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International guidelines for managing investigation and collection of evidence of war crimes

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Abstract

The article is devoted to the peculiarities of the international regulations of the organization of the investigation and collection of evidence of military crimes. The objective is to analyze the effective minimization of the impact of destructive factors on the investigation of military crimes, so it is necessary to create a special governmental institution to cooperate with the International Criminal Court with the appointment of national coordinators in relation to amendments to the Code of Criminal Procedure of Ukraine, which provides for the possibility of investigation. The methodological basis of the research was the methods and techniques of scientific knowledge, specifically the main method of research was the dialectical method. It is concluded that the concept of investigation of military crimes committed in armed conflict and criminal prosecution of perpetrators can be defined as of important scientific and practical significance, a holistic interdisciplinary comprehensive theoretical system of activities under special conditions, which generally combines theoretical provisions on specific patterns in the field of legal support, organization of investigation and collection of evidence of military crimes. : search, arrest and transfer of officials involved in military crimes and implementation of international proceedings against the accused.

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Reglamento internacional de la organización de investigación y recolección de pruebas de delitos militares

Resumen

El artículo está dedicado a las peculiaridades del reglamento internacional de la organización de la investigación y recolección de pruebas de delitos militares. El objetivo consiste en analizar la minimización efectiva del impacto de los factores destructivos en la investigación de delitos militares, por lo que es necesario crear una institución gubernamental especial para cooperar con el Tribunal Penal Internacional con la designación de coordinadores nacionales en relación con las enmiendas al Código de Procedimiento Penal de Ucrania, que prevé la posibilidad de investigación. La base metodológica de la investigación fueron los métodos y técnicas del conocimiento científico, específicamente el método principal de la investigación fue el método dialéctico. Se concluye que el concepto de investigación de delitos militares cometidos en conflictos armados y enjuiciamiento penal de los perpetradores puede definirse como de importante significado científico y práctico, un sistema teórico integral interdisciplinario holístico de actividades en condiciones especiales, que generalmente combina disposiciones teóricas sobre patrones específicos en el campo de apoyo legal, organización de la investigación y recolección de pruebas de delitos militares: búsqueda, detención y traslado de funcionarios involucrados en delitos militares e implementación de procesos internacionales contra los imputados.

Palabras clave: derecho internacional humanitario; delitos militares; investigación penal; recolección de pruebas; proceso judicial adecuado.

Introduction

Prohibition of criminal offences against the peace, security of humanity and international legal order under present-day conditions is necessitated not so much by the incidence of criminal offences as by the extremely high level of their social danger. For example, Article 7 of the Law of Ukraine “On Fundamentals of National Security of Ukraine” defines that criminal

activities against the peace and security of humanity are currently the main real and potential threats to the national security of Ukraine and social stability (Law of Ukraine, 1993).

Soon after its independence was declared, Ukraine chose the course towards ensuring the fundamental principles of protecting human rights and freedoms, firmly established in the international community. In 2001, for the first time in the history of the national criminal legislation, the new Criminal Code of Ukraine was supplemented by Chapter XX "Criminal offences against peace, security of mankind and international legal order".

Armed conflicts are mainly provoked by existing contradictions that cannot be resolved in a peaceful, non-military way. Present-day armed conflicts are usually caused by ethnic, national, religious interests of a large group of people and contradictions originated therefrom. According to the Stockholm International Peace Research Institute, a half of 205 major armed conflicts taking place from 1989 to 1994 were caused by the power struggle in the country, the rest being related to control over the territory, struggle for autonomy, national and ethnic problems, and other antagonistic contradictions.

According to the United Nations Organization, the conflict in eastern Ukraine has been one of the deadliest in Europe since World War II. During the War in Donbas, 13,000 people have died, 28,000 have been wounded, and approximately 1.8 million inhabitants of Donbas and Crimea have become internally displaced persons. Ukraine has suffered immense financial and economic losses. Twenty-seven percent of Donbas's industrial potential were illegally transferred to the Russian Federation, including the equipment of 33 local industrial giants (The war in the Donbass, 2019).

