

1532nd meeting, 18 and 24 June 2025

2 Current political questions

2.3 Consequences of the aggression of the Russian Federation against Ukraine

Agreement between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression against Ukraine

Whereas the United Nations General Assembly, in its Resolution A/RES/68/262 of 27 March 2014, called upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine's borders through the threat or use of force or other unlawful means;

Whereas the United Nations General Assembly, in its Resolution A/RES/71/205 of 19 December 2016, reaffirmed the responsibility of all States to refrain from the threat or use of force against the territorial integrity or political independence of any State and from acting in any other manner inconsistent with the purposes of the United Nations, and urged the Russian Federation to immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice;

Whereas the United Nations General Assembly, in its Resolution A/RES/73/194 of 17 December 2018, condemned the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol, and recalled that this temporary occupation and the threat or use of force against the territorial integrity or political independence of Ukraine by the Russian Federation are in contravention of commitments made to respect the independence and sovereignty, and existing borders of Ukraine;

Whereas the United Nations General Assembly, in its Resolution A/RES/76/70 of 9 December 2021, urged the Russian Federation to completely and unconditionally withdraw its military forces from Crimea, and end its temporary occupation of the territory of Ukraine without delay, and further stressed that the presence of Russian troops in Crimea is contrary to the national sovereignty, political independence and territorial integrity of Ukraine and undermines the security and stability of neighbouring countries and the European region;

Whereas the United Nations General Assembly, in its Resolution A/RES/ES-11/1 of 2 March 2022, recognising that the military operations of the Russian Federation inside the sovereign territory of Ukraine were on a scale that the international community had not seen in Europe in decades, deplored in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2, paragraph 4, of the Charter of the United Nations, demanded that the Russian Federation immediately cease its use of force against Ukraine and deplored the involvement of Belarus in this unlawful use of force against Ukraine;

Whereas the United Nations General Assembly, in its Resolution A/RES/ES-11/6 of 23 February 2023, emphasised the need to ensure accountability for the most serious crimes under international law committed on the territory of Ukraine through appropriate, fair and independent investigations and prosecutions at the national or international level, and ensure justice for all victims and the prevention of future crimes;

Whereas the United Nations General Assembly, in its Resolution A/RES/79/184 of 17 December 2024, condemned the war of aggression against Ukraine by the Russian Federation in violation of Article 2, paragraph 4, of the Charter of the United Nations, and the use of Crimea for this and to support the attempted illegal annexation of the Kherson, Zaporizhzhia, Donetsk and Luhansk oblasts;

Welcoming that the European Union Agency for Criminal Justice Cooperation (Eurojust) has supported the co-operation and co-ordination of national investigation efforts by setting up the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) in The Hague, the Kingdom of the Netherlands, on 3 July 2023, and expressing satisfaction with the work carried out by the ICPA in ensuring appropriate investigation into the crime of aggression against Ukraine;

Desiring to follow up on the work carried out by the national authorities co-operating in the ICPA, in particular to support Ukraine in its efforts to prosecute the crime of aggression committed against this State in the most efficient and legitimate way;

Recalling the Charter of the International Military Tribunal of 8 August 1945, whose Article 6.a established individual criminal responsibility for crimes against peace;

Recalling that, on 11 June 2010, the Review Conference of the Rome Statute adopted by consensus Resolution RC/Res.6 which contains, inter alia, the text of Article 8*bis* on the crime of aggression; noting that, notwithstanding that Ukraine ratified the Rome Statute on 25 October 2024 and became a State party to this treaty on 1 January 2025, the jurisdictional regime for the crime of aggression in the Rome Statute prevents the International Criminal Court from exercising jurisdiction with respect to the crime of aggression in this particular context;

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes and noting Article 437 of the Criminal Code of Ukraine;

Considering that the creation of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Special Tribunal"), as a collaborative effort, is the most suitable solution to determine criminal accountability in the case of those individuals who bear the greatest responsibility for the crime of aggression against Ukraine and to avoid duplication of prosecutions at national level against the same individuals;

Understanding that the jurisdiction of the Special Tribunal shall be based on the territorial jurisdiction of Ukraine;

