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Features of the forensic classification of war crimes

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■ **Abstract.** The relevance of the study was determined by the need to improve the forensic systematisation of war crimes in view of the current challenges and scale of criminal activity during the armed conflict in Ukraine, as well as the problems of investigating them in conditions of aggression. The aim of the study was to substantiate the expediency of distinguishing between war crimes according to criminal law and forensic criteria, as well as to form the basis for their criminalistic classification, taking into account the criminal law and criminalistic aspects of the acts under investigation. The methodological tools of the study included a set of methods, among which were formal-legal, comparative-legal, inductive, comparative, forecasting and forensic analysis methods to substantiate conclusions and provide recommendations on the subject of the study. The results of the study consisted in substantiating the criminal classification of war crimes as a necessary component (element) of the criminalistic methodology for investigating criminal offences. The classification criteria for differentiating war crimes by type of armed conflict, territorial factor of commission, methods of criminal activity, nature and scale of socially dangerous consequences, features of the subjective composition of the offence, as well as motivational and target-oriented guidelines for the behaviour of the perpetrators are substantiated. The importance of aggravating circumstances was highlighted, which, despite the absence of direct confirmation in the disposition of Article 438 of the Criminal Code of Ukraine, are of key importance for identifying the degree of individual responsibility. This refers to cases of the formation and implementation of criminal intent through the issuance of orders, the development of plans or strategies for committing war crimes, initiated at the highest level of the military and political leadership of the aggressor state. Emphasis is placed on the advisability of amendments and additions to Article 438 of the Criminal Code of Ukraine with the expansion of the list of aggravating circumstances, in particular if war crimes are committed against children or have negative consequences for the gene pool of the nation. The scientific novelty and practical significance of the results obtained lies in the formation of effective mechanisms for investigating war crimes through the analysis of criminal law, criminal procedure and criminalistic aspects of investigating violations of the laws and customs of war, as well as during the improvement of criminal legislation at both the national and international levels

■ **Keywords:** forensic activity; investigation of crimes; differentiation; evidence process; violations of the laws and customs of war; characteristics; international justice

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■ Introduction

According to estimates by I. Basysta *et al.* (2023), law enforcement agencies registered over 59 thousand criminal offences qualified under Article 438 of the Criminal Code of Ukraine (CCU)¹ during just the first nine months of the full-scale aggression against Ukraine. In the same period, the Office of the UN High Commissioner for Human Rights documented over 16 thousand casualties among civilians (persons not involved in the armed conflict) (UN confirms over 6,300 deaths..., 2022). The majority of fatalities were caused by the use of wide-area explosive weapons in populated areas. Evidently, under these conditions, the actual number of victims is significantly higher. Representatives of various human rights organisations also draw attention to this circumstance. For example, some estimates suggest that in the city of Mariupol alone, the approximate number of deaths is assessed at 100 thousand, which points to the unprecedented scale of losses inflicted on the civilian population (In Mariupol, the invaders killed..., 2023).

According to reports from the Deputy Minister of Internal Affairs of Ukraine, Y. Yenin, the police documented around 600 cases of violations of the laws and customs of war in just two weeks following the de-occupation of Kherson (More than 9,400 have..., 2022). Simultaneously, according to A. Tolkach (2024), over 600 criminal proceedings were registered in the Chernihiv region regarding the commission of more than 800 crimes covered by Article 438 of the CCU².

Official assessments from juvenile prosecutors regarding international crimes committed against children also draw attention. Specifically, as of June 2022, over 700 children were affected by the armed aggression, and approximately 200 thousand were forcibly deported to the territory of the Russian Federation. Among other serious violations of international humanitarian law, as noted by L. Ostapchuk & T. Kuzmenko (2022) and D.L.R. Tchobo (2022), cases of mass murder, torture, sexual violence, looting, shelling, and seizure of critical infrastructure facilities, etc., have been recorded.

These figures comparatively indicate the mass nature of war crimes committed on the territory of Ukraine. In this regard, V. Tymoshenko (2024) points out that in the Chernihiv region alone, law enforcement agencies registered more cases of international crimes in just one month of hostilities than during the entire period preceding the full-scale invasion. For instance, according to certain verified data, from 2014 to 2022, 253 criminal offences concerning the commission of international crimes were documented in Ukraine, of which 172 related to violations of the laws and customs of war. In the structure of the

criminogenic situation at that time, this number accounted for only 0.054% of the total documented criminal offences.

