, 2019, and Russia is in violation of it. Ukraine's accession to the INF Treaty makes it impossible to develop, manufacture and operate missiles with a range of more than 500 km, and, taking into account other international agreements, more than 300 km in the export version. Ukraine complies with the Presidential Decree and, accordingly, does not have any medium-range or shorter-range missiles. At the same time, the Russian Federation has been using missile weapons with a range of up to 5000 km since February 24, 2022, during the war against Ukraine (Halunko et al., 2023).

Thus, the INF Treaty, unlike the Missile Technology Control Regime, prevents Ukraine from developing and producing missiles with a range of more than 500 km for its own use and 300 km for export. This situation puts the Armed Forces of Ukraine in a pre-emptive disadvantage with the capabilities of the Russian Space and Rocket Forces, which have launch

vehicles (boosters) with a range of up to 5000 km and intercontinental missiles. Therefore, withdrawal from the INF Treaty is a matter of national security for Ukraine. And it requires some political will and courage from the Ukrainian Parliament, which it is lacking even during the second year of Russia's full-scale invasion of Ukraine, with constant strikes at civilian objects by the Russian missiles, and the deaths of thousands of Ukrainian civilians.

National legislation of the United States regarding restrictions on the development, manufacture, proliferation and use of missile weapons

The US laws of international importance primarily arose as a result of the search for methods to protect the US from some crises at home. Perhaps that is why the sanctions imposed by the US Treasury Department play a huge role among them. In the 20s and 30s of the twentieth century, the crisis of overproduction in an industrialized country was catastrophic. Every financial transaction in the world is controlled by the US banking system, which is an effective measure to prevent the undesirable proliferation of missiles and dual-use technologies. Including those that are not prohibited by any international agreements (Iglesias & González-Agote, 2023).

First of all, the sanctions and restrictions apply to dual-use goods. Dual-use items are the goods that have both commercial and military applications or contribute to the proliferation of weapons of mass destruction. Restrictions are imposed through the implementation of export controls. US EAR – Export Administration Regulations. The rules set forth in parts 730-774 of Title 15 of the Code of Federal Regulations (CFR) and issued by the US Department of Commerce to implement the Export Administration Act and other regulatory requirements. The EAR is amended by publishing decisions in the US Federal Register. There is a so-called EPCI – the Enhanced Proliferation Control Initiative. A presidential initiative announced by the United States in December 1990 that underlies within the US Department of Commerce's non-proliferation controls. A particular attention is paid to missile technology, as well as chemical, biological and nuclear weapons. Although the 1990 EPCI announcement covered both goods and end-use controls, the term is often used informally to refer to the EPCI provision that requires an export license based on the exporter's "knowledge" of the end-user or end-use purpose, or that the exporter has "been informed" (Compliance, 2021).

In case of violation of the US laws and international agreements, some sanctions may be imposed, for example, individuals and legal entities may be included in international lists – excluded/prohibited persons – special category citizens/special category terrorists. The sanctions are administrative and financial in nature (Technology, 2020).

Thus, on February 14, 2020, the US Federal Register published an official notification of the Bureau of International Security and Non-proliferation of the US Department of State regarding the introduction of restrictive measures against a number of foreign legal entities and individuals for violating of the non-proliferation regime (Regarding, 2021). Restrictive measures were imposed against some legal entities and individuals who, in violation of Section 3 of the US Non-proliferation Act, transferred or received goods, services or technology from Iran (since January 1, 1999), Syria (since January 2005) and North Korea (since January 1, 2006), that are subjects to the international control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or that have a potential to be used in the development of weapons of mass destruction, cruise or ballistic missile systems.

It is noted that some of these goods, services or technologies are not included in the international control lists, but are subjects to the US national control lists. In particular, on February 3, 2020, the United States imposed restrictive measures, including against: “Kumertau Aviation Production Enterprise,” Russia; – “Instrument Building Design Bureau” (KBP), Russia; – “Scientific Production Association Mashinostroyeniya” (NPOM), Russia; “Eren Carbon Graphite Industrial Trading Company, Ltd.,” Turkey (Concerning, 2020).

