

Problems of Russian Aggression Investigation against Ukraine

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Current state of investigation of military, war and other crimes caused by Russian aggression against Ukraine is studied, legal and procedural issues of their investigation are outlined. Attention is drawn to the national, foreign and international nature of the investigation of such crimes, which indicates their scale and complexity. Issues that arisen due because of conducting of hostilities on Ukrainian territory and their consequences were also considered (danger of investigative actions, lack of qualified personnel, the existence of a significant number of refugees and temporarily displaced persons, etc.). The purpose of tis research is related to beginning of the unprovoked large-scale war of Russian Federation against Ukraine and the need to bring to criminal responsibility the persons responsible for its resolution, which involves the investigation of war, military and other crimes on the territory of Ukraine and requires the solution of certain urgent problems. Particular attention is paid to Ukrainian unsuccessful attempts to ratify and implement the Rome Statute of the International Criminal Court, which can complicate the assessment of socially dangerous actions in accordance with the Criminal Code of Ukraine and the requirements of the International Criminal Court and hinder the creation of a legal basis for bringing the aggressor to criminal responsibility. In this context, the criminal procedural legislation needs changes that will facilitate the conduct

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of investigative and judicial actions under martial law conditions, as well as the introduction of electronic justice in Ukraine (in particular, the use of video communication and the provision of information during the transmission and collection of convincing data).

Keywords: Russian aggression; war crimes; military offense; investigation; Rome Statute of the International Criminal Court; criminalistics.

Research Problem Formulation

On February 24, 2022, Russian Federation, supported by Republic of Belarus, launched aggressive unprovoked large-scale war against Ukraine. This aggression was a continuation of Russian Federation invasion that occupied the Autonomous Republic of Crimea and certain parts of Donetsk and Luhansk regions on 26.02.2014.

The Rome Statute of the International Criminal Court ¹ (hereinafter referred to as ICC), despite long-term attempts to ratify and implement it, is still not part of the legislation of Ukraine ² but it is crucial in creating the legal basis for bringing the aggressor to criminal responsibility. It should be noted that attempts to ratify the Rome Statute nevertheless contributed to the adoption of the draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding Implementation of International Criminal and Humanitarian Law» (reg. No. 2689) but the President of

Ukraine has not yet signed it ³. At the same time, the application of the Rome Statute has not only important scientific, but also practical legal significance for the law enforcer in Ukraine, which is due to the recognition of the jurisdiction of the ICC in Ukraine, as well as a preliminary study of the situation and a pre-trial investigation that has been ongoing since 2014.

Therefore, the legal basis of the war, military and other crimes committed by the Russian military on the territory of Ukraine is related to the prospect of the development of criminal legislation, which, unfortunately, should be recognized as imperfect. At the same time, the criminal procedural legislation of Ukraine is developing quite actively, adapting to the remote implementation of functions, as well as simplifying certain pre-trial investigation procedures. Currently, the need to create new forensic methods, investigation algorithms and conduct separate investigative actions in wartime is relevant. It is worth remembering that pre-

- 1 Римський статут міжнародного кримінального суду: затв. 17.07.1998 р.; чинний для України з 01.07.2002 р. (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_588#Text (date accessed: 29.04.2022).
- 2 Шепітько М. Кримінально-правовий захист діяльності Міжнародного кримінального суду. Римський статут Міжнародного кримінального суду: проблеми імплементації до національного законодавства України : мат-ли дискус. панелі IV Харківськ. міжнар. юрид. форуму (Харків, 25.09.2020). Харків, 2021. С. 108–110.
- 3 Прийнято Закон «Про внесення змін до деяких законодавчих актів України щодо імплементації норм міжнародного кримінального та гуманітарного права» / Офіц. сайт Верховної Ради України. URL: <https://www.rada.gov.ua/news/Povidomlennya/208710.html> (date accessed: 29.04.2022).

trial investigations of events in Ukraine are carried out by both domestic and foreign specialists (especially those countries to which refugees from Ukraine have arrived and persons who are granted temporary protection). There are also prospects for such an investigation by international criminal courts (tribunals).