Attaching the greatest importance to due process and fair trial standards, including the principles of *nullum crimen sine lege* and *ne bis in idem*, in accordance with international and European human rights standards;

Noting the special character of the crime of aggression, which affects the entire population of Ukraine, and stressing the need to hear specially affected groups of victims before the Special Tribunal;

Whereas the founding member States of the Council of Europe, in the wake of the Second World War, created a pan-European organisation out of the conviction that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation, built on the promise of "never again";

Whereas, at a time when war has returned to Europe because of the war of aggression by the Russian Federation against Ukraine and "the promise of 'never again' ... has been fundamentally challenged", the Heads of State and Government of the Council of Europe declared, at their 4th Summit in Reykjavík on 16 and 17 May 2023, to unite around the values embodied by the Council of Europe and against the war in Ukraine, which they consider to be "a flagrant violation of international law and everything [the Council of Europe] stand[s] for", in order to preserve and protect the bedrock of freedom, peace, prosperity and security for Europe;

Whereas, on 15 March 2022, the Parliamentary Assembly of the Council of Europe (hereinafter "Parliamentary Assembly") through its Opinion 300 (2022) condemned the Russian Federation's aggression against Ukraine in the strongest terms, noting that the escalation of military activities as of 24 February 2022 represented a continuation of the war of aggression by the Russian Federation against Ukraine that had begun on 20 February 2014;

Whereas the Committee of Ministers, in its Resolution CM/Res(2022)2, adopted on 16 March 2022 at the 1428^{ter} meeting of the Ministers' Deputies, took the decision to exclude the Russian Federation from the Organisation as a result of its full-scale invasion of Ukraine, in line with the unanimous position expressed by the Parliamentary Assembly in its Opinion 300 (2022) and by the Secretary General of the Council of Europe (hereinafter "Secretary General"), and on 17 March 2022, at the 1429th meeting of the Ministers' Deputies, the Committee of Ministers decided to suspend all relations with Belarus and its rights to participate in meetings and activities of the Organisation;

Whereas the Council of Europe established the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine on 17 May 2023 as a first step towards an international compensation mechanism for victims of the Russian Federation's internationally wrongful acts in or against Ukraine;

Whereas the Statute of the Council of Europe (ETS No. 1) provides for the conclusion of agreements as a means to further the aim of the Organisation;

Whereas States and international organisations in the Core Group on the Establishment of a Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Core Group") have collaborated to bring about accountability for the crime of aggression against Ukraine;

Whereas the Parliamentary Assembly, in its Recommendation 2294 (2025) of 9 April 2025, called on the Committee of Ministers to work towards the establishment of the Special Tribunal for the Crime of Aggression against Ukraine as soon as political agreement is finally reached among the States and partners participating

in the Core Group, by authorising the Secretary General to conclude the agreement for the establishment of the Special Tribunal with Ukraine and establishing the Enlarged Partial Agreement on the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Enlarged Partial Agreement") and inviting all member and observer States of the Council of Europe, as well as other States and international organisations, to become members;

Whereas the United Nations General Assembly, in its Resolution A/RES/79/284 of 16 April 2025, acknowledged the contribution of the Council of Europe to the work of the Core Group towards the establishment of a special tribunal for the crime of aggression against Ukraine, and its willingness to examine possible options to provide expert and technical support for the establishment and, as appropriate, operation of such a special tribunal;

Whereas, reflecting the work of the Core Group, Ukraine, by letter dated 13 May 2025, requested the establishment of the Special Tribunal for the Crime of Aggression against Ukraine within the framework of the Council of Europe;

Whereas the Committee of Ministers, on 4 June 2025 at the 1530th meeting of the Ministers' Deputies decided to set up a Working Party on the Special Tribunal for the Crime of Aggression against Ukraine (GT-TRIBUNAL), open also to observer States, as well as the European Union, with the mandate to examine the draft legal instruments submitted by Ukraine and to prepare the decisions required to establish the Special Tribunal within the framework of the Council of Europe;

Whereas the Committee of Ministers subsequently authorised the Secretary General, by decision taken on 24 June 2025 at the 1532nd meeting of the Ministers' Deputies, to conclude with Ukraine the present Agreement between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "the Agreement") with the annexed Statute,

Now therefore the Council of Europe and Ukraine (hereinafter "the Parties") have agreed as follows:

Article 1 – Establishment of the Special Tribunal

1. There is hereby established the Special Tribunal to investigate, prosecute and try persons who bear the greatest responsibility for the crime of aggression against Ukraine.
2. The Special Tribunal shall function in accordance with the Statute of the Special Tribunal (hereinafter "the Statute"), which is annexed to this Agreement and forms an integral part thereof.
3. In furtherance of the implementation of paragraph 1 of this article, Ukraine shall undertake to adopt, where appropriate and as soon as possible, the constitutional, legislative, statutory and administrative measures necessary to enable the Special Tribunal to fulfil its functions.
4. Nothing in this Agreement shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law.

Article 2 – Seat of the Special Tribunal and host State agreement

1. The Special Tribunal shall have its seat in one of the States that has joined the Enlarged Partial Agreement, subject to the conclusion of a host State agreement.
2. The Special Tribunal may sit away from its seat when it considers it necessary for the efficient exercise of its functions or otherwise desirable.

Article 3 – Legal status and powers of the Special Tribunal

1. The Special Tribunal shall possess legal personality under international law and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes, in particular to enter into agreements and arrangements, including on co-operation, with States and international organisations and bodies in accordance with its competence and mandate.
2. Subject to the host State agreement, the Special Tribunal shall possess legal personality under the national law of the host State and thus enjoy such legal capacity as is necessary for the exercise of its functions, the fulfilment of its mandate and the protection of its interests, in particular the capacity to contract and to acquire and dispose of movable and immovable property.
3. The Special Tribunal shall possess legal personality under the national law of Ukraine and thus enjoy such legal capacity as is necessary for the exercise of its functions, the fulfilment of its mandate and the protection of its interests, in particular the capacity to contract and to acquire and dispose of movable and immovable property.
4. The Special Tribunal shall be represented by its President for the purposes of this article.

Article 4 – Organisation of the Special Tribunal

The composition and operation of the Special Tribunal shall be determined by its Statute.

Article 5 – Management Committee

1. It is the understanding of the Parties that the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Management Committee") will be established within the institutional framework of the Council of Europe through an enlarged partial agreement to finance the Special Tribunal and to carry out the administrative and managerial functions set out in the Statute as well as in paragraph 2 of this article. The modalities and criteria for membership of the Management Committee will be determined by the Enlarged Partial Agreement.
2. It is the understanding of the Parties that the Management Committee will, in addition to the functions set out in the Statute, have the following additional functions:
 - a. ensuring the provision of the necessary funding for the Special Tribunal and the Management Committee, including its secretariat;
 - b. providing non-judicial advice and policy direction on all administrative aspects of the operation of the Special Tribunal, including questions of efficiency;
 - c. recommending to members and associate members measures to advance the aims of the Special Tribunal and the Management Committee;
 - d. drawing up rules of procedure governing the work of the Management Committee and any other arrangements required for the implementation of its activities;
 - e. considering and adopting strategies, as appropriate, to further advance cross-regional support for the Special Tribunal;
 - f. ensuring the effective co-operation of members and associate members across all relevant sectors, based on a system of burden sharing;
 - g. considering arrangements for the co-ordinated transition of certain non-judicial residual functions of the Special Tribunal to the Council of Europe, in particular regarding the management of records and archives;
 - h. considering mechanisms to assist members and associate members with costs related to the enforcement of sentences, the release of sentenced persons and the protection of witnesses after the termination of the Enlarged Partial Agreement, including possibly through the establishment of a trust fund; and
 - i. performing any other function necessary to carry out its mandate.

Article 6 – Finance and budget

1. The Special Tribunal is to be financed through the Enlarged Partial Agreement referred to in Article 5 of this Agreement.
2. The Secretary General shall inform the Management Committee when sufficient contributions are in hand to finance the establishment of the Special Tribunal and twelve months of its operations plus pledges equal to the anticipated expenses of the following twenty-four months of the Special Tribunal's operation. Upon this, the Management Committee will decide when the first phase of operations of the Special Tribunal as foreseen by Article 53, paragraph 1.a, of the Statute shall commence, including the recruitment, by the Secretary General, of core staff necessary for the execution of this first phase.
3. The Secretary General shall continue to seek contributions equal to the anticipated expenses of the Special Tribunal beyond its first three years of operation. Should the financial contributions committed pursuant to the Enlarged Partial Agreement be insufficient for the Special Tribunal to implement its mandate, the Parties shall explore alternative means of financing the Special Tribunal.
4. The annual budget of the Special Tribunal will be approved by the Management Committee.

