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War crimes and crimes against humanity in Ukraine: Legal qualification and features of documentation

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Abstract

This scientific article is devoted to the interpretation of war crimes and crimes against humanity, peculiarities of regulation of these illegal acts and organization of their investigation in Ukraine. Using the dialectical method, it emphasizes the necessity of using the resources of the International Criminal Court ICC in Ukraine and establishing a Special International Tribunal to hold personally responsible for the commission of crimes of aggression the actors involved. The expediency of creating a special state institute for interaction with the ICC with the appointment of national coordinators is argued. The components of the concept of investigation of war crimes and crimes against humanity are determined as a holistic, comprehensive and interdisciplinary theoretical system for activities under special conditions. In the conclusions of the case, the need to ensure clear management and coordination of the international investigation team under the auspices and control of the International Criminal Court and the Eurasian Agency in order to collect, execute, systematize and preserve the factual evidence base, in accordance with the rules of the international protocol, is pointed out.

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Keywords: international humanitarian law; war crimes; crimes against humanity; organization of investigation; collection of evidence.

Crímenes de guerra y crímenes contra la humanidad en Ucrania: Calificación legal y características de la documentación

Resumen

Este artículo científico está dedicado a la interpretación de los crímenes de guerra y crímenes contra la humanidad, las peculiaridades de la regulación de estos actos ilegales y la organización de su investigación en Ucrania. Mediante el método dialéctico, se enfatiza en la necesidad de utilizar los recursos de la Corte Penal Internacional CPI en Ucrania y establecer un Tribunal Internacional Especial para responsabilizar personalmente por la comisión de crímenes de agresión a los actores implicados. Se argumenta la conveniencia de crear un instituto estatal especial para la interacción con la CPI con el nombramiento de coordinadores nacionales. Se determinan los componentes del concepto de investigación de crímenes de guerra y crímenes de lesa humanidad como un sistema teórico holístico, amplio e interdisciplinario para actividades en condiciones especiales. En las conclusiones del caso, se señala la necesidad de garantizar una gestión y coordinación claras del equipo internacional de investigación bajo los auspicios y el control de la Corte Penal Internacional y el Organismo Euroasiático a fin de recopilar, ejecutar, sistematizar y preservar la base de pruebas fácticas, de conformidad con las normas del protocolo internacional.

Palabras clave: derecho internacional humanitario; crímenes de guerra; crímenes de lesa humanidad; organización de la investigación; recopilación de pruebas.

Introduction

The need for a criminal law bans on crimes against peace, the security of mankind and international law and order in modern conditions is due not so much to their prevalence as to the extremely high degree of their public danger. Thus, Article 7 of the Law of Ukraine «On the Fundamentals of National Security of Ukraine» determines that at the present stage the main real and potential threats to the national security of Ukraine, stability in

society, in the sphere of state security are criminal activities against peace and security of mankind (On The Fundamentals Of Ukraine's National Security. Law Of Ukraine, 1993).

Also, with the proclamation of Ukraine's independence and the choice of a course aimed at ensuring the fundamental principles of protecting human rights and freedoms that are well-established in the international community, in 2001 the Criminal Code of Ukraine, having Chapter XIX «Crimes against the established order of military service (War crimes)» (Articles 401-434), for the first time in the history of national criminal legislation was supplemented by Chapter XX «Crimes against peace, the security of mankind and international law and order» (Criminal Code Of Ukraine, 2001).

Armed conflict, in the overwhelming majority of cases, is due to the existence of contradictions of an ethnic, national, religious nature, which the parties cannot resolve peacefully, non-military means. The Russian Federation (hereinafter – the RF) commits deliberate criminal acts in Ukraine, which, in accordance with the Rome Statute, have signs of war crimes and crimes against humanity - in particular, murder, torture, kidnapping, hostage-taking, inhuman treatment, rape and other forms of sexual violence, extrajudicial executions, deportation, destruction of civilian infrastructure, misappropriation of property and other actions against the civilian population, etc.

During the full-scale invasion of the RF in Ukraine (from 02/24/2022 to the present day), law enforcement officers recorded more than 47 thousand such crimes committed by the aggressor party (Torture, rape and murder, 2022), and this number in the conditions of war is constantly growing. At the same time, the colossal sums of the Russian Federation's war expenditures only confirm the commitment and involvement of the top military and political leadership in such actions (Table 1).