Analysis of Essential Researches and Publications

Given ongoing aggressiveness of Russian invasion of Ukraine, research on this problem is certainly more forward-looking. At the same time, publications on the problems of pre-trial investigation in general and war crimes in particular with attempts to bring to criminal responsibility those guilty of aggression against other states and the execution of justice (justice) against them were already published. Therefore, an important basis for this study is the work of specialists in constitutional and international law: A. Antonov, Yu. Barabash, O. Zadorozhnyi, O. Serdiuk and V. Steshenko ⁴. In historical context, basic researches were research papers of H. Gross and R. Reiss.

Thus, *Manual for forensic investigators as a system of criminalistics* by Hans Gross became impetus for development of criminalistics, creation of certain algorithms and rules for investigating crimes ⁵ and Rodolphe Reiss made an invaluable contribution to solving the problem recording war and war crimes committed in World War I by the Austro-Hungarian Empire during its invasion of Serbia ⁶ (reminiscent of Russian aggression against Ukraine).

In the context of the investigation of the attack of the Russian Federation on Ukraine, current studies of modern forensic scientists: D. Franhez, V. Zhuravel, O. Kliuiev, E. Kurapka, B. Lindav, V. Lukashevych, He. Malevski, E. Simakova-Yefremian and V. Shepitko ⁷. We should note that in modern conditions, works that demonstrate the ability of forensic science and criminalistics to respond to specific challenges of the time have become important. At the time, there was a need for forensic methods and separate algorithms of actions during investigation of war crimes and war crimes, as well as the active use of innovative methods of investigation for this purpose.

- 4 Antonov A. Russia's Aggression Against Ukraine. State Responsibility, Individual Responsibility and Accountability. *Scrutinizing Ukraine's Application at the ICJ, Ukraine's Acceptance of the ICC's Jurisdiction Pursuant to Art. 12(3) of the Rome Statute and the Role of the UN Human Rights Monitoring Mission*. Master's thesis. Odense, 2018. 120 p. ; Barabash I., Serdiuk O., Steshenko V. Ukraine in European human rights regime: Breaking path dependence from Russia. *The EU in the 21st Century: Challenges and Opportunities for the European Integration Process*. 2020. Pp. 247–270. DOI: [10.1007/978-3-030-38399-2_14](https://doi.org/10.1007/978-3-030-38399-2_14) (date accessed: 29.04.2022) ; Задорожний О. Анексія Криму — міжнародний злочин : монографія. Київ, 2015. 576 с.
- 5 Гросс Г. Руководство для судебных следователей как система криминалистики. Москва, 2002. 1088 с.
- 6 Reiss R. A. Report Upon the Atrocities Committed by the Austro-Hungarian Army During the First Invasion of Serbia. London, 1916. Pp. VII—VIII.
- 7 Frangež D., Lindav B. The Science of Criminal Investigation between Theory and Practice in Slovenia. *Journal of Criminal Investigation and Criminology*. 2019. № 70. Pp. 141—161 ; Шепітько М. Зазнач. твір ; Шепітько В., Шепітько М. Доктрина криміналістики та судової експертизи: формування, сучасний стан і розвиток в Україні. *Право України*. 2021. № 8. С. 12—27. DOI: [10.33498/louu-2021-08-012](https://doi.org/10.33498/louu-2021-08-012) (date accessed: 29.04.2022) ; Журавель В. Механізм злочину як категорія криміналістики. *Journal of the National Academy of Legal Sciences of Ukraine*. 2020. № 27 (3). С. 142—154. DOI: [10.37635/jnalsu.27\(3\).2020.142-154](https://doi.org/10.37635/jnalsu.27(3).2020.142-154) (date accessed: 29.04.2022).

Article Purpose

In connection with the unprovoked large-scale war of Russia against Ukraine, to investigate the possibilities of bringing to justice those responsible for its solution, as well as to find out the peculiarities of the investigation of war, military and other crimes committed on the territory of Ukraine, that requires solving certain urgent issues.

