

## Establishment of the Tribunal on the Aggression of Russia Against Ukraine: Supreme Level of Responsibility to Prevent New Conflicts in Europe

On February 24, 2022, Russia extended its armed aggression against Ukraine, unleashed in 2014 with the illegal annexation of the Autonomous Republic of Crimea, and with the temporary occupation of certain areas of Donetsk and Luhansk regions. Unlike the previous stage of the international armed conflict (2014-2022), with the attack on February 24, 2022, Russia has already openly used its armed forces and other government and private paramilitary groups along the entire demarcation line with the occupied territories, on the state border between Ukraine and Russia, as well as on a Belarus border section. Belarus, in addition to the right of passage through their territory in the spring of 2022, also host Russian military formations and bases on their territory. The attacks on the territory of Ukraine continue from those positions. Thus, such activity of Belarus and its senior officials is nothing else than complicity in the aggressive war of Russia against Ukraine.

There are several reasons for the full-scale invasion. One of them is the weak reaction of the West to the aggression of Russia against Georgia in 2008 and against Ukraine in 2014. It is also about the ineffective policy of appeasement. However, the main reason was the failure of existing international legal

*Tribunal should have international judicial jurisdiction over the crime of aggression, which will be recognised by a broad international coalition and provide a mechanism for compensating losses caused by Russian aggression*

mechanisms to counter the aggression of one of the permanent members of the UN Security Council. Sanction pressure that mainly targeted the entourage of Russia's top leaders, rather than directly the leaders themselves, did not have a proper effect. In addition, the prosecution of international criminal responsibility for the crime of aggression had not been seriously considered until February 24, 2022. Thus, until now, none of Russia's top officials have been convicted.

The impunity can provoke (generate) new invasive wars coming from totalitarian and authoritarian regimes. Furthermore, aggression precedes the commission of all other international crimes, such as war crimes, crimes against humanity, and genocide. There is clear evidence collected and documented after the de-occupation of Kyiv, Chernihiv, Sumy, and Kharkiv regions of

Ukraine that shows numerous facts confirming those crimes.

To counteract the further continuation of aggression in Ukraine and its spread to other countries and to prevent the commission of other international crimes, the first critical thing to be done is to ensure the inescapable punishment for the act of aggression, which is the source of all other crimes (war crimes, crimes against humanity, and genocide). In other words, it is necessary to find effective mechanisms for bringing to justice the top officials of the aggressor state who made decisions on aggression or contributed to their adoption. Today, possible formats for implementing international criminal justice for the crime of aggression are discussed on different levels, both among experts and policy-makers. They take into account historical experience (in particular, the Nuremberg Trials and Tokyo Tribunal, which after the Second World War were, in fact, by far the only trials on charges of aggression) and modern challenges associated with the possible delivery of such justice with no personal attendance of these persons in the courtroom (*in absentia*), when the jurisdiction is not recognised, does not extend, or overlaps, etc.

As of now, discussions on establishing such a tribunal are still underway. This paper attempts to explain the importance of the need to establish such a tribunal as promptly as possible, both for Ukraine and for the entire international community, as

well as analyse possible ways to organise the tribunal, and its optimal model.

## Crime of Aggression: General Aspects

The crime of aggression is one of the classic four international crimes (war crimes, crimes against humanity, and genocide). The formal definition of aggression is enshrined in the UN General Assembly Resolution 3314 (XXIX) of 14 December 1974, in Art. 1. According to the definition, it consists of the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Aggression can take various forms, the list of which is provided in Art. 3. of the Resolution.<sup>1</sup> In particular, the Russian and Belarusian aggression against Ukraine was committed in the following acts:

- the invasion or attack by the armed forces of the Russian Federation of the territory of Ukraine, temporary military occupation, and illegal annexation of certain Ukrainian territories;
- bombardment by the armed forces of Russia against the territory of Ukraine, blockade of the ports or coasts of Ukraine by the armed forces of Russia;
- attack by the Russian armed forces on the land, sea, or air forces of Ukraine;
- the use of armed forces of the Russian Federation that were, with the international agreement, on the territory of Ukraine, specifically in the Autonomous

- Republic of Crimea and in Sevastopol, and the illegal annexation of these territories;
- the action of Belarus in allowing their territory to be used by Russia for perpetrating an act of aggression against Ukraine, in particular, an invasion of the Kyiv region and an offensive against Kyiv city were carried out from the territory of Belarus; missile attacks continued to be launched from their territory, and they also provide their airspace for aircraft attacking Ukraine.
  - Russia's sending armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State that are of such gravity as to amount to the acts listed above, or substantial involvement therein, such as the mercenaries of the "Wagner" private military company.

Presently, this international crime is enshrined in Art. 8-1 of the Rome Statute. According to it, "the crime of aggression" means the planning, preparation, initiation or execution by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity, and scale, constitutes a manifest violation of the Charter of the United Nations.<sup>2</sup> Thus, the crime of aggression implies bringing to justice persons who passed the decisions or otherwise contributed to aggression, first of all, the political and military leaders of the aggressor state.

Furthermore, the Criminal Code of Ukraine also lists the elements of a criminal offense that entail responsibility for planning, preparation, initiation, or execution of aggressive war (Art. 437<sup>3</sup>), albeit in a very generalised form. At the same time, the enshrinement of this criminal offence in national legislation may act as an argument in favour of one of the models for the Special Tribunal on aggression, which will be discussed below.

Aggression is critical because it is a prerequisite for committing other international crimes: if it were not for the illegal aggression against Ukraine, there would have been no crimes against humanity, no war crimes, no genocide. This was also the case in this armed conflict, as evidenced by the numerous facts of such crimes revealed after the liberation of the occupied Ukrainian territories. In addition, it is not only the attack against a country suffering the physical assault, but also against the international community in its entirety. That is why the establishment of an international mechanism to punish such crimes is of paramount importance.

The crime of aggression should be given special attention and priority in the investigation process, along with other international crimes. After all, the sooner the perpetrators responsible for aggression are convicted, the sooner the end is put to other crimes, and the sooner peace, law and order can be ensured.

### Crimes of aggression and international body investigation

This crime was the subject matter in the criminal prosecutions in the Nuremberg (1945-1946) and Tokyo (1946-1948) tribunals. In fact, the Nuremberg Tribunal first recognised aggression as an international crime. During the Trials, the allies charged 24 German political, military, and economic leaders with advanced planning of an aggressive war" in violation of the terms of the Kellogg-Brian Pact of 1928. In their judgment, the Nuremberg Tribunal declared: "To initiate a war of aggression (...) is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole." It must be said that other significant tribunals established ad hoc subsequently did not have jurisdiction over the crime of aggression. For example, the Tribunals for the former Yugoslavia and Rwanda that were established ad hoc by the UN Security Council in 1993 and 1994, respectively, had no jurisdiction over the crime of aggression, since the UN regarded the conflicts in these states as internal.

Unlike ad hoc tribunals that are established on a case-by-case basis and are provisional, the International Criminal Court has become the first permanent body empowered to investigate the crime of aggression, among other things. In fact, the international community has made

many efforts to move from an ad hoc tribunal model to a permanent body. At the same time, the limited resources of the International Criminal Court, when a total of 31 cases have been brought before the Court since its inception, a significant scope of its competence (including war crimes, crimes against humanity, and genocide) raises the questions whether this instrument can remain the only format for the prosecution of the crime of aggression.

### International Criminal Court possible investigation into Russian aggression against Ukraine

For a long time, the Rome Statute have not at all contained a definition of the crime of aggression or the jurisdiction requirements for it. It was as late as at the Review Conference of the Rome Statute, held in Kampala, Uganda, from May, 31, to June, 11, 2010, that the Resolution RC/RES.5 adopted the so-called Kampala Amendment to Article 8 of the Rome Statute, which supplemented the list of war crimes, and Resolution RC/RES.6. Amendment to the Rome Statute was adopted. It inserted in the Rome Statute new articles that include a definition of the "crime of aggression" (Article 8 *bis*) and the conditions under which the Court exercises jurisdiction over that crime (Articles 15 *bis* and 15 *ter*). According to section 5 of Art. 15 *bis*, in respect of a State that is not a party to the Rome Statute, the Court shall not exercise its

jurisdiction over a crime of aggression when committed by that State's nationals or on its territory.

