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Valery Shepitko,
Doctor of Law, Professor, Professor of Criminalistics Department of Yaroslav Mudryi National Law University, Head of the Laboratory of the Academician Stashis Scientific Research Institute for the Study of Crime Problems, Kharkiv, Ukraine
ORCID: https://orcid.org/0000-0002-0719-2151
Web of Science Researcher ID: AAF-1268-2019
e-mail: shepitko.valeryl@gmail.com

Mykhaylo Shepitko,
Doctor of Law, Professor, Professor of Criminal Law Department of Yaroslav Mudryi National Law University, Leading Staff Researcher of the Academician Stashis Scientific Research Institute for the Study of Crime Problems, Kharkiv, Ukraine
ORCID: https://orcid.org/0000-0002-7164-8037
Web of Science Researcher ID: AAF-6689-2019
e-mail: shepitko.michael@gmail.com

Valery Shepitko

Mykhaylo Shepitko

Fixation of Evidentiary Information on the War Crimes, Committed in Ukraine

Abstract: *Large-scale Russian aggression against Ukraine led to the huge number of war crimes commitment. The pre-trial investigation of this category of criminal proceedings led to problems in fixation of evidentiary information and collection evidence. Problems at this stage are associated with the dangers of conducting investigative (research) actions, the need to obtain information from the occupied territories, the presence of misinformation and countermeasures from the aggressor country. A separate problem was the departure of witnesses and victims abroad, the fear of giving statements to law enforcement agencies. Therefore, the most valuable information has become digital information and digital evidence, since their collection is possible remotely. In order for this information to become evidential, it is important to comply with the collection standards according to the relevant protocols.*

Today, the law enforcement agencies of Ukraine, which carry out pre-trial investigations into crimes committed during the Russian aggression against Ukraine, work in difficult conditions of the growing number of atrocities of the aggressor's army, the implementation of hostilities, the lack of safe conditions for recording and collecting evidentiary information.

Keywords: *evidence fixation, evidence collection, evidentiary information, war crimes, aggression, International Criminal Court, digital information, digital evidence, digital criminalistics*

Russian Federation is waging a full-scale war against Ukraine, which has forced more than a third of Ukrainians to leave their homes (almost 14 million Ukrainians in the first 100 days of the war) and has claimed many lives. According to the Office of the United Nations High Commissioner for Refugees, it was established that there were 7.6 million Ukrainian refugees in Europe, 4.2 million registered and asked for shelter and assistance[1].

Methods of conducting this war are targeted terror in all Ukrainian regions, mass murder and torture, kidnapping and rape, forced deportation of the civilian population, destruction of the civil infrastructure of Mariupol, Kharkiv, Chernihiv, Kremenchuk, Kherson, Mykolaiv, Nikopol, Lviv and other settlements, atrocities in Irpin, Bucha, Hostomel, Borodianka, Izium, Kupiansk, occupation of certain regions of the country which allows us to raise questions about Ukrainian people genocide.

[1] The UN Refugee Agency. URL: https://www.unhcr.org/ua/contact-us-ua

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According to the statistics of the General Prosecutor's Office, as of April 2, 2023, 77,900 crimes of aggression and war crimes, 16,934 crimes against national security were registered in Ukraine. According to juvenile prosecutors, 1,411 children were injured in Ukraine as a result of the full-scale armed aggression of the Russian Federation. At the same time, 467 children died and more than 944 were injured of various degrees of severity[2]. According to various estimates, during the war Russia could deport from 260 to 700 thousand Ukrainian children[3].

According to the Prosecutor General's Office, during the year of full-scale war, Russia destroyed or damaged more than 81 thousand civilian objects with targeted attacks: more than 62 thousand residential buildings, more than 450 medical institutions[4]. 3,126 educational institutions were damaged due to massive bombing and shelling by the armed forces of Russian Federation, 438 of them were completely destroyed[5]. Russia in the 21st century is destroying critical infrastructure, killing civilians, deporting children, stealing grain, blocking Ukrainian ports, and trying to create a global food crisis.

Russian occupying forces launched 68 rockets and used 30 kamikaze drones against objects on the territory of Ukraine in just one week (from October 27 to November 3, 2022). Massive missile strikes on energy facilities in Ukraine took place on November 15, when more than 90 missiles and 10 kamikaze drones were launched, leaving about 20 million people without power.

Investigating war crimes during wartime is a difficult task. This is due to the dangers of conducting investigative (research) actions, the need to obtain information from occupied territories, existence of disinformation and countermeasures from the aggressor country.

Currently law enforcement agencies of Ukraine, that carry out pre-trial investigations into crimes committed during the Russian aggression against Ukraine, work in difficult conditions of the growing number of atrocities of the aggressor army, implementation of hostilities, the lack of safe conditions for recording and collecting evidentiary information (that can be lost if not to carry out the necessary investigative (search) actions). Problem is the need to attract technical, expert and special assistance at the crime scene, to create qualified investigative teams. In addition, I. V. Hloviuk and H. K. Teteriatnyk rightly point out that "methodology specificity of investigating war crimes committed in the context of an armed conflict consists in application of the collective (brigade) method of investigation, investigation on "hot traces" and special procedures of investigative (research) actions in conditions of armed conflict"[6].

The system of pre-trial investigation bodies faces new challenges related to the need for "quality documentation, collection of evidence bases of mass criminal violations of international humanitarian law, many of which have to be investigated for the first time in the absence of developed specialized

[2] Офіс Генерального прокурора. URL: https://www.gp.gov.ua; Офіс Генерального прокурора. URL: https://m.facebook.com/1000064585280174

[3] Див.: В Росію могли депортувати до 700 тис. українських дітей. URL: https://www.ukrinform.ua/amp/rubic-society/3653634-v-rosiu-mogli-deportuvati-do-700-tisac-ukrainskih-ditej-ekspert.html

[4] В Україні вже зафіксували понад 71 тисячу воєнних злочинів РФ. URL: https://www.ukrinform.ua/amp/rubric-society/3682265-v-ukraine-vze-zafiksuvali-ponad-71-tisacu-voennih-zlociniv-rf.html

[5] Офіс Генерального прокурора. URL: https://m.facebook.com/1000064585280174

[6] Гловюк І. В., Тетерятник Г. К. Контекстуальні елементи у провадженнях щодо воєнних злочинів: предмет доказування Sui Generis. *Юридичний науковий електронний журнал*. 2022. № 6. С. 397.

methods"[7]. Special sources emphasize that investigation of war crimes for law enforcement officers is a completely new line of work, because most have never investigated such crimes... Materials obtained by law enforcement officers can in the future be used both in national and international courts to bring high-ranking officials of the Russian Federation to justice to responsibility for committed crimes[8].

Worthy of attention is the approach of individual scientists who defend the position regarding the need to "standardize the investigation of war crimes which should help "unify the process of personnel training, algorithmize work at the scene, interaction between different units, forensic science institutions, ensure high-quality documentation of facts, conduct of procedural actions"[9].

Any criminal investigation or trial is a fight for information. Investigation should accurately establish the circumstances of the criminal proceedings, adequately reflect the events of criminal offense, the situation, the persons guilty of its commission[10].

Evidence should be considered as any factual data obtained in the procedural order, on the basis of which pre-trial investigation bodies and the court establish the presence or absence of facts and circumstances that are important for criminal proceedings and subject to evidence (evidence)[11]. Proof in proof is one of the structural elements (means of proof) used during pre-trial investigation and trial of criminal proceedings[12].

