

УДК 341.4

DOI: 10.37635/jnalsu.27(4).2020.267-281

Юлія Миколаївна Черноус

Кафедра криміналістики та судової медицини  
Національна академія внутрішніх справ  
Київ, Україна

## АКТУАЛЬНІ ПИТАННЯ РОЗСЛІДУВАННЯ ТА СУДОВОГО РОЗГЛЯДУ МІЖНАРОДНИМ КРИМІНАЛЬНИМ СУДОМ СПРАВ ПРО МІЖНАРОДНІ ЗЛОЧИНИ

**Анотація.** Важливим завданням нашої держави є ратифікація Римського Статуту Міжнародного кримінального суду, а також подальша імплементація його положень до національного законодавства і правозастосовної практики. Це забезпечить належні правові підстави розслідування та ефективного судового розгляду Міжнародним кримінальним судом справ про міжнародні злочини, що посягають на інтереси нашої держави. Нові завдання постають і перед криміналістикою, яка, використовуючи останні досягнення природничих, технічних та суспільних наук, пристосовує їх до розв'язання завдань судочинства, трансформує у криміналістичну практику, здійснює криміналістичне забезпечення розслідування та судового розгляду справ про міжнародні злочини. Питання розслідування та судового розгляду Міжнародним кримінальним судом справ про міжнародні злочини не були предметом окремого наукового дослідження, що визначило мету представленої наукової статті. Визначальним для досягнення поставленої мети є загальний діалектичний метод наукового пізнання. У процесі дослідження було надано характеристику міжнародних злочинів, визначено засади діяльності Міжнародного кримінального суду, до юрисдикції якого належать міжнародні злочини, обґрунтовано необхідність ратифікації Україною Римського статуту Міжнародного кримінального суду; визначено основні засади криміналістичного забезпечення розслідування та судового розгляду справ про міжнародні злочини Міжнародним кримінальним судом; з'ясовано важливість формування криміналістичної методики розслідування та судового розгляду міжнародних злочинів. Обґрунтовано, що ефективно розслідування та судовий розгляд справ про міжнародні злочини Міжнародним кримінальним судом потребує криміналістичного забезпечення, застосування криміналістичних засобів, методів, прийомів із дотриманням міжнародних стандартів. Основними напрямками реалізації криміналістичного забезпечення є техніко-криміналістичне, тактико-криміналістичне і методико-криміналістичне. Криміналістична методика розслідування та судового розгляду Міжнародним кримінальним судом справ про міжнародні злочини покликана пропонувати найбільш ефективні методи і засоби діяльності відповідно до міжнародних стандартів та з метою досягнення завдань правосуддя. Вказана криміналістична методика характеризується рядом особливостей, зокрема, вона повинна охоплювати питання взаємодії досить широкого кола компетентних суб'єктів як у межах держави, так і на міжнародному рівні.

**Ключові слова:** міжнародний злочин, розслідування, криміналістичне забезпечення, судовий розгляд, міжнародний стандарт.

**Julia M. Chornous**

*Department of Criminology and Forensic Medicine  
National Academy of Internal Affairs  
Kyiv, Ukraine*

## **TOPICAL ISSUES OF INVESTIGATION AND TRIAL BY AN INTERNATIONAL CRIMINAL COURT OF CASES OF INTERNATIONAL CRIMES**

**Abstract.** *An important task for Ukraine is the ratification of the Rome Statute of the International Criminal Court, as well as the further implementation of its provisions into national legislation and law enforcement practice. This will provide proper legal grounds for the investigation and effective trial by the International Criminal Court of cases of international crimes that encroach on the national interests. New tasks are also facing forensic science, which, using the latest advances in natural, technical, and social sciences, adapts them to the tasks of criminal procedure, transforms them into forensic practice, provides forensic support for the investigation and trial of crimes under international law. The issues of investigation and trial of international crimes by the International Criminal Court were not subjected to a separate study, which determined the purpose of the paper presented. The general dialectical method was decisive for the achievement of the set purpose. In the course of the study the characteristics of international crimes were given, the principles of activity of the International Criminal Court, to whose jurisdiction international crimes belong, were determined; the necessity of ratification of the Rome Statute of the International Criminal Court by Ukraine was substantiated; the basic principles of forensic support of investigation and trial by the International Criminal Court of cases of international crimes were determined; the importance of formation of criminological methods of investigation and trial of international crimes was clarified. It is substantiated that the effective investigation and trial by the International Criminal Court of cases of international crimes requires forensic support, the use of forensic tools, methods, techniques in compliance with international standards. The main areas of forensic support are technical, tactical, and methodological. The forensic methodology for the investigation and trial of international crimes by the International Criminal Court is designed to offer the most effective methods in accordance with international standards and to achieve the goals of justice. The specified forensic methodology is characterised by a number of features, in particular, it should cover the interaction of a wide range of competent entities both within the state and at the international level.*

**Keywords:** international crime, investigation, forensic support, judgement, international standard.

### **INTRODUCTION**

The effective investigation of international crimes and their judicial review by the International Criminal Court requires amendments and additions to the national legislation, stipulates increased requirements for the activities of law enforcement agencies, judicial bodies at the national and international levels. The need to ratify the Rome Statute of the International Criminal Court of 1998<sup>1</sup>, according to which the jurisdiction of the International Criminal Court extends to international crimes –

---

<sup>1</sup> Rome Statute of the International Criminal Court. (1998, July). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_588](https://zakon.rada.gov.ua/laws/show/995_588).