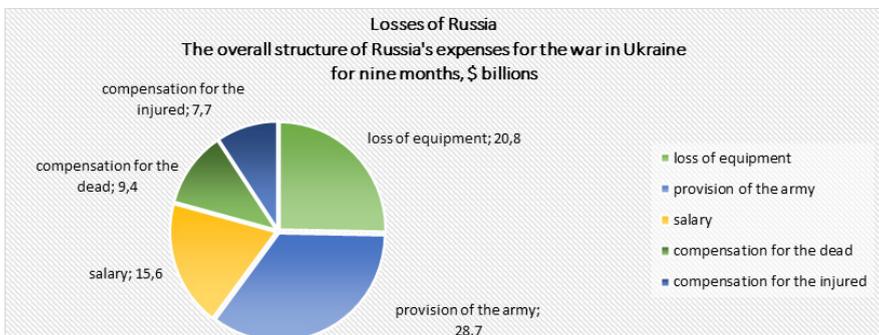


Table No. 01. (Information from: Datsenko, 2022).

War crimes and crimes against humanity, which are directly related to international criminal law, are particularly dangerous for humanity and undermine the international system of security and law and order. The long-term efforts of the international community have yielded fruitful results, which are reflected in the formation of international legal norms that establish the grounds and conditions for responsibility for crimes against peace, security of mankind and international law and order.

With the signing of the Rome Statute of 1998, since July 1, 2002, the international criminal justice body has been officially operating on a permanent basis, whose competence includes the prosecution of persons responsible for genocide, war crimes, crimes against humanity and aggression (Bibik and Kulyk, 2014).

As you know, international organizations were created and continue to be created by states to jointly solve global problems. The essence of global problems is that states are not able to solve them independently, on their own. Of course, the problem of armed conflicts and violations of humanitarian law that occur during armed conflicts, especially in the light of recent events in Ukraine, Syria and the Middle East as a whole, is the most vivid example of the fact that these problems cannot be solved by the forces of one, even the most powerful state.

At the 2005 World Summit, member states of the United Nations Organization (hereinafter – the UN) recognized that genocide, crimes against humanity, and war crimes are such dangerous crimes that the world's population needs collective international responsibility to protect against these acts. In this regard, the international community, acting through the UN, has undertaken to use diplomatic, humanitarian and other peaceful means to protect the population from international and, in particular, war crimes (Article 139 of the Final Document).

In addition, the states agreed to support UN efforts to create opportunities for early warning of these acts. At this, the obligation of members of the international community to stop mass violations of human rights cannot be recognized as an innovation in international law and the practice of international relations.

Thus, in the XXI century, the world community continues to emphasize the universal nature of the problem of combating war crimes, and the UN remains the main international organization designed to solve problems of concern to the entire world community.

The resolutions of the Parliamentary Assembly of the Council of Europe and the European Parliament mention the genocide in Ukraine. Even a preliminary review of the existing factual base of crimes committed by the Russian occupiers gives objective grounds to talk about all the signs of actions defined precisely as genocide in accordance with the international

Convention for the Prevention and Punishment of the Crimes of Genocide. In particular, we are talking about: mass intentional killings of Ukrainian civilians; injuries, disability, severe mental trauma, including due to numerous cases of rape, torture, bullying committed by the Russian occupiers; purposeful and deliberate destruction by the aggressor country of the system of life support of Ukraine; forcible deportation of Ukrainian citizens to Russia. Mass kidnapping of children (Pashkov, 2022).

Illegal actions committed in the conditions of armed conflict, causing a ban on the entire international community, should not go unpunished, and their effective warning is intended to be ensured both by measures adopted at the national level and by the intensification of international cooperation.

Disclosure and investigation of international procedures requires international cooperation of state institutions in order to search for international criminals. The need for such cooperation determines the needs of practical activities of national law enforcement agencies to seize evidence on the territory of other states, to ensure the implementation of criminal procedural functions defined by law and the administration of justice. It is regulated, on the one hand, by international legal norms, and on the other – by the provisions of the national criminal and criminal procedural legislation.

The adoption in Ukraine in 2012 of a new Criminal Procedure Code (hereinafter – the CPC of Ukraine) settled a number of issues of international cooperation in criminal proceedings, including defining its main forms: international legal assistance in carrying out procedural actions (Chapter 43 of the Criminal Procedure Code of Ukraine); extradition of persons who have committed a criminal offense (extradition) (Chapter 44 of the Criminal Procedure Code of Ukraine); criminal proceedings in the order of adoption (Chapter 45 of the Criminal Procedure Code of Ukraine).

However, in recent years, the nature, concept and goals of international cooperation of state bodies have undergone significant changes. In today's conditions, the presence of numerous military conflicts in the world and, above all, on the territory of Ukraine, encourages the search for reserves in improving the efficiency of law enforcement activities, the development of new methods for investigating war crimes and crimes against humanity in order to improve skills in the search for criminals, qualifications, organization and conduct of investigative (investigative) actions in the investigation of crimes of this category.