Thus, US legislation in terms of restrictions on the development, manufacture, proliferation and use of weapons is not formally applicable to Ukrainian businesses engaged in the development of launch vehicles(boosters). However, according to the legal custom in the field of missile technology, confirmed by effective coercion in the form of sanctions, and given that the United States is a very important major financial and arms partner (donor) for the Ukrainian people in the Russian-Ukrainian war, it is practically becoming the subject to unconditional implementation.

Domestic legal restrictions on development of tactical and strategic missile weapons in Ukraine

The Ukrainian legislation, when signing international agreements, implements these agreements at a state level. First of all, with regard to missile weapons. START I: The Strategic Arms Reduction Treaty between the USSR and the United States was signed on July 31, 1991 (Kimo, 2022). START II: The Treaty on the Further Reduction and Limitation of Strategic and Offensive Arms was signed between Russia and the United States on January 3, 1993. Ukraine was directly involved in the implementation of these Treaties. After declaring its independence, Ukraine inherited 17% (1656 units) of the USSR’s nuclear heritage. According to the Almaty Agreement, Belarus, Kazakhstan and Ukraine pledged to withdraw all tactical Nuclear Weapons deployed on their territories to Russia no later than July 1, 1992.

In April 1992, the United States put forward a draft of the Additional Five-Party Protocol to START I, which was signed by all parties on May 23, 1992 in Lisbon and went down in history as the Lisbon Protocol. This document determined the succession of Ukraine, Russia, Belarus and Kazakhstan to the former USSR’s obligations under the START I Treaty. In the Protocol, Belarus, Ukraine, and Kazakhstan confirmed their commitment to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons as non-nuclear weapon states as soon as possible. In addition to the Lisbon Protocol, the Bush administration secured special unilateral statements from the presidents of Belarus, Kazakhstan, and Ukraine, in which they confirmed their countries’ intention to become non-nuclear weapons states, accede to the Nuclear Non-Proliferation Treaty, and ensure the removal of strategic nuclear weapons to Russia (Treaty, 1968; Start I, 2022).

Ukraine’s aspiration to have the status of a non-nuclear weapon state has been repeatedly confirmed in documents of the Verkhovna Rada: The Statement of October 24, 1991, which states Ukraine’s intention to “accede to the Treaty on the Non-Proliferation of Nuclear Weapons as a non-nuclear weapon state,” the Address to the Parliaments and Peoples of the World as of December 5, 1991, and the Resolution as of April 9, 1992. On October 25, 1993, an agreement was signed between Ukraine and the United States to assist Ukraine in eliminating strategic nuclear weapons and preventing the spread of mass destruction. On November 18, 1993, the Verkhovna Rada of Ukraine adopted a resolution on the ratification of the START Treaty and the Lisbon Protocol.

The Resolution stipulates that, in accordance with the limits established under the Treaty for the former USSR and principles of equality of all states – the successors of the former Soviet Union, Ukraine are obliged to reduce, with subsequent destruction, 36% of their carriers and 42% of their nuclear warheads of strategic offensive nuclear weapons located on their territories. On November 16, 1994, the Verkhovna Rada of Ukraine decided to accede to the Treaty on the Non-Proliferation of Nuclear Weapons. On December 5, 1994, the ratification documents under START I were exchanged. From that moment on, the Treaty had entered into force and its practical implementation by the parties began. On the same day, the documents on Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons were handed over to the heads of the depositary states (On Ratification, 1993).