The Office of the Prosecutor General notes that in 2022, the share of war crimes among the total number of criminal offences registered in Ukraine was about 17% (Unified report on criminal..., 2022). In 2023, against the background of a general increase in the criminogenic situation, this figure dropped to 13% (Unified report on criminal..., 2023), and in 2024, it accounted for nearly 6% (Unified report on criminal..., 2024).

The presented statistics show both an increase and a significant decline in the quantitative indicators for war crimes committed in Ukraine. For example, in 2023, the number of recorded criminal offences under Article 438 of the CCU increased by 0.92% compared to the previous year (Unified report on criminal..., 2023). At the same time, a decrease in cases of violations of the laws and customs of war by 53% is observed in 2024 (Unified report on criminal..., 2024), with the magnitude of the regress reaching 52% over three years.

This trend is driven by both objective factors, such as changes in the nature of combat operations and the redistribution of efforts by law enforcement and the security sector, and organisational factors, which relate to the specifics of recording and registering war crimes during different periods of the armed conflict. Despite this, the circumstance has not eased the investigation process. As noted, no law enforcement system in the world is capable of effectively responding to the consequences of hostilities without strengthening the personnel potential of pre-trial investigation bodies, their resource provision, interagency cooperation, and effective methodological support.

In this regard, L.J. Trautman & M. McFarlin (2023), O. Agarkova (2024), and V. Tymoshenko (2024) emphasise that the escalation of the criminogenic situation concerning war crimes, combined with active combat operations and the limited resource capabilities of the national law enforcement system, poses a serious threat to international legal order. Judicial practice confirms this. For example, in 2022, notices of suspicion were issued in 135 criminal proceedings, of which 34% were forwarded to court with an indictment, and only 7 resulted in a court verdict (Reporting on the state..., 2022).

In 2023, these indicators fell to 88 criminal proceedings where suspicion was notified, with 42% sent to court with an indictment, and 40 resulting in a court verdict (Reporting on the state..., 2023). In 2024, out of 64 criminal proceedings where suspicion

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

² Ibidem, 2001.

was notified, 72% of cases were sent to court with an indictment, and a court verdict was announced in 41 proceedings (1 in person, 40 in absentia) (Reporting on the state..., 2024).

This means that for the majority of the total number of war crimes committed in Ukraine, no judicial decisions have been rendered. This necessitates a comprehensive analysis of the issues surrounding the investigation of violations of the laws and customs of war, taking into account the forensic specifics of their classification and characterisation. This necessity is further confirmed by the content of Article 8 of the Rome Statute¹, which outlines a wide range of forms and methods for committing war crimes, and the fragmentary nature of Article 438 of the CCU², which requires the application of provisions from international criminal legislation, international humanitarian law, and the precedential practice of international tribunals. Consequently, this complicates the investigation process and highlights the need for forensic differentiation of violations of the laws and customs of war. In the opinion of E. Didenko (2024), clarifying the aforementioned circumstances using standard procedures of procedural and forensic activity will ultimately contribute to the development of effective mechanisms for investigating war crimes.

Therefore, the aim of this research was to define the theoretical and methodological foundations for the forensic classification of war crimes, develop their criteria and structural elements, and ascertain the practical significance of this classification for establishing the facts subject to proof in criminal proceedings concerning violations of the laws and customs of war.

■ Materials and Methods

The normative basis of this research was provided by the rules and provisions of the Rome Statute of the International Criminal Court³, the Criminal Code of Ukraine (CCU)⁴, and the Criminal Procedure Code of Ukraine⁵, which regulate the substantive, procedural, and criminal enforcement aspects of war crimes investigations. The theoretical foundation of the study consists of scholarly and methodological works by Ukrainian legal scholars, notably I. Hlovyuk & G. Teteryatnyk (2022), A. Shulzhenko (2022), O. Harasymov *et al.* (2025), and others, which examine specific features of proving war crimes, and also carry out their forensic classification and characterisation. The conceptual views on the scientific approaches of the aforementioned authors and other

specialists formulated the methodological and theoretical basis for analysing the subject of research and the issues surrounding the forensic classification of war crimes. They allowed for the systematisation of scholarly positions regarding the specifics of the forensic classification of violations of the laws and customs of war and for the reasoned formulation of the research conclusions.