1. Methodology of the study

The methodological basis of the study was the methods and techniques of scientific knowledge. Their application is due to a systematic approach, which makes it possible to consider the problems of research in the unity of their social content and legal form. The leading method of research is dialectical, with the help of laws and categories of which the essence of war crimes and crimes against humanity is determined, as well as the peculiarities of international regulation of their investigation, taking into account national regulatory procedures.

The use of the laws of formal logic and its methods such as induction and deduction, analysis and synthesis, made it possible to determine the structural and logical scheme of research, to identify the properties and signs of the legal nature of war crimes and crimes against humanity, the problems of their criminalization and investigation at the national level.

The method of system analysis, system-structural and formal-logical methods are applied in order to clarify the conceptual foundations of the organization of the investigation of war crimes, subject to the proper legal procedure in accordance with the norms of international customary law and the practice of its application; dogmatic – for the interpretation of legal categories, deepening and clarifying the conceptual; functional – in order to identify the levels of organization of the investigation; typological – when clarifying the proper legal procedure for organizing an investigation and collecting evidence of war crimes; methods of modeling and forecasting – to form proposals for the improvement of certain provisions of national legislation in accordance with the requirements of international humanitarian law and the practice of its application in the investigation of crimes of aggression committed under a special legal regime; sociological and statistical methods – during the analysis and generalization of the empirical basis of the study.

2. Analysis of recent research

Today, in the science of international humanitarian law, criminal and criminal procedural law, a significant number of works are presented, which analyze the features of qualification, organization of investigation and collection of evidence about the crimes of aggression, the processes of formation and development of the system of international criminal justice in this direction.

The presence of a significant number of scientific research on this topic is of great theoretical and practical importance, and the formulated ideas are reflected in the legislation and are positively perceived by international

law enforcement practice. At the same time, some works do not take into account the modern development of law enforcement investigative practice in this area, which is happening very rapidly and necessitates the reassessment of previous conclusions in the light of a new interpretation of certain provisions of international treaties or the construction of new concepts.

Most scientific concepts lack a systematic approach to organizing the investigation of war crimes committed during a military conflict.

It should be noted that according to official statistics, since the introduction of martial law in Ukraine on 24.02.2022, investigators of the National Police of Ukraine initiated 172,684 criminal proceedings, 49,851 initiated on the facts of committing crimes on the territory of Ukraine by servicemen of the Armed Forces of the Russian Federation and their accomplices (National Police of Ukraine, 2022) (table 2). The investigation of such a large number of these crimes requires efficiency, professionalism and the involvement of a significant human resource.

Table No. 02.

The number of criminal proceedings initiated by the investigators of the National Police on the facts of the commission of crimes on the territory of Ukraine by servicemen of the armed forces of the Russian Federation and their accomplices is 49,851 (in the period from 24.02.2022 to 19.12.2022)

Legal qualification:

	- Article 438 (Violation of the laws and customs of war) of the Criminal Code of Ukraine – 38313
	- Article 110 (Encroachment on the territorial integrity and inviolability of Ukraine) of the Criminal Code of Ukraine – 9143
	- Article 1111 (Collaboration) of the Criminal Code of Ukraine – 2207
	- Article 111 (High Treason) of the Criminal Code of Ukraine – 103
	- Article 113 (Sabotage) of the Criminal Code of Ukraine – 37
	- Article 437 (Planning, preparation, unleashing and waging an aggressive war) of the Criminal Code of Ukraine – 29
	- Article 258 (Terrorist Act) of the Criminal Code of Ukraine – 18
	- Article 281 (Violation of the rules of air flights) of the Criminal Code of Ukraine – 1

Source: prepared by the authors.

In connection with the above-mentioned circumstances, there is a need, taking into account current trends in the development and interpretation of the norms of international humanitarian and criminal procedural law,

a new theoretical understanding of issues related to the organization and establishment of interstate and interdepartmental interaction of documenting and investigating war crimes and crimes against humanity.

These circumstances determined the choice of the topic of a scientific article, covering a set of issues, the study of which has an indisputable theoretical value.

3. Results and discussion

3.1. The legal nature of war crimes and crimes against humanity and the problem of their criminalization

By their nature, war crimes are among the most serious and serious crimes known to mankind. According to modern international law, international crimes (crimes against humanity) are genocide, aggression, war crimes, crimes against humanity.

The international community refers to war crimes as any of the following acts: deliberately directing an attack against civilians in a war zone; committing violent acts in order to spread terror among the civilian population; deliberately carrying out an indiscriminate attack affecting civilians or civilian objects, knowing that such an attack would result in excessive deaths, injuries to civilians or damage to civilian objects; deliberate attacks on unprotected areas or demilitarized zones; deliberately transforming into an object of attack a person known to be hors de combat; deliberate attacks on medical personnel, equipment and materials.