Article 7 – Co-operation with the Special Tribunal

1. Ukraine shall co-operate with the Special Tribunal and its organs at all stages of the proceedings. Ukraine shall facilitate access of the Prosecutor of the Special Tribunal and defence counsel to sites, persons and relevant documents required for the investigation.

2. Ukraine shall comply, without undue delay, with any request for assistance or order by the Special Tribunal, including, but not limited to:
 - a. arrest, surrender, transfer or detention of persons;
 - b. execution of requests for legal assistance for the purpose of procuring evidence or transmitting objects, documents, records or other evidence;
 - c. service of documents.
3. It is the understanding of the Parties that each member and associate member of the Management Committee will co-operate, within the framework of co-operation agreements or other arrangements and within the limits of their national legislation and their international obligations, with the Special Tribunal for the purpose of enabling it to fulfil its mandate.
4. During their presence in Ukraine, the judges, the Prosecutor and the Deputy Prosecutors of the Special Tribunal, the Registrar and defence counsel, together with family members who form part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. Ukraine shall ensure the inviolability of all documents belonging to the Special Tribunal and the defence counsel or held by them during such presence in the territory of Ukraine.
5. The staff of the Special Tribunal and seconded officials shall enjoy the privileges and immunities as provided by the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2).

Article 8 – Settlement of disputes

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation or by any other mutually agreed-upon mode of settlement.

Article 9 – Entry into force

This Agreement shall enter into force on the first day of the month following the date on which all the following conditions have been met:

- a. the Agreement has been signed by the Secretary General expressing the Council of Europe's consent to be bound by it;
- b. Ukraine has notified the Council of Europe in writing that the internal legal procedures for establishing its consent to be bound have been completed; and
- c. the Enlarged Partial Agreement referred to in Article 5 of this Agreement has been established.

Article 10 – Amendments

This Agreement may be amended by written agreement between the Parties upon approval by the Management Committee. Any amendment shall enter into force on the thirtieth day following such approval.

Article 11 – Termination

1. This Agreement may be terminated by the Parties by mutual agreement.
2. This Agreement shall be terminated by the Parties if:
 - a. the Management Committee notifies the Parties, in accordance with Article 54, paragraph 1, of the Statute, of its recommendation to dissolve the Special Tribunal and to establish a residual mechanism;
 - b. the Enlarged Partial Agreement is terminated in accordance with Article 13, paragraph 2, of the Enlarged Partial Agreement; or
 - c. there are insufficient funds to finance the anticipated expenses of the following twelve months of the Special Tribunal's operations and the Parties cannot secure alternative means of financing the Special Tribunal.
3. In case of termination in accordance with paragraph 1 and paragraph 2.b or c of this article, the termination of this Agreement shall be effective from the first day of the fourth month after the date of the decision of the Parties to terminate it. The Parties shall make all necessary arrangements for the orderly winding-down of operations of the Special Tribunal and ensure that the right to a retrial in accordance with Article 28, paragraph 3, of the Statute can be exercised.
4. In case of termination in accordance with paragraph 2.a of this article, the termination shall take effect upon the completion of the transition period referred to in Article 54, paragraph 3, of the Statute.

5. Any tasks of the Special Tribunal not conferred upon the residual mechanism shall be assumed by the Council of Europe, unless otherwise agreed upon by the Parties and, where applicable, any State, international organisation or entity concerned.

6. The Parties shall notify the host State of their decision to terminate the Agreement and co-operate with the Special Tribunal, the host State and the Management Committee to ensure an orderly winding-down of operations of the Special Tribunal.

In witness whereof, the undersigned representatives of the Council of Europe and of Ukraine, being duly authorised thereto, have signed this Agreement.

Done in Strasbourg on 25 June 2025, in two original copies, in Ukrainian, English and French, all texts being equally authentic.

For the Council of Europe:

For Ukraine:
