

Vilnius | 6 May 2022

International Conference

CRIMINAL RESPONSIBILITY FOR THE CRIME OF AGGRESSION AGAINST UKRAINE: WHAT ARE OPTIONS FOR JUSTICE?

Vilnius Communiqué

Upon the kind invitation of the Ministry of Justice of the Republic of Lithuania and the Law and Democracy Centre (Justice Hub), under the patronage of the Prime Minister of the Republic of Lithuania, an international conference “Criminal Responsibility for the Crime of Aggression against Ukraine: What Are Options for Justice?” was held in Vilnius (Lithuania) on 6 May 2022.

More than a hundred experts of international law, politicians and other public figures from different countries, including a number of signatories of February-March 2022 Combined Statement and Declaration calling on the international community to create a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine, took part in the Conference.

The subject of the Conference was divided into four sub-topics:

- 1) why trials for aggression are vitally important for the survival of an international community and prosecution possibilities?;
- 2) the aggressive policy of Russia: its origins, aims and contents, and ideological justification for the war of aggression;
- 3) the crime of aggression against Ukraine: International Criminal Court and other possibilities?;
- 4) legal rationale for the establishment of the Special Tribunal: jurisdiction, composition, functioning and procedure (act of indictment, immunities, trials in absentia, and enforcement).

Each sub-topic was discussed in a special panel. In the closing session, the discussions of each panel were summarised, and this Communiqué was adopted on behalf of the participating panellists.

The prohibition of aggression is a distinctive achievement of modern civilisation and international law. War was outlawed by the General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg–Briand Pact or Pact of Paris) of 27 August 1928. Now acts of aggression are unequivocally considered to be the most serious form of the illegal use of force pursuant to Article 2(4) of the United Nations Charter - a core principle of the United Nations.

As emphasised by the Nuremberg International Military Tribunal in its Judgment of 1 October 1946, “war is essentially an evil thing. Its consequences are not confined to the belligerent States alone but affect the whole world. To initiate a war of aggression, therefore, 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”. That is why the crime of aggression cannot be left unpunished; the effective prosecution of those responsible for aggression is an essential precondition for ensuring perpetual peace and friendly relations between peoples, based on such common values as self-determination and freedom, the rule of law, pluralistic democracy and human rights, i.e. for the aims declared by the United Nations Charter, the Statute of the Council of Europe, the Treaty on the European Union and other international and regional instruments.

The participants at the Conference, being those invited to speak as panellists in relation to the four topics, note that the war launched by Russia against Ukraine may meet the definition of almost all illustrative examples of acts of aggression enumerated in UN General Assembly resolution 3314 (XXIX) on the Definition of Aggression. It is also true that this war has resulted in international crimes that shake the conscience of humankind.

The participants at the Conference underline that the crime of aggression against Ukraine, as well as the other international crimes that have followed, must be seen in the context of the rule of Vladimir Putin, and actions taken over the past two decades. Some panelists understood the actions to be taken in pursuit of a particular ideology (sometimes referred as the “Russian world” view, or “Russian-ism”), which seeks to glorify the Soviet past, deny an independent existence for Ukrainian and Belarusian people, and claim a broader Russian sphere of exclusive interests and influence. The approach fails to respect the rule of law, human rights and other basic principles of democracy.

The participants at the Conference addressed ongoing investigations into international crimes arising out of Russia's war of aggression against Ukraine, including those before the International Criminal Court as well as those instituted by means of national law, including under universal jurisdiction. The Rome Statute of the International Criminal Court's definition of, and jurisdiction over, the crime of aggression, as well as obstacles to the prosecution of crime of aggression committed against Ukraine before the International Criminal Court were also discussed.

The participants of the Conference examined the possibility of states, acting through the United Nations or a regional organisation, or by a special multilateral treaty between like-minded states, establishing a special criminal tribunal to exercise jurisdiction arising under national criminal codes and general international law to investigate both the perpetrators of crimes of aggression and those who have materially contributed to the commission of such crimes.

The International Criminal Court has jurisdiction in respect of war crimes and crimes against humanity committed on the territory of Ukraine, and the jurisdiction of the Special Tribunal would support and complement the work of the ICC, avoiding any duplication of jurisdiction. It would assess the planning, preparation, initiation and execution of the crime of aggression committed against Ukraine, including its origins and roots, and taking into account preceding acts of aggression against other countries. Those most responsible - the highest political and military leadership of Russia, as well as the highest political and military leadership of the Belarus regime, who have provided territorial and other assistance to Russia for perpetrating acts of aggression against Ukraine – should be held to account by the proposed tribunal.

The participating panellists of the Conference:

- **Reiterate the importance for present and future generations of ending impunity for the core international crime - the crime of aggression - against Ukraine;**
- **Express support for all international and national legal efforts undertaken to investigate and prosecute individuals responsible for war crimes and crimes against humanity committed in Ukraine, and to establish an effective mechanism to investigate and prosecute individuals responsible for the crime of aggression committed against Ukraine;**
- **Welcome the recent proposal made by the Parliamentary Assembly of the Council of Europe (Resolution 2436 (2022) and Recommendation 2231 (2022)), which encourages, as a matter of urgency, the establishment of an ad hoc international criminal tribunal for the investigation and prosecution of the crime of aggression committed by the political and military leadership of the Russian Federation;**
- **Call upon states to engage in further discussions, as a matter of urgency, on the establishment of an ad hoc international criminal tribunal to investigate and prosecute those responsible for the crime of aggression committed against Ukraine, and to consolidate political will with a view of implementing the proposal made by the Parliamentary Assembly of the Council of Europe;**
- **Encourages the creation of an active international network of lawyers, including academics and practitioners, to support the establishment of the ad hoc international tribunal for the crime of aggression against Ukraine.**