In legal doctrine, there are different approaches to understanding evidence. Evidence is considered as "facts of real reality", "any factual data relevant to criminal proceedings", "relevant medium (source) of information about them", "procedural procedure and the form (method) of its fixation in the materials of criminal proceedings. In Art. 84 of the Criminal Procedure Code of Ukraine defines the concept of evidence: evidence in criminal proceedings is factual data on which basis the investigator, prosecutor, examining magistrate and court establish availability or absence of facts and circumstances that are important for criminal proceedings and subject to proof. The lack of information (lack of evidence or their falsity) complicates establishing the fact of a committed criminal offense, the guilty persons, the motives of this act, etc.

Fixation (consolidation) of evidence is an important element of the procedure of their collection. Recording of evidence is considered as the procedural registration of this evidence in protocols (Article 104 of the Criminal Procedure Code of Ukraine)[13]. and appendices to protocols (Article 105 of the Criminal Procedure Code of Ukraine). V. H. Honcharenko notes that procedural consolidation of discovered and obtained factual data is an absolutely necessary act of any procedural action for evidence collection without which it is impossible to form judicial evidence from the known factual data[14]. O. Rybalka emphasizes that final element of evidence formation is their fixation. It is from this moment that the objectification of the evidence data perceived by the subject takes place, they are fixed with the help of the legally prescribed means of fixation[15].

[7] Дуфенюк О. М. Розслідування воєнних злочинів: логістичні, криміналістичні та судово-медичні питання. *Юридичний науковий електронний журнал*. 2022. № 4. С. 369.

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[9] Дуфенюк О. Розслідування воєнних злочинів в Україні: виклики, стандарти, інновації. *Baltic Journal of Legal and Social Sciences*. 2022. № 1. С. 51.

[10] Докази та доказування у кримінальному провадженні: навч. посібник / Р. І. Благута, Ю. В. Гуцуляк, О. М. Дуфенюк та ін. Львів: ЛьвДУВС, 2018. С. 16.

[11] Шепітько В., Шепітько М. Кримінальне право, криміналістика та судові науки: енциклопедія. Харків: Право, 2021. С. 151, 152.

[12] Погорецький М. Теорія кримінального процесуального доказування: проблемні питання. *Право України*. 2014. № 10. С. 14.

[13] Докази та доказування у кримінальному провадженні: навч. посібник / Р. І. Благута, Ю. В. Гуцуляк, О. М. Дуфенюк та ін. Львів: ЛьвДУВС, 2018. С. 82.

[14] Гончаренко В. Г. Доказування в кримінальному провадженні: науково-практичний посібник. Київ: Прецедент, 2014. С. 25.

[15] Рибалка О. Теоретичні засади доказування в кримінальному процесі. *Підприємництво, господарство і право*. 2020. № 8. С. 283.

Valery Shepitko,
Mykhaylo Shepitko

FIXATION OF EVIDENTIARY INFORMATION ON THE WAR CRIMES, COMMITTED IN UKRAINE

Large-scale Russian aggression against Ukraine led to the huge number of war crimes commitment. The pre-trial investigation of this category of criminal proceedings led to problems in fixation of evidentiary information and collection evidence. Problems at this stage are associated with the dangers of conducting investigative (research) actions, the need to obtain information from the occupied territories, the presence of misinformation and countermeasures from the aggressor country. A separate problem was the departure of witnesses and victims abroad, the fear of giving statements to law enforcement agencies. Therefore, the most valuable information has become digital information and digital evidence, since their collection is possible remotely. In order for this information to become evidential, it is important to comply with the collection standards according to the relevant protocols.

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Keywords: evidence fixation, evidence collection, evidentiary information, war crimes, aggression, International Criminal Court, digital information, digital evidence, digital criminalistics

Valery Shepitko,
Mykhaylo Shepitko

FIXATION D'INFORMATIONS PREUVES SUR LES CRIMES DE GUERRE COMMIS EN UKRAINE

L'agression russe à grande échelle contre l'Ukraine a conduit à un grand nombre de crimes de guerre. L'enquête préliminaire sur cette catégorie de procédures pénales a conduit à des problèmes de fixation des informations probantes et de collecte des preuves. Les problèmes à ce stade sont liés aux dangers liés aux actions d'enquête (recherche), à la nécessité d'obtenir des informations des territoires occupés, à la présence de désinformation et aux contre-mesures de la part du pays agresseur. Un autre problème était le départ des témoins et des victimes à l'étranger, la peur de faire des déclarations aux forces de l'ordre. Par conséquent, les informations les plus précieuses sont devenues des informations numériques et des preuves numériques, puisque leur collecte est possible à distance. Pour que ces informations deviennent probantes, il est important de respecter les normes de collecte selon les protocoles pertinents.

Aujourd'hui, les forces de l'ordre ukrainiennes, qui mènent des enquêtes préliminaires sur les crimes commis lors de l'agression russe contre l'Ukraine, travaillent dans des conditions difficiles du nombre croissant d'atrocités commises par l'armée de l'agresseur, de la conduite des hostilités, de l'absence de sécurité. conditions d'enregistrement et de collecte des informations probantes.

Mots clés : fixation de preuves, collecte de preuves, informations probantes, crimes de guerre, agression, Cour pénale internationale, information numérique, preuves numériques, criminalistique numérique

In the forensic aspect, the recording of evidence is a system of actions for display of evidence and conditions, means and methods of their detection and procedural processing[16]. Fixation of evidentiary information involves use of modern forensic knowledge and appropriate technical and forensic tools (digital photo and video equipment, video control systems, optical visualization systems, 3D scanners, UAVs (drones, quadcopters, multicopters), mobile DNA laboratories, etc.).

Use of forensic means, techniques and methods is the answer to criminal activity. The task of criminalistics is to develop and use such tools that allow to properly collect, investigate and use evidentiary information. The topic of criminalistics traditionally includes laws related to the evidence procedure (collection, research, evaluation and use of evidence). It is no accident that at one time criminology was considered as the science of judicial evidence or the science of evidentiary law (S. M. Potapov)[17].

In forensic science , there is an axiom that was once proposed by Dr. Edmond Locar (Locar principle): "every contact leaves a trace." In this sense, any criminal offense always leaves traces (materially fixed, ideal, virtual or electronic ones).

The Prosecutor General's Office(Ukraine), 13 EU member states and the Office of the Prosecutor of International Criminal Court (ICC) opened an investigation into war crimes and crimes against humanity committed in Ukraine. At the same time, Prosecutor General's Office offered a special home page with a request to citizens to register and document such crimes. A special EU investigative team was created together with Poland, Lithuania and Ukraine with the support of Eurojust and Europol. On April 25, 2022, Eurojust and the International Criminal Court (ICC) agreed on joint efforts and the Court participation in the joint investigative team. Estonia, Latvia, Slovakia[18] and Romania also became members of the joint investigative group[19]. Czech government has approved deployment of up to 15 members of the Military Law Enforcement Service to assist in the investigation of war crimes in Ukraine. The Czech mission will be part of the investigative team of the International Criminal Court and will be involved on a periodic basis[20]. It is important that joint investigative groups (Task Forces) should be created to collect (record) evidence of crimes committed by the Russian Federation, which will be submitted to the International Criminal Court (ICC).

Office of the Prosecutor General, together with Ukrainian and international partners, created a special resource called Warcrimes to document war crimes and crimes against humanity committed during the full-scale war in Ukraine. Documented evidence will be used to prosecute those involved in crimes under Ukrainian law, as well as at the International Criminal Court and

[16] Ковальчук С. О. Структура та зміст збирання доказів як етап їх формування під час кримінального процесуального доказування. Південно український правничий часопис. 2018. 4. Ч. 2. С. 105.

[17] Див.: Энциклопедия криминалистики в лицах / под ред. В. Ю. Шепитько. Харьков: Апостиль, 2014. С. 278, 279.