Thus, the jurisdiction of the ICC about this crime of aggression is limited to states that are parties to the Rome Statute. As neither of the parties to the conflict is a party to the Rome Statute, the ICC jurisdiction does not currently extend to the crime of Russian aggression against Ukraine. Therefore, the ICC Prosecutor's Office is authorised to investigate all categories of international crimes that have occurred in Ukraine since November 20, 2013 (crimes of genocide, crimes against humanity, and war crimes), except for the crime of aggression.

### Extending of the jurisdiction to investigate the crime of Russian aggression against Ukraine to the ICC

The Rome Statute authorises the amendment of it. The idea of extending jurisdiction to investigate the crime of Russian aggression against Ukraine by amending the Rome Statute has already been voiced. For example, a proposal has been mentioned by the international non-governmental organisation Parliamentarians for Global Action (PGA). PGA is convinced that the crime of aggression should be considered by the International Criminal Court, which allows for disregard of the immunity of senior officials of Russia as an aggressor state. The PGA proposes to amend Article 15 *bis* of the Rome Statute about the crime of aggression, such as deleting paragraph 15 *bis* (5) that excludes ICC

jurisdiction over the crime of aggression over non-parties, which could allow ICC to administer justice over the political and military leaders of a State that is not a party to the Rome Statute, i.e., Russia if it has committed the crime of aggression in the territory of a State Party that has accepted jurisdiction over the crime of aggression. It must be mentioned that Ukraine has accepted the jurisdiction of the ICC but has not ratified the Rome Statute. Such amendments to the Rome Statute may require ratification of the Rome Statute by Ukraine.<sup>4</sup>

For such amendments to come into effect, they must be adopted by all 43 States parties to the Rome Statute that have ratified the Kampala amendments. In case the model is acceptable, it would imply a rather lengthy ratification process. This is the only scenario when they will be considered applicable from July, 17, 2018, and binding on these 43 states that have the right to invoke, in exceptional cases, Art. 58 of the Vienna Convention on the Law of Treaties (hereinafter referred to as the Vienna Convention), in order to ensure their immediate entry into force to enable the ICC regime of jurisdiction over the crime of aggression in line with the objectives of the Statute itself (in particular, the Preamble of the Statute states that it is adopted to put an end to the impunity for the perpetrators of international crimes).

However, such a track raises several challenges. First, it should be kept in mind that

the ratification of amendments by countries (which also depends on the political cycle within the signatory countries) can stretch considerably in time. Therefore, any amendment is likely to take at least a few years, if it happens at all. In addition, even if this is achieved, the revision might be applied prospectively rather than retrospectively since the application of Article 58 of the Vienna Convention, in this case, is debatable. Moreover, the ICC does not have sufficient material and personnel resources to cover yet another type of international crime, given the scale of war crimes and crimes against humanity recorded in Ukraine. Furthermore, the ICC mechanisms do not provide for the possibility of administering justice *in absentia*, which significantly reduces the opportunities for certain persons to be brought before the court.

## International Special Tribunal for the Aggression of Russia Against Ukraine

The need to have an international tribunal regarding Russia's aggression against Ukraine is contingent on several reasons:

1. To date, no international court (tribunal) has jurisdiction to administer justice against the political and military senior officials of Russia (in particular, against Putin, Medvedev, Shoigu, Gerasimov, Dvorkin, and others). These oligarchs promote aggression (for example, Pryhozhyn who finances private military companies and recruitment of mercenaries to fight in Ukraine) for committing the crime of aggression against Ukraine.

2. Impunity for such actions has already brought significant casualties among Ukrainians following the new large-scale round of aggression against Ukraine. This is evidenced by numerous facts of torture, murder, rape, and other crimes discovered after the liberation of the occupied territories of Kyiv, Chernihiv, Sumy, and Kharkiv oblasts.

3. Therefore, creating a special tribunal or giving the International Criminal Court jurisdiction over the crime of aggression against Ukraine will bridge a huge gap in international criminal law. It will make it possible to bring to justice the political and military senior officials of Russia for the crime of aggression and prevent new predatory wars by totalitarian and authoritarian regimes.