At the same time, the leaders of the United States, the United Kingdom, and Russia signed a Memorandum on Security Assurances for Ukraine, which sets out the obligations of the nuclear powers with respect to Ukraine's national security in accordance with the generally recognized principles of international law. On the same day, France, China, and the United Kingdom unilaterally provided security guarantees to Ukraine. Ukraine has fulfilled its obligations (Memorandum, 2014). The national legal requirements for the design and production of weapons, including combat missiles, are spelled out in the relevant Law on Defense Procurement and in special and martial law bylaws approved by the Government of Ukraine (On defense, 2020; On licensing, 2015).

It should also be noted that according to the Resolution of the Cabinet of Ministers of Ukraine No 392 as of April 23, 2001, Ukraine has established the institute of general designer to design some equipment for the defense and security needs of the state. This is the person authorized by the Cabinet of Ministers of Ukraine to ensure the implementation of a set of research, development and research and technological works related to the creation and modernization of samples of a particular type of weapons or military equipment or the most important systems of military equipment, automated systems, products and technologies of dual-use (On the approval, 2001).

It has significant legislative powers and organizational capabilities. In particular, he submits proposals to state customers for approval of executors and co-executors of product development and distribution of funds among them, technical specifications for research, development and research and technology works, reviews and determines some relevant technical specifications (certificates) for the products; controls the implementation of tasks for modernization of products created under his supervision and manufactured by enterprises regardless of their ownership; provides customers of research, development and experimental technological works at any stage of their implementation with reasonable proposals for revision (clarification) of the terms of reference (tactical and technical requirements); participates in the work of commissions on certification of products developed under his leadership (On the approval, 2001).

There are also certain simplifications for importing components to Ukraine for the production of weapons. After all, the situation changed dramatically after the start of the full-scale invasion of Ukraine by Russian-terrorist forces after February 24, 2022. Previously, business entities had to submit a large package of documents for registration with the State Export Control Service, but after the start of the large-scale invasion, one electronic application was sufficient enough. These can be business entities of any form of ownership, which after their registering with the State Export Control Service as entities engaged in the import of military goods are entitled to import them for the needs of the Armed Forces of Ukraine.

Charitable organizations can also do this, with the exception that they are not allowed to make a profit. The State Export Control Committee of Ukraine has registered more than five hundred entities that can import military and dual-use goods to Ukraine (Doluda, 2022). Thus, the Ukrainian government has created virtually all the necessary conditions for the design, testing, and production of short-range missiles. Ukrainian missile designers and manufacturers face virtually the same problem: lack of funding. For, all available public funds are currently used to provide financing to a million-strong Ukrainian army. Private Ukrainian and foreign investors and volunteers have not yet been convinced to invest in promising projects of Ukrainian missile designers and manufacturers.

Prospects for the creation of missile weapons in Ukraine and its legal regulation

The existing restrictions, in our opinion, should not be seen as a verdict on the Ukrainian missile program. The official missile program has been reviewed by the National Security and Defense Council of Ukraine. It is known that the deadline for its implementation has been postponed until 2031: NSDC Secretary O. Danylov said that the Council considered documents on the National Security Strategy of Ukraine and the Strategic Defense Bulletin, and that more than UAH 200 billion would have been allocated for missile weapons by 2031 (Ukraine, 2021). From the information obtained, it is known that Ukrainian developments fully comply with the restrictions of the INF Treaty. That is, Ukrainian missiles will never reach the aggressor at a distance of more than 500 km.

According to the authors, we should look for our own Ukrainian way to succeed. First of all, based on the study of the very purpose of the restrictions – to curb the proliferation of weapons of mass destruction: nuclear, chemical and biological. That is, strategic missile weapons in Ukraine may be different from weapons of mass destruction. The target for Ukrainian strategic missiles without range limitation shall only be the military targets. This should follow from the very purpose of the missiles: to destroy military decision-making centers (bunkers), warships, bases and munitions depots. The target can determine the design of the missiles, and they cannot be used in any other way.

