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Military-Aggressive Crime as A Subject of War Criminology

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Abstract The article is devoted to the study of military-aggressive crime as a subject of war criminology. It is established that military-aggressive crime is an extensive system of criminal practices based on crimes of aggression. Armed aggression against Ukraine as a foreign policy manifestation and consequence of the functioning of the Russian fascist political regime has as its consequence and accompanying manifestations a number of violent war crimes, crimes against humanity, as well as genocidal practices. They determine a backlash in the form of a system of violent war-related crimes. On this basis, two epistemological blocks are distinguished in the structure of military-aggressive crime: crimes of action and reaction. They are interconnected. The first determines the second. A number of war criminals among Ukrainian combatants, as well as civilians, who commit aggressive and violent hate crimes are caused by previous crimes against them, representatives of their community. It is stated that there is a paradoxical international legal situation when ongoing aggression as an internationally wrongful act of the State is recorded in various formats and at various levels, including the highest level of the UN, but at the same time, the international community does not respond to the crime of aggression in the forms inherent in criminal justice.

Index Terms aggression, war, armed conflict, military-aggressive crime, crime of aggression, war crime, genocide, hatred, criminology of war

I. Introduction

The Russian-Ukrainian war, which dates back to 2014, acquired its full-scale dimension on February 24, 2024. On that day, Russian troops carried out a massive invasion of Ukraine using the entire known range of conventional weapons. Having been repulsed by the Armed Forces of Ukraine, the aggressor's troops were forced to retreat in a number of directions, and as of November 2023, the theater of operations has changed significantly compared to February-May 2022. At the same time, the inhumane and illegal nature of the armed aggression of the Russian Federation remains unchanged, which has triggered a chain reaction in the form of a whole cascade of violent criminal practices related to the war. It has become clear that this is a systemic phenomenon, a holistic phenomenon of widespread and grave war-related violence against people. It combines different types of crimes from a legal point of view. However, what they have in common is their violent nature, hatred, an attitude of dominance, and a victimhood complex. It has also become clear that this holistic phenomenon requires a separate and equally conceptually holistic approach at the level of criminological research in order to get answers to questions about its sources, the variety of manifestations, the specifics of determination and promising ways to counteract it. It should be noted that the problems of reproduction of crime in the context of armed

conflicts have traditionally been considered within a separate scientific field - criminology of war. At the same time, paying tribute to the existing developments, we cannot but take into account the fact that military-aggressive crime has not yet been the focus of attention as an independent and holistic subject of criminological research.

II. The Purpose of This Article

Is to define the content, describe and explain the main characteristics of the phenomenon of military-aggressive crime as a component of the subject of war criminology in the context of the ongoing international armed conflict on the territory of Ukraine.

III. Results and Discussion

Military-aggressive crime is a binary epistemological and praxeological formation. It is possible to distinguish two conditional blocks of criminal practices: the block of criminal action and the block of criminal reaction. The block of criminal action is represented by four basic criminal manifestations: aggression and crimes of aggression, genocidal criminal practices, war crimes and crimes against humanity.

A. The Aggression of the Russian Federation

As an illegal meta-complex: both an international illegal act of the state and a crime of aggression. As an international illegal act of the state, it has been repeatedly confirmed by a number of law enforcement and legislative acts, namely:

- the resolutions of the Verkhovna Rada of Ukraine "On the Appeal to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and the national parliaments of the world on the recognition of the Russian Federation as an aggressor state" No. 129-VIII [1], "On the Statement of the Verkhovna Rada of Ukraine "On repulsing the armed aggression of the Russian Federation and overcoming its consequences" No. 337-VIII [2], "On the Statement of the Verkhovna Rada of Ukraine "On Ukraine's derogation from certain obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms" No. 462-VIII [3], "On the Statement of the Verkhovna Rada of Ukraine in connection with the recognition by the Russian Federation of the independence of illegal self-proclaimed entities in the temporarily occupied territories of certain districts of Donetsk and Luhansk regions of Ukraine" No. 2093-IX [4], "On the Statement of the Verkhovna Rada of Ukraine on the Recognition of the Russian Regime as a Terrorist, the Illegitimacy of the Russian Federation's Membership in the United Nations and its Reform, and the Responsibility of Members of Russian Political Parties Supporting Aggression" No. 2787-IX [5], etc.;