[18] Російські воєнні злочини в Україні: ЄС підтримує розслідування Міжнародного кримінального суду, надаючи 7,25 мільйонів євро. An official EU website. URL: https://ec.europa.eu/commission/presscorner/detail/uk/IP_22_3543

[19] Румунія приєдналась до спільної групи слідчих, що розслідують воєнні злочини в Україні. Європейська правда. 13 жовтня 2022. URL: https://www.eurointegration.com.ua/news/2022/10/13/7148638/

[20] Уряд Чехії схвалив направлення місії для розслідування воєнних злочинів в Україні. Європейська правда. 8 березня 2023. URL: https://www.eurointegration.com.ua/news/2023/03/8/7157622/

the Special Tribunal once it is established[21]. Website of Prosecutor General's Office offers an algorithm of actions for victims and witnesses to record war crimes with the possibility to send video and photo materials that confirm the commission of crimes.

Important role in collecting data on the facts of aggression crime, genocide crime, crimes against humanity, and war crimes should be performed not only by law enforcement agencies, but by non-governmental, public organizations. The help of such organizations in documenting (recording) war crimes can be essential. This assistance can become critically important not only for starting a pre-trial investigation in Ukraine, but for providing necessary testimony (data) for the work of international courts (first of all, the International Criminal Court). An example of such activity is the coalition: Ukraine. 5 in the morning was formed by 16 Ukrainian human rights organizations specifically to record war crimes, crimes against humanity, and other gross violations of human rights. Similar functions for recording war crimes committed in Ukraine abroad (information received from refugees and temporarily displaced persons) were undertaken by the Sunflowers project[22].

Recording information carried out by law enforcement agencies and public organizations abroad is important and necessary, but it can carry danger of suggesting information that did not exist, convincing the persons who turned to them about futility of official procedures. It should be noted that currently law enforcement agencies are only at the initial stages of collecting such information, but the possibility of correct interpretation and qualification of committed will depend on its proper processing.

It is obvious that collection, recording, classification and, as a result, legal assessment of evidentiary information requires its special protection at various stages. Thus, collection of evidentiary information has a priori complications from the problem of involving a large number of law enforcement officers with different levels of knowledge, different goals (including possible opposition and even the desire to destroy it) to complications of language component. Large number of problems that can result from the loss of evidence status are associated with the loss of information carriers (a large number of refugees, displaced persons, loss of servers due to hacker attacks, etc.).

The question arises about the need to develop certain algorithms, rules, questionnaires for collecting, documenting and recording evidentiary information. Special questionnaires and memos were developed by public organizations to record information about war crimes. In particular, the ZMINA Human Rights Center, the Ukrainian Helsinki Human Rights Union, Truth Hounds and Ukrainian Legal Advisory Group proposed a memo on recording evidence of crimes against civilian population[23].

It is possible to talk about the need to develop forensic methods for investigation of international crimes, formation of a system of scientific provisions and recommendations regarding management and implementation of investigations and prevention of certain types of crimes (development of typical systems (algorithms) of actions of authorized persons). At the request of the legal community, in May 2022, representatives of the Department of Forensic Science of Yaroslav Mudryi National Law University for recording of war crimes during the Russian-Ukrainian war developed and proposed recommendations for photo recording of damaged (destroyed) property of Ukrainian citizens as a result of Russian military aggression (algorithm of actions when photographing a damaged (destroyed) high-rise building).