War crimes are directly related to the international criminal law. They are particularly dangerous to humanity, undermining the international security and law enforcement system. Longstanding efforts of the international community have yielded tangible results, represented in international legal norms that establish the grounds and conditions of responsibility for crimes against the peace, security of humanity and international legal order. After the Rome Statute was signed in 1998, the International Criminal Justice Authority, which is responsible for prosecuting those charged with genocide, war crimes, crimes against humanity and aggression, has been officially operating on a permanent basis since July 1, 2002 (Bibik and Kulyk, 2014).

As is well known, international organizations have been created by states to jointly solve global problems. The essence of the latter is that states are not able to solve them on their own. The problem of armed conflicts and violations of humanitarian law that occur during armed conflicts, especially against the background of recent events in Ukraine, Syria and the Middle East, is definitely the most vivid example of the fact that these problems cannot be solved by only one, even the most powerful, state.

At the 2005 World Summit, United Nations member states recognized that genocide, criminal offences against humanity, and war crimes are so dangerous that the world population needs collective international protection against these actions. In this regard, the international community, acting through the United Nations, has committed itself to using diplomatic, humanitarian and other peaceful means to protect the population from international and, in particular, war crimes (Art. 139 of the Outcome Document). The states have also agreed to support United Nations efforts to provide early warning of these actions. At the same time, the obligation of members of the international community to stop mass violations of human rights cannot be considered an innovation in international law and practice of international relations.

Thus, in the 21st century, the world community keeps emphasizing the universal nature of actions against war crimes, and the United Nations remains the leading international organization aimed to solve the problems evoking concerns of the entire world community.

Unlawful acts committed in the context of an armed conflict and prohibited by the whole international community must not go unpunished. Their prevention must be ensured both by measures taken at the national level and by intensified international cooperation. Disclosure and investigation of international proceedings require international cooperation of government institutions to search for international criminals.

The need for such cooperation determines the requirements of practical activities of national law enforcement agencies to seize evidence in the territory of other states, to ensure implementation of statutory criminal procedure functions and administration of justice. The latter is guided, on the one hand, by international legal norms and, on the other hand, by the provisions of national criminal and criminal procedure legislation. According to scientific research, the nature, concepts and objectives of international cooperation between public authorities have undergone significant changes recently.

The reasons for low efficiency of law enforcement activities are quite numerous, including the lack of methods for investigating transnational and international crimes, inadequate qualifications, lack of relevant skills to detect criminals, manage and conduct investigative (search) activities while investigating war crimes.

1. Materials and methods

Methodologically the study is based on the methods and techniques of scientific knowledge. Their application is determined by a systematic

approach, which enables to consider the problems of the research in the integrity of their social content and legal form. The key method of the research is *dialectical method*, the laws, and categories of which made it possible to define the essence of war crimes, as well as the peculiarities of international guidelines for their investigation, considering national legal regulatory specificities of particular procedural actions.

The laws of formal logic and its methods, such as *induction* and *deduction*, *analysis,* and *synthesis*, allowed determining the structural and logical scheme of the scientific research, identifying the properties and features of the legal nature of war crimes and the problems of their criminalization at the national level. *System-based analysis*, *systematic structural method* and *formal logic method* enabled to clarify the conceptual basis of managing investigation of war crimes, subject to proper legal procedure in accordance with the customary international law and its practical application in an armed conflict. *Dogmatic method* made it possible to interpret legal categories and clarify the concepts.

Functional method allowed identifying the stages of investigation management, as well as conceptual organizational measures going beyond individual criminal proceedings, non-acceptance of which has a direct destructive effect on war crimes investigation. *Typological method* was applied when clarifying the appropriate legal procedure for investigation management and collection of evidence of committed war crimes. *Modeling and forecasting methods* enabled to formulate proposals on improving particular provisions of national legislation in accordance with the requirements of international humanitarian law and its practical application in the investigation of criminal offences committed in an armed conflict. *Sociological and statistical methods* were applied when analyzing and generalizing the empirical basis of the study.