Deliberately carrying out an attack, knowing that such an attack would lead to broad, long-term and serious environmental damage; the use of weapons, shells and materials that cause excessive injury or unnecessary suffering; use of poison or poisoned weapons or suffocating, poisonous or other gases and all similar liquids, materials or devices; use of chemical or bacteriological weapons; the use of bursting bullets or weapons, the main action of which is injury; the use of indiscriminate traps or mines (which can affect both combatants and civilians) in places where there is a high probability of civilians being (Koval and Avramenko, 2019).

Determination of the grounds for the application (criminalization) or refusal to apply (decriminalization) of criminal influence should be recognized as a constant problem of criminal law. It should be emphasized that the perpetrators of most war crimes today, unfortunately, manage to avoid criminal prosecution. One of the reasons is the imperfection of the legislation and its non-compliance with international standards.

Despite the lack of a legislative definition of war crimes, some of those are provided for in Chapter XIX of the Criminal Code of Ukraine: violence against the population in the area of hostilities (Article 433); mistreatment of prisoners of war (Article 434); illegal use of symbols of the Red Cross, Red Crescent, Red Crystal and their abuse (Article 435); looting (art. 432). At the same time, looting in accordance with the Criminal Code of Ukraine has a much narrower application compared to the one provided by the Geneva Conventions and, accordingly, the Rome Statute. Thus, according to Ukrainian law, looting is the theft on the battlefield of things that are killed or wounded, whereas according to the Rome Statute, looting is the seizure of any property without the consent of its owner for personal use.

The universal norm regarding war crimes is contained in Chapter XX of the Criminal Code of Ukraine. So, in accordance with Art. 438 «Violation of the laws and customs of war» is considered a crime of ill-treatment of prisoners of war or civilians, expulsion of civilians for forced labor, looting of national values in the occupied territory, use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties ratified by the Verkhovna Rada of Ukraine, as well as ordering the commission of such actions (Criminal Code of Ukraine, 2021).

When applying this norm, it is necessary to similarly focus on the practice of international criminal courts, doctrine, authoritative comments on international humanitarian law and the provisions of international treaties. At the same time, the list of acts that may be considered violations of the laws and customs of war does not necessarily have to coincide with the list from Article 8 of the Rome Statute, or the list of serious violations of international humanitarian law under the Geneva Convention or the First Additional Puncture.

It can be expanded, but not arbitrarily. In any case, the expansion of the list of these acts should be supported in international practice. Otherwise, Ukraine will almost certainly face cases against itself in the European Court of Human Rights.

In accordance with modern international law and practice, as well as the criminal legislation of foreign countries, crimes of aggression are considered exclusively in the context of political subjectivity, that is, criminal liability, including international liability. It is possible to attract only the highest political and military leadership of the aggressor state, which by its powers can actually plan, prepare or unleash (initiate) an aggressive war or order aggressive hostilities.

Thus, bringing to criminal liability persons from among ordinary servicemen of the Russian Federation according to the qualification of Art. 437 (planning, preparation, unleashing and waging an aggressive war) of

the Criminal Code contradicts both the provisions of current international legal acts and the practice of criminalizing aggression in the legislation on criminal liability of EU countries (Khrypun, 2022).

It should be emphasized that currently the Criminal Code of Ukraine does not have responsibility for crimes against humanity covered by Art. 7 of the Rome Statute and contain the following features of a large-scale or systematic attack against the civilian population, the performer's awareness of the large-scale and systematicity, and be committed in the form of: murders (civilians); destruction (mass destruction of civilians or occurred within the framework of such destruction); the use of a vacuum bomb; deportation or forced displacement of the population; Torture; persecution (restriction of the freedom of one or more persons in terms of exercising fundamental rights) (Rome Statute Of The International Criminal Court. Charter Of The United Nations, 1998).

Currently, we have to state the imperfection of certain norms of the Criminal Code of Ukraine, which sometimes creates obstacles in an adequate response to hostilities in the temporarily occupied and adjacent territories. Currently, there is an urgent need to revise Chapters XIX-XX of the Code in order to include in their composition the norms that would provide for criminal liability for all actions against the interests of the people of Ukraine.

We propose to focus on the list of acts that can be qualified as a violation of the laws and customs of war proposed in the draft law «On Amendments to Certain Legislative Acts of Ukraine to Ensure the Harmonization of Criminal Legislation with the Provisions of International Law» No. 9438 (On The Adoption As A Basis Of The Draft Law Of Ukraine On Amendments To Certain Legislative Acts Of Ukraine To Ensure The Harmonization Of Criminal Legislation With The Provisions Of International Law, 2019). This list complies with international standards and Ukraine's obligations under international treaties to criminalize violations of international humanitarian law.