Main Content Presentation

Taking into account development of hostilities in Ukraine (starting with the Revolution of Dignity and Occupation of the Autonomous Republic of Crimea and parts of Donetsk and Luhansk regions), Verkhovna Rada of Ukraine on 25.02.2014 adopted a Statement⁸, and on 04.02.2015 — Resolution⁹ in the form of a statement to the ICC on Ukrainian recognition of its jurisdiction to commit crimes against humanity by senior state officials during peaceful protests in the period of

21.11.2013–22.02.2014 and war crimes by senior officials of Russian Federation and heads of terrorist organizations DPR and LPR caused especially grave consequences and mass killings of Ukrainian citizens.

In the period 2016–2019, ICC ISS Prosecutor's office provided annual reports on the events at the Independence Square in Kyiv, Crimea and Eastern Ukraine¹⁰. On December 14, 2020, this report referred to the completion of a preliminary study of the situation in Ukraine during 2020 and published a decision on compliance with the criteria for initiating an investigation in terms of subject jurisdiction, admissibility and interests of justice¹¹.

In addition to the statements of the Verkhovna Rada of Ukraine regarding the recognition of the jurisdiction of the ISS, Art. 8 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand (as amended on 27.06.2014)¹², refers to the *obligation* of Ukraine and the European Union to

8 Про визнання Україною юрисдикції Міжнародного кримінального суду щодо скоєння злочинів проти людяності вищими посадовими особами держави, які призвели до особливо тяжких наслідків та масового вбивства українських громадян під час мирних акцій протестів у період з 21 листопада 2013 року по 22 лютого 2014 року : Заява ВР України до Міжнар. кримін. суду від 25.02.2014 р. № 790-VII. URL: <https://zakon.rada.gov.ua/laws/show/145-19#Text> (date accessed: 29.04.2022).

9 Про Заяву Верховної Ради України «Про визнання Україною юрисдикції Міжнародного кримінального суду щодо скоєння злочинів проти людяності та воєнних злочинів вищими посадовими особами Російської Федерації та керівниками терористичних організацій “ДНР” та “ЛНР”, які призвели до особливо тяжких наслідків та масового вбивства українських громадян» : Постанова ВР України від 04.02.2015 р. № 145-VIII. URL: <https://zakon.rada.gov.ua/laws/show/790-18#Text> (date accessed: 29.04.2022).

10 International Criminal Court Report on Preliminary Examination Activities 2016. *A First Printed Criminalist*. 2016. № 13. Pp. 125–135 ; 2017. *Ibid*. 2017. № 15. Pp. 87–95 ; 2018. *Ibid*. 2018. № 17. Pp. 98–108 ; 2019. *Ibid*. 2019. № 19. Pp. 130–138.

11 Отчет о действиях по предварительному изучению ситуаций в 2020 году / International Criminal Court. URL: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-ukr-rus.pdf> (date accessed: 29.04.2022).

12 Association Agreement between Ukraine, on the one hand, and the European Union, European Atomic Energy Community and their Member States, on the other hand : rat. of the declarations. Law of Ukraine No. 1678-VII dated on September 16, 2014 (as amended and supplemented). https://zakon.rada.gov.ua/laws/show/984_011#Text (date accessed: 29.04.2022)

cooperate in order to strengthen peace and international justice through the *ratification and implementation* of the Rome Statute of ICC dated on 1998 and related documents. This effectively means that Ukraine has made an additional commitment in the future to ratify the Rome Statute within the framework of cooperation with the European Union.

Despite the Russian aggression and numerous crimes by the occupiers, the Verkhovna Rada of Ukraine not only appealed to the ICC, but also recognized its jurisdiction in this part. It should be noted that this international legal body (according to the report of the ICC Prosecutor's Office) has taken under its jurisdiction the crimes that fall under the Rome Statute and that have been committed on the territory of Ukraine since November 21, 2013 (according to the declaration of the Verkhovna Rada of Ukraine). Thanks to this, Ukrainian lack of ratification of the Rome Statute has to some extent been overcome, although the need for such ratification grows day by day.

It should be mentioned about the specificity (complementarity) of the jurisdiction of the ICC, which complements the national bodies of criminal justice. For example, O. Senatorova clarifies that direct translation of Rome Statute from English (without using the Russian version) from the official portal of the Verkhovna Rada of Ukraine testifies to the auxiliary nature of «*national criminal jurisdiction*»¹³. This means that the national criminal jurisdiction is not exempted from the duties of the state bodies of Ukraine regarding the legal assessment (qualification) of committed crimes and bringing the guilty to criminal responsibility. If the national

jurisdiction will not be able to achieve justice and bring the guilty persons to criminal responsibility, then the ICC together with its legal basis (Rome Statute) will help to carry out justice.