The research methodology covered a set of general scientific and special methods that made it possible to discuss and obtain the results of the research. These methods include comparative analysis to identify patterns, trends and dynamics in the investigation of war crimes, as well as to substantiate practical recommendations for improving the mechanisms for their investigation. Content analysis was used to study and systematise scientific approaches and cause-and-effect relationships related to the subject of the study. The inductive method was used to form general conclusions based on the analysis of individual facts. The forecasting method was used to develop proposals for improving Ukrainian legislation on criminal liability for war crimes. During the criminal classification, the method of criminal analysis was used, taking into account the objective and subjective characteristics of the offence under investigation, which made it possible to systematise violations of the laws and customs of war according to criteria that ensure a consistent criminal characterisation of war crimes.

■ Results and Discussion

In its general understanding, forensic systematisation is based on the general features and characteristic specifics of a particular criminal offence. These allow for the differentiation of socially dangerous acts into corresponding groups (types), kinds, and/or sub-kinds according to criteria that facilitate their investigation process. In other words, it is formed in accordance with specific criteria and characteristic features that make it possible to formulate unified approaches to the mechanism of investigating criminal offences (Kostiuk, 2024). Despite this, questions regarding the criteria for this classification remain contentious in forensic theory. In attempting to comprehend the forensic aspects of war crimes, this research does not aim to reflect all existing scholarly views or approaches to carrying out this differentiation. Instead, it proposes to support the opinion of certain researchers who believe that forensic classification should be conducted considering a combination

¹ Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

² Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

³ Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁴ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

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

of both criminal law and forensic aspects of the commission of the respective unlawful acts.

Drawing on the theoretical aspects and practical specifics of criminal law activity, forensic science performs a comprehensive analysis of unlawful activity, taking into account the practical needs of law enforcement. On this basis, it forms its own forensic systems, focusing on the specifics of individual types, groups, kinds, and sub-kinds of socially dangerous acts, with the aim of developing effective mechanisms for their investigation and prevention. This particular feature is noted by other researchers, including Y. Paleshko *et al.* (2020), A. Repchok (2020), O. Pchelina & V. Pchelin (2022), and others. This circumstance creates the conditions for isolating the elements of the forensic profile of war crimes and provides the opportunity to carry out their criminal law assessment. The latter, in turn, is based on this classification, including a detailed analysis of criminal offences within the defined category (Kostiuk, 2024).

In studying the forensic classification of war crimes, O. Pchelina & V. Pchelin (2022) propose to carry it out based on three criteria, which depend on the method of commission, the object of the encroachment, and the victim. A similar, though somewhat more specific, form is adhered to by I. Hlovyuk & G. Teteryatnyk (2022), who divide war crimes according to three features. The first relates to the method of commission, distinguishing those associated with sexual violence, torture or other inhuman treatment, infliction of bodily harm, unlawful deprivation of liberty, unlawful deportation, hostage-taking, intentional killing, use of poisonous weapons, destruction or appropriation of property under special protection of international humanitarian law, and so forth.

The second relates to criminal orientation, namely acts directed against civilian objects, facilities engaged in providing humanitarian assistance or used by peacekeeping and security missions, objects designated for religious, educational, artistic, cultural, scientific and other purposes of social life, medical institutions and places where the sick and wounded are concentrated, as well as sites of cultural and historical heritage of national or global significance. Finally, the third group of criteria depends on the victim, ranging from civilians, military personnel, individuals engaged in humanitarian missions or peacekeeping, to children.

A somewhat different classification is suggested by A. Shulzhenko (2022), who proposes differentiating war crimes with regard to the classification features of the victims of such acts – i.e., the persons and/or parties who have suffered harm as a result of serious violations of international humanitarian law. Thus,

depending on the nature of the adverse consequences that shape the objective elements of violations of the laws and customs of war, and which also affect the process of proving them and the corresponding methodology of investigation, the scholar classifies war crimes by features characterising the victim. These include military personnel, prisoners of war, civilians, representatives of humanitarian missions protected under international humanitarian law, children, and the state itself in cases where the harm caused affects national interests or the people as a whole.