- the Decrees of the President of Ukraine "On the Introduction of Martial Law in Ukraine" No. 64/2022 [6], "On the Use of the Armed Forces of Ukraine and Other Military Formations" No. 71/2022 [7], On the Decision of the National Security and Defense Council of Ukraine of March 18, 2022 "On the Implementation of a Unified Information Policy under Martial Law" No. 152/2022 [8], "On the Nullity of Acts Violating the Sovereignty and Territorial Integrity of Ukraine" No. 687/2022 [9], etc;

- Laws of Ukraine "On Peculiarities of the State Policy on Ensuring the State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions" No. 2268-VIII [10], "On Amendments to Certain Laws of Ukraine on the Prohibition of Production and Distribution of Information Products Aimed at Promoting the Actions of the Aggressor State" No. 2109-IX [11];

- cascade of decisions of the Council of the European Union in connection with the Russian aggression against Ukraine. They state that the Russian aggression was manifested in the annexation of the Autonomous Republic of Crimea and destabilization of the situation in Eastern Ukraine. This entailed a number of restrictions:

- 1) diplomatic: exclusion from the G-8 group, in particular, for the period of the G-7 Summit in Brazil on June 4-5, 2014;

- 2) political: ban on entry of certain Russian citizens to the Schengen area, freezing of assets, termination of military cooperation;
- 3) economic: so-called "economic" sectoral sanctions [12];
- 4) a comprehensive solution of political, legal and economic nature, namely The European Council Decision on Ukraine [13], which states:

"The European Council strongly condemns Russia's aggressive war against Ukraine. It calls on Russia to immediately cease its indiscriminate attacks on civilians and civilian infrastructure, and to withdraw immediately and unconditionally all its troops and military equipment from all of Ukraine within its internationally recognized borders. The atrocities committed by Russian troops, the suffering and destruction caused are unspeakable. It also calls on Russia to immediately allow the safe return of Ukrainians forcibly transferred to Russia".

The same decision imposed sanctions (the sixth package) on the Russian Federation (on crude oil and petroleum products, except for crude oil supplied by pipelines), as well as a call to stop any attempts to impose these and previously imposed sanctions.

It should be noted that in addition to stating the aggressiveness of the war unleashed by Russia, it also refers to atrocities that are directly related to the subject of our study. Let's record this point: an aggressive war is accompanied and expressed through atrocity crimes;

- a number of decisions of the Parliamentary Assembly of the Council of Europe (hereinafter – the PACE). In general, it is worth noting the activity of this collective governance body within the Council of Europe, which regularly and in almost the most detailed manner records and responds to the manifestations and consequences of the Russian Federation's aggression.

Thus, the PACE adopted Opinion 300 [14] "Consequences of the aggression of the Russian Federation against Ukraine", which states that in connection with Russia's serious violations of the Charter of the Council of Europe, the Assembly supports the continuation of the procedure for expelling Russia from the Council of Europe in accordance with Article 8 of the Charter. On April 27 and 28, 2022, during the second part of the 2022 session on the following topics: "Consequences of the continuing aggression of the Russian Federation against Ukraine: the role and response of the Council of Europe" and "Aggression of the Russian Federation against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes".

"Humanitarian consequences and internal and external migration in connection with the aggression of the Russian Federation against Ukraine". On October 13, 2022, the Parliamentary Assembly unanimously adopted Resolution 2463 [15] "Further escalation of the aggression of the Russian Federation against Ukraine". In the adopted document, the PACE, in particular, called on the member states of the Council of Europe to accelerate the establishment of a Special International Tribunal for the crime of aggression against Ukraine

and a comprehensive international compensation mechanism for damages caused by the aggression, including the establishment of a register of damages. The PACE also called on the Council of Europe member states to recognize the current Russian regime as a terrorist regime and to provide Ukraine with the necessary air defense capabilities.

On January 24, 2023, the PACE adopted Recommendation 2245 [16] "Council of Europe Summit in Reykjavik: United around values in the face of extraordinary challenges". According to this Recommendation, the members of the Council of Europe are invited to ensure the comprehensive responsibility of the Russian Federation for the aggression against Ukraine by supporting and leading the initiative to establish a special international criminal tribunal to investigate and prosecute the crime of aggression committed by the political and military leadership of the Russian Federation, and by ensuring the leading role of the Council of Europe in its establishment and providing specific expert and technical assistance.

On January 24, 2023, the PACE adopted Resolution 2476 [17] "Conflict-related sexual violence", which, in particular, emphasizes the need to establish a special international tribunal to prosecute the crime of aggression against Ukraine, as conflict-related sexual violence is a consequence of the crime of military aggression.