The challenges faced by the national justice system include the inconsistency of criminal legislation with the generally recognized provisions of international criminal law enshrined in the Rome Statute of the International Criminal Court (hereinafter – the ICC) (there is no explanation of what war crimes are, the blank disposition of Article 438 of the Criminal Code of Ukraine, the general subject of the crime of aggression, the lack of responsibility for crimes against humanity, the lack of an institution of team responsibility, etc.). This problem requires a comprehensive solution. Some lawyers reasonably believe that the way out of this situation is the adoption of the law on transitional justice (Bida, 2021).

In addition, the problems with bringing perpetrators to justice are created for Ukraine by the lack of a unified approach to the qualification of war crimes. The analysis of the specified category of criminal proceedings showed the absence of a single position in the qualification of these criminal actions among the investigative bodies and the prosecutor's office, which negatively affects the process of organizing the pre-trial investigation and its results as a whole.

As a result of the ambiguous and diverse assessment of this category of crimes, a dual nature was gradually laid in the mechanism of preliminary and final criminal-legal qualification of the circumstances of the crime and the actions of suspects, when the same events were simultaneously assessed as participation in the crimes of aggression, and as terrorist acts, and in other individual cases – as a violation of the laws and customs of war.

3.2. Prospects for using the resources of the International Criminal Court and establishing a Special International Tribunal to bring to personal responsibility for the commission of crimes of aggression

Under international law, the most active way to investigate and bring the perpetrators to justice is the state in whose territory war crimes are committed (Nazarchuk, 2020). In regulating the organization and interaction of law enforcement and judicial bodies in the investigation of crimes at the interstate level, bilateral and multilateral international treaties play a significant role (Smyrnov, 2003), which, first of all, should include the European Convention on Mutual Assistance in Criminal Matters of 1959; European Convention on the Transfer of Criminal Proceedings of 1972; convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993 etc.

To date, in Ukraine, all data on crimes of aggression committed on its territory must be promptly collected, appropriately documented, which will further allow administering justice in order to restore justice for victims of violence. That is, fixing the events that have signs of war crimes and crimes against humanity committed by the RF in Ukraine is necessary for: achieving justice and bringing to inevitable responsibility the leadership of the Russian Federation and all those responsible for these crimes; guaranteeing effective justice to prevent the commission of new such crimes; informing the international community in order to prevent disinformation and silence the facts about the crimes committed; strengthening the country's legal position in investigations, litigation at the national and international levels; assessment of the damage caused to the state and citizens as a result of large-scale armed aggression (Participation of Ukrainian organizations in documenting crimes committed by the Russian Federation in Ukraine, 2022).

In the world there is a rather conditional division into «internal» and «external» models of prosecution of war criminals. The main criterion is whether the state wants to actively investigate cases of war crimes on its territory, or whether the leading role belongs to external factors (international institutions, foreign mechanisms, etc.).

Ukraine is still using hybrid tactics, on the one hand, directing efforts to bring the perpetrators to justice as much as possible by means of the national legal system, on the other hand, it relies on the ICC as a universal jurisdiction over complex jurisdictional issues or immunities, or in case of insufficient resources.

International customary law provides an opportunity to exercise universal jurisdiction over war crimes that are not serious violations, regardless of the citizenship of their perpetrator and the place of their commission. Universal jurisdiction may be provided for by the rule of international customary or contractual law.

If a universal jurisdiction is established by a contract, it is usually mandatory. Universal jurisdiction can be exercised either by adopting internal legislative or in the form of an investigation into persons suspected of committing offenses and transferring them to the court. The grounds for exercising universal jurisdiction over war crimes are present simultaneously in international treaty and customary law.

Usually, the parties to the conflict make it clear that they will not cooperate in any way and in every way interfere with the investigation. As a result, active opposition to the organization of the investigation and collection of evidence-based information about war crimes committed by the opposing parties to the armed conflict is formed by hiding traces of war crimes (destruction of relevant documentation, evasion of its issuance to investigative groups, etc.). This behavior is explained by a completely understandable unwillingness to be convicted of committing illegal actions, paying reparations in the future.

ICC Prosecutor F. Bensouda stated that:

The events in Ukraine show signs of war crimes and crimes against humanity and require a more detailed investigation. Despite the available information about national court proceedings, potential cases that may appear on the basis of an investigation would be admissible in the ICC. This is explained either by the fact that the authorized bodies in Ukraine and/or in the Russian Federation do not take active actions against the relevant categories of persons and acts, or by the fact that the national judicial system is not «accessible» in the territory under the control of the opposite party, which makes it impossible to detain the accused, or to obtain the necessary evidence and testimony, or to conduct proceedings by representatives of the competent authorities (Prischepa, 2020, n/y).