The events surrounding the Euromaidan, the Autonomous Republic of Crimea and parts of Donetsk and Luhansk regions are already the subject of the ICC investigation, which has reached preliminary conclusions¹⁴: the ISS Prosecutor's Office has already offered its proposals for the preliminary qualification of criminal offenses committed in the period 2014–2020.

Thus, the ICC Prosecutor's Office studied several forms of possible actions and considered the context of the international armed conflict and the occupation of Crimea and various possible legal qualifications of the armed conflict in eastern Ukraine. In particular, I found reasonable grounds to believe that on February 26, 2014, *in the period preceding the occupation and/or in the context of the occupation of the territory of Crimea, the following crimes were committed*:

- *intentional homicide* (subclause (a) (i) of clause 2 of Article 8);
- *tortures* (sub-paragraph (a)(ii) of paragraph 2 of Article 8);
- *violation of human dignity* (subclause (b)(xxi) clause 2 of Art. 8);
- *unlawful deprivation of liberty* (s.c. (a)(vii) art. 8, para. 2);
- *coercion of protected persons to serve in the armed forces of the enemy state* (subclause (a)(v) of clause 2 of Article 8);
- *intentional deprivation of the protected persons' rights to a fair*

13 Сенаторова О. Юрисдикція Міжнародного кримінального суду щодо ситуації збройного конфлікту в Україні. *Римський статут Міжнародного кримінального суду ...* . С. 61–62.

14 Отчет о действиях URL: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-ukr-rus.pdf> (date accessed: 29.04.2022).

and normal trial (subsection (a)(vi) clause 2 of Article 8);

- *movement of certain parts of occupied territory population outside this territory (regarding movement of prisoners within the framework of criminal proceedings of persons and prisoners; subclause (b)(viii) of clause 2 of Art. 8);*
- *seizure of the enemy's property, when such seizure is not due to an urgent military need (regarding private property and cultural property; subclause (b)(xiii) of clause 2 of Art. 8)*¹⁵.

In addition, the ISS Prosecutor's Office emphasizes that in considering the available information on alleged crimes under Art. 7 of the Rome Statute, reasonable grounds have been found to believe that the actions that can be qualified as crimes took place in the period preceding **occupation of Crimea** and during this occupation, namely:

- *murder (sub-paragraph (a) of paragraph 1 of Article 7);*
- *deportation or forcible transfer of population (regarding the movement of persons in custody within the framework of criminal proceedings, and prisoners; subclause (d) of clause 1 of Art. 7);*
- *imprisonment or other cruel deprivation of physical liberty (subclause (e) of clause 1 of Article 7);*
- *torture (subclause (f) of clause 1 of Article 7);*
- *persecution of any identified group or community on political grounds (s.c. (h) Art. 7 (1));*
- *enforced disappearance of persons (s.c. (i) art. 7, para. 1).*

In addition, in 2019, the office of the Prosecutor of the ISS concluded that there were reasonable grounds to believe that at least the following war crimes were committed from April 30, 2014 onwards in the context of the armed conflict **in Eastern Ukraine**:

- *intentional attacks on civilians and civilian objects (s. (b) (i) — (ii) or (e)(i) Art. 8 (2));*
- *intentionally striking protected buildings (subclause (b) (ix) or (e) (iv) of clause 2 of Article 8);*
- *intentional homicide or murder (clauses (a)(i) or (c)(i) clause 2 of Article 8);*
- *torture and inhuman or degrading treatment (s.c. (a)(ii) or (c)(i) art. 8, para. 2);*
- *lust for human dignity (s.c. (b)(xxi) or (c)(ii) art. 8, para. 2);*
- *rape and other forms of sexual violence (art. 8, para. 2 (b) (xxii) or (e) (vi)).*

In addition, if the conflict were international in nature, there would be reasonable grounds to believe that the following war crimes were committed:

- *intentionally committing attacks resulting in damage to civilians and civilian objects manifestly incompatible with the expected military advantage (non-dimensional attacks; subclause (b) (iv) of clause 2 of Article 8);*
- *unlawful deprivation of liberty (s.c. (a)(vii) art. 8, para. 2)*¹⁶.