On January 26, 2023, the PACE unanimously adopted Resolution 2482 [18]: "Legal and human rights aspects of the aggression of the Russian Federation against Ukraine". In the resolution, the PACE strongly supported the establishment of a special international criminal tribunal to investigate the crime of aggression against Ukraine and the extension of the tribunal's jurisdiction to cover the aggression launched by the Russian Federation in February 2014, as well as the role and complicity of the leaders of Belarus in the aggressive war against Ukraine.

On June 22, 2023, the Parliamentary Assembly of the Council of Europe adopted Resolution 2506 [19] "Political consequences of the aggression of the Russian Federation against Ukraine". Main provisions:

- 1) The Assembly calls on as many states as possible to join the Register of Damages caused by the Russian aggression against Ukraine;
- 2) The Assembly calls for the establishment of an international compensation mechanism using confiscated assets of the Russian Federation to immediately compensate for the damage caused to Ukraine by the war and calls for the prompt establishment of a Special Tribunal for the crime of aggression against Ukraine;
- 3) The Assembly recognizes the responsibility of Russian private military groups and calls for the designation of the Wagner Group and Kadyrov's Guard as terrorist organizations.

B. UN General Assembly Resolutions

- 1) "Aggression against Ukraine" [20]. It directly and unambiguously defines the actions of the Russian Federation in Ukraine as aggression and demands that the

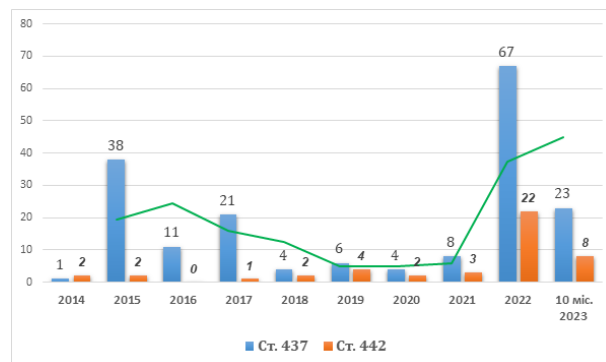


Figure 1: Graphic representation of the level and dynamics of the crime of aggression (Article 437 of the Criminal Code of Ukraine) and manifestations of genocide (Article 442 of the Criminal Code of Ukraine)

Russian Federation immediately, fully and unconditionally withdraw all its military forces from the territory of Ukraine within its internationally recognized borders (Resolution ES-11/1, [20]);

- 2) "On the humanitarian consequences of the aggression against Ukraine" (Resolution A/ES-11/L.2, [21]);
- 3) "Further Protection and Reparation for Aggression against Ukraine" of (Resolution L.6/2022, November 14, 2022), etc.

Thus, as we can see, even a cursory analysis of the titles and key provisions of international law enforcement acts, as well as national legislation of Ukraine, and parliamentary resolutions is enough to make sure that civilized countries of the world, international organizations, including the UN, recognize the act of aggression of the Russian Federation against Ukraine. At the same time, there is a paradoxical situation when the ongoing aggression as an internationally illegal act of the state is recorded in various formats and at various levels, including the highest level of the UN, but the international community does not respond to the crime of aggression in the forms typical of criminal justice. And in our opinion, this is, if not hypocrisy, then weakness before the aggressor, substitution of the position of dignity for political expediency and pharisaism (and, consequently, geopolitical discrimination, which, after all, follows from the very discourse of international law, which is based on the division of the world's peoples into civilized and uncivilized), then at least a significant gap in the international legal mechanism for ensuring peace and justice, the principles of inevitability of punishment for the most serious international crimes.

Therefore, crimes of aggression (in international legal terminology) can be judged, at present, solely on the basis of the national Ukrainian practice of applying the law on criminal liability (Article 437 of the Criminal Code of Ukraine). The latter demonstrates, although not adequate (in our opinion), at least a certain level (presence) of these crimes and their dynamics, including those that correlate with other war crimes (see Figure 1).