In carrying out this differentiation, the author's attention is focused on the fact that, according to the provisions of criminal procedural legislation, a person who has suffered physical, moral (psychological), material, or property damage as a result of unlawful acts may be recognised as a victim in criminal proceedings (Article 55 of the Criminal Procedure Code of Ukraine (CPC¹)). The researcher does not question the provisions of the aforementioned article. The author's hypothesis is based on the assertion that the consequences of war crimes can affect the interests of the State, which, under certain circumstances, may act not only as the prosecution but also as the victim, or at least as the legal representative of the injured party. This is particularly true in situations where the criminal actions of one of the parties to the armed conflict violate the territorial integrity and sovereignty of the aggression's victim State, or if the armed aggression has caused significant damage to its citizens, environment, economy, cultural heritage, or the proper functioning of State institutions, especially in cases affecting the judicial or legislative branches of power.

Although the aforementioned classification can be used as a working model, it does not fully cover all the contextually legal elements (features) of the objective structure of the offence under investigation, and only partially satisfies the practical needs of the investigation process. For example, scholars do not account for the territorial feature of the committed act, which, in the opinion of A. Kovalenko (2022), is important for investigating war crimes, as it characterises the specifics of their pre-trial investigation and judicial proceedings.

In this regard, O. Harasymov *et al.* (2025), when classifying war crimes by territorial features, categorise them as those committed in controlled territory and, conversely, occupied territory. A similar, yet more detailed, classification form is adopted by A. Kovalenko (2022), who differentiates violations of the laws and customs of war into those committed: in territories not under enemy occupation and where no active hostilities took place; in de-occupied territories (liberated from occupation), provided that

¹ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

the investigation is conducted after the liberation of the relevant area; in temporarily occupied territories under enemy control; and in territories where active hostilities are ongoing, i.e., within zones of active combat operations.

In this context, the objective aspect (or objective element) of the investigated offence acquires fundamental significance, as it characterises the unlawful behaviour and determines the methods of committing war crimes, the object of the encroachment (criminal focus), the victim, the place of commission, as well as the socially dangerous consequences and their causal link to the committed act. These elements hold vital evidentiary significance for establishing the material circumstances of the criminal activity, which is a necessary condition for carrying out its legal assessment, formulating the prosecution's position in the adversarial process, and building the evidentiary basis within the scope of a specific act that falls under the elements of the crime's definition.

Under these conditions, war crimes should be understood as grave and/or serious violations of the laws and customs of war which contravene the fundamental principles of international humanitarian law. Given the above, it is expedient to carry out a forensic classification of violations of the laws and customs of war based on criteria dependent on the type of armed conflict within which they were committed, the place of their commission, and the focus of the criminal encroachment, the object of which may include: Firstly, civilians who are not taking part in the armed conflict, including children, who benefit from an increased level of protection in accordance with international humanitarian law. Secondly, servicemen who are participating in the armed conflict but may also enjoy protection under certain conditions stipulated by the norms of international humanitarian law. Thirdly, property rights as a special institution of international humanitarian law, considered in the context of prohibiting the unlawful destruction, appropriation, or confiscation of the property of civilians and objects that are not military targets. Fourthly, subjects with special status and heightened protection, represented by members of international organisations, humanitarian and monitoring missions, as well as specific categories of civilians performing functions related to human rights protection, provision of medical or humanitarian aid in armed conflict conditions, who enjoy an increased level of legal protection (immunity) in accordance with international humanitarian law norms. Fifthly, objects with special status and heightened protection, meaning objects that, in accordance with international humanitarian law, are not only removed from the category of lawful military targets but are also subject to enhanced protection due to performing humanitarian, medical, cultural, educational, religious,