---

genocide, crimes against humanity, war crimes, crime of aggression – is stipulated by the provisions of the Constitution of Ukraine 1996<sup>1</sup>, the Law of Ukraine "On International Treaties" of 2004<sup>2</sup>. It also follows from the content of the Association Agreement between Ukraine, of the one part, and the European Union and its Member States of 2014<sup>3</sup> of the other part. Art. 8 of the Agreement stipulates that States shall cooperate with a view to strengthening peace and international justice through the ratification and implementation of the Rome Statute<sup>4</sup> of the International Criminal Court and related instruments.

The important tasks for Ukraine in this direction are highlighted in the Action Plan for the implementation of the National Strategy in the field of human rights for the period up to 2020, approved by the order of the Cabinet of Ministers of Ukraine dated November 23, 2015 No. 1393<sup>5</sup>. In particular, it is necessary to analyse the compliance of international humanitarian law and criminal legislation of Ukraine in order to identify gaps and inconsistencies; development, based on the results of the above analysis, of a draft law on amending the Criminal Code of Ukraine<sup>6</sup> and, if necessary, in other regulations and submission to the Verkhovna Rada of Ukraine in order to harmonise with the norms of international humanitarian law (in particular, on the definition of war crimes) (p. 3). It is necessary to create an effective crime investigation system in accordance with international standards and taking into account the practice of the European Court of Human Rights (p.1, p.2, p.6)<sup>7</sup> etc.

In the context of an armed conflict that continues in the eastern Ukraine, the harmonisation of criminal legislation with the provisions of the Rome Statute acquires particular importance, which has been repeatedly noted by scientists<sup>8</sup>. New tasks are also facing forensics, which, using the latest advances in natural, technical, and social sciences, adapts them to the problems of justice, transforms them into forensic practice, provides forensic support for the investigation and trial of international crimes. Problematic issues of ratification of the Rome Statute of the International Criminal Court by Ukraine, some aspects of the investigation and trial of cases of international crimes

---

<sup>1</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>2</sup> Law of Ukraine No 1906-IV "On International Treaties of Ukraine". (2004, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1906-15#Text>.

<sup>3</sup> Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. (2014, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text).

<sup>4</sup> Rome Statute of the International Criminal Court. (1998, July). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_588](https://zakon.rada.gov.ua/laws/show/995_588).

<sup>5</sup> Action plan for the implementation of the National Strategy in the field of human rights for the period up to 2020 No 1393-r. (2015, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/1393-2015-%D1%80#Text>.

<sup>6</sup> Criminal codex of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

<sup>7</sup> Action plan for the implementation of the National Strategy in the field of human rights for the period up to 2020 No 1393-r, op. cit.

<sup>8</sup> Opinion of the Constitutional Court of Ukraine in the case on the constitutional petition of the President of Ukraine on issuing an opinion on the compliance of the Constitution of Ukraine with the Rome Statute of the International Criminal Court (Rome Statute case) (case No 1-35 / 2001): Opinion of the Constitutional Court of Ukraine of 11 July. 2001 No 3-v / 2001. Retrieved from <http://zakon2.rada.gov.ua/laws/show/v003v710-01>.

---

are covered in the works of N.A. Zelinska [1], N.V. Kaminska [2], O.V. Senatorova [3], R.K. Goel [4], M.V. Shepitko [5] and others. Among European scholars dealing with the investigation of international crimes were: A.G. Kibalnik, [6], J. P. Pérez-León Acevedo, [7], H. Grigoryan, [8], Č. Chepelka, [9], U. Cedrangolo, [10], V. Felbab-Brown, [11], R. Ivory, [12].

However, there are a number of topical issues of investigation and trial by the International Criminal Court of cases of international crimes that have not been the subject of scientific research. Accordingly, the objectives of the study are: to characterise international crimes, determine the principles of the International Criminal Court, which has jurisdiction over international crimes; justify the need for Ukraine to ratify the Rome Statute of the International Criminal Court; determine the basic principles of forensic support of investigation and trial by the International Criminal Court of cases of international crimes; substantiation of the need to form a forensic methodology for the investigation and trial of international crimes.

## 1. MATERIALS AND METHODS

The study is based on the analysis of legislative acts and regulations of Ukraine, namely the provisions of the Constitution of Ukraine of 1996<sup>1</sup>, the Criminal Code of Ukraine of 2001<sup>2</sup>, the Criminal Procedure Code of Ukraine of 2012<sup>3</sup>, the Law of Ukraine "On International Agreements" of 2004<sup>4</sup>, bylaws and others. The provisions of the Rome Statute of the International Criminal Court of 1998<sup>5</sup>, a number of ratified international treaties of Ukraine (the Vienna Convention on the Law of Treaties of 1969<sup>6</sup>, the United Nations Convention against Transnational Organised Crime of 2000<sup>7</sup>, the Second Additional Protocol to the European Convention on Mutual Convention) assistance in criminal cases in 2001<sup>8</sup> etc.).

The methodological tools were chosen taking into account the goal, the specifics of the subject in hand. The dialectical approach was applied to become privy to the event and composition of an international crime, its consideration from the activity aspect, to determine the correlations between its elements. The dialectical approach was necessary to determine the principles of the International Criminal Court in the implementation of the function of justice. Important for forensic science are the provisions of dialectics on the ability of matter to reflect, on the relationship and interdependence of phenomena.