2. Analysis of the recent research

The research of international humanitarian law and criminal procedure both in Ukraine and abroad is currently represented by a significant number of works analyzing the processes of formation and development of international criminal justice system, as well as specificities of managing investigation of war crimes and collecting evidence thereof. Research in this area includes the works of M. Antonovych, V. Vasylenko, M. Hnatovskyi, N. Driomina-Volok, N. Zelinska, O. Kasyniuk, I. Kolotukha, V. Pylypenko, I. Strokova, K. Ambos, J. Bischoff, G. Boas, W. Morris, J. Stewart, H. Thams, O. Trifftener, M. Scharf, etc.

The research of the abovementioned authors on this problem is of important theoretical and practical value. The ideas they formulated

found their application in legislation being positively perceived by the international law enforcement practice. At the same time, some works do not take into account current rapid development of judicial practice in this area, which necessitates reassessment of previously made conclusions due to the new interpretation of particular provisions of international treaties or construction of new approaches. Besides, most of these works lack systematic approach to the management of investigating war crimes committed in a military conflict.

This poses a need for a new theoretical comprehension of management and development of interagency and interstate cooperation in the investigation of war crimes, taking into account current trends in the development and interpretation of international humanitarian and criminal procedure law.

These circumstances determined the choice of the research topic covering a number of issues, the study of which has both theoretical and practical significance.

3. Findings of the research

3.1. Legal nature of war crimes and the problem of their criminalization at the national level

By their nature, war crimes are one of the most severe and serious offences known to humanity. Under international law, the state in the territory of which war crimes are committed, must take the most active part in the investigation and prosecution of people charged with the criminal offence (Nazarchuk, 2020). At present, Ukraine, however, is not always able to respond adequately to hostilities on the temporarily occupied and adjacent territories.

For example, the Criminal Code of Ukraine, except Art. 438, has no detailed rules determining illegality of particular actions in an armed conflict. There is also neither explanation of war crimes, which are of minor, medium, and severe gravity, nor the extent of responsibility for their commission. This problem requires a comprehensive solution. Some lawyers rightly consider adoption of the law on transitional justice to be the way out of this situation (Bida, 2021).

Any of the following acts is considered a war crime according to the international community:

1. Intentionally directed attacks against the civilian population in a combat zone.

2. Committing acts or threats of violence to spread terror among the civilian population.
3. Deliberate launch of an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause loss of life, injury to civilians or damage to civilian objects.
4. Indiscriminate attacks affecting non-defended localities or demilitarized zones.
5. Intentional attack of a person who is recognized to be hors de combat.
6. Deliberate attacks against medical personnel, equipment, and facilities.
7. Intentional launch of an attack in the knowledge that such attack will cause widespread, long-term, and severe damage to the natural environment.
8. Use of weapons, projectiles and materials causing superfluous injury or unnecessary suffering.
9. The use of poison or poisoned weapons or asphyxiating, poisonous or other gases and all analogous liquids, materials, or devices.
10. The use of chemical or biological weapons.
11. The use of explosive bullets or weapons, the primary effect of which is to injure.
12. The use of booby-traps or mines (which can affect both combatants and civilians) in places with a high probability of civilians (Koval and Avramenko, 2019).

However, objectivity in determining grounds for application (criminalization) or refusal to apply (decriminalization) criminal law influence should be recognized as an ongoing problem of criminal law. It should be emphasized that, unfortunately, persons guilty of committing most war crimes nowadays manage to avoid criminal prosecution, one of the reasons being inadequate legislation and its inconsistency with international norms. Current Art. 438 of the Criminal Code of Ukraine ("Violation of rules of the warfare") is quite generalized, therefore national legislation should specify elements of war crimes, defining all serious violations of international humanitarian law as war crimes. Thus, there is an obvious need to specify elements of war crimes in national legislation (Nazarchuk, 2020).

When applying Art. 438 of the Criminal Code of Ukraine, it is necessary to focus on the practice of international criminal courts, doctrines,

authoritative statements of international humanitarian law and provisions of international treaties. Besides, the list of acts that can be considered violations of rules of the warfare does not need to strictly coincide with the correspondent list in Art. 8 of the Rome Statute, or the list of serious violations of international humanitarian law under the Geneva Conventions, or Additional Protocol 1 thereto. The list can be expanded, but not arbitrarily, to find support in international practice. Otherwise, Ukraine will almost surely face legal proceedings in the European Court of Human Rights initiated against it.