An example is high-precision kinetic weapons that do not use explosives at all. In this case, Ukraine will not infringe anything. Such technical areas should be included in the Ukrainian missile program as strategic weapons to deter the aggressor, along with other traditional tactical means (Halunko et al., 2023).

And what about Ukraine's industrial and financial state groups? They do almost nothing by themselves in the field of effective modern military missile boosters and prevent private businesses from doing so.

An example of confirmation of this conclusion is the decision of the State Property Fund of Ukraine, which is forced to liquidate more than 1,200 unprofitable state-owned enterprises. On June 16, 2023, the State Property Fund of Ukraine reported that it had analyzed 2,364 enterprises currently managed by the SPFU. From them: 134 are strategic assets that will remain under state management; 288 are subject to privatization and are looking for investors; 664 are located in the occupied territories; 1278 are scheduled for liquidation or bankruptcy (Boysun et al., 2023).

The recent reforms of public administration in the public sphere regarding production of Ukrainian weapons offer some hope for solving this problem. Thus, on March 21, 2023, the

Government of Ukraine established the Ukrainian Defense Industry Joint Stock Company by transforming the State Concern Ukroboronprom. The company will be responsible for managing the state's corporate rights in relation to business entities in the military-industrial complex of Ukraine (On termination, 2021; On the establishment, 2023).

It should be emphasized that the new entity in the form of a private joint-stock company, with its legal competence and political will, will be able to corporatize the inefficient state defense enterprises. This could theoretically create some conditions for the emergence of a new Ukrainian arms industry. However, the future statutory activities of the Ukrainian Defense Industry Joint Stock Company are not really aimed at stimulating of the development, testing, and production of Ukrainian weapons, in particular short-range ballistic missiles.

Thus, the main hope remains with private initiative, the Ukrainian (including diaspora) patriotic investors and volunteers. The development and production of Ukrainian strategic missile weapons to deter the aggressor should be entrusted on a private level with the support from the state, taking into account the experience, ability to communicate with the authorities, and critical thinking of citizens. Any high-precision weapon will be in demand on the global arms market, especially "the clean" weapons that are not weapons of mass destruction, which will provide revenue. Active Ukrainians should also have the opportunity to make history in Ukraine, in particular as the designers and manufacturers of missile technologies for effective deterrence of the Russian terrorist aggressor.

In our opinion, this possibility can be ensured at the legislative level by adopting annexes to the restrictive regulations on the creation of strategic missile weapons to deter aggressors that are not weapons of mass destruction. This should be done within the framework of the future and necessary social contract in Ukraine, which will guarantee its citizens well-being and prosperity of a rich country, peace, and personal freedoms.

Conclusions

The article analyzes the legal mechanism of arms trafficking and legal restrictions regarding the creation of missile weapons in the context of the Russian-Ukrainian war that began in early 2014. It has been proven that it is satisfactory for the design and production of ballistic missiles with a range of up to 500 km. After all, the current international, interstate and national legal regimes, although limiting certain types of missile weapons, provide a theoretical opportunity to produce and supply effective missile weapons to the Armed Forces of Ukraine. Although we cannot claim that the legislation in Ukraine in the area we are analyzing is perfect, it needs to be enhanced. However, the main reason why the Armed Forces of Ukraine do not have effective Ukrainian missiles is the lack of political will to withdraw from the INF Treaty and create a new investment paradigm. The current investment paradigm focuses domestic elites (the Ministry of Defense of Ukraine, national industrial financial groups, and volunteer organizations) on purchasing weapons from various foreign manufacturers rather than investing in production of Ukrainian weapons, including the missiles to deter the Russian aggressor.