or other social functions; these are inviolable or their operational disruption is dangerous to the population, humanity, or the environment, including those categorised as critically important and used to sustain the population's vital activities and the country's functioning. Sixthly, the natural environment, as an integral component of the object of protection under international humanitarian law, an attack on which may lead to large-scale and long-term damage that, in the context of armed conflict, may be qualified as a war crime, and in peacetime - as ecocide, provided the elements of the crime correspond to the norms of international and national law. Seventhly, justice, as an institution with enhanced immunity that ensures the realisation of the right to a fair trial, which is inseparable from the rule of law and the observance of fundamental human rights. Eighthly, prohibited means and methods of warfare. This refers to forms of force application in armed conflict that are explicitly prohibited by international humanitarian law norms because they contradict the principles of distinction, proportionality, and the prohibition of unnecessary suffering. These include the use of indiscriminate weapons or those causing excessive harm, conducting hostilities without distinction, use of weapons of mass destruction, including chemical and biological weapons, perpetrating terror against the civilian population, unlawful deportation, forced labour, performance of military tasks, etc. (Rubanenko, 2024).

Depending on the method of commission of war crimes, they can be differentiated into those that encroach upon a person's life and health, honour and dignity, inviolability and safety, property rights, the legal regime of special international protection, on objects that ensure the state's vital functions and are necessary for the population's sustenance, on justice, as well as on prohibited methods and means of warfare. Specifically, those encroaching upon life include wilful killing, killing of a combatant who has laid down arms or unconditionally surrendered, and aggressive actions that, under certain circumstances, resulted in fatal consequences.

Those crimes encroaching upon health can include torture, inhuman treatment, biological medical or scientific experiments that are not justified by treatment, wilful infliction of grievous bodily harm, severe suffering, injury to health, maiming, and compulsory sterilisation. Against honour and dignity are rape, sexual slavery, enforced prostitution, other forms of sexual violence including forced impregnation, as well as encroachment on human dignity in the form of insulting or humiliating treatment.

Crimes encroaching upon inviolability and safety include deportation or forcible transfer of the civilian population, as well as attacks on the civilian population or individual civilians who are not directly participating in hostilities. Against property

rights are the large-scale destruction and appropriation of property not justified by military necessity, including its seizure, as well as the pillage of cities and other populated areas. Against the legal regime of special international protection for subjects and objects defined by international law can be classified as attacks on personnel, objects, materials, units, or transports involved in providing humanitarian assistance or in peacekeeping and security missions in accordance with the UN Charter¹ including attacks on buildings, medical institutions and vehicles, and on personnel using identification emblems prescribed by the Geneva Conventions in accordance with international law.

Crimes against the functioning of vital infrastructure that provides for the basic needs of the population and stability in the country include attacks on civilian objects, buildings designated for religious, educational, artistic, scientific, or charitable purposes, historical monuments, hospitals, and places where the sick and wounded are concentrated, provided that they are not military targets. Those encroaching upon the functioning of justice include the wilful deprivation of a prisoner of war or another protected person of the right to a fair trial, unlawful deprivation of liberty, depriving citizens of the hostile party of the right to judicial protection by declaring their claims inadmissible or cancelling already established rights, the passing of sentences and carrying them out without prior trial before a court constituted in accordance with the requirements of law, or a court that does not guarantee compliance with the procedural rights necessary for a fair judicial decision.

Crimes that ignore the requirements of international humanitarian law regarding prohibited methods, means, and rules of warfare can be classified as, in particular, regarding established methods of warfare: attacks on undefended towns that are not military targets, attacks that cause harm to the civilian population or specific persons or the environment, taking of hostages, forcing prisoners of war to serve in the armed forces of a hostile power, compelling citizens of the hostile party to participate in hostilities, perfidy (treacherous killing or wounding), using children under the age of 15 for combat purposes, using the civilian population as a “human shield” for defence or cover, illegal displacement of the civilian population, and the declaration that no quarter will be given. Regarding established means of warfare: the use of poisonous substances or poisonous weapons, asphyxiating gases, toxic liquids, bullets that expand or flatten easily in the human body, weapons causing excessive suffering, and other indiscriminate means of warfare prohibited by international humanitarian law. Regarding established rules of warfare: the

improper use of protected symbols (flags, signs, UN), issuing unlawful orders; engaging protected persons in hostilities contrary to their status. Depending on the nature and scale of socially dangerous consequences that have led to loss of life, caused grievous bodily harm or maiming, damaged cultural or national heritage, and provoked large-scale humanitarian crises including socially dangerous consequences that have a limited but specific effect war crimes can include the recruitment and use of children in armed conflict, women, persons of other nationalities with the aim of engaging them in active combat and latent destruction by the enemy on the battlefield, etc.