At present, it is necessary to state the inadequacy of particular norms of the Criminal Code of Ukraine. There is an urgent need to review the articles of Chapters XIX-XX of the Code in order to include the norms establishing criminal liability for all the actions against the interests of the people of Ukraine.

It seems reasonable to focus on the list of actions, which can be qualified as violations of the laws of the warfare, proposed in the bill "On Amendments to Certain Legislative Acts of Ukraine as to Conforming Criminal Legislation to the Provisions of International Legislation" No. 9438. This list meets international standards and responsibilities assumed by Ukraine under international treaties to criminalize violations of international humanitarian law.

3.2. Conceptual bases for managing investigation of war crimes

Fighting crime in a military conflict is impossible without proper management of pre-trial investigation and solution of criminal offences, which predetermines the entire further process of criminal proceedings. For example, R.S. Belkin identified four stages of criminal investigation. The first is the highest and the most general stage treating investigation as a specific form of activity of pre-trial investigation bodies and inquiry of all the agencies. This stage is defined as a set of measures ensuring effective operation of system elements and fulfillment of the assigned tasks.

The second, "managerial", stage of investigation covers specific content and represents the primary function of investigative bodies. This stage is defined as a set of measures ensuring optimal structure of these bodies, the required level of management, efficiency of their performance and improvement of their operating methods.

The third stage of investigation management is the stage of applying forensic methods, i.e. management of a particular act of investigation (investigation of a particular criminal offence). This stage is defined as a set of measures aimed to create optimal conditions for determining and applying recommendations, which are the most effective and appropriate for a particular investigation to achieve the highest possible results with a minimum expenditure of time, efforts and resources.

The fourth stage of investigation management is called tactical and covers management of a separate investigative action or managerial and technical measures within a specific act of investigation. This stage is defined as a set of measures ensuring selection and implementation in a particular situation of the most effective and appropriate criminological and tactical methods and techniques to achieve the objectives of a specific investigative action.

Managing investigation of a particular criminal offence is an integral part of forensic methodology. It includes traditional measures taken within a separate criminal proceeding and aimed to create optimal conditions for determining and implementing recommendations of forensic methodology, which are the most effective in a particular investigative action, in order to achieve the highest possible results with a minimum expenditure of time, efforts and resources. However, when investigating war crimes committed by the parties to an armed conflict, other organizational measures going beyond particular criminal proceedings must be taken.

Management of war crimes investigation, like any activity, entails internal subordination, coherence, and cooperation. The main objective of this process is its effectiveness (Skuba, 2017). In addition to the single goal, which is the main in the management of interaction, it is necessary to take into account such criteria as specificities of cooperation of investigative, operational and other units with each other; timeframes for performing joint activities; functions of interacting units; connection with the system of bodies carrying out operational search activities; degree of confidentiality; stages of implementing joint investigative and operational search measures; subjects of interaction; forms of mutual information exchange (Yukhno, 2012).

Given the specifics of committing criminal offences in an armed conflict, interaction is one of the crucial factors in successful investigation of this type of socially dangerous actions. Their detection and investigation involves improving legal regulations, as well as organizational and tactical component of interaction between the investigator and other subjects of investigation (Blahuta *et al.*, 2014). In this case, viability and effectiveness of interaction are determined by investigative situations developing at a particular stage of investigation in criminal proceedings, and therefore, aimed at identifying the facts in issue.

Bilateral and multilateral international treaties play a significant role in regulating management and interaction of law enforcement and judicial bodies during investigation of criminal offences at the interstate level. These treaties include the European Convention on Mutual Assistance in Criminal Matters (1959); the European Convention on the Transfer of Proceedings in Criminal Matters (1972); the Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases of January 22, 1993, etc

(Smyrnov, 2003; Law of Ukraine, 1998; Law of Ukraine, 1995; Law of Ukraine, 1994).

Adoption of the new Criminal Procedure Code of Ukraine regulated a number of issues of international cooperation in criminal proceedings and defined its main forms: international legal assistance in the conduct of procedural actions (Chapter 43 of the CPC); surrender of persons who have committed a criminal offense (extradition) (Chapter 44 of the CPC); takeover of criminal proceedings (Chapter 45 of the CPC) (Law of Ukraine, 2012).

