

UKRAINE: ESTABLISHMENT OF THE SPECIAL TRIBUNAL FOR THE CRIME OF AGGRESSION MUST ENSURE VICTIMS-CENTERED JUSTICE

Paris, Geneva, London, 14 May 2025

The International Federation for Human Rights (FIDH), Amnesty International, the International Commission of Jurists (the ICJ) and the undersigned organizations are encouraged by steps taken towards the establishment of the Special Tribunal for the Crime of Aggression against Ukraine by the Council of Europe Committee of Ministers, although regrettably final details on the mechanism's legal framework, including its Statute, have not been made public. In this regard, the organizations call on the Council of Europe to urgently publish the draft Statute of the Tribunal to ensure the transparent and inclusive participation of civil society, especially victims and survivors, as the Tribunal is established and, certainly, in its proceedings.

The initiative to establish a Special Tribunal has been precipitated by Russia's full-scale invasion of Ukraine on 24 February 2022, and the creation of the Special Tribunal is a significant step towards holding those responsible, up to the highest levels, for the crime of aggression. In its annual meeting held on 14 May in Luxembourg, the Committee of Ministers of the Council of Europe invited the Organisation's Secretary General to lead the process for the establishment of the Special Tribunal for the Crime of Aggression against Ukraine, to be created on the basis of an agreement between the Council of Europe and Ukraine.

"The Tribunal is an important breakthrough for the international justice community and especially for the millions of Ukrainians who have been harmed by the Russian aggression", said **Oleksandra Matviichuk, FIDH Vice-President and Head of the Center for Civil Liberties**. "For the court to be truly effective however, it must not become a remote and hollow entity that does not engage with the Ukrainian victims or give them access to proceedings."

Until the draft Statute of the Tribunal is published, it is not possible to specifically comment on its contents. However, based on a recent [explainer](#) published by the Council of Europe regarding the proposed Tribunal, a number of observations can be made.

As a key preliminary observation, the organizations expect the Tribunal to be able to investigate and prosecute senior government and military leaders responsible for the crime of aggression, up to and including heads of state. In this regard, the organizations deeply regret the availability of "personal immunities", which, according to the Council of

Europe explainer, will be granted to the members of the Troika (Head of State, Head of Government and Minister for Foreign Affairs). **The organizations firmly oppose the reported availability of personal immunities within the Tribunal's legal framework.** Immunity has no bearing on a person's potential individual responsibility and the mechanism cannot allow such immunities to lead to impunity by enabling those who likely bear the most responsibility for the crime of aggression to escape prosecution. The organizations call on all stakeholders, in particular the Council of Europe and Ukraine to urgently amend the draft Statute for the Tribunal to remove the availability of personal immunities, which are not recognized by international criminal tribunals and for which there is a growing body of law and practice excluding them.

Veronika Velch, Director of Amnesty International Ukraine said: "The creation of the Special Tribunal is a step towards addressing some of the far too many accountability gaps confronting the delivery of justice for Ukrainians. It should ensure that the crime of aggression is thoroughly investigated. However, immunity goes hand in hand with impunity. In Amnesty International's view, pursuing accountability at the highest level of Russia's and other states' political and military leadership must be a paramount objective of the Tribunal. Consequently, any immunity provisions which are currently in the Tribunal's draft legal framework must be urgently removed or risk compromising future justice for victims of aggression. The Tribunal must not shy away from seeking indictments against all those who ordered, planned and implemented the crime of aggression against the people of Ukraine, including those most responsible."

The possibility of holding trials *in absentia* (without the presence of the accused) also marks a regressive development from previously established international criminal tribunals. Although the Special Tribunal's draft Statute is reported to ensure that an accused person has the right to request the reopening of proceedings if they had not previously waived their right to appear or accepted the initial judgment, the Tribunal will need to ensure any trials held *in absentia* respect the fair trial rights of the accused, including by effective representation by counsel even where they do not appear. In particular, trials *in absentia* may affect perceptions of objectivity and impartiality of trials where an accused person is not present to defend themselves. For these reasons, such trials should be avoided by the Tribunal.

We also emphasise the importance, and perception, of impartiality and independence in all investigations, prosecutions and adjudications, in line with international law and applicable European Convention on Human Rights' standards.

"The Tribunal has to ensure complete compliance with international standards to maintain credibility," said **Kate Vigneswaran, Director of the Global Accountability Initiative at the ICJ.** "Cases of aggression should normally be investigated and adjudicated by the ICC, and Rome Statute States Parties should ratify the Kampala amendment on the crime of aggression to ensure the Court's capacity to do so."

FIDH, Amnesty International, the ICJ and the undersigned organizations call on the international community, especially on all Council of Europe member and observer States, members of the Core Group, and international organizations, to pursue all avenues to investigate and prosecute the crime of aggression in Ukraine. To this end, cooperation by all stakeholders will be critical for effective investigations.

The organizations also underline that effective cooperation must be established between the Tribunal, the Council of Europe's Register of Damage and the Claims Commission once established, as well as with the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) and the International Criminal Court (ICC). The organizations also call on States to ratify the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes as a basis of cooperation with the Tribunal, as well as international cooperation between states.

The Special Tribunal should be able in legal and capacity terms to investigate and prosecute the crime of aggression against Ukraine. However, while the Tribunal is an important step, at the present juncture the need for comprehensive accountability for the crime of aggression requires the United Nations and the international community to continue to work towards a global and international justice response for the crime of aggression against Ukraine and other countries. Such an international mechanism should also exclude, if established under the auspices of the United Nations, the possibility of any immunity for those alleged to have committed the crime of aggression.

Victims of Russia's aggression deserve justice now – peace must be accompanied by justice. All victims must be heard, and their rights to truth, justice and reparations must be central to all discussions and actions taken as the establishment of the Special Tribunal moves forward.

Background

Following Russia's full-scale invasion of Ukraine in 2022, which resulted in widespread violations of international humanitarian and human rights law, the ICC has issued [arrest warrants](#) for six Russian officials, including Vladimir Putin, for war crimes and crimes against humanity. However, the ICC currently lacks jurisdiction to prosecute the crime of aggression in Ukraine.

The agreement establishing the Special Tribunal is expected to be signed by the Secretary General of the Council of Europe following the [decision](#) of the Committee of Ministers adopted on 14 May 2025. Ukraine officially requested the Council of Europe to establish a Special Tribunal for the Crime of Aggression on 14 May 2025.

The undersigned organisations endorse this statement:

- Kharkiv Human Rights Protection Group (Ukraine)
- Center for Civil Liberties (Ukraine)