It should be emphasized that the ICC, as the highest court for criminal prosecution of international crimes, faces objective difficulties in obtaining jurisdiction over the crime of aggression. In addition, neither Ukraine nor Russia ratified the Rome Statute, although Ukraine recognized the ICC's jurisdiction to prosecute other international crimes. In addition, within a universal jurisdiction, only a few countries can prosecute for this fundamental international crime.

Despite all its shortcomings, the International Criminal Court is currently the only international mechanism that gives a chance to bring to personal responsibility the highest military leadership of the Russian Federation. In view of this, the main attention of the Special International Tribunal, the creation of which is planned, should be focused solely on the act of aggression, so that the work of the ICC is complemented solely to attract the military-political leaders of the RF, who planned, prepared, initiated and carried out an act of aggression in Ukraine, and later - control and manage its implementation.

It is possible that the tribunal will consider the actions of Belarus falling under paragraph f of Art. 8 of the Rome Statute, as the state that allowed its territory to be used to commit an act of aggression against Ukraine (Ogrenchuk, 2022). The narrow and clear purpose of the tribunal will also mean a reasonable budget, as it will not have to review the cases of hundreds of mid-level officials.

International organizations and a number of countries currently support the creation of a tribunal, which can be created on the basis of a multilateral treaty between states or on the basis of an agreement with international organizations such as the UN, the EU or the Council of Europe. The key thing is that the status of this judicial institution should be international and cover as many states as possible. Also, the jurisdiction of the Special Tribunal should cover the beginning of an armed conflict, that is, from 2014, and should not have a final date, as the armed conflict continues.

3.3. Organizational and legal aspects of the investigation of war crimes and crimes against humanity

It should be emphasized that in March 2022, the UN Human Rights Council launched a corresponding investigation into Russian aggression and created an independent commission, in April 2022 the Parliamentary Assembly of the Council of Europe adopted a resolution «Consequences of the Russian Federation's continued aggression against Ukraine: the role and reaction of the Council of Europe», in which it called on member states and international judicial institutions to promptly investigate the crimes of Russian invaders in Ukraine.

On 19.05.2022, the European Parliament adopted a resolution containing a number of important points: taking all necessary measures to investigate war crimes, crimes against humanity, genocide and aggression committed on the territory of Ukraine; creation of a special international tribunal; expanding the mandate of Eurojust to ensure the analysis and preservation of the collected evidence, etc. (Pashkov, 2022).

In Ukraine, the Office of the General Prosecutor of Ukraine (hereinafter – the OGP), as the legally established body responsible for the investigation of war crimes on the territory of Ukraine, plays a key role in ensuring the prosecution of those responsible for war crimes and crimes of cruelty. However, the scale of these criminal actions is unprecedented and puts forward huge demands to the entire law enforcement system and justice authorities.

The main goal at this stage is to ensure accountability for war crimes in Ukraine, to provide assistance, advice and resources necessary to prosecute criminals. Currently, various expert groups and international missions involved in the investigations carried out by Ukrainian law enforcement agencies involved in the collection and execution of evidence of crimes.

In particular: the ICC Prosecutor's Group (42 investigators, forensic experts and support staff (The Prosecutor of the International Criminal Court sent a group of 42 investigators and forensic experts to Ukraine to investigate international crimes, 2022), joint investigation team (Ukraine-Lithuania-Poland); a team of French criminologists; Council of Europe Advisory Group; a group of experts from the international organization Human Rights Watch; American «Conflict Observatory», created at the initiative of the State Department and so on. In addition, 12 countries have launched their own criminal investigations into the events in Ukraine, and more than 40 countries have supported the ICC investigation. The Office of the President of Ukraine also initiated the creation of a personal register of Russian interventionists who committed war crimes on the territory of Ukraine (Advisory group on investigation of war crimes and crimes against humanity for Ukraine, 2022).

The support of the EU, the US and the UK-initiated Advisory Group on War Crimes and Crimes against Humanity, the Office of the Prosecutor General aims to streamline coordination and communication measures to ensure the application of best practices, avoid duplication of efforts, and support the effective use of financial resources and qualified personnel to respond to the needs of the OGP.

The main task of such a group, which included experienced prosecutors on the investigation of war crimes, investigators and other specialists who should provide the necessary expert potential, provide training, advisory and operational support to the OGP. The mobile investigation teams also

include international and Ukrainian specialists to increase the capabilities of the war crimes unit, regional prosecutors to conduct investigative (inquiry) actions and assist Ukrainian investigators in conducting investigative actions at crime scenes (Advisory group on investigation of war crimes and crimes against humanity for Ukraine, 2022).

Thus, it is on the agenda to ensure clear management and coordination of the international investigation team (from prosecutors, ballistics, pathologists to translators), under the auspices and control of the ICC and the Eurojust agency in order to collect, execute, systematize and preserve the factual basis of evidence according to the norms of the international protocol.