---

<sup>1</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA%96-%D0%B2%D1%80#Text>.

<sup>2</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

<sup>3</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17>.

<sup>4</sup> Law of Ukraine No 1906-IV "On International Agreements". (2004, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1906-15#Text>.

<sup>5</sup> Rome Statute of the International Criminal Court. (1998, July). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_588](https://zakon.rada.gov.ua/laws/show/995_588).

<sup>6</sup> Vienna Convention on the Law of Treaties. (1969, May). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_118](https://zakon.rada.gov.ua/laws/show/995_118).

<sup>7</sup> United Nations Convention against Transnational Organized Crime. (2000, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_789](https://zakon.rada.gov.ua/laws/show/995_789).

<sup>8</sup> Second Additional Protocol to the European Convention on Assistance in Criminal Matters. (2001, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_518#Text](https://zakon.rada.gov.ua/laws/show/994_518#Text).

---

Revealing the features of forensic investigation and trial of international crimes, using a dialectical method, various forms of reflection of the event of an international crime were studied, ranging from the simplest, related to the contact interaction of two objects, and to psychophysiological, when facts and circumstances are recorded in consciousness of people. To study the criminologically significant information, the peculiarities of the use of technical means and tactics were revealed.

In the course of the research general scientific methods were used. Namely: empirical: observations and comparisons; general: analysis and synthesis, induction and deduction; concretisation, generalisation, and analogy. In particular, analysis and synthesis, induction and deduction were used to determine the characteristics of international crimes, which depend on both international law and the law of a particular state, as well as applied methods, means, methods of criminal activity. General scientific methods were used in the study of international forensic standards, the content of which is constantly changing depending on the pace of scientific and technological progress, integration of the best achievements of science and technology to solve problems of effective investigation and prosecution of international crimes. Generalisation methods and analogies were used to form practical recommendations for improving the investigation and trial of international crimes based on the study of legislation, scientific papers, and foreign practices.

Special research methods were also applied. Comparative law research – to compare the legal norms of Ukraine and foreign countries that regulate the procedure of criminal proceedings and the conduct of certain procedural actions, the application of international cooperation. Historical method – to highlight the scientific views on the interpretation of the concepts of "forensic support", "international crime", "forensic methodology", "international standard". Systemic and structural method – for formulating tasks that are solved as a result of forensic support for the investigation and judicial consideration by the International Criminal Court of cases of international crimes. These tasks were considered in accordance with the technical, tactical, and methodological areas of forensic support. Using the systemic and structural method, the foundations of the creation and operation of international investigation groups – the subjects of the investigation of international crimes were revealed. The method of legal forecasting made it possible to identify areas for further development of scholarly views on the issues of forensic support and trial of international crimes, to form the principles of appropriate forensic methodology. These proposals also apply to the expansion of the content of such a structural element of the science of forensics as a method of investigating certain types of crimes.

Thus, the applied methodology provided knowledge of the essence of international crimes, the principles of the International Criminal Court, which has jurisdiction over cases of international crimes; theoretical and legal bases of forensic support of investigation and trial of cases on international crimes by the International Criminal Court; the main provisions of the forensic methodology of investigation and trial of cases of international crimes.

## **2. RESULTS AND DISCUSSION**

The academic literature in this field has substantiated that international crime consists of transnational crimes and crimes of international significance [1]. International crimes are violations of the principles and norms of international law that are especially dangerous for

---

human civilisation and are fundamental to ensuring peace, protecting the individual and the vital interests of the international community as a whole [13]. In order to effectively combat international crimes, within the framework of the Diplomatic Conference of Plenipotentiaries under the auspices of the United Nations in Rome in 1998, a decision was made to establish a permanent International Criminal Court [4]. The Statute of the International Criminal Court provides for the onset of international criminal liability for: a) the crime of genocide; b) crimes against humanity; c) war crimes; d) crime of aggression<sup>1</sup>. The International Criminal Court is an independent institution of international justice. The International Criminal Court exercises jurisdiction based on the principle of complementarity. In fact, the implementation of legal proceedings on international crimes and persons accused of their commission is entrusted to the courts of a particular state. Thus, the International Criminal Court does not replace the national legal system. However, in the presence of the grounds specified in Art. 17 of the Rome Statute of the International Criminal Court<sup>2</sup>, when a state cannot ensure the implementation of proceedings in relation to international crimes, it is carried out by the International Criminal Court.

Today, Ukraine needs to implement the Statute into national legislation and bring law enforcement practice in line with its provisions. However, to this day, the Rome Statute of 1998, on the basis of which the International Criminal Court<sup>3</sup>, operates, remains unratified by the Verkhovna Rada of Ukraine, which causes difficulties in law enforcement. Today 123 states are Parties to the Rome Statute. Ukraine signed this international agreement in 2000, but did not ratify it, as the Constitutional Court of Ukraine ruled that the Rome Statute<sup>4</sup> was inconsistent with the Constitution of Ukraine<sup>5</sup>. Only on June 30, 2019 Art. 124 of the Constitution of Ukraine was amended, which gave the state the right to ratify the Rome Statute and recognise the jurisdiction of the International Criminal Court. That is, it took Ukraine almost nineteen years to come close to an important strategic decision. Given the urgent need to consider cases of international crimes, Ukraine has twice recognised the jurisdiction ad hoc (for specific situations), submitting special applications to the International Criminal Court under Part 3 of the Statute. The first statement concerned the recognition by Ukraine of the jurisdiction of the International Criminal Court to commit crimes against humanity by high-ranking state officials, which led to particularly serious consequences and mass killings of Ukrainian citizens during peaceful protests between November 21, 2013 and February 22, 2014<sup>6</sup>; on recognition by Ukraine of the jurisdiction of the International

---

<sup>1</sup> Charter of the United Nations and Charter of the International Court of Justice. (1945, June). Retrieved from [http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995\\_010](http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_010)

<sup>2</sup> Rome Statute of the International Criminal Court. (1998, July). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_588](https://zakon.rada.gov.ua/laws/show/995_588).