The given forensic classification of war crimes is not exhaustive. This is because the circumstances defined therein may be complex and relate simultaneously to the methods, means, place of commission of the crime or the nature of the armed conflict. At the same time, in the context of analytical and forensic activities, it makes it possible to systematise the key features of violations of the laws and customs of war in order to better understand the circumstances of the commission and the specifics of the investigation.

In this context, the subjective characteristics that characterise violations of the laws and customs of war are no less important. This is because such offences are characterised by being committed with direct intent, or, as stated in the provisions of international criminal law – *mens rea* – i.e. guilt in the sense of understanding. From this point of view, *mens rea* consists in the awareness of the perpetrator of a criminal offence of the unlawful nature of their actions or inaction and their prohibition under international criminal law (Rubanenko, 2024). In turn, this is crucial for assessing the guilt of the accused and the correct legal classification of their actions.

In this context, it is advisable to classify war crimes according to subjective criteria, which can be divided into three groups. The first group concerns subjects who have committed unlawful acts. These include combatants from among the military personnel of the regular armed forces of a state participating in an armed conflict, persons acting on behalf of or in the interests of a party to the conflict and belonging to mercenaries, volunteers, members of irregular armed formations of one of the parties to the conflict, commanders, military leaders and persons from the military-political leadership who are vested with authority, who may not only personally commit acts but also give orders to commit such acts and bear responsibility for them, civilians, if they are involved in combat missions and actively participate in their implementation or act within the powers of the warring party (representatives of security agencies, intelligence agencies, law enforcement agencies, prison

¹ Charter of the United Nations. (1945, June). Retrieved from <https://www.un.org/en/about-us/un-charter>.

services, medical institutions, various manufacturing or construction industries, etc.).

The second depends on the form of complicity on the part of individual (sole) perpetrators. That is, the sole commission of a war crime. Co-perpetrators, in the case of a coordinated joint commission of a war crime by several persons. Organisers and leaders who are authorised to give orders, plan, incite the commission of war crimes, as well as accomplices who provided means, information, logistics, cover and committed other acts that contributed to the commission of a war crime.

The third group covers the purpose and motives for the implementation of criminal intentions. It includes achieving military superiority (destruction of the enemy, weakening the will to resist, etc.), revenge or violent motivation against the population, the wounded, prisoners of war, ideological or political components (ethnic, national, religious, racial hatred, discrimination, including for the purpose of apartheid or genocide), mercenary motives (enrichment, seizure of property for any purpose,

satisfaction of material needs, promotion, etc.), motives related to sexual aggression (in the case of sexual violence).

Taking into account the above, it is advisable to differentiate the forensic classification of war crimes according to objective and subjective criteria, which corresponds to the systematic approach to the typology of criminal offences in forensics. This approach is dictated by the need to ensure a more effective organisation of investigations into violations of the laws and customs of war, including by establishing typical mechanisms for their commission, features of evidence, typical traces of crime and behaviour of the subjects of the criminal offence under investigation (Fig. 1). This duality is not only methodologically sound, but also practically oriented, as it allows the criminalistic model of investigation to be adapted to the specifics of individual groups, types or subtypes of war crimes, to isolate the elements of their forensic profile, to forecast forensically significant information, and to select effective methods for its detection, recording, seizure, and use in evidence.