From the data recorded in the diagram, it follows that the cumulative level of crimes of aggression since the beginning of the Russian-Ukrainian war in 2014 amounted to 183 facts registered by law enforcement agencies of Ukraine. This circumstance, firstly, confirms the position that Russia's aggressive war against Ukraine has been going on since 2014, and not since February 24, 2022, and, thus, represents the appropriate temporally extended research format for the corresponding category of crime. Secondly, it clearly testifies to the high level and unfavorable dynamics of crimes of aggression, the peak of which falls on 2015 and 2022. At the same time, it was in 2022 that the highest level of 67 crimes, provided for in Art. 437 of the Criminal Code of Ukraine. And this is quite natural: starting exactly from February 24, 2022, the phase of a full-scale Russian offensive takes place, which was accompanied by the invasion of the aggressor's troops simultaneously from at least four directions. The obvious, from the point of view of common sense and objective data, the absence of legitimate grounds for the use of armed force by the Russian state against Ukraine (*jus ad bellum*) leaves no other options for the legal evaluation of such actions, separate as an act of aggression from the point of view of international law of responsibility of states and crimes of aggression - from the standpoint of international and national criminal law and legislation. And these crimes continue, causing more and more victims, destruction of civil infrastructure, damage to the environment.

And they will continue as long as the modern Russian fascist regime retains the contours of its vitality. It is worth being aware that aggression is a direct consequence and form of existence of Russian fascism as an atypical and complex cascade of factors of various nature. Modern Russian fascism, [22] substantiates in his research, is based on a branched meta-complex of factors of the collective unconscious, in which paternalism, hysteria of fear, neuroses of obsessive states, resentment, hostility to aesthetically developed cultural patterns occupy a prominent place. At the same time, it was established that Russian fascism is not ideological. Instead, it is traumatic in the first place, and mythological in the second, falsified-commemorative, megalotym-revanchist, locked in the cycle of the 20th century. The phantasms of liberation from the shackles of culture and immersion in the past are built on the platform of greatness-sacrifice, military ethics and aesthetics, a neurotic attitude to struggle, which is fixed by the culture of suffering and, at the same time, a taboo on researching the real sources of the latter, falsification of the causes of collective trauma, selective historical amnesia.

At the same time, the danger of war with Russia and confrontation with modern Russian fascism lies not only in combat, military and related challenges, but also in transformations in more subtle spheres of social life [22]. Dewey [13] noted that the serious danger to our democracy is not that there are other totalitarian states. The danger lies in the fact that in our own attitudes, in our own social institutions, there are preconditions that in other states have led to the victory of external power, discipline, uniformity, and dependence on

leaders. Accordingly, the battlefield is here, in ourselves, in our social institutions. We have realized, adds Fromm [15], that the crisis of democracy is not a purely Italian or German problem, that it threatens every democratic state. Millions of people gave up freedom with the same fervor with which their parents and ancestors fought for it; that they did not seek freedom, but sought a way to get rid of it; that millions of others were indifferent and did not believe that freedom was worth fighting and dying for.

And these are, in our opinion, very reasonable remarks that demonstrate, firstly, how anti-democratic reactive practices that will be formed in response to military threats can depend on the foreign policy aggressive manifestation of Russian fascism. Secondly, they force the so-called civilized nations of the world to take part of the blame for the emergence of the fascist regime in Russia, because with their connivance and cooperation (at least economic and political), the criminal post-Soviet imperial revanchism crystallized in Russian state institutions. And the best way to respond to this could be (and hopefully will be) a proper international (taking into account the principle of *par in parem non habet imperium*) legal response to these crimes, which have become a real challenge to the existing international legal order, its effectiveness, and real significance.

C. Genocidal Criminal Practices

As manifestations of the crime of genocide, one of the most serious military-aggressive crimes, are also recorded at the level of national criminal justice and are not reflected at the international level. Figure 1 shows that, starting in 2014, such manifestations were recorded annually. The cumulative level for 2014 - 10 months of 2023 amounted to 46 facts that are qualified under Article 442 of the Criminal Code of Ukraine ("Genocide"). The largest number of them was in 2022, 22 cases.

And although the UN International Court of Justice has not yet made a substantive decision regarding the Russian Federation's violation of the 1948 UN Convention on the Prevention and Punishment of Genocide, this does not deprive Ukraine of the opportunity and necessity to record and respond to manifestations of genocide. This convention contains the imperative duty of each signatory state to prevent genocide and ensure punishment for its commission. It is clear that there are certain political and legal dependencies between the recognition of a state's violation of the UN Convention on the Prevention of Genocide and its punishment (that is, as an internationally illegal act of the state) and the recognition of the existence of the crime of genocide. That is, by analogy with the crime of aggression. And although the UN International Court of Justice did not take a corresponding decision on the latter, nevertheless, a number of law enforcement acts listed above, including at the level of the UN General Assembly, PACE, European Council, etc., sufficiently legitimize the relevant and national law enforcement practice, and, no less important, but still uncertain, international in the format of criminal justice. With the recognition of genocide, we do not

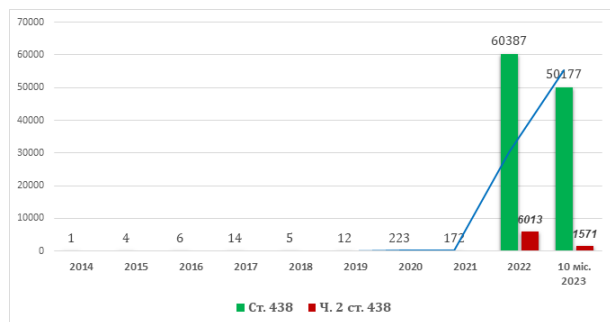


Figure 2: Graphical representation of the level and dynamics of violations of the laws and customs of war (Article 438 of the Criminal Code of Ukraine) during 2014 - 10 months of 2023

observe a similar state of affairs, as with aggression. States and international organizations are very careful about fixing the recognition of this crime. However, nevertheless, the state of Ukraine, fulfilling primarily its constitutional obligations to citizens, as well as international legal obligations, carries out the recording of crimes of genocide, which are indisputably one of the most serious military-aggressive crimes.

D. Military Violent Crimes

These are represented by a very wide range of serious violations of the laws and customs of war, combined with violence against civilians and violence against military personnel and other categories of combatants not caused by military necessity. Similarly, to the previous categories of military-aggressive crimes, there was a surge in military violent crimes in 2022-2023. At the same time, unlike crimes of aggression and genocide, trends towards a significant increase in their number (by more than 200%) began to be recorded in 2020 (see Figure 2).

The data in Figure 2 shows that in 2020 alone, more war crimes were registered than in all the previous six years (2014-2019). In 2021, there was a slight decrease to 172 crimes, but in 2022, this figure reached a record 60,387. This trend continued in 2023, with 50,477 cases of serious violations of the laws and customs of war registered in the first 10 months of the year. It should be noted that in the forms of statistical accounting of criminal offenses, it is since 2022 that Part 2 of Article 438 of the Criminal Code of Ukraine has been singled out, i.e. those war crimes that are combined with intentional murder. And it is this category of war crimes (which is about 6% of all officially registered cases, i.e., excluding the latent part) that mostly constitutes the subject of military aggressive crime in the sense of its violent nature. Although, of course, not exclusively. It should also include cases of sexual violence, illegal deprivation of liberty, torture, forced eviction, displacement of the population, and expulsion for forced labor (collectively, this is another 10% of all war crimes) committed in the context of the armed conflict in Ukraine.

E. Crimes Against Humanity

They committed in the context of the armed conflict in Ukraine are systematic, large-scale, and express the policy of the Russian state towards the population of Ukraine that found itself in the occupied territory. It should be noted that in the context of the current criminal legislation of Ukraine, these criminal offenses appear to be phantom crimes, as the Criminal Code of Ukraine does not contain special provisions on liability for them. Instead, they are highlighted in the draft of the new Criminal Code of Ukraine, section 11.2. The approach proposed therein is generally consistent with the concept of crimes against humanity that has developed in international criminal law and is embodied, among other things, in the provisions of the Rome Statute of the International Criminal Court. In this regard, there is hope that in the near future the text of the Criminal Code of Ukraine will be brought in line with the challenges of the Russian-Ukrainian war. For now, we note that the national law enforcement practice follows the path of qualifying the relevant crimes as war crimes, i.e. under Article 438 of the Criminal Code of Ukraine, and therefore, in this study, we will consider them as war crimes of violence with notes, where appropriate and necessary.

The criminal reaction block is represented by the following groups of military-aggressive crimes:

1) Military Violent Crimes Committed Against Military Personnel of the Russian Federation

It should be noted that here we should talk about self-determination of crime, when crimes of aggression and war crimes committed by combatants on the side of the Russian Federation cause a backlash, producing violence not caused by military purposes. For example, according to the report of the Head of the UN Human Rights Monitoring Mission in Ukraine [23], 91 cases of enforced disappearances and arbitrary detentions committed by Ukrainian law enforcement agencies have been documented since February 24, 2022. Of the 73 victims interviewed by the High Commissioner's authorized representatives, 53% were subjected to torture or ill-treatment by members of the Armed Forces and law enforcement agencies of Ukraine. There have been 25 cases of arbitrary executions of Russian prisoners of war and persons who stopped participating in hostilities committed by the Armed Forces of Ukraine. This often happened immediately after being captured on the battlefield [23].