Valery Shepitko,
Mykhaylo Shepitko

FIXIERUNG VON BEWEISDATEN ÜBER DIE IN DER UKRAINE BEGEBENEN KRIEGSVERBRECHEN

Die groß angelegte russische Aggression gegen die Ukraine führte zu einer großen Zahl von Kriegsverbrechen. Die vorgerichtliche Untersuchung dieser Kategorie von Strafverfahren führte zu Problemen bei der Feststellung beweiskräftiger Informationen und der Beweiserhebung. Probleme in dieser Phase sind mit den Gefahren der Durchführung von Ermittlungs-(Forschungs-)Maßnahmen, der Notwendigkeit, Informationen aus den besetzten Gebieten zu erhalten, dem Vorhandensein von Fehlinformationen und Gegenmaßnahmen des Angreiferlandes verbunden. Ein weiteres Problem war die Abwanderung von Zeugen und Opfern ins Ausland sowie die Angst, gegenüber den Strafverfolgungsbehörden Aussagen zu machen. Daher sind digitale Informationen und digitale Beweise zu den wertvollsten Informationen geworden, da ihre Sammlung aus der Ferne möglich ist. Damit diese Informationen beweiskräftig werden, ist es wichtig, die Erhebungsstandards gemäß den relevanten Protokollen einzuhalten.

Heute arbeiten die Strafverfolgungsbehörden der Ukraine, die vorgerichtliche Ermittlungen zu Verbrechen durchführen, die während der russischen Aggression gegen die Ukraine begangen wurden, unter schwierigen Bedingungen, die sich aus der wachsenden Zahl von Gräueltaten der Armee des Angreifers, der Durchführung von Feindseligkeiten und dem Mangel an Sicherheit ergeben Bedingungen für die Aufzeichnung und Sammlung beweiskräftiger Informationen.

Schlüsselwörter: Beweissicherung, Beweiserhebung, beweiskräftige Informationen, Kriegsverbrechen, Aggression, Internationaler Strafgerichtshof, digitale Informationen, digitale Beweise, digitale Kriminalistik

[21] Офіс Генерального прокурора. URL: https://warcrimes.gov.ua

[22] Шепітько М. В. Про роль неурядових організацій в протидії кримінальним правопорушенням в умовах війни. Матеріали VIII (XXI) Львівського форуму кримінальної юстиції: Українська кримінальна юстиція в умовах війни (Львів, 9 червня 2022). Львів: ЛьвДУВС. 2022. С. 259.

[23] Див.: URL: https://zmina.info/articles/pamyatka-fiksacziyyi-dokaziv-zlochyniv-proty-czyvilnogo-naselennya/

The need to record evidentiary information in modern conditions has led to formation of new directions in criminalistics: digital forensics, nuclear forensics, aerospace criminalistics, genomic criminalistics, etc.

While proving, possibility of using the latest technical means to record information (especially the scale of destruction during the Russian-Ukrainian war, damaged buildings, destroyed civilian infrastructure, victims among population) becomes important.

Currently, digital tools are intensively implemented in Ukraine, among which unmanned aerial vehicles (UAV)[24] are defined as an aircraft whose flight control and control is carried out remotely using a remote training point located outside the aircraft, or an aircraft in flight autonomously according to the corresponding program[25]. Unique experience of using drones was gained by the Armed Forces of Ukraine during the repulse of the armed aggression of the Russian Federation[26]. Use of quadcopters makes it possible to record the consequences of war crimes and other crimes committed during the war against Ukraine. In particular, in Kharkiv, the military together with law enforcement agencies are recording the extent of the destruction in Northern Saltivka (the largest of affected districts))[27].

In modern conditions of Russian aggression and the creation of danger near the nuclear power plants in Ukraine (Chernobyl, Zaporizhzhia, Khmelnytskyi, Rivne, etc. NPPs) and other dangerous (special) facilities, as well as[28], threats to use tactical nuclear weapons, an appeal to the provisions becomes important nuclear forensics (Nuclear Forensics) a new direction of forensics and forensics. In particular, nuclear forensics consists in the study of nuclear and other radioactive materials in order to find evidence of their origin, as well as the places and ways of their illegal circulation and enrichment, establishing weak points in ensuring the safety of such materials[29]. Establishing (recording) the facts of nuclear terrorism requires the use of nuclear forensic research methods, forensic examination of nuclear and other radioactive materials.