References

- Boytsun, Andriy, Dmytro Yablonovskyi, Oleksandr Lysenko, Oleksiy Pavlysh, Maria Kramar, and Soe Weekly (2023) New strategy of the old Ukroboronprom, three energy companies to receive 600 million euros from the EBRD. *Ukrainska Pravda*. Available online: <https://www.epravda.com.ua/publications/2023/06/23/701528/>

- Compliance with export legislation (2021) Esri. Available online: <https://www.esri.com/uk-ua/legal/export-compliance>
- Concerning the US restrictive measures for violation of non-proliferation regime (2020) State Financial Monitoring Service of Ukraine. Available online: <https://fiu.gov.ua/pages/protidija-terorizmu/dokumenti/rishennya-mizhnarodnix-organizacij-ta-inozemnix-krajin/shhodo-obmezhuvalnix-zaxodiv-ssha-za-porushennya-rezhimu-nerozpovsyudzhennya.html>
- Doluda, Ihor (2022) The Concept of Legal Regulation of Export and Import of Military and Dual-Use Goods in Ukraine. *Legal Bulletin*, No 26, 127-134. Available online: <http://lawbulletin.oduvs.od.ua/v26-2022>
- Fidler, David P. (2003)
- Dziubynskyi, Vadym (2022) The overall crime rate in Ukraine in the first half of 2022 decreased by 25% against the previous period. *Ukrinform*. Available online: <https://www.ukrinform.ua/rubric-society/3537526-u-policii-kazut-so-riven-zlocinnosti-za-piv-roku-vpav-na-25.html>
- Halunko, V., Felyk V., Levenko A., Ivannyschuk A., Rokytskyi Y., Popova S., and Popova L. (2023) *Missiles in the Russian-Ukrainian War*. Edited by V. Felyk. Kyiv: Lyudmila Publishing House.
- Iglesias, Miguel Otero and Agustín González-Agote (2023) Is US dollar hegemony under the threat? Real Instituto Elcano. Available online: https://www-realinstitutoelcano-org.translate.google/en/analyses/is-us-dollar-hegemony-under-threat/?_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc
- Killer facts 2019: The scale of the global arms trade (2019) Amnesty International. Available online: https://www-amnesty-org.translate.google/en/latest/press-release/2019/08/killer-facts-2019-the-scale-of-the-global-arms-trade/?_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc
- Kulichenko, I., Levenko O., Shapar A. et al. (2022) Ecology of the metropolis. Ecological aspects of industrial development of Dnipropetrovsk. IMA-press, 368 p.
- Levenko, O. (2020) North Korean Missile God of War “Mars.” Dominant Print, 36 p.
- Lockheed, Martin (2023) Our History. Lockheed Martin Corporation. Available online: <https://www.lockheedmartin.com/en-us/news/features/history.html>
- Lopes da Silva, Diego, Nan Tian, Lorenzo Scarazzato, Lucie Béraud-Sudreau, and Xiao Liang (2022) The SIPRI Top 100 Arms-producing and Military Services Companies. Stockholm International Peace Research Institute. Available online: <https://www.sipri.org/publications/2022/sipri-fact-sheets/sipri-top-100-arms-producing-and-military-services-companies-2021>
- Martynets, Serhiy (2022) 18,000 assault rifles were distributed in Kyiv today, weapons from the West are on the way. S'OHODNI. Available online: <https://ukraine.segodnya.ua/ua/ukraine/reznikov-v-kieve-razdali-18-tys-avtomatov-na-podhode-oruzhie-ot-zapada-1605245.html>
- Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons (2014) *The Holos of Ukraine*, No 39.
- Missile Technology Center Control Regime (MTCR) (2022) Nuclear Threat Initiative. Available online: <https://www.nti.org/education-center/treaties-and-regimes/missile-technology-control-regime-mtcr/>
- Missile Technology Control Regime (2023) *MTCR*. Available online: <https://mtcr.info>