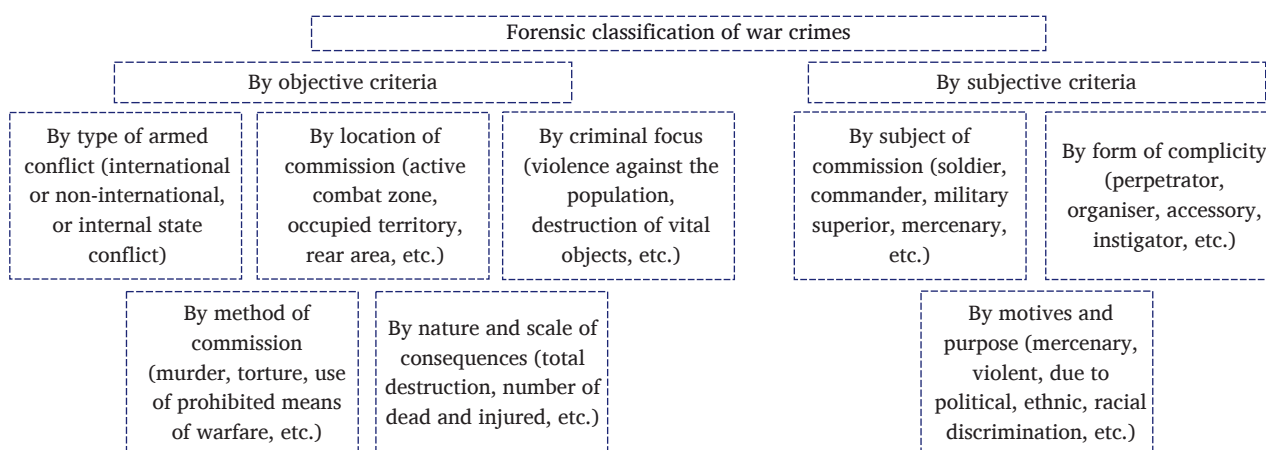


Figure 1. Forensic classification of violations of the laws and customs of war according to typological criteria that determine the objective and subjective characteristics of violations of the laws and customs of war

Source: developed by the authors

In this context, attention is drawn to improving the mechanisms for prosecuting certain subjects responsible for violations of the laws and customs of war. This implies the expediency of isolating the especially aggravating circumstances of the criminal offence in question, which could be defined in the disposition of Article 438 of the Criminal Code of Ukraine (CCU)¹ and the provisions of Article 8 of the Rome Statute of the International Criminal Court². This is because these circumstances are of significant importance for the individualisation of criminal

responsibility, especially when it concerns the collective execution of a criminal order, or the implementation of decisions or plans deliberately directed by the highest military-political leadership, which requires a distinct criminal law assessment.

Accordingly, the main criterion for qualifying a war crime should be the establishment of key circumstances which serve, first, to provide a legal evaluation of the role of each participant in the war crime who had (or has) the authority to make criminal decisions of a military nature contrary to international

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

² Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

humanitarian law. Secondly, to determine the degree of participation (responsibility) both of such persons and of their subordinates in the implementation (execution) of the criminal plan or decision. Thirdly, to ensure the formation of a sufficient and admissible evidentiary base to prove the guilt of each participant in the criminal activity carried out in the course of executing the criminal plan or decision.

Consequently, it seems justified to introduce amendments to Article 438 of the CCU¹ by supplementing its norm with a second part that would establish criminal liability not only for military commanders and superiors but also for senior officials of the military-political leadership who initiated, authorised, or transmitted criminal regulatory decisions related to the violation of the laws and customs of war. Specific attention should be paid to additions concerning the commission of war crimes against children. Such actions not only violate the norms of international humanitarian law but also threaten the nation's gene pool, destroying its biological, social, and cultural prospects. For this reason, the commission of war crimes against children must be considered an especially aggravating circumstance that requires a separate criminal law qualification and a corresponding response from national and international law enforcement agencies.

■ Conclusions

Consideration of the forensic aspects of violations of the laws and customs of war demonstrates the necessity of undertaking a forensic classification of war crimes, taking into account both the criminal-law and forensic dimensions of criminal activity. Such an approach makes it possible to view forensic differentiation not merely as a means of systematising knowledge about war crimes, but also as an instrument for identifying the objective and subjective features that define the structure of corresponding criminal offences. In turn, forensic differentiation becomes a methodological basis for the formation of elements of forensic characterisation and their proper evaluation, which includes an analysis of the methods of commission and concealment, as well as the determination of circumstances, motives, and consequences.

Within the framework of the proposed war crime classification, it is expedient to categorise them according to the following criteria: type of armed conflict, location of the crime's commission, method of implementing criminal intent, nature and scale of the resulting consequences, individuals who committed the crime, form of their complicity, and the purpose and motives of the criminal encroachment.

