

**Committee of Legal Advisers on Public International Law  
(CAHDI)**

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for the Crime of Aggression against Ukraine***

Chairperson, honourable members of the committee, ladies and gentlemen

Thank you for inviting me to speak about the Special Tribunal for the Crime of Aggression against Ukraine. In my presentation I will start by looking back shortly on developments in 2025 and say some words about where we stand now and what are the next steps. I will touch upon the interim-headquarters agreement to be prepared and I will elaborate on the relationship and cooperation between the Special Tribunal and the ICC.

1. Looking back, what were the milestone moments in 2025?

- The core group concluded its work in Strasbourg exactly one year ago this week (19-21 march) and the ministers of the Core Group Countries gave their political blessing in Kyiv in May 2025. This was followed by CM decision on the bilateral agreement in June 2025.
- The crowning achievement was the signing of the bilateral agreement between Ukraine and the Council of Europe by president Zelensky and Secretary General Berset on 25 June 2025
- Since then, further work on establishment of the Special Tribunal and the finalization and adoption of the Enlarged Partial Agreement (EPA) on the Management Committee of the Special Tribunal has been conducted within the Council of Europe through the GT Tribunal, chaired by the Netherlands.
- Another important development in 2025 was the decision by the Dutch government taken, on 28 October, to host the first phase of the tribunal – colloquially known as the “skeleton tribunal”. This decision was essential for the process towards the practical establishment of the Tribunal to be able to move forward.
- For the last phase – the fully operational tribunal – the Netherlands has not made a host state offer at this time.

2. So where do we stand now, and what are the next steps?

- The work in the GT-Tribunal has yielded important results. A few days ago, here in STR, a draft decision on the modalities for the adoption of the EPA on the management committee of the special tribunal was agreed in principle – which is going to be presented to the Committee of Ministers for adoption.

- Member states of the Council of Europe as well as non-member states can notify their intention to join, unconditionally or conditionally, depending on national procedures and clarity on budget.
- When sufficient states, a number 16 or more are on board, including the major contributors of the EPA, and budget parameters will be adequate, the Committee of Ministers can then decide on the entry into force of the EPA.
- Some states, including the Netherlands, are ready to join and have already notified the Secretary General of the Council of Europe of their intention to join. The Netherlands did not need parliamentary approval for this.
- The Netherlands hope that many more states will join those that have already stated that they will join the EPA, so we can reach the necessary number of states as soon as possible to be able to move forward.
- Another important result is that, thanks to funding received from the EU, the Advance Party (AP) of the Tribunal has become operational as of 1 February 2026. The AP will make important practical preparations for the work of the skeleton tribunal to start, for example in relation to housing, cybersecurity issues, etc. The Netherlands, as a host country, is actively engaging with the AP on the further continuation of the planning process.
- We have shared an overview of costs and timelines of the host-nation offer for the first phase and are briefing Council of Europe member states in Strasbourg on what this offer entails.
- In the meantime, we have started scoping locations for the Skeleton Tribunal in the Netherlands, and are working together with AP, Ukraine and other member states to develop scenarios for the final operational phase of the Tribunal. For that purpose, certain crucial cost- and security-defining aspects of the final phase, have yet to be determined, such as which detention facilities need to be in place, and whether witnesses will be able to participate via video.
- The Netherlands cannot decide on these aspects alone. This is a joint effort and responsibility in which the AP will play an important role, and we are working together to complete this puzzle. We are looking forward to a visit of them soon to the Netherlands, where we will be working on a number of these issues quite intensively.

### 3. Some words on the interim-headquarters agreement.

- One important task of the Advance Party is to prepare the interim-headquarters agreement, which will be concluded between the skeleton-tribunal and the host state. The interim agreement will provide the legal basis for the skeleton-tribunal's functioning on Dutch territory.
- Similar interim agreements have been concluded with other tribunals, including the ICC.
- Contrary to a 'full' headquarters agreement, such interim agreements do not require parliamentary approval. This makes the process towards their conclusion less complicated and – generally speaking – more speedy than the ratification of a 'full' headquarters agreement.
- An interim agreement provides the legal basis for the tribunal to start setting up and make practical arrangements for its operations. However, an interim-

headquarters agreement does not provide a legal basis for the tribunal to exercise jurisdiction on the territory of the Netherlands. Therefore, the commencement of the operations of the tribunal remains subject to the conclusion and entry into force of the full headquarters agreement.