<sup>3</sup> *Ibidem*, 1945.

<sup>4</sup> Opinion of the Constitutional Court of Ukraine in the case on the constitutional petition of the President of Ukraine to issue an opinion on the compliance of the Rome Statute of the International Criminal Court with the Constitution of Ukraine. (2001, July). Retrieved from <http://zakon2.rada.gov.ua/laws/show/v003v710-01>.

<sup>5</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>6</sup> Statement of the Verkhovna Rada of Ukraine to the International Criminal Court on recognition by Ukraine of the jurisdiction of the International Criminal Court on crimes against humanity by senior state

Criminal Court on the commission of crimes against humanity and war crimes by senior officials of the Russian Federation and leaders of terrorist organisations "DPR" and "LPR", which led to particularly serious consequences and mass murder of Ukrainian citizens<sup>1</sup>.

Thus, first of all, Ukraine needs to ratify the Rome Statute of 1998, on the basis of which the International Criminal Court<sup>2</sup> operates, which is conditioned by the European integration direction of Ukraine's development. However, this is only the first of the important and urgent tasks. The next task is due to the fact that in order to implement effective law enforcement, achieve the objectives of investigation and trial of cases of international crimes, it is necessary to provide forensic activities. The actual "forensic support" can be described as activities to create conditions for the readiness and implementation of methods, tools, techniques of forensic techniques, tactics, and methodology, based on the principles of general theory of forensics and aimed at achieving the objectives of criminal justice. The main areas of implementation of forensic support are technical, tactical, and methodological.

Effective investigation and trial by the International Criminal Court of cases of international crimes requires forensic support, the use of forensic tools, methods, techniques in compliance with international standards. The concept of "international standards" is used in all spheres of public life and is a generalised concept that covers the requirements for a particular field of activity, taking into account international law, the requirements of the world community and the best foreign practices. Thus, scientists note that today the important tasks for Ukraine is to fulfil the international obligations and to bring the national legal system to international and European standards. The implementation of universally recognised standards in national constitution and legislation is achieved by enshrining the fundamental principles of cooperation in joint agreements [14]. International standards are a source of critical information, as they contain norms and regulations based on advances in various fields of engineering, technology, and practical experience and recognised by consensus by representatives of all stakeholders [15]. International standards include standards developed by an international standard-setting body. The most famous of which is the International Organisation for Standardisation. The International Organisation for Standardisation (ISO) defines standardisation as an activity aimed at achieving the optimal degree of order in a particular area by establishing provisions for general and repeated application of existing or potential tasks [16]. For example, A.O. Poltavskyi refers to the standardisation of the crime scene inspection. According to the author, activities on the crime scene in accordance with international standards will improve the functioning of government agencies and institutions in this area with the projected improvement of its

---

officials, which led to particularly grave consequences and mass murder of Ukrainian citizens during peaceful protests between November 21, 2013 and February 22, 2014, No 790-VII. (2014, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/790-18#Text>.

<sup>1</sup> Resolution of the Verkhovna Rada of Ukraine "On Recognition of Ukraine's Jurisdiction of the International Criminal Court on Committing Crimes against Humanity and War Crimes by Senior Officials of the Russian Federation and Leaders of Terrorist Organizations "DPR" and "LPR", which Lead to Serious Consequences and Mass Murder of Ukrainian Citizens" No 145-VIII. (2015, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/145-19#Text>.

<sup>2</sup> Charter of the United Nations and Charter of the International Court of Justice. (1945, June). Retrieved from [http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995\\_010](http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_010)

---

quality, increase the confidence of international partners in the investigation of cross-border crimes and provide impetus to update forensics [17]. Compliance with international standards is also relevant for certain areas of forensic support, in particular, technical.

Technical and forensic support of criminal proceedings should be in line with the best foreign practices. For example, 3D scanning technologies have become part of the daily practice of law enforcement agencies of leading world countries. Such forensic support is necessary for law enforcement agencies in Ukraine. Scanning creates a three-dimensional image with the ability to freely change the angle, which can be saved on any digital media. The software included with the scanner is able not only to visualise three-dimensional images of the scanned area, but also to arbitrarily change the position of the viewpoint. This creates a virtual three-dimensional view of the crime scene of the incident, in particular different views from different points, and then analyses the situation in detail. With the help of the scan results, the investigating bodies have the opportunity not only to "return" to the crime scene to determine the location of certain objects after the inspection, but also to study the traces in more detail [18]. This image can be used during forensic examinations, in the trial process, etc. According to Yu.Yu. Orlov, the use of laser scanning to capture the situation at the crime scene complies with the Criminal Procedure Legislation of Ukraine. Laser scanning is a promising method of capturing the situation at the crime scene. Media with recording of laser scan results should be attached to the protocol of investigative action in the form of appendices. Subsequently, these carriers can be used when procuring evidence [19].