4. Furthermore, the tribunal will have certain symbolism because, in essence, it will be the second case in modern history after the Nuremberg and Tokyo Tribunals when a state's senior officials can be directly convicted of the crime of aggression.

5. The newly established tribunal may provide in its statute for a mechanism of compensation for damage caused as a result of Russia's aggression, meant both to the Ukrainian state as a whole, and to individual citizens or legal entities that have suffered losses.

## The official position of Ukraine and the international community on the tribunal for aggression

After February, 24, 2022, Ukraine intensified the processes of finding effective international legal mechanisms for investigating the crime of aggression and creating an appropriate judicial authority. One of the first initiatives to establish an Ad Hoc Tribunal for the Crime of Aggression against Ukraine after February, 24, 2022 was presented on March, 4 by the Minister of Foreign Affairs, Dmytro Kuleba, and a group of well-known international lawyers<sup>5</sup>, with the support of the Royal Institute of International Relations Chatham House: Statement on the Establishment of a Special Tribunal to Punish the Crime of Aggression Against Ukraine<sup>6</sup>.

Since then, the initiative has been supported by the Parliamentary Assembly of the Council of Europe, by the European Parliament, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, as well as by international and national organizations.

On July 14, 2022, in The Hague (The Netherlands), during the International Conference on Prosecuting Russia for Crimes in Ukraine, the Minister of Foreign Affairs of Ukraine, Dmytro Kuleba, called for the establishment of a Special Tribunal for the Crime of Aggression against Ukraine to bring the senior military and political officials of the Russian Federation to justice<sup>7</sup>, and presented some of its acceptable parameters for Ukraine. They described that such a tribunal:

1) It shall be based on recognised international standards, rules and approaches applied by the International Criminal Court and set out in its Rome Statute. It shall investigate and prosecute crimes of aggression against Ukraine committed on its territory, as defined in Article 8 *bis* of the Rome Statute but may include additional mechanisms and procedures, in particular for dealing with compensation for damage caused by aggression; 2) It shall have jurisdiction over all events starting from February 2014, the beginning of the armed aggression of the Russian Federation against Ukraine; 3) It shall have jurisdiction over individuals who exercise effective control over or directly direct the political or military actions of the state; 4) It shall not be limited with any immunities, that is, the official status of the defendant, such as the status of the head of state, or the official status of another official of the state, will not exempt such a person from individual criminal responsibility and will not mitigate punishment; 5) It shall consider only crimes of aggression against Ukraine and will be established as an international special criminal tribunal for armed aggression of Russia against Ukraine.<sup>8</sup>

On September 22, 2022, the President of Ukraine Volodymyr Zelensky created a working group in a Decree No. 661/2022, which will work on the matter of creating a Special International Tribunal for the crime of aggression against Ukraine. Also, on September 22, 2022, the Parliament

website reported on the setting up of an interfactual deputy team "Tribunal for Russian Aggressors." It will also contribute to the creation of a special tribunal for aggression and the development of a compensation mechanism for damages caused by the Russian Federation's armed aggression.

## Setting up the tribunal

In general, in the public sphere, the process of discussing various ways for setting up the tribunal and its potential model has not yet gained wide publicity and was a relatively closed discussion among a narrow circle of specialists in international humanitarian law, since this is a sensitive issue of communication with international partners and is dictated by the need to minimise any Russia's opposition to the process of setting up the tribunal.

At the same time, according to the Ambassador for Special Assignments of the Ministry of Foreign Affairs of Ukraine, Anton Korynevych, several mechanisms for the creation of a tribunal for aggression are currently under consideration:

- under an agreement with the United Nations on the recommendation of the General Assembly;
- under an agreement with a regional organisation (EU, Council of Europe);
- based on a multilateral international treaty.

Thus, the individual elements and the mechanism for the establishment of the tribunal will still be the subject for consultations and negotiations. Therefore, let us consider the advantages and disadvantages of each of these models.

## Mechanism for setting up a tribunal for aggression under an agreement with the United Nations on the recommendation of the General Assembly

The model was proposed at the meeting of the Yale Club. It foresees the setting up of a tribunal to deal with crimes of aggression through an agreement between Ukraine and the United Nations, on the recommendation of the General Assembly. There is a similar proposal from the Ukrainian working group Global Accountability Network<sup>9</sup>. They propose a draft resolution of the UN General Assembly and the statute of the special tribunal set up by the UN and Ukraine.