The analysis of the obtained evidence which made it possible to qualify certain acts as criminal and to start an investigation of the ISS, opens up prospects for further cooperation of this body with Ukrainian

15 It goes on to refer to the norms of the Rome Statute. See: Rome Statute. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text (date accessed: 29.04.2022).

16 Отчет о действиях П. 278—281. URL: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-ukr-rus.pdf> (date accessed: 29.04.2022).

lawyers regarding armed Russian aggression.

Thus, starting from 24.02.2022, the Office of the Prosecutor General of Ukraine registered as of 23.04.2022:

- 1) 7,999 *crimes of aggression and war crimes* (among which: *violations of the laws and customs of war* (Art. 438 of the Criminal Code (hereinafter referred to as *Criminal Code of Ukraine*) – 7,759; *planning, preparation, initiation and waging of an aggressive war* (Art. 437 of Criminal Code of Ukraine) – 48; *war propaganda* (Art. 436 of Criminal Code of Ukraine) – 11, *others* – 181);
- 2) 3,760 *crimes against national security* (among them: *violations of the territorial integrity and inviolability of Ukraine* (Article 110 of Criminal Code of Ukraine) – 2,417, *treason* (Article 111 of the Criminal Code of Ukraine) – 647, *sabotage* (Article 113 of the Criminal Code of Ukraine) – 60, *others* – 636).

In the so-called main criminal proceedings against the Russian aggression, 620 suspects were recorded, among them representatives of the military

and political leadership of the Russian Federation (ministers, deputies, military command, officials, etc.)¹⁷.

In order to accumulate evidence in these criminal proceedings, it is necessary to collect it in a timely and correct manner and use it to restore justice and the administration of justice. The activities of the justice authorities in gathering evidence of war crimes committed in Ukraine are important not only for national justice systems, but also for the international criminal justice system already operating in Ukraine. As of today, 41 states have appealed to the ISS, the jurisdiction of which was recognized by Ukraine, regarding the need to investigate war crimes¹⁸; this significantly contributed to the beginning of such activities in Ukraine¹⁹. Moreover, in these conditions, it is important to coordinate activities between national and international justice systems²⁰.

In this context, the statement of the President of Ukraine V. Zelenskyy on «*creation of a special mechanism of justice in Ukraine for investigation and trial of each crime of the occupiers*» became relevant

17 Офіс Генерального прокурора / Офіц. сайт. URL: <https://www.gp.gov.ua> (date accessed: 29.04.2022).

18 Statement of ICC Prosecutor, Karim A. A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact portal launched for provision of information / Official site of ICC. URL: <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and-north-macedonia> (date accessed: 29.04.2022).

19 Ірина Венедіктова та Прокурор Міжнародного кримінального суду побували на місцях вчинення воєнних злочинів РФ на Київщині / Офіц. сайт Офісу Генпрокурора. URL: <https://www.gp.gov.ua/ua/posts/irina-venediktova-ta-prokuror-miznarodnogo-kriminalnogo-sudu-pobuvali-na-misctsyah-vcinennya-vojennix-zlociniv-rf-na-kiyivshhini> (Date accessed: 29.04.2022).

20 Creation of separate International Courts on the situation in Ukraine is not excluded. Thus, on April 28, 2022, the Parliamentary Assembly of the Council of Europe called for the creation of an ad hoc International Criminal Tribunal to prosecute those responsible for the crime of aggression against Ukraine. E.g., PACE calls for the setting up of an ad hoc international criminal tribunal to hold to account perpetrators of the crime of aggression against Ukraine. Official site of Parliamentary Assembly of the Council of Europe. URL: <https://pace.coe.int/en/news/8699/pace-calls-for-the-setting-up-of-an-ad-hoc-international-criminal-tribunal-to-hold-to-account-perpetrators-of-the-crime-of-aggression-against-ukraine> (date accessed: 29.04.2022).