- NATO Position on the Intermediate-Range Nuclear Forces Treaty (2019). NATO. Available online: https://www.nato.int/cps/uk/natohq/topics_166100.htm
- On defense procurement (2020) Law of Ukraine from 17.07. 2020, No. 808-IX. *The Holos of Ukraine*, No 144.
- On licensing of economic activities (2015) The Law of Ukraine from 02.03.2015, No 222-VIII. *Bulletin of the Verkhovna Rada*, No 23, 158.
- On Ratification of the Treaty between the Union of Soviet Socialist Republics and the United States of America on the Reduction and Limitation of Strategic Offensive Arms, signed in Moscow on July 31, 1991, and the Protocol thereto, signed in Lisbon on behalf of Ukraine on May 23, 1992 (1993) Resolution of the Verkhovna Rada of Ukraine from 18.11.1993, No 3624-XII. *Bulletin of the Verkhovna Rada of Ukraine*, No 49, p. 464.
- On termination by reorganization of the State Concern “UkrOboronProm” in the order of reorganization into a joint-stock company (2021) Regulation of the Cabinet of Ministers of Ukraine from December 09.12.2021, No 1594. *The Official Bulletin of Ukraine*, No 98, 6407.
- On the establishment of the Ukrainian Defense Industry Joint Stock Company (2023) Resolution of the Cabinet of Ministers of Ukraine from 21.03.2023, No 441. Verkhovna Rada of Ukraine. Available online: <https://zakon.rada.gov.ua/laws/show/441-2023-%D0%BF#Text>
- On the approval of the Regulation on the general designer on the creation of equipment for the needs of defense and security of the state (2001) Resolution of the Cabinet of Ministers of Ukraine No 392 as of April 23, 2001. *ZakonOnline*. Available online: https://zakononline.com.ua/documents/show/238536___644159
- Plakhuta, Victor (2022) War-hardened. How Israel became a military superpower. *Ukrainian Pravda*. Available online: <https://www.pravda.com.ua/articles/2022/12/9/7379947/>
- Regarding the US restrictive measures for violation of non-proliferation regime (2021) The State Financial Monitoring Service of Ukraine. Available online: <https://fiu.gov.ua/pages/protidija-terorizmu/dokumenti/rishennya-mizhnarodnix-organizacij-ta-inozemnix-krajn/shhodo-obmezhuvalnix-zaxodiv-ssha-za-porushennya-rezhimu-nerozpovsyudzhennya.html>
- Relevance of Swiss neutrality: a relic of the past or an effective tool of foreign policy? (2021) ADASTRA. Available online: <https://adastra.org.ua/blog/relevantnist-nejtralitetu-shvejcariji-reликт-minulogo-chi-diyevij-instrument-zovnishnoyi-politiki>
- Cranston, Alan (2023) Nuclear weapons are unworthy of civilization. Global Security Institute. Available online: https://gsinstitute.org/?gad=1&gclid=EAIaIQobChMIwIfWsq6s_wIVCkGRBR0DMQfHEAAYBCAAEgJdlvD_BwE
- Start I, Start II. Ukraine in the process of nuclear disarmament (2022) Kimo. <http://kimo.univ.kiev.ua/MVZP/79.htm>
- Technology licensing trade between countries (2020) Buklib. Available online: <https://buklib.net/books/25623/>
- Treaty on Non-Proliferation of Nuclear Weapons (1968) Treaty from 01.07.1968. *The Official Bulletin of Ukraine*, No 18.
- Trends in International Arms Transfers (2018) SIPRI. Available online: <https://www.sipri.org/publications/2019/sipri-fact-sheets/trends-international-arms-transfers-2018>
- Ukraine to allocate UAH 200 billion for missile program by 2031: We can't wait for help (2021) Focus. Available online: <https://focus.ua/uk/voennye-novosti/491016-ne>

mozhem-zhdatt-pomoshchi-ukraina-vydelit-200-mlrd-grn-na-raketnuyu-programmu-
do-2031-goda

Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (1996) International document from 01.07.1996, No 998_177. Verkhovna Rada of Ukraine. Available online: https://zakon.rada.gov.ua/laws/show/998_177#Text