The suggested systematisation has not only theoretical significance but is also practically oriented, as it reates the preconditions for isolating the elements of the forensic profile and providing them with an appropriate legal assessment. This contributes to the effective documentation and, consequently, the proof of violations of the laws and customs of war.

It is essential to supplement the disposition of Article 438 of the Criminal Code of Ukraine with specific aggravating and especially aggravating circumstances which significantly increase the degree of public danger posed by war crimes. In this context, this refers to the execution of a criminal plan, strategy, or order initiated by the highest military-political leadership, especially when the violations of the laws and customs of war bear the hallmarks of mass acts of violence or genocidal practice. Acts of violence against children deserve particular attention in this regard. This is because such acts not only violate the fundamental norms of international humanitarian law but also pose a threat to the preservation of the nation's gene pool, thus demanding a special criminal law assessment. Consequently, this will contribute to enhancing the individualisation of criminal responsibility for committing war crimes and align with the fundamental principles of international criminal justice. Accordingly, it is justified to supplement Article 438 of the Criminal Code of Ukraine with such qualifying features as the commission of a war crime through the issuance of a criminal order, plan, or strategy by the highest military command or military-political leadership with the intent to destroy a particular population group, minors, or other especially vulnerable categories of persons in the context of a large-scale armed conflict or in an occupied territory.

In further research, attention should be focused on isolating the elements of the forensic profile of war crimes and providing them with a proper legal assessment. This will facilitate the establishment of the facts subject to proof and a clear delineation of their boundaries, which is a necessary prerequisite for developing effective mechanisms for the investigation of violations of the laws and customs of war.

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None.

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Особливості криміналістичної класифікації воєнних злочинів

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■ **Анотація.** Актуальність дослідження обумовлена необхідністю вдосконалення криміналістичної систематизації воєнних злочинів з огляду на сучасні виклики та масштаби злочинної діяльності під час збройного конфлікту на території України, а також проблематикою їх розслідування в умовах агресії. Метою дослідження було обґрунтування доцільності розмежування воєнних злочинів за кримінально-правовими та криміналістичними критеріями, а також формування основ їх криміналістичної класифікації з огляду на кримінально-правові та криміналістичні аспекти досліджуваних діянь. Методологічний інструментарій дослідження охоплював комплекс методів, серед яких формально-юридичний, порівняльно-правовий, індуктивний, порівняльний, метод прогнозування та криміналістичного аналізу задля обґрунтування висновків і надання пропозицій щодо предмета дослідження. Результати дослідження полягали в обґрунтуванні криміналістичної класифікації воєнних злочинів як необхідної складової (елементу) криміналістичної методики розслідування кримінальних правопорушень. Обґрунтовано класифікаційні критерії для диференціації воєнних злочинів за типом збройного конфлікту, територіальним чинником учинення, способами реалізації злочинної діяльності, характером і масштабами суспільно небезпечних наслідків, особливостями суб'єктивного складу правопорушення, а також мотиваційно-цільовими орієнтирами поведінки винних осіб. Висвітлено значення особливо кваліфікуючих обставин, які, попри відсутність прямого закріплення в диспозиції ст. 438 Кримінального кодексу України, мають ключове значення для ідентифікації ступеня індивідуальної відповідальності. Ідеться про випадки формування та реалізації злочинного наміру шляхом віддання наказу, розроблення планів або стратегій вчинення воєнних злочинів, ініційованих на найвищому рівні військово-політичного керівництва держави-агресора. Акцентовано на доцільності змін і доповнень до ст. 438 Кримінального кодексу України з розширенням переліку обтяжуючих обставин, зокрема якщо воєнні злочини вчинені проти дітей чи мають негативні наслідки для генофонду нації. Наукова новизна і практична значущість одержаних результатів полягає у формуванні дієвих механізмів розслідування воєнних злочинів через аналіз кримінально-правових, кримінально-процесуальних і криміналістичних аспектів розслідування порушень законів та звичаїв війни, а також під час удосконалення норм кримінального законодавства як на національному, так і на міжнародному рівнях.

■ **Ключові слова:** криміналістична діяльність; розслідування злочинів; диференціація; процес доказування; порушення законів і звичаїв війни; характеристика; міжнародне судочинство