One of the progressive achievements is the use of videoconferencing technology in criminal proceedings. This technology has a wide scope of use, because the procedural actions in the mode of videoconferencing are carried out both during the pre-trial investigation and trial. Videoconferencing is used in criminal proceedings both within the state and in international cooperation. The actual forensic support for the conduct of procedural actions in the videoconference mode requires the development of uniform, internationally unified approaches regarding the legal framework, technology, organisation, tactics of conduct, and staffing.

Modern databases of law enforcement agencies and international organisations provide information and reference support for investigations and trials, provide a search for missing persons and suspects in crimes. In the context of the investigation and trial of cases of international crimes, it is important to use the main databases of information maintained by Interpol: "Persons", "Database of stolen vehicles", "Database of DNA profiles", "Database of fingerprints" etc. [20; 21]. Forensic examinations in criminal proceedings must comply with international standards (ISO / IEC17025: 2006). In this case, the standards of forensic activity are enshrined in the methods of expert research, which are, conditionally, programmes for solving expert problems, a list of consecutive operations [22]. Standardisation of forensic support should be understood as an activity to achieve optimal ordering of forensic activities by unifying the regulatory and methodological support of expert research. Given the beginning of work in this direction in Ukraine, it is important to understand that standardisation is a continuous process, and involves the development of new standard methods with the emergence of new types of expertise [23]. As noted by N.V. Nestor, of particular relevance is the unification of

examination methods and the harmonisation of forensic expertise in Ukraine with the relevant international standards in this area, in particular, with the requirements of the European Network of Forensic Science Institutions (ENFSI) [23].

In the case of tactical support of investigation and trial of international crimes, attention is paid to the conduct of procedural actions with the use of modern tactics and their complexes. In turn, the methodological support of the crime investigation is aimed at developing the most effective forensic recommendations that will ensure the achievement of the objectives of criminal proceedings. Thus, the next urgent task is to develop a methodology for the investigation of international crimes and judicial consideration by the International Criminal Court of cases of international crimes. This forensic methodology is characterised by a number of features, in particular, it should cover the interaction of law enforcement agencies, individual entities both within the state and at the international level. The issue of application of measures of international cooperation in accordance with certain directions [24], as well as new forms of international cooperation, for example – "secret investigations" is relevant [25].

An important aspect of the study is the creation of international investigative teams and the settlement of forensic support for their activities. According to Art. 19 of the UN Convention against Transnational Organised Crime of 2000, in connection with cases that are the subject of investigation, prosecution or trial in one or more participating States, the competent authorities concerned may establish bodies to conduct joint investigations (subject to the conclusion of appropriate agreements or arrangements)<sup>1</sup>. According to p. 1-2 of Art. 20 of the 2001 Second Additional Protocol on the European Convention on Mutual Assistance in Criminal Matters in 1959<sup>2</sup>, a joint investigation team may be established in cases when: a) the investigation of a crime by a Party requires complex investigative activities involving other Parties; b) Several Parties conduct investigations of crimes, the circumstances of which require the possibility of coordinated, concerted action in the territory of the parties concerned. Any interested Party may request the establishment of a joint investigation team, and the request should include proposals for the composition of the team. The team is established in one of the Parties where the investigation is expected to take place<sup>3</sup>. The Law of Ukraine "On Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters"<sup>4</sup> of 2011 stipulates that in Ukraine the body that decides on the establishment of a joint investigation team is the Prosecutor General's Office of Ukraine (p. 10). These provisions are provided in Part 2 of Art. 571 of the Criminal Procedure Code of Ukraine<sup>5</sup>. The establishment and operation of international joint

---

<sup>1</sup> United Nations Convention against Transnational Organized Crime. (2000, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_789](https://zakon.rada.gov.ua/laws/show/995_789).

<sup>2</sup> European Convention on Mutual Assistance in Criminal Matters. (1959, April). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_036#Text](https://zakon.rada.gov.ua/laws/show/995_036#Text).

<sup>3</sup> Second Additional Protocol to the European Convention on Assistance in Criminal Matters. (2001, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_518#Text](https://zakon.rada.gov.ua/laws/show/994_518#Text).

<sup>4</sup> Law of Ukraine No 3449-VI "On Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters". (2011, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3449-17#Text>.

<sup>5</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17>.

---

investigation teams is a progressive step of the world community in the fight against international crime. This measure allows to increase the efficiency of investigation and trial of international crimes, to optimise the implementation of measures of international cooperation in criminal proceedings. Under the conditions of the investigation by the joint investigation team, the efficiency of cooperation between the representatives of the competent authorities of foreign states, in particular increases. After all, the differences between the legislation and the practice of its implementation by foreign states are significant, and it is often difficult for the competent authorities to agree on the procedure for objective and subjective reasons. The provisions of international law regulating interstate relations on a global or regional scale are partially devoted to the settlement of the outlined issues. However, despite the importance of such regulation, it is necessary to be guided by other sources of law, in particular, national legislation. The activities of international joint investigation teams should be implemented in a coordinated manner. It is a question of interaction of competent bodies of the states, their separate divisions and employees: investigators, operational workers, experts, the prosecutors carrying out the set tasks. Clarification of procedural, organisational, forensic features of such interaction is important in practice and requires in-depth study.