Use of digital information (digital evidence) is of paramount importance in the context of Russian full-scale war against Ukraine. There are peculiarities of using digital information in the investigation of war and other international crimes. In particular, according to O. Dufeniuk, investigation of war crimes in the digital age has specific features, which are due to: 1) capabilities of smartphone users and other devices with photo and video recording functions to document war crimes, broadcast events online and disseminate information via the Internet and social networks etc.; 2) possibilities of monitoring, monitoring of various objects; 3) digitization of forensic and

[24] Перлін С. І., Лозова С. М. Деякі напрями використання безпілотних літальних апаратів у слідчій та експертній практиці. *Вісник ЛДУВС ім. Е. О. Дідоренка.* 2020. Вип. 1 (89). С. 269-279.

[25] Правила виконання польотів безпілотними авіаційними комплексами державної авіації України. затв. Наказом Міністерства оборони України від 08.12.2016 р. № 661. URL: https://zakon.rada.gov/ua/laws/show/z0031-17

[26] Білоус В. Аерокосмічна зйомка у криміналістичній дидактиці та діяльності органів правопорядку. *Criminalistics and Forensic Expertology: Science, Studies, Practice. 14 International Congress.* 2018. С. 486.

[27] Див.: Аерокриміналістика: як дрони з людськими іменами фіксують злочини росіян. URL: https://www.ukrinform.ua/amp/rubric-technology/3655812-aerokriminalistika-akdroni-z-ludskimi-imenami-fiksuut-zlocini-rosian.html

[28] 6 березня 2022 р. російські війська обстріляли Харківський фізико-технічний інститут з реактивних систем залпового вогню «Град». В інституті знаходиться дослідна ядерна установка «Джерело нейтронів», в активну зону якої завантажено 37 паливних ядерних елементів.

[29] Шепітько В., Шепітько М. Кримінальне право, криміналістика та судові науки: енциклопелія. Харків: Право, 2021. С. 302.

forensic expert activities; 4) transformation of the model of criminal proceedings from paper to electronic one[30].

Reflection of war and other crimes of an international nature is reflected in the information space. Significant amount of information about committed international crimes is stored in electronic (digital) sources, computer systems, applications for smartphones, tablets, etc. In this sense, approaches regarding possibilities of working with so-called digital evidence (digital information or electronic traces) — information that is created with the help of high information technologies are gaining significant importance.

In scientific sources of foreign countries, the digital evidences term has become widely used which means any stored data or data transmitted using computer or other technology[31]. Along with the term digital evidence, others are used, for example: electronic evidence, electronic traces, digital sources of information, electronic documents, etc. Digital evidence requires new approaches to its collection, storage, use and research during evidence in criminal proceedings.

Important innovative direction in the development of forensics and forensics is the use of digital information. Forensic knowledge reflects certain trends of the globalized world. In fact, it is possible to state the emergence of a separate forensic direction: digital forensics.

Digital forensics is a separate forensic theory and type of forensic examination, which sets as its task the research on digital evidence using forensic techniques and available methods for the purpose of pre-trial investigation and trial[32]. Digital forensics is related to the process of collecting, obtaining, preserving, analyzing and presenting electronic (digital) evidence in pretrial and judicial proceedings. In this regard, R. L. Stepaniuk and S. I. Perlin note that "the tools and methods of digital forensics are focused on providing technical procedures for searching, extracting, storing, and analyzing information contained in computer devices, electronic networks, and mobile phones and other digital devices, cloud storage, etc"[33].

Development of digital criminalistics takes place in three main directions: 1) formation of a separate scientific field in criminology; 2) specific expertise application while working with digital evidence; 3) conducting forensic examinations (in particular, computer and technical examination).

The issue of obtaining information from open sources for the purpose of recording evidence of war crimes committed during the Russian-Ukrainian war requires special attention. Obtaining information from open sources or intelligence of open sources of information on Internet (Open-Source Intelligence: OSINT) involves the search, analysis and selection of certain information from publicly available sources[34]. Several Ukrainian OSINT communities, including Molfar, participate in investigations of Russian war crimes in Ukraine[35].