3.3. Appropriate legal procedure for war crimes investigation in accordance with customary international law and the practice of its application in an armed conflict

The analysis of work of the International Criminal Court (hereinafter – ICC) enables to identify conceptual organizational measures going beyond particular criminal proceedings, non-acceptance of which has a destructive direct effect on war crimes investigation. These measures include: a) defining the strategy and management of investigation; collecting evidence; b) determining the structure of investigative bodies and principles of their work organization; c) defining the procedure for creating an interagency investigative operations group (hereinafter – IIOG), material and combat service support for their activities; d) ensuring the right to qualified legal protection and the procedure for involving other participants of criminal proceedings (translators, specialists, witnesses); e) determining the principles of information and analytical work, management of controlling, accounting, reporting; f) managing interaction and cooperation between states, international and national bodies of criminal justice in the process of investigation and collection of evidentiary information; g) defining measures to raise skill level of personnel; h) using expert knowledge in field conditions; i) managing forensic examinations and activities of expert institutions, etc.

Concerning the strategy of managing investigation and collecting evidence of war crimes, it should be noted that representatives of military and political leadership of states do not directly participate in war crimes, give orders to commit them, sign relevant documents etc. Therefore, in our opinion, when managing collection of evidence of war crimes committed by representatives of military and political leadership of states, the main efforts should be focused on collecting sufficient evidence to justify accusation of persons most responsible for committing the criminal offences and holding the highest political and military positions.

It stands to reason that in order to prove their guilt, it is necessary to establish connection of public policy makers with a set of criminal offences

committed in different areas of an armed conflict, to prove that they developed and implemented a strategic criminal plan or it was performed under their direct leadership, i.e. to adopt the doctrine of "common purpose", when several criminals act together to achieve a goal.

At the national level, members of the operational investigations group directly interact with each other, agree on the main directions of pre-trial investigation and procedural actions, and exchange the obtained information. The Prosecutor General's Office of Ukraine acting as the initiator of creating a joint investigations group carries out coordination of their activities in the territory of Ukraine. In addition to representatives of the law enforcement agencies from the EU member states involved in the joint investigation teams, there is a possibility to involve officials of Europol and Eurojust within the EU (European Convention, 2011; Shostko and Ovcharenko, 2008).

Being timebound and having neither opportunity nor resources to manage simultaneous investigation of a large number of criminal proceedings on war crimes committed in different areas of an armed conflict, each IIOG should be assigned the task of rapid and high-quality investigative (search) actions and collecting maximum physical evidence. At the same time, IIOG prosecutors should coordinate investigation of various criminal proceedings, ensure effective exchange of information, and report promptly and competently its suspicions to the main organizers of war crimes.

In case the obtained evidence proves the guilt of high-ranking war criminals, criminal proceedings should be immediately initiated against them. Otherwise, investigators will focus on searching and prosecuting low-ranking war criminals. Thus, collecting testimony from separate war criminals with a detailed description of place and nature of the criminal offence, they will omit the facts proving involvement of political and military leaders of the opposing side of an armed conflict.

The process of managing investigation of war crimes and collecting evidence may involve various forms of interaction between law enforcement agencies. For instance, when investigating war crimes, it may be difficult to collect evidence outside the territory of a particular state, i.e. in the territory of the other party, with respect for the rights of the participants in criminal proceedings.

The fact that many states have not ratified or signed the Rome Statute of the ICC so far is a serious obstacle to the prosecution of war criminals. In this regard, it is necessary to take effective measures against the states that do not want to cooperate with bodies investigating war crimes. Therefore, we propose to establish arrangements for proceedings in this category of cases based on the principle of universal jurisdiction.

Customary international law requires states to exercise their jurisdiction and gives them the right to exercise universal jurisdiction over war crimes that do not belong to grave breaches. Universal jurisdiction allows investigating war crimes without regard to where they were committed and the nationality of the perpetrator. Universal jurisdiction distinguishes between the criminal offences that states are obliged to stop on the basis of universal jurisdiction (mandatory universal jurisdiction) and the criminal offences that states have the right to stop (optional universal jurisdiction).