Given the progressive nature of legislation, it should be noted that Ukraine's practical experience on this issue requires improvement. Moreover, the events in eastern Ukraine on July 17, 2014, namely the crash of an MH17 airliner of Malaysian airlines, as a result of which 298 people from different countries were killed, led to unification in the fight against the common evil, creation of the Joint Investigation Team (JIT). It included representatives from Australia, Belgium, Malaysia, the Netherlands, and Ukraine, as well as International Civil Aviation Organisation (ICAO), the European Organisation for the Safety of Air Navigation (Eurocontrol), the International Criminal Police Organisation (Interpol), and the European Police Office (Europol), The European Aviation Safety Agency (EASA), etc. From the Ukrainian side, employees of the General Prosecutor's Office of Ukraine, the Kyiv Scientific Research Institute of Forensic Expertise, and other competent bodies were involved.

In September 2016, this investigative team announced the preliminary results of its work. The official report of the International Investigation Team on flight MH17 states that for a long period of time, between 100 and 200 investigators and experts participated in the investigation as part of the Joint Investigation Team. In two years, the contents of dozens of containers containing thousands of fragments have been carefully analysed. 1448 of these fragments were added into the database as material evidence. 60 requests for legal assistance were sent to more than 20 countries. Twenty different weapon systems have been studied. Five billion pages of the Internet have been recorded, the content of which is considered for significance for the investigation. A thorough study and recording of half a million of video and photo materials was conducted, and more than 200 witnesses were interrogated. In addition, 150,000 recorded telephone conversations were listened to, the content of which was summarised and analysed. In this regard, more than 3,500 of these wiretapped telephone conversations were fully and carefully recorded, translated and studied. All of this is documented in more than 6000 protocols. The Joint Investigation Team (JIT) investigated a number of versions. Attracting experts and conducting expert examinations was of great importance. It was due to forensic examinations that it was

established that the MH17 airliner was shot down by a 9M38 missile. In addition to forensic examinations, the so-called simulation modelling was carried out, which involved the explosion of a combat unit and an entire missile in conditions specially prepared for testing, performed by a group of forensic experts from countries belonging to the JIT. The investigation identified individuals who may be involved in criminal acts against the MH17 airliner or transportation of the anti-aircraft complex BUK [26]. On March 9, 2020, the court hearing on the MH17 case began in the Netherlands. The trial was taking place in a country whose citizens were made up the majority of passengers of the Malaysian Airlines aircraft, following a procedure under the laws of the Kingdom of the Netherlands [27], although the issue of transferring the case to the jurisdiction of the International Criminal Court has been discussed [28].

It is obvious that it is impossible to establish the circumstances of the crime without proper forensic support and the formation of methods of investigation and trial of cases of international crimes. According to empirical sources, Ukraine has faced a number of difficulties related to the organisation of the investigation, the tactics of procedural actions, the involvement of specialists and the conduct of examinations as part of an international joint investigation team. Thorough developments are required in this direction. Another feature of the forensic methodology of investigation and trial of international crimes by the International Criminal Court is the involvement of a wide range of entities that can collect information about the event. First of all this refers to law enforcement agencies of the state, which conduct investigations of crimes in accordance with the provisions of national law. However, other entities – non-governmental organisations, activists, volunteers – can also collect and transmit information to the Prosecutor's Office. It is important that on the basis of the received data, the International Criminal Court also conducts its own investigation. Directly during the trial, only the International Criminal Court has the power to declare certain evidence admissible or inadmissible, and in general to recognise or reject any information as evidence.

It should also be noted the participation of the International Humanitarian Fact-finding Commission. The Commission is a permanent, independent mechanism for investigating violations of international humanitarian law committed in both international and non-international armed conflicts. The activities of the Commission reflect the humanitarian and non-political nature of legal norms on the protection of victims of armed conflict [3]. The International Humanitarian Commission may investigate violations of international humanitarian law during armed conflicts between states [3]. The investigation is being conducted by a chamber of seven members of the Commission who are not nationals of the states participating in a conflict. The Commission may invite the parties to provide evidence within a fixed period of time, and the Commission may conduct its own investigation, including on the spot, by questioning witnesses. Chamber members can split up and conduct simultaneous investigations in different regions. The Commission shall report the findings to the states accused of the offenses, which shall have the right to challenge the evidence provided. The report shall be confidential, but the Commission may decide to make it public at the request of the parties to the conflict or if it considers that no action is being taken to put an end to the offenses. The Commission is not a judicial body, so it merely communicates the results of the investigation to stakeholders and considers measures to be taken to help restore respect for international humanitarian law [3].

---

The range of subjects involved in the investigation and trial of cases of international crimes has been expanded to ensure interaction and the application of measures of international cooperation between the competent authorities of foreign states, international, public organisations, individual citizens, in order to establish the circumstances of the committed international crime. Considering that, according to the Constitution of Ukraine, "current international agreements, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine" (p. 1, Art. 9)<sup>1</sup>, and the provisions of the Criminal Procedure Legislation of Ukraine are provisions international treaties, the binding nature of which was approved by the Verkhovna Rada of Ukraine (p. 2 of Art. 1 of the CPC of Ukraine<sup>2</sup>), an important task of Ukraine is the ratification of the Rome Statute, as well as further implementation of its provisions to national law and law enforcement practice. This will provide a legal basis for investigation and trial by the International Criminal Court of cases of international crimes that encroach on the interests of Ukraine.