For obvious reasons, due to the emotional connotations of sacrifice that legitimize reactive violence in response to the aggression of the Russian Federation, this category of crimes has an increased artificial latency. At the same time, we are convinced that maintaining the commitment to the development and strengthening of the foundations of a legal and democratic state, and associating ourselves with the civilized nations of the world, forces the law enforcement and judicial authorities of Ukraine to adhere to objectivity and the rule of law, to properly record and investigate all cases of crimes, even against combatants of the aggressor country;

2) Aggressive Violent Crimes Motivated by Hatred Related to War

In a strictly logical sense, this category of violent criminal practices is formed outside the context of an armed conflict, as understood in international humanitarian law. That is, these are violent crimes that:

- 1) are based on hatred related to the victim's affiliation with the aggressor on the basis of language, nationality, political views, religious denomination (Russian Orthodox Church of the Moscow Patriarchate or vice versa - Ukrainian Orthodox Church), etc. Moreover, these crimes are committed both on the territory of Ukraine controlled by the Government of Ukraine and on the temporarily occupied territories - against persons with a pro-Ukrainian position (which is determined, among other things, by the attributes of the Ukrainian language, state symbols kept at home, in a vehicle, on their person, on electronic media, etc.), parishioners and clergy of the Ukrainian Orthodox Church and/or those who had experience of participating in the Anti-Terrorist Operation, the Joint Forces Operation before 24.02.2022 - on the territory of certain districts of Donetsk and Luhansk regions - temporarily occupied by Russia since 2014;
- 2) are motivated by hatred based on inaction in repelling the armed aggression of Ukrainian citizens. This category of violent crimes, as practice shows, is committed by members of the Armed Forces of Ukraine and is burdened by the factor of post-traumatic stress disorder, which is known to exacerbate the sense of justice, demandingness, vindictiveness, etc.

IV. Conclusions

To summarize, we emphasize that military-aggressive crime is an extensive system of criminal practices based on crimes of aggression. It is the armed aggression against Ukraine, as a foreign policy manifestation and consequence of the functioning of the Russian fascist political regime, that has a trail of war crimes, crimes against humanity, and genocidal practices. As a reaction to the aggression and related crimes, a complex of reactive crimes is unfolding. Therefore, in the phenomenon of military-aggressive crime, two epistemological blocks are distinguished: crimes of action and reaction. They are interconnected; the first one determines the second one and makes us look at a number of war criminals on the part of Ukrainian combatants, as well as civilians who commit aggressive and violent hate crimes as victims of crimes against them, representatives of their community. The criminal as a victim is one of the perspectives of the criminological analysis of military-aggressive crime that should be revealed in thorough research.

Crimes of aggression are currently recorded exclusively at the level of national Ukrainian practice of applying the law on criminal liability (Article 437 of the Criminal Code of Ukraine). The aggregate level of crimes of aggression since the beginning of the Russian-Ukrainian war in 2014 amounted to 183 facts registered by law enforcement agencies

of Ukraine. The cumulative level of genocide Article 442 of the Criminal Code of Ukraine in 2014 - 10 months of 2023 amounted to 46 cases. Most of them occurred in 2022, 22 cases. During 2022-2023, 110864 war crimes committed by Russian representatives on the territory of Ukraine were registered. Of these, 7584 were combined with premeditated murder.

The criminal reaction block is represented by the following groups of military-aggressive crimes: 1) military violent crimes committed against military personnel of the Russian Federation; 2) aggressive violent crimes motivated by war-related hatred. The latter category of violent criminal practices is formed outside the context of armed conflict, as understood in international humanitarian law. That is, these are violent crimes that: a) are based on hatred associated with the victim's affiliation with the aggressor on the basis of language, nationality, political views, or religious denomination; b) are based on hatred based on inaction in repelling the armed aggression of Ukrainian citizens. This category of violent crimes, as practice shows, is committed by members of the Armed Forces of Ukraine and is burdened by the factor of post-traumatic stress disorder, which is known to exacerbate the sense of justice, demand, vindictiveness, etc.

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