Universal jurisdiction may be provided for by the norms of international customary or treaty laws. If universal jurisdiction is established by treaty, it is usually mandatory. Universal jurisdiction can be exercised either through adoption of internal legislative acts (legislative universal jurisdiction), or through investigation of persons suspected of committing offenses and their transfer to the court (law-enforcement universal jurisdiction). The grounds for exercise of universal jurisdiction over war crimes are present in both international treaty and customary laws.

In some cases, the parties to the conflict make it clear that they refuse to cooperate and will obstruct the investigation in any way. This results in an active opposition to managing investigation and collecting evidence of war crimes committed by the warring parties of an armed conflict.

This is expressed through concealing traces of war crimes, namely through destruction of relevant documentation, rejection to issue it to investigative groups with the consent or acquiescence of member-state's leadership of an armed conflict, etc. For example, former ICTY Prosecutor Carla del Ponte tells about opposition of the ICTY by the Central Intelligence Agency, the United Nations and NATO. Such behavior of the authorities is understandable and can be explained by the fact that it can damage further payment of reparations.

For instance, heads of states do not want investigative bodies to obtain important archival and documentary testimonies (such as meeting schedules, agenda records, protocols, deciphering's, verbatim records of meetings and conferences, official orders, reports, purchase orders, inventory, payment information, other correspondence) that reveal internal mechanisms of war crimes in their countries, as well as involvement of political, military, and reconnaissance groups and police in secret war crimes.

If this is the case state leaders restrict access of investigative bodies to a number of archives, which contain the abovementioned and other documents proving the involvement of politicians, military bodies and police in war crimes, and provide unrestricted access to minor archives, destroy requested documents under a local ordinance requiring automatic destruction of documents after a certain period of storage, or impose other obstacles.

If heads of states do not assist investigative bodies in collecting and analyzing physical evidence, mass grave sites, identifying and interrogating crucial witnesses, including high-ranking officials, or persons hiding and remaining under their jurisdiction, they may use threats, blackmail or other ways to obstruct identification of witnesses willing to testify; restrict access to witnesses (for example, by threatening that, under local laws, any communication or even conversation with investigators involves the risk of criminal prosecution for allegedly disclosing "state" or "military secrets"); allow witnesses to testify only in case investigators issue a summons to the authorities of their country; forbid investigators to work in the territory under their jurisdiction; refuse to cooperate with the ICC. And in such case, the ICC cannot force the state to cooperate.

To effectively eliminate or minimize consequences of these destructive factors it is necessary to establish a special governmental institution for cooperation with the ICC, appoint national coordinators, make amendments in the Criminal Procedure Code of Ukraine, ensure the possibility to establish an institution of joint IIOGs, i.e. on the basis of relevant international treaties, providing for management of collecting evidentiary information on war crimes, to form joint groups of ICC members and national criminal justice authorities, balancing between the systems of continental and Anglo-Saxon laws, which will definitely contribute to impartiality of investigation.

It is necessary to share views on a regular basis with the representatives of the international community, placing priority over political considerations and short-term interests of states, to ensure political assistance from the international community in finding and managing collection of evidence on war crimes and arresting war criminals, for example, employing sanctions and creating direct dependence of economic assistance on cooperation with the ICC; to ensure wide involvement of representatives of international organizations (OSCE, Human Rights Watch, Doctors Without Borders, etc.) and various media in investigative actions, since the activities of international criminal justice provide for privileged evidence, for example, data are handed over by the International Committee of the Red Cross.

Management and methods of investigation, collection of evidence of war crimes committed by the parties to an armed conflict are directly affected by the following destructive factors:

1. rapid change in the operational situation.
2. frequent redeployment of military units and subdivisions.
3. death, injury and captivity of witnesses, victims, suspects during the fighting.
4. change of scenery as a result of bombing, artillery or mortar fire, capture by the enemy.