(03.04.2022) ²¹. This special mechanism is related to the need to establish special investigative teams at both the interstate and international levels. The system of law enforcement agencies of Ukraine is in a rather difficult situation, because it is necessary to:

- 1) record a huge amount of probative information;
- 2) carry out procedural actions under pre-war criminal procedural mechanisms;
- 3) provide necessary number of professionals to perform these tasks (they are lacking due to the fulfillment of the duty to defend the state, violation of the oath, lack of qualifications, etc.);
- 4) carry out criminal prosecution in default of or death of perpetrators or eyewitnesses of crimes;
- 5) ensure that investigative teams have access to the scene (which is not possible due to hostilities, occupation or mines).

It is worth noting that intensity of the commission of crimes, some of their facts give grounds to argue about the signs of committing the most serious crimes, that is, genocide, giving the disclosure of these facts in the form of an international public response. Thus, on April 14, 2022, the Verkhovna Rada of Ukraine adopted the Statement «On the Commitment of Genocide by the Russian Federation in Ukraine» ²² that was the result of the opening by law enforcement agencies of proceedings regarding the facts of violence against the civilian population after the liberation of territorial communities of Kyiv oblast, in Mariupol and other cities,

statements of official representatives of the aggressor country on the denazification and destruction of the Ukrainian people, as well as the prohibition of the Ukrainian language and the destruction of Ukrainian-language books.

Obviously, collection, recording, classification and legal evaluation of ; probative information requires its special protection at various stages. Thus, the collection of ; probative information is complicated a priori due to the involvement of a significant number of law enforcement officers with different levels of knowledge and different motivations (in particular, there can be opposition and a desire to destroy this information). A significant number of problems can cause information to be deprived of the status of evidence due to the loss of the carriers of such information (masses of refugees and displaced persons, destruction of storage servers due to hacker attacks, etc.). Recording of information carried out by law enforcement agencies and public organizations of other countries is certainly important and necessary, but it can be biased and dangerous in nature - by suggesting events that did not happen or falsely believing the people who turned to them in the futility of official procedures. It should be noted that today law enforcement agencies are only at the initial stage of collecting such information, but the possibility of correct interpretation and classification of committed crimes will depend on its proper processing.

In this context, the interaction not only of representatives of Ukrainian, foreign, interstate and international justice bodies,

21 Володимир Зеленський ініціює створення спеціального механізму, який допоможе притягнути до відповідальності осіб, причетних до злочинів проти українського народу / Офіц. сайт Президента України. URL: <https://www.president.gov.ua/news/volodimir-zelenskij-iniciyuye-stvorennnya-specialnogo-mehaniz-74057> (date accessed: 29.04.2022).

22 Про Заяву Верховної Ради України «Про вчинення Російською Федерацією геноциду в Україні»: Постанова ВР України від 14.04.2022 р. № 2188-IX. URL: <https://zakon.rada.gov.ua/laws/show/2188-20#Text> (date accessed: 29.04.2022).

but also of legal systems is important. Unfortunately, the Rome Statute of the ICC cannot yet be considered a component of current Ukrainian legislation, although it remains an auxiliary and important legal basis for prosecuting those guilty of aggression against Ukraine. Therefore, it is logical to continue the work of the International Criminal Court to record war crimes and war crimes in Ukraine. It is worth noting that national criminal legislation is the basis for representatives of law enforcement agencies of Ukraine in bringing guilty persons to criminal responsibility. The predominance of violations of the laws and customs of war (Article 438 of the Criminal Code of Ukraine), which are blanket and disclosed with the help of international treaties (in particular, the Rome Statute of the ICC that Ukraine has not yet ratified).

In our opinion, consequence of such rapid development of the national criminal legislation will be its further reformation, which will contribute to the adoption of the new Criminal Code of Ukraine in the post-war period. In this context, it is appropriate to pay attention to the activities of the Working Group on the Development of Criminal Law of the Commission on Legal Reform under the President of Ukraine, which has already proposed an incomplete draft of the Criminal Code of Ukraine, in where the book 11 *Crimes against the international legal order* is planned with five chapters (genocide, crimes against humanity, crime of aggression, war crimes, crimes against the peace and security of mankind)²³. It is clear that the adoption of the new Criminal Code of Ukraine, for its part, will require amendments to at least the Criminal Procedure Code of Ukraine and

the reclassification of acts committed by Russian aggressors against our state and its citizens. Therefore, the proposals included in the text of the draft Code of Criminal Procedure of Ukraine need to be monitored and adjusted.