- A similar process will take place with regard to the Special Tribunal. An interim agreement will be concluded to allow the skeleton-tribunal to start setting up the tribunal's operations.
- Once a decision has been made regarding the hosting of the tribunal in its fully operational phase, the full headquarters agreement will be concluded and ratified between the Special Tribunal and the host state.

4. Finally, I want to touch on a subject that is of particular importance to the Netherlands as host state – not only for the skeleton-tribunal, but also for the ICC.

- The requirement that the Special Tribunal will not undermine the mandate and work of the ICC is one of the conditions for the Netherlands' willingness to host the skeleton-tribunal.
- The Netherlands considers the ICC and the Special Tribunal to be complementary to each other.
- The Special Tribunal is a temporary institution whose jurisdiction is limited to a specific instance of aggression, namely the aggression committed against Ukraine.
- The Dutch government has consistently expressed the view that the necessity of establishing the Special Tribunal lies in fulfilling the accountability gap resulting from the ICC's inability to exercise jurisdiction over the aggression committed against Ukraine.
- Moreover, the Dutch advisory council on international law (CAVV) has noted that the initiative to establish a special tribunal for crimes of aggression against Ukraine could have a positive effect on the functioning of the ICC, as long as it is accompanied by support for proposals to amend the Statute of the ICC to this effect. This is referred to as the 'two-track approach'.
- In a resolution adopted on 9 July 2025, the Assembly of States Parties has committed itself to the aim of strengthening the jurisdiction of the ICC over the crime of aggression and has decided to convene a Special Session in 2029 to consider proposals for amendments to the Rome Statute and other routes to achieve this aim. It also decided to establish a dedicated subgroup to take this process forward and to convene an intersessional meeting in 2027 to take stock and to advance the discussion.
- The Netherlands has long supported, and continues to support, these efforts to strengthen the jurisdiction of the ICC over the crime of aggression.
- In addition, Article 46 of the Statute of the Special Tribunal ensures that the tribunal and the ICC are not only complementary in principle, but also in practice.
- This article requires that the Special Tribunal shall co-operate with the International Criminal Court on all matters of mutual concern and provides that it may conclude agreements or practical arrangements with the International

Criminal Court with a view to ensuring the effective exercise of their respective jurisdictions.

- Moreover, this article stipulates that nothing in the statute shall negate the existing obligations of States Parties to the Rome Statute to co-operate fully with the International Criminal Court. It also provides that, where the Special Tribunal and the ICC have pending cases against the same person, the Special Tribunal shall give priority to the proceedings before the ICC, whenever that person has been apprehended and detained by the ICC.
- According to the Netherlands, this ensures that the ICC's proceedings will not be undermined, while simultaneously allowing the Special Tribunal to move ahead with its own investigations and proceedings.

Mrs. Chairperson,

Let me conclude. We have made considerable steps in the process of establishing the Special Tribunal, one of the pillars of restoring justice and comprehensive accountability for Ukraine. The legal framework for the Special Tribunal is now mostly in place, now we need to rally the political will to move forward. We call upon all states to swiftly sign the EPA.

Accountability and the safeguarding of and enhancement of international legal order are responsibilities shared by us all. The Netherlands is and remains a committed and dedicated partner in these efforts. We have offered to be host state for the initial phase of the Tribunal. We engage with the Advance Team on everything needed for implementation, support them, and work together on developing options for Phase 2, the fully-fledged Special Tribunal.

Next year, from May to November 2027 the Kingdom of the Netherlands will chair the Council of Europe. As the Special Tribunal and the Claims Commission are accountability institutions under the auspices of the Council of Europe (with the initial phase of the Tribunal and the Claims commission hosted in the Netherlands, we plan to give due attention to their operationalization during our chairmanship.