5. minefields, sniper attacks, etc.
6. a large number of cases investigated within a limited time period.
7. bringing to criminal responsibility the parties to an armed conflict.
8. a significant time gap between the moment of committing mass murders and starting of examining mass grave sites, which prevents identification due to decomposition of bodies.
9. problems with assembling evidence base, since shootings were performed in the places excluding any unwanted witnesses.
10. selective providing of criminal justice bodies with various military information, such as documents, objects, drone pictures, decoded recordings of radio interceptions, etc. concerning events that could become or have already been the subject of investigation.
11. politicization of investigation process and conducting investigation on the border line between national sovereignty and international responsibility, in the area between legal and political spheres.
12. the way local population perceives investigation of war crimes at the national level and administration of justice for war crimes against persons of the opposite party within the state may lead to public dissatisfaction and hostility towards criminal justice bodies, which will diminish the importance of the ICC and national criminal justice bodies.
13. illegal comparisons with the actions of the other party and the use of "spilled blood" factor to evade criminal liability for war crimes, such as "the right to commit illegal acts against the enemy" for unfounded accusations of "cowardice" of investigative bodies not directly involved in hostilities.
14. investigation of war crimes only in respect of one of the parties to the conflict, etc.
15. the need to ensure an impartial and neutral investigation so that neither party bears "special" responsibility.
16. unwillingness of the parties to an armed conflict to obey lawful requirements of the judiciary and international legal provisions.
17. problems of ensuring testimony of high-ranking foreigners.
18. attempts to stage a fake war crime "committed" by the enemy.
19. obstruction of investigation.
20. the possibility of armed resistance of the suspect or his comrades during detention.

21. combat fatigue of the accused, suspects, victims, witnesses, etc.
22. slow investigation of this category of criminal offences, which may exceed all reasonable deadlines, and dragged-out detentions.

Specific methodology of investigating war crimes committed in an armed conflict consists mainly in the collective (team) method of investigation, "hot pursuit" investigation and special arrangements for investigative (search) actions in an armed conflict. This applies both to traditional investigative (search) actions (interrogation, search, inspection of a crime scene, etc.) and new techniques for criminology, which have found extensive practical application only in locations of an armed conflict (for example, interrogation of war prisoners, examining mass grave sites, analysis of radio transmissions, etc.).

The main evidence in the activities of international criminal justice bodies is the testimony of witnesses, victims, suspects, accused, as well as documents with a widespread practice of their preliminary recording with technical means obtained during interrogations, inspections, searches, and expert examinations.

It is necessary to develop new criminological research techniques, widely applied only in localities of an armed conflict (analysis of intelligence information, bringing into the proceedings a large number of photo, audio and video materials proving commission of war crimes, etc.). Investigative (search) actions should be aimed at identifying particular commissioned officers (pilots, artillerymen, snipers, etc.) who gave and carried out orders on air strikes, shelling and destruction of civilians and settlements, and on other war crimes. Then, on the basis of legislation regulating activity of officials of the state involved in the conflict, it is necessary to define those who are guilty.

To improve efficiency and quality of investigative actions it is necessary to innovate the procedure for performing investigative (search) actions through adapting them to the conditions of an armed conflict, using the latest technologies to capture evidence, broadening and enhancing expert database, improving forms and methods of cooperation with other law enforcement agencies, improving quality and reliability of communications and transport means, etc.

Detection, detention and surrender to court of the officials involved in committing war crimes are extremely complex processes, which are mainly related to contradictory provisions of the Rome Statute of the ICC stating fundamental constitutional and legal prohibitions: 1) to surrender persons to court (Art. 89); 2) to take into account official capacity (Art. 27), which presupposes application of the Statute to a head of state or government, a member of a government or parliament; 3) to exclude from «ne bis in idem» principle (no person shall be tried by the court for a crime for which that person has already been convicted or acquitted by the court).

Reluctance of the parties to an armed conflict to prosecute their citizens, which are war criminals, often treated as "heroes" by the population, as well as lack of a binding effective legal mechanism of search, detention and surrender of war criminals is one of destructive factors of war crime investigation.

In contrast to the norms of national constitutions and criminal laws, prohibiting extradition of citizens, the Rome Statute of the ICC in Art. 89, requesting States Parties to surrender persons to the ICC, makes no exceptions to the transfer of citizens of those countries to which such a request is submitted. According to Art. 89 (1), the Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State in the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the Statute and the procedure under their national law, comply with requests for arrest and surrender (Verkhovna Rada of Ukraine, 1998).