There are several essential features of the new tribunal in the Yale Club proposal that are shared by some, but not all, of these available proposals:

1. The tribunal should be international, aimed at depriving of the immunity of Russia's senior officials involved in the aggression against Ukraine (in fact, this feature coincides with the general approach of all stakeholders involved in the discussion of this process).
2. The tribunal shall be set up through an agreement between Ukraine and the United Nations, on the recommendation of the



General Assembly<sup>10</sup>. Although the General Assembly does not have the authority to impose the tribunal on Ukraine (since it does not have any such enforcement powers as the Security Council has), they may authorise the Secretary-General to work with Ukraine to establish a tribunal to which Ukraine voluntarily agrees through an international treaty.

3. The tribunal should be limited in scope, that is, such tribunal should focus only on the crime of aggression, and focus on those who hold senior positions; and its jurisdiction should not include crimes that can be prosecuted in the ICC or in national courts.

The key challenge to the setting up of such a court is the fear of international partners to create an international precedent, because other states will be able to demand the adoption of similar measures in other cases. In addition, it will be necessary to enlist the support of most UN member states, which also significantly delays the process of setting up the court.

Without reform of the UN Security Council, the establishment of such a tribunal by its decision is unlikely, since the procedure for making such a decision will require the consent of Russia as a permanent member of the UNSC. Given the fact that the reform of the UN Security Council may take a long time, this option for creating such a tribunal is not seriously weighed.

**Mechanism for the establishment of a tribunal for aggression under an agreement with a regional organization (EU, Council of Europe).**

The model may involve the creation of both, a special and a "hybrid" tribunal, integrated into the national justice system (its shortcomings can be found further below). It should be noted that the EU is a better framework for the establishment of such a court than the Council of Europe. This comes from the difficulty of obtaining a unanimous decision in the Committee of Ministers of the Council of Europe. Besides, there have been no precedents for establishing any such ad hoc levels of jurisdiction in the framework of the Council of Europe.

At the same time, among the 13 countries that opened national war crimes proceedings in Ukraine, there are 9 EU Member States. Moreover, Eurojust received a mandate from the European Commission to collect and store data on international crimes committed in Ukraine, and it plays a key role in coordinating international effort to investigate them through the JIT Network<sup>11</sup>. In addition, the EU has experience in establishing a special tribunal on the basis of an agreement between Kosovo and the EU. It was The Kosovo Specialist Chambers and the Specialist Prosecutor's Office. The model may show certain disadvantage, such as that such an international instrument of prosecution would be based on the support of few partner states. On the other hand, the UN General

Assembly can further support the mechanism of the special tribunal for Ukraine in the process of its formation, or afterwards, which will give more legitimacy to its functioning.

## Mechanism for the establishment of a tribunal for aggression on the basis of a multilateral international treaty

This mechanism is basic, in case it is impossible to implement the above options. It will be implemented on the basis of the parameters listed by the Minister of Foreign Affairs of Ukraine (see above). It could have the format of a “hybrid” tribunal integrated into the national justice system, when signatory countries to a multilateral international treaty recognise its jurisdiction. For example, the International Public Law and Policy Group (PILPG) has proposed a draft law on the Ukrainian High Court for War Crimes<sup>12</sup>, a specialised court in the national judicial system of Ukraine that will prosecute violent crimes, including the crime of aggression, that are not prosecuted in the ICC<sup>13</sup>. Serhii Sayapin, an associate professor and associate dean of the Law School of KIMEP University (Almaty, Kazakhstan), considers the approach to be the most effective, taking into account the experience of Ukraine in bringing to justice the ex-President, Viktor Yanukovich, for the crime of aggression. In fact, he was convicted of treason and aiding Russian Federation’s aggression against Ukraine in 2014, which led to the occupation of Crimea. In addition, there are members of the Russian Federation’s Main Intelligence Department, Aleksandr

Aleksandrov and Yevheniy Yerofeyev, who, in connection with their participation in hostilities in the East of Ukraine, were convicted under Part 2 of Art. 437 of the Criminal Code of Ukraine for waging an aggressive war.<sup>14</sup>

However, the model has significant disadvantages:

- the conviction by such a court makes it difficult to prosecute Russia’s and Belarus’s senior officials who enjoy the immunity;
- Art. 125 of the Constitution of Ukraine prohibits the creation of extraordinary or special courts; thus, the introduction of the model will require amendments to the Constitution of Ukraine, which adoption is impossible during the active phase of hostilities and the operation of the martial law.