The organization and methodology of the investigation, the collection of evidence of war crimes committed by the parties to the armed conflict are directly influenced by the following destructive factors: a rapid change in the operational situation; frequent redeployment of military units and units; death, wounding and capture of witnesses, victims, suspects; change of situation as a result of bombing and shelling, occupation; mining of the terrain, shelling of snipers, etc.; a large number of proceedings on such facts; the difficulty of bringing to criminal liability the parties to the conflict; a significant period of time from the moment of the massacres to the beginning of the study of mass grave sites, which prevents their identification due to the decomposition of corpses.

Problems of forming an evidence base due to the inability to access witnesses, scenes, etc.; selective provision of military information, i.e. documents, objects, photographs from drones, decoded recordings of interceptions of radio conversations, etc., politicization of the investigation process and investigation on the border line between national sovereignty and international responsibility, in the area between the legal and political spheres; investigation of war crimes only against one of the parties to the conflict, etc.

Unwillingness of the parties to an armed conflict to comply with the legal requirements of the justice authorities and a number of international legal provisions; problems of ensuring the testimony of high-ranking leaders and diplomats; attempts to dramatize the «commission» of war crimes by the enemy; counteraction to the investigation; armed resistance during detention; receiving combat and mental injuries by persons involved in the investigation process.

The unwillingness of the parties to the armed conflict to prosecute their citizens – war criminals, to whom the population often refers as «heroes», and the lack of a binding effective legal mechanism for the search, detention and transfer of war criminals is one of the destructive factors in the investigation of war crimes.

It should also be emphasized the need to establish constant cooperation, regular exchange of experience with representatives of the international community, prioritizing political considerations and short-term interests of states, providing the international community with political assistance in collecting and organizing the collection of evidence-based information on war crimes, the arrest of criminals. It is also effective to widely involve representatives of international organizations (Organization for Security and Cooperation in Europe, Human Rights Watch, etc.) and the media in order to use the institute of privileged evidence by international criminal justice authorities.

At the national level, members of the investigative task force directly interact with each other, coordinate the main directions of pre-trial investigation, conduct procedural actions, and exchange the information received. Coordination of their activities on the territory of Ukraine is carried out by the Prosecutor General's Office of Ukraine (Second Additional Protocol To The European Convention On Mutual Legal Assistance In Criminal Matters, 2001), as the initiator of the creation of a joint investigation team. Also, in addition to representatives of law enforcement agencies of the member states of the organization, which are part of the joint investigation teams, within the EU there is a possibility of involving employees of Europol and Eurojust (Shostko and Ovcharenko, 2008).

The specificity of the content of the methodology for investigating war crimes committed during an armed conflict is determined mainly by the group (brigade) method of investigation, investigation on «hot tracks» and special conditions for conducting investigative (investigative) actions in an armed conflict.

This applies to both traditional investigative (search) actions (interrogation, search, inspection of the scene, etc.) and new techniques for forensic science, which have become widespread in practice only in areas of armed conflict (for example, interrogation of prisoners of war, research of mass grave sites, analysis of radio conversations, etc.).

The main evidence in the activities of international criminal justice bodies is the testimony of witnesses, victims, suspects, accused and documents with the widespread practice of their preliminary fixation using technical means obtained during interrogations, examinations, searches, appointment and conduct of examinations.

In our opinion, it is necessary to develop new techniques for forensic science, which are common in practice only in areas of armed conflict (intelligence analysis, involvement in the case of a large number of photo-audio and video materials proving the commission of war crimes, etc.). Investigative (investigative) actions should be aimed at identifying

specific command personnel (pilots, artillerymen, snipers, etc.) who gave and carried out orders for airstrikes, shelling and destruction of civilians, settlements, other war crimes, and then, on the basis of regulatory regulation of the activities of officials of the state party to the conflict – to identify the perpetrators.

It is worth noting that there are already some successes in the investigation of war crimes and crimes against humanity in Ukraine. Thus, since the active phase of military aggression on the territory of Ukraine on 24.02.2022, as of October 2022, suspicion of aggression, its planning, preparation and implementation of 624 top officials of the highest political and military leadership of the RF has been notified in absentia (Kostin: 626 representatives of the leadership of the RF reported suspicion of a crime of aggression, 2022).

The analysis of the ICC's work makes it possible to identify the following conceptual organizational measures that go beyond individual criminal proceedings, the rejection of which destructively affects the investigation of war crimes and crimes against humanity: the definition of an investigation strategy and the organization of investigation and collection of evidence; determination of the structure of bodies and the principles of organization of their work; the procedure for establishing an interdepartmental investigative task force (hereinafter – the MCOG), material, technical and logistics support for their activities; organization of ensuring the right to qualified legal protection and the procedure for attracting other participants in criminal proceedings (translators, specialists, concepts, etc.); definition of the principles of information and analytical work, organization of control, accounting, reporting; organization of interaction and cooperation between states, international and national criminal justice bodies; optimization of evidence collection, adaptation of the use of human resources in «field» conditions; organization of expert research and activities of expert institutions, etc.