Conclusions

Issues of investigating the Russian aggression against Ukraine are complex and large-scale, caused by the commission of war, war crimes and other crimes, so they require appropriate qualification — as the alleged commission of genocide. In this context, the interaction of state law enforcement and judicial bodies with relevant foreign and international institutions is important. Therefore, today it is essential to ratify and implement the Rome Statute of the ICC, the jurisdiction of which Ukraine has repeatedly recognized, and to establish an International Criminal Tribunal for cases where the jurisdiction of the ICC cannot be applied.

Law enforcement agencies of Ukraine, which carry out pre-trial investigations into crimes committed during the Russian aggression against Ukraine, work in extremely difficult conditions, under which the number of atrocities of the aggressor's army increases, hostilities continue, there are no safe conditions for recording and collecting probative information (that can be lost, if the necessary investigative actions are not taken). The problem is also the need to involve technical, expert and special assistance at crime scenes and to create qualified investigative teams. Another challenge for law enforcement agencies is the recording of large-scale crimes by the aggressor, which requires the use of non-standard equipment (for example,

23 Діяльність Робочої групи з питань розвитку кримінального права. URL: <https://newcriminalcode.org.ua/article/diyalnist-robchoyi-grupy-z-pytan-rozvytku-kryminalnogo-prava-i86> (date accessed: 29.04.2022).

drones) and the correct procedural design. The situation is also affected by a certain instability of the justice system and the need to change criminal procedural norms, which will make it possible to conduct investigative and judicial actions remotely (with the help of video communication, registers and other means of transmission and accumulation of information), thus securing information and introducing real electronic justice.

Excessive concentration of attention only in the practice of registration of criminal proceedings is of concern (on the website of the Prosecutor General's Office, a significant number of criminal proceedings have been initiated). At the same time, the procedural terms and scope of investigative actions indicate that the main difficulties of law enforcement agencies are still ahead. Therefore, in our opinion, the main efforts of forensic scientists should focus on the creation of forensic methods, algorithms for investigating crimes and conducting investigative actions (in particular, related to large-scale events: shootings, mass torture, burials, places of hostilities, etc.).

Проблеми розслідування російської агресії проти України Михайло Шепітько

Досліджено сучасний стан розслідування військових, воєнних та інших злочинів, спричинених російською агресією проти України, окреслено правові та процесуальні проблеми їх розслідування. Звернено увагу на національний, іноземний та міжнародний характер розслідування таких злочинів, що свідчить про їх масштабність і складність. Також розглянуто проблеми, що виникли через ведення бойових дій на території України, та їх наслідки (небезпечність проведення слідчих дій, нестача кваліфікованих кадрів, наявність значної кількості біженців і тимчасово

переміщених осіб тощо). Мета дослідження пов'язана з початком неспровокованої широкомасштабної війни РФ проти України й необхідністю притягнути до кримінальної відповідальності винних у її розв'язанні осіб, що передбачає розслідування воєнних, військових та інших злочинів на території України й потребує розв'язання окремих нагальних проблем. Особливу увагу приділено невдалим спробам України ратифікувати й імплементувати Римський статут Міжнародного кримінального суду, що може ускладнити оцінювання суспільно небезпечних дій згідно з Кримінальним кодексом України й вимогами Міжнародного кримінального суду та стати на заваді створенню правового підґрунтя для притягнення агресора до кримінальної відповідальності. У цьому контексті кримінально-процесуальне законодавство потребує змін, які сприятимуть спрощенню проведення слідчих і судових дій в умовах воєнного стану, а також запровадженню електронного правосуддя в Україні (зокрема, використанню відеозв'язку й забезпеченню інформації під час передавання та збирання доказових даних).

Ключові слова: російська агресія; воєнні злочини; військові злочини; розслідування; Римський статут Міжнародного кримінального суду; криміналістика.

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