The effective investigation and trial of international crimes by the International Criminal Court depends to a large extent on the forensic support of these activities in accordance with international standards. The implementation of forensic support is carried out in accordance with the technical, tactical, and methodological areas, both within the state and at the international levels. It is necessary to develop a forensic methodology for the investigation and trial of international crimes by the International Criminal Court. The methodology of crime investigation offers the most effective methods and means of activity, based on the use of data on typical investigative situations, systems of standard versions, complexes of investigative actions, law enforcement intelligence operations, etc. The development of a methodology for investigating international crimes is an urgent requirement of the time, because it is necessary to ensure the achievement of the objectives of criminal proceedings against international crimes committed on the territory of Ukraine. Thus, in September 2015, Ukraine submitted to the International Criminal Court a Statement recognising the Court's jurisdiction over all crimes (primarily crimes against humanity and war crimes) committed in Ukraine since the beginning of the Russian military aggression against Ukraine. The statement must be of indefinite period.

The General Prosecutor's Office of Ukraine has prepared materials confirming the commission of crimes against humanity and war crimes by militants in Donbass and officials of the Russian Federation. They can become an evidence base in the International Criminal Court [29]. In a 2018 report, the Office of the Prosecutor of the International Criminal Court noted that among the alleged crimes committed in Crimea and Donbas are murder, torture, sexual and gender crimes, forced conscription into the armed forces of the occupying state, violation of the right to a fair trial, illegal imprisonment, seizure of property, etc. The Prosecutor's Office is currently conducting a preliminary study of the situation. The state of investigation and trial of criminal cases concerning these crimes, which were carried out by law enforcement agencies of Ukraine, is assessed. According to the Office of the General Prosecutor, the Prosecutor's

---

<sup>1</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>2</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17>.

---

Office of the International Criminal Court is currently considering 14 information reports on serious violations of international humanitarian law in the temporarily occupied territories of Crimea and Donbas: premeditated murder, torture, deportation or forced displacement of the population, intentional directions of attacks against civilians and civilian objects [30; 31].

## CONCLUSIONS

The listed above and other circumstances eloquently testify to the need to form a comprehensive forensic methodology for the investigation and trial of international crimes by the International Criminal Court. Forming the specified technique, it is necessary to be guided by work of V.A. Zhuravel, which characterises a separate forensic methodology as an information and cognitive model, which reflects a set of methods, tools, techniques, and recommendations of a typical nature, set out in descriptive form for the rational organisation of the process of collecting, evaluating and using evidence of specific and investigating various criminal manifestations and judicial review of criminal cases. It covers not only a system of methods, techniques, and tools, but also recommendations to the investigator and judge on the most optimal, rational organisation of the investigation of certain types of crimes and the trial of criminal cases.

It is the forensic methodology that should form a kind of "algorithm" for the basics of investigation and trial of international crimes by the International Criminal Court, taking into account high international standards and practices of the world's leading states. This methodology should include the following elements: forensic characterisation of an international crime; a typical list of circumstances to be established; a typical algorithm of procedural actions and other measures at each stage of the investigation; tactics of carrying out separate procedural actions, tactical operations; features of the use of special knowledge; organisation of interaction of representatives of law enforcement agencies, including at the international level; attracting the help of citizens and non-governmental organisations, using the opportunities of the media, etc. Particular attention should be paid to the methodology of judicial review of international crimes by the International Criminal Court, taking into account its specifics.

## REFERENCES

- [1] Zelinska, N.A. (2007). *International legal concept of international crime*. (Doctor's thesis, Odessa National Law Academy, Odessa, Ukraine).
- [2] Shcherban, Ye., & Kaminska, N. (2020). Some issues of implementation of the Rome Statute of the International Criminal Court. *Scientific Bulletin of the National Academy of Internal Affairs*, 2(115), 138-143. doi: <https://doi.org/10.33270/01201152.138>.
- [3] Senatorova, O.V. (2016). Application of the mechanism of the international humanitarian commission on establishing the facts concerning the situation of the armed conflict in Ukraine. In S.O. Hrynenko (Eds.). In *Legal support of operational and service activities: current problems and ways to solve them: Proceedings of the Scientific and Practical Conference*, Iss. 7, (pp. 91-101). Kharkiv: Pravo.
- [4] Goel, R.K., & Saunoris, J.W. (2019). Does variability in crimes affect other crimes? the case of international corruption and shadow economy. *Applied Economic*, 51(3), 239-258.
- [5] Shepitko, M.V. (2017). The impact of international legal acts on the content of