Determining the strategy of organizing the investigation and collecting evidence-based information about war crimes and crimes against humanity, it should be understood that representatives of the military-political leadership of states, as a rule, themselves do not directly participate in the commission of such crimes, do not personally give orders to commit such actions, do not sign the relevant documents, etc.

Therefore, in our opinion, when organizing the collection of evidence-based information on war crimes and crimes against humanity committed by representatives of the military-political leadership of states, the main efforts should be focused on collecting sufficient evidence that gives grounds for accusing those who bear the greatest responsibility and occupy the highest political and military positions.

To prove their guilt, it is necessary to establish a connection between persons pursuing state policy with a set of crimes committed in different areas of armed conflict, to prove that they or under their direct leadership developed and put into operation a strategic criminal plan, that is, to apply the doctrine of «common goal» when several criminals act together to achieve the goal.

In conditions of limited time, in the absence of the opportunity and resources to organize a simultaneous investigation of a large number of criminal proceedings on war crimes committed in different areas of the armed conflict, each IIOG should have the task of quickly and efficiently conducting investigative (investigative) actions and collecting the maximum amount of material evidence.

At the same time, IIOG prosecutors should coordinate the investigation of various criminal proceedings, ensure effective exchange of information, promptly and competently report suspicion to the main organizers of war crimes. Under such conditions, interaction, taking into account the specifics of war crimes, is one of the determining factors for the successful investigation of this type of socially dangerous acts.

In the process of organizing the investigation of war crimes and crimes against humanity and the collection of evidence-based information, various forms of interaction between law enforcement agencies can be used. There may be difficulties associated with collecting evidence outside the territory of the relevant state on the territory of the other party, in compliance with the rights of participants in criminal proceedings.

In our opinion, in order to minimize the consequences of destructive factors that affect the effectiveness of war crimes investigation, it is necessary to create a special governmental institute for cooperation with the ICC with the appointment of national coordinators. This requires amendments to the CPC of Ukraine, providing for the possibility of creating an institution of joint IIOG, that is, to form joint groups of employees of the ICC and national criminal justice bodies on the basis of relevant international treaties to organize the collection of evidence-based information on war crimes.

Summing up the unit, it should be noted that when investigating war crimes and crimes against humanity, it is necessary to rationalize the procedure for conducting investigative (investigative) actions by adapting them to the conditions of armed conflict, using the latest technologies for fixing evidence, expanding and strengthening the expert base, improving the forms and methods of interaction with other law enforcement and state bodies, improving the quality characteristics and reliability of communications and transport, etc.

Conclusions

The imperfection of certain provisions of the criminal legislation of Ukraine was stated, which creates obstacles in an adequate response to criminal actions that are interpreted by the international community as war crimes and crimes against humanity crimes of hostilities in the temporarily occupied and adjacent territories.

This actualizes the need to supplement the Criminal Code with relevant provisions that would provide for criminal liability for all actions against the interests of the people in the conditions of military aggression, meet international standards and Ukraine's obligations under international treaties to criminalize violations of international humanitarian law.

Given the relative novelty for Ukraine of war crimes and crimes against humanity, their specificity, significant public resonance and an extremely large number, it is necessary for law enforcement agencies and courts to develop a common position in the criminal legal qualification of the studied illegal acts in order to increase counteraction to their commission, organization of pre-trial investigation and trial.

We see the prospects of documenting war crimes and crimes against humanity, and further bringing to justice the perpetrators of them, first of all, the top political and military leadership of the aggressor state, in using the resources of the International Criminal Court and the Special International Tribunal tested by practice. In addition, it is expedient to create a special state institute for interaction with the International Criminal Court with the appointment of national coordinators and make appropriate changes to national legislation.

The concept of investigation of war crimes and crimes against humanity is a comprehensive, interdisciplinary holistic theoretical system of provisions on specific patterns in the field of legal support, organization of investigation and collection of evidence-based information on these crimes, search, detention and transfer of officials involved in their commission within the framework of international cooperation.

This concept makes it possible to combine scientific provisions on the activities of law enforcement agencies and criminal justice bodies under special legal regimes into a single system, and contains scientifically based methodological recommendations on the organization of documentation and investigation of war crimes and crimes against humanity.

In order to collect, execute, systematize and preserve the factual base of evidence on war crimes and crimes against humanity according to the norms of the international protocol, the relevant changes are required by the provisions of the criminal procedural legislation through detailed regulation in it of the powers of joint international investigative and

operational groups under the auspices and control of the International Criminal Court and the Eurojust agency.

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