Given the possibility of conflict of national law and provisions of the Statute, Art. 102 differentiates the terms "extradition" and "surrender" (referring to surrender, not extradition, as a special institution of international law, regulating cooperation of states in the fight against crime). According to this Article, "surrender" means the delivering up of a person by a State to the Court, pursuant to the Statute, whereas "extradition" means the delivering up of a person by one State to another as provided by treaty, convention, or national legislation.

At the same time, the practice of international law confirms the fundamental difference between the legal natures and contents of "extradition" and "surrender", creating effective preconditions to avoid amendments to the constitution in case it provides for an absolute prohibition on extradition:

1) the national constitution does not contradict the Statute, therefore there is no need to amend constitution (Republic of Armenia);

2) the national constitution contradicts the Statute, but the contradictions are insignificant, and amendments to the constitution are of general nature recognizing jurisdiction of the ICC, and allowing the ICC to sit within the State's territory (surrender of citizens to the ICC is performed without their extradition). In addition, Art. 88 of the Protocol I Additional (1977) provides for the obligation of States Parties to afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of grave breaches of the Geneva Conventions (1949) and the Additional Protocol I (1977), in particular, in the matter of extradition.

Extradition and mutual assistance in matters of criminal proceedings are provided in Art. 18 and 19 of Protocol II Additional to the Geneva Conventions for the protection of cultural Property in the event of an armed conflict (1954). The need for mutual assistance is particularly evident when states have to prosecute or extradite persons suspected (accused) of committing criminal offences.

Conclusions

To summarize the findings presented above, we can conclude that the concept of investigating war crimes committed in an armed conflict and criminal proceedings of perpetrators is of great scientific and practical significance. It is a comprehensive interdisciplinary integral theoretical system for working in special conditions, which combines doctrines of specific regularities in the sphere of legal support, management of investigation and collection of war crime evidence, search, detention and surrender of officials involved in war crimes, international prosecution of perpetrators.

This concept makes it possible to combine scientific provisions on the activities of criminal justice bodies in an armed conflict into a single system, which, in its turn, contributes to identification of open issues and systematic solution of relevant problems. It is highly important for investigative and judicial practice, since it equips criminal justice authorities with scientifically grounded recommendations on managing investigation of war crimes, and with the methods of carrying out such investigations.

When applying provisions of the Criminal and Criminal Procedure Codes of Ukraine, it is necessary to focus on the practice of international criminal courts, doctrines, authoritative statements of international humanitarian law and provisions of international treaties. Besides, the list of acts that can be considered violations of rules of the warfare does not need to strictly coincide with the correspondent list in Art. 8 of the Rome Statute or the list of serious violations of international humanitarian law under the Geneva Conventions, or Additional Protocol 1 thereto. The list can be expanded, but not arbitrarily, in accordance with the international practice.

The highest form of cooperation between the competent authorities when investigating war crimes, having often transnational nature, is creation and operation of interagency investigative operations groups, the number and personal composition of which are determined by the complexity of a crime, the number of incidents of criminal activity, location of committed criminal offenses, the number of persons involved in the crime, the need to identify and search these persons, the amount of evidence and guidance information, etc.

To effectively eliminate or minimize consequences of factors destructing war crime investigation process it is necessary to establish a special governmental institution for cooperation with the ICC, appoint national coordinators, make amendments in the Criminal Procedure Code of Ukraine, ensure the possibility to establish an institution of joint IIOGs, i.e. on the basis of relevant international treaties, providing for management of collecting evidentiary information on war crimes, to form joint groups of ICC members and national criminal justice authorities, which will definitely contribute to impartiality of investigation.

Customary international law requires states to exercise their jurisdiction and gives them the right to exercise universal jurisdiction over war crimes that do not belong to grave breaches. Universal jurisdiction can be exercised either through adoption of internal legislative acts (legislative universal jurisdiction), or through investigation of persons suspected of committing offenses and their transfer to the court (law-enforcement universal jurisdiction). The grounds for exercise of universal jurisdiction over war crimes are present in both international treaty and customary laws.

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