- crimes against justice. *Bulletin of the National Academy of Legal Sciences of Ukraine*, 4, 30-41
- [6] Kibalnik, A.G. (2019). Crime of aggression: Deceptive expectations of international criminal law. *Russian Journal of Criminology*, 13(2), 300-310.
- [7] Pérez-León Acevedo, J.P. (2017). The close relationship between serious human rights violations and crimes against humanity: International criminalization of serious abuses. *Anuario Mexicano De Derecho Internacional*, 17(1), 145-186.
- [8] Grigoryan, H. (2020). Aggression as a crime in international and national criminal law. *Wisdom*, 14(1), 122-130.
- [9] Čepelka, Č. (2017). The concept of crimes against humanity. *Czech Yearbook of Public and Private International Law*, 8, 339-345.
- [10] Cedrangolo, U. (2019). The accountability for international crimes perpetrated by children. *International Criminal Law Review*, 19(4), 698-723.
- [11] Felbab-Brown, V. (2017). Organized crime, illicit economies, civil violence & international order: More complex than you think. *Daedalus*, 146(4), 98-111.
- [12] Ivory, R., & Søreide, T. (2020). The international endorsement of corporate settlements in foreign bribery cases. *International and Comparative Law Quarterly*, 69(4), 945-978.
- [13] Ferizović, J. (2020). The case of female perpetrators of international crimes: Exploratory insights and new research directions. *European Journal of International Law*, 31(2), 455-488.
- [14] Parkhomenko, N., Voloshyna, I., Tarakhonych, T., Tykhomyrov, O., & Husariev, S. (2020). Theoretical Basis of Implementation of International Standards and European Principles in Ukrainian Legislation. *Journal of Legal, Ethical and Regulatory Issues*, 23(4). Retrieved from <https://www.abacademies.org/articles/theoretical-basis-of-implementation-standards-and-european-in-ukrainian-legislation-9399.html>.
- [15] Martseniuk, M.M., & Hvozdetzka, I.V. (2012). International quality standards. *Bulletin of Khmelnytsky National University*, 3(2), 154-156.
- [16] International Organization for Standardization (ISO). (2013). ISO/IEC Guide 2:2004 Standardization and related activities – General vocabulary. Retrieved from [https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso\\_guide\\_2\\_2004.pdf](https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso_guide_2_2004.pdf).
- [17] Poltavskyyi, A.O. (2019). On the issue of standardization of inspection technology (research) of the scene. *Forensics and Forensics*, 64, 331-349. doi: <https://doi.org/10.33994/kndise.2019.64.29>.
- [18] Danets, S.V. (2014). Application of the latest laser scanning technologies during the inspection of the accident site. *Forensic Bulletin*, 2(22), 166-171.
- [19] Orlov, Yu.Yu. (2011). Use of laser scanning during site inspection. *Scientific Bulletin of the National Academy of Internal Affairs*, 4, 196-201.
- [20] Rankin, M. (2019). The 'responsibility to prosecute' core international crimes? the case of german universal jurisdiction and the Syrian government. *Global Responsibility to Protect*, 11(4), 394-410.
- [21] Trindade, A. A. C. (2018). Reflections on the international adjudication of cases of grave violations of rights of the human person. *Journal of International Humanitarian Legal Studies*, 9(1-2), 98-136.
- [22] Chornous, Yu.M., & Lopata, O.A. (2016). Areas, levels and forms of international cooperation in the field of forensic science. *Forensics and Forensics*, 62, 28-37.
- [23] Nestor, N.V. (2019). The concept of standardization of forensic activity. *Forensics and Forensics*, 64, 68-77.
-

- [24] Cherniavskiy, S.S., Holovkin, B.M., Chornous, Yu.M., Bodnar, V.Y., & Zhuk, I.V. (2019). International cooperation in the field of fighting crime: directions, levels and forms of realization. *Journal of Legal, Ethical and Regulatory Issues*, 22(3), 1-11.
- [25] Cherniavskiy, S.S., Hribov, M.L., Nebytov, A.A., Kniaziev, S.M., & Telenyk, S.S. (2020). The Forms of International Co-Operation in the Area of Undercover Investigations. *Journal of Legal, Ethical and Regulatory Issues*, 23(1). Retrieved from <https://www.abacademies.org/articles/the-forms-of-international-cooperation-in-the-area-of-undercover-investigations-9021.html>.
- [26] Report of the International Investigation Team on flight MH17. *Sait "LB.ua", Site "LB.ua"*. Retrieved from [http://ukr.lb.ua/news/2016/09/28/346430\\_zvit\\_mizhnarodnoi\\_slidchoi\\_grupi\\_shchodo.html](http://ukr.lb.ua/news/2016/09/28/346430_zvit_mizhnarodnoi_slidchoi_grupi_shchodo.html).
- [27] Deputy Prosecutor General Gunduz Mammadov led an international investigation team from Ukraine in case MH17. *Site "Office of the Attorney General"*. Retrieved from [https://www.gp.gov.ua/ua/news?\\_m=publications&\\_c=view&\\_t=rec=268637](https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec=268637).
- [28] MH17 crash trial. *Sait "Truth Hounds", Site "Truth Hounds"*. Retrieved from <https://truth-hounds.org/sudovyj-proces-katastrofy-rejsu-mh17>.
- [29] Human rights activists call for a single center to gather evidence of war crimes and crimes against humanity. *Site "Radio Liberty"*. Retrieved from <https://www.radiosvoboda.org/a/26988764.html>.
- [30] International Day of Justice and the anniversary of the MH17 tragedy: the facts of all the most serious war crimes and crimes against humanity need to be properly investigated. Retrieved from [https://www.gp.gov.ua/ua/news?\\_m=publications&\\_c=view&\\_t=rec&id=277171](https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec&id=277171).
- [31] Zhuravel, V. (2011). A separate forensic methodology: the concept and scope. *Bulletin of the Academy of Legal Sciences of Ukraine*, 2(65), 202-213.

### **Julia M. Chornous**

Doctor of Law, Professor

Professor of the Department of Criminology and Forensic Medicine

National Academy of Internal Affairs

03035, 1 Solomyanska Sq., 1 Kyiv, Ukraine

**Suggested Citation:** Chornous, J.M. (2020). Topical issues of investigation and trial by an international criminal court of cases of international crimes. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(4), 267-281.

Submitted: 18/07/2020

Revised: 14/11/2020

Accepted: 07/12/2020