## The challenges and risks for the International Tribunal for Russia’s aggression against Ukraine

There are also challenges and concerns about the feasibility of effective administration of justice with regard to the crime of aggression by such a tribunal. It should be taken into account and, if possible, mitigated under any model of the tribunal:

1. Possible non-recognition or non-extension and overlapping of jurisdictions. In the absence of a UN Security Council sanction (decision), such a tribunal will be voluntary in terms of accession of states to an

international treaty on the establishment of the court and the recognition of its jurisdiction. The latter would determine the implementation of its decisions and the possibility of ensuring the inescapable punishment for the crime of aggression. Concerns about overlapping jurisdictions with the ICC have been also raised. That is why it must be emphasized that the tribunal will not interfere with the ICC since such an ad hoc tribunal will only investigate the crime of aggression against Ukraine. The ICC will continue to deal with three other types of international crimes regarding the situation in Ukraine (war crimes, crimes against humanity, and genocide). Such an approach was proclaimed in the above-mentioned Statement on the Establishment of an Special Tribunal to Punish the Crime of Aggression Against Ukraine<sup>15</sup>.

2. Condemnation with no personal presence in the court of Russia's and Belarus's officials responsible for aggression, as well as persons who contributed to such aggression, such as financing it (in absentia). Unless Russia is defeated in this war or Russia's democratic transformation takes place in another way, it is highly probable that ensuring personal participation in this process of these categories of persons will be impossible. At the same time, the continuation of the policy of impunity will lead to new aggressions.

3. Challenges related to compensation for damages caused by aggression. The purpose of bringing to justice those responsible for

aggression is not only to condemn these persons but also to compensate for the damage caused by the aggression. Such reparations may be made from two main sources: funds and property located abroad and owned by persons who facilitated and financed the aggression (for example, oligarchs involved in the aggression) and the aggressor states in general. This entails the expansion of the mandate for such a tribunal to impose such punishment as confiscation of foreign assets in favour of Ukraine. However, as a rule, the subjects of the crime of aggression are specific representatives of Russia and Belarus rather than the aggressor state in general. This requires the continued search for effective mechanisms of compensation for damage from the aggressor states in general by bringing them to justice for violation of the Charter of the United Nations and their aggression against Ukraine with the possibility of confiscating their assets.

## Conclusion

1. The encroachment of Russia, a permanent member of the UN Security Council, on the international legal order set up after the Second World War requires an adequate response from the entire civilized world because impunity breeds new aggression and victims. The response would include the setting up of effective international legal mechanisms for bringing before the court the international criminals associated with the aggression.

2. Because of this, the jurisdictional gap regarding the crime of aggression, which developed from the fact that the ICC does not have the mandate to investigate it in the context of Ukraine's situation, must be overcome in the shortest possible time by establishing an ad hoc International Tribunal for Russian aggression against Ukraine.

3. Such a tribunal should have international judicial jurisdiction over the crime of aggression, which will be recognised by a broad international coalition and provide a mechanism for compensating losses caused by Russian aggression.

4. Certain elements and the mechanism of setting up the International Tribunal for Russia's aggression against Ukraine should be the subject of consultations and negotiations. As of now, the mechanism under the agreement with the European Union is a promising solution to create the tribunal. In this case, the positive experience of Kosovo in setting up The Kosovo Specialist Chambers and the Specialist Prosecutor's Office can be taken into account, to a certain extent, although in the context of Ukraine it is not without shortcomings, from the point of view of the Constitution of Ukraine.

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<sup>1</sup> UN General Assembly Resolution. 1974. Resolution 3314 (XXIX). 2319th plenary meeting, 14 December 1974. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>

<sup>2</sup> UN General Assembly, 1998. Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

<sup>3</sup> UN General Assembly, 1998. Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

<sup>4</sup> Ukraine. Verkhovna Rada. 2001. The Criminal Code of Ukraine (last amended 2022). 5 April 2001. <https://zakon.rada.gov.ua/laws/show/en/2341-14#n3035>

<sup>5</sup> "Ukrainian International Criminal Justice Week (13-22 July 2022)", *Parliamentarians for Global Action*, accessed October 30, 2022, <https://www.pgaction.org/news/accountability-ukraine.html>

<sup>6</sup> Philippe Sands, Dapo Akande, Philippe Leach, Gordon Brown (former British Prime Minister), Nikolai Gnatkovsky and others.

<sup>7</sup> "Statement on the Establishment of an Special Tribunal to Punish the Crime of Aggression Against Ukraine", *European Pravda*, accessed October 30, 2022, <https://www.eurointegration.com.ua/files/a/a/aad78ad-combined-statement-and-declaration-1-.pdf>

<sup>8</sup> Дмитро Кулеба в Гаазі назвав п'ять параметрів майбутнього Спецтрибуналу для покарання керівництва РФ за злочин агресії проти України, accessed October 30, 2022, Дмитро Кулеба в Гаазі назвав п'ять параметрів майбутнього Спецтрибуналу для покарання керівництва РФ за злочин агресії проти України | Міністерство закордонних справ України (mfa.gov.ua)

<sup>9</sup> "Dmytro Kuleba, called for the establishment of a Special Tribunal for the Crime of Aggression against Ukraine to bring the senior military and political officials of the Russian Federation to justice",

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*Ministry of Foreign Affairs of Ukraine*, July 14, 2022, <https://mfa.gov.ua/news/dmitro-kuleba-v-gaazi-nazvav-pyat-parametriv-majbutnogo-spectribunalu-dlya-pokarannya-kerivnictva-rf-za-zlochyn-agresiyi-proti-ukrayini>

<sup>9</sup> Professor David M. Crane, Kanalya Arivalagan, Rohan Bhattacharjee, Lotta Lampela, "Considerations for the Setting up of The Special Tribunal for Ukraine on the Crime of Aggression", *The Ukraine Task Force of The Global Accountability Network*, July 2022, <https://2022.uba.ua/wp-content/uploads/2022/07/the-special-tribunal-for-ukraine-on-the-crime-of-aggression.pdf>

<sup>10</sup> There are precedents, in particular the Extraordinary Chambers in the Courts of Cambodia (established pursuant to a recommendation of the General Assembly) and the Special Court for Sierra Leone (established pursuant to recommendations of the Security Council, which did not act under its authority under Chapter VII to deal with threats to the peace, breaches of the peace, and acts of aggression).

<sup>11</sup> How the EU Could Lead on Accountability for International Crimes in Ukraine. European Union-backed Specialized Chambers in the Courts of Ukraine or a Hybrid Court. Open Society Foundation. Concept Note. Version of 19 September 2022.

<sup>12</sup> "Draft Law for a Ukrainian High War Crimes Court", *Public International Law & Policy Group*, accessed October 30, 2022, <https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/62d6c27baae10b6ca51cadb7/1658241661209/DRAFT+Ukraine+High+War+Crimes+Court.pdf>

<sup>13</sup> Oona A. Hathaway, "The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I). An agreement between the United Nations and Ukraine can pave the way", *Just Security*, September 20, 2022, <https://www.justsecurity.org/83195/the-case-for-creating-an-international-tribunal-to-prosecute-the-crime-of-aggression-against-ukraine-ua/>

<sup>14</sup> Iryna Nazarchuk, "What should the Special Tribunal be for the crime of aggression against Ukraine?", *Yurydychna hazeta*, July 12, 2022, <https://yur-gazeta.com/publications/practice/mizhnarodne-pravo-investiciyi/yakim-buti-specialnomu-tribunalu-shchodo-zlochynu-agresiyi-proti-ukrayini-.html>

<sup>15</sup> "Statement on the Establishment of an Special Tribunal to Punish the Crime of Aggression Against Ukraine", *European Pravda*, accessed October 30, 2022, <https://www.eurointegration.com.ua/files/a/a/aad78ad-combined-statement-and-declaration-1-.pdf>

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