

Seminar on the Special Tribunal for the Crime of Aggression against Ukraine
– What role for regional organisations such as the Council of Europe?
10 April 2024

“Future collaboration and cooperation of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) with the Special Tribunal”

Ms Margarita Šniutytė-Daugėlienė, Vice-President of Eurojust

Thank you very much. And thank you for the opportunity to participate in today’s interesting and timely discussion.

The Prosecutor General of Ukraine has already presented some elements of the International Center for the Prosecution of the Crime of Aggression against Ukraine (ICPA). During my intervention, I will invite you to take a closer look at the ICPA’s origins, working modalities, main challenges, the progress made so far, and the future perspectives.

Starting with the origins of the ICPA, it is obvious that the perpetrators of international crimes must be held accountable for their actions. It is crucial that this also applies in relation to the violation of one of the cornerstones of the modern international rules-based order, the prohibition of the use of force.

From the start of the Russian invasion, the Ukrainian authorities, together with the international community, have been discussing different possibilities to initiate prosecutions for the crime of aggression in relation to the war in Ukraine. However, it was also clear that from the start that agreeing on the way forward was going to take some time.

It was against this background that on 2 February 2023, the President of the European Commission, Ursula von der Leyen, announced the plans to establish the ICPA.

As mentioned by the Prosecutor General, the ICPA is a coordination platform set up by Eurojust in support of national judicial investigations into the crime of aggression related to the war in Ukraine. It is not a new international organisation nor a separate legal entity. Instead,

the ICPA participants carry out their investigative activities in accordance with their national laws on criminal procedure.

While the discussions about the establishment of the Special Tribunal are ongoing, the ICPA ensures that crimes are well documented and crucial evidence is not lost.

The ICPA also facilitates the exchange of information, evidence and specialist knowledge between the participants, and allows for the coordination and implementation of a common investigative and prosecutorial strategy.

The work of the ICPA thereby effectively prepares and contributes to the future prosecutions of the crime of aggression, irrespective of the jurisdiction before which these will be brought.

As was already mentioned, the ICPA currently consists of participants from six countries (Ukraine, Lithuania, Latvia, Estonia, Poland, and Romania). In addition, the US appointed a Special Prosecutor for the Crime of Aggression and the Office of the Prosecutor of the ICC also designated staff to participate in the ICPA's activities.

Now that we have covered the basics, I will say a few words about how the ICPA works in practice. The ICPA was officially launched at Eurojust in July 2023. The following September, the first in-person meeting of the ICPA took place where the ICPA participants discussed working modalities, preliminary strategies, and the distribution of tasks.

While several ICPA participants have been present at Eurojust's premises for longer periods, most of them are carrying out their work from their respective home countries, in addition to their regular professional duties. The participants are meeting each other frequently, either in person, at Eurojust, or online.

Topics discussed at these meetings include the general approach to the investigative framework and principal components of the case, types of relevant evidence, the coordination of investigative efforts and activities undertaken by individual ICPA participants, and of course, the ICPA's joint work products.

ICPA participants have also discussed a working level definition of the crime of aggression, but in the interest of the ongoing investigations, I cannot share any further details about that.

At some of their meetings, ICPA participants have invited legal scholars and other practitioners to share their knowledge and experience regarding the investigation and prosecution of international crimes.

As for the support provided by Eurojust, we have recruited a dedicated team of legal experts to assist the ICPA participants in their daily work. This team ensures optimal synergies between the ICPA and Eurojust's newly established Core International Crimes Evidence Database.

In addition, ICPA participants benefit from Eurojust's administrative, logistical and technical assistance. For example, we are now in the process of putting into place an automated translation system that covers all languages of the ICPA participants, and of course, Russian.

The ICPA's foundations may be solidly in place, but an endeavor of this kind is not without challenges. Of course, the most obvious one is the lack of recent judicial practice in the investigation and the prosecution of the crime of aggression. Directly linked to that is the lack of practitioners with relevant knowledge and experience. As a result, ICPA participants find themselves in uncharted territory and have to develop new processes and workflows from scratch. Other major challenges include access to evidence and safeguarding information security.

There are many more hurdles to overcome, but with a view to the time, I will conclude my intervention with a few remarks about the progress made so far and the ICPA's future perspectives. The ICPA has proven to be a real game changer in the accountability landscape. In the past few months, the ICPA participants have developed and deepened their knowledge on the crime of aggression and of investigative and prosecutorial strategies in complex case building.

ICPA participants have discussed and coordinated a common prosecutorial approach, and they have increased the evidence collection efforts, which is subsequently submitted to the Core International Crimes Evidence Database.

An important element is that through regular meetings and discussions, the participants have also fostered an atmosphere of mutual trust and teamwork, which will be crucial going forward.

All this brings me to the future perspectives of the ICPA. It goes without saying that the results of the ICPA's activities are being carefully recorded, including the initial investigative efforts and analysis of the evidence, as well as possible considerations for the next steps.

As mentioned earlier, the work of the ICPA does not anticipate a specific outcome of the political debate about the establishment of a tribunal. The ICPA participants are focused on building the case, and on collecting and safeguarding evidence. Their working modalities are flexible and will remain that way in order to adapt to the set-up of a future tribunal.

Through the ICPA, we make sure that crucial evidence is secured and that there is no time lost in building the case for the prosecution of the crime of aggression, wherever that prosecution will take place.

The fact that there is no final decision about a tribunal yet is also reflected in the ICPA's working methods. For example, evidence and other relevant documents will be translated into both Ukrainian and English to ensure that they can be used in various national and international jurisdictions.

Eurojust closely follows the discussions but refrains from taking a position on what should be the way forward. In line with our apolitical mandate, our focus as EU agency remains on providing concrete, practical support to national judicial authorities.

Nobody knows what the future holds, but one thing is clear: we will only get justice done through a global, collective and well-coordinated effort.

This includes important occasions like today where different stakeholders involved in the fight against impunity come together to exchange experiences, best practices and ideas. With this I would like to conclude my intervention, and I look forward to answering any questions you may have.