OSINT technologies and methods allow you to get the most necessary information in the shortest possible time and by spending the least amount of resources[36]. The Number of sources of information and its volumes in OSINT are incomparably higher than as a result of obtaining it operationally, which requires the use of special automated information processing complexes and

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Valery Shepitko,
Mykhaylo Shepitko

USTAWIENIE INFORMACJI DOWODOWYCH O ZBRODNIACH WOJENNYCH POPEŁNIONYCH NA UKRAINIE

Abstrakcyjny. Zakrojona na szeroką skalę agresja rosyjska na Ukrainę doprowadziła do popełnienia ogromnej liczby zbrodni wojennych. Dochodzenie przygotowawcze w tej kategorii postępowań karnych doprowadziło do problemów z utrwalaniem informacji dowodowych i gromadzeniem dowodów. Problemy na tym etapie wiążą się z niebezpieczeństwami prowadzenia działań śledczych (badawczych), koniecznością uzyskania informacji z terytoriów okupowanych, obecnością dezinformacji i przeciwdziałania ze strony państwa agresora. Osobnym problemem był wyjazd świadków i ofiar za granicę, obawa przed składaniem zeznań organom ścigania. Dlatego najcenniejszą informacją stały się informacje cyfrowe i dowody cyfrowe, ponieważ ich gromadzenie jest możliwe na odległość. Aby informacje te miały charakter dowodowy, ważne jest przestrzeganie standardów gromadzenia zgodnie z odpowiednimi protokołami.

Dziś organy ścigania Ukrainy, które prowadzą dochodzenia przedprocesowe w sprawie zbrodni popełnionych podczas rosyjskiej agresji na Ukrainę, pracują w trudnych warunkach rosnącej liczby okrucieństw armii agresora, prowadzenia działań wojennych, braku bezpiecznych warunki rejestrowania i gromadzenia informacji dowodowych.

Słowa kluczowe: utrwalanie materiału dowodowego, gromadzenie materiału dowodowego, informacja dowodowa, zbrodnie wojenne, agresja, Międzynarodowy Trybunał Karny, informacja cyfrowa, dowód cyfrowy, kryminalistyka cyfrowa

the development of appropriate software[37]. In addition, the number of Internet users is growing every year. As of early October 2020, 4.9 billion people, or 63.2% of the world's population, use the global network. And the size of data in this network reached 2.7 zettabytes (1 GB ~ 1012 GB)[38].

In this regard, the provisions of the Berkeley Protocol on Digital Open Source Investigations[39], which contain advice on recording digital evidence (digital information), become important. The Berkeley Protocol is a guide to the effective use of open source digital information in the investigation of violations of international criminal law, human rights and humanitarian law[40].

The Berkeley Protocol for Open Digital Data Investigations describes the professional standards to be followed in the discovery, collection, preservation, analysis and presentation of publicly available digital information and its use in international criminal and human rights investigations[41]. At the same time, digital information in the public domain is publicly available information in a digital format, which is usually obtained from the Internet[42].

Berkeley Protocol is a recommendation document presented in 2020 by the Center for Human Rights at the University of California, Berkeley and the Office of the United Nations High Commissioner for Human Rights. It outlines minimum standards for searching, collecting, storing, verifying and analyzing open sources, and can serve as a practical guide for lawyers (lawyers), journalists, law enforcement agencies and researchers. Fixed standards are the basis of any OSINT project, that is, intelligence based on open sources[43].

Berkeley Protocol states that "open data investigation is an investigation that relies, in whole or in part, on publicly available information to conduct formal and systematic online investigations into alleged wrongdoing... Publicly available information can provide clues, support intelligence, and serve as direct evidence in courts"[44]. Public access sources include: a) photos, videos, other publications; b) content created by the user in social networks, such as You Tube, Facebook, Instagram, etc.; c) satellite image data[45].

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