

Frequently Asked Questions - Special Tribunal for the Crime of Aggression against Ukraine

1. What is the Special Tribunal for the Crime of Aggression against Ukraine?

The Special Tribunal is a proposed tribunal that would be set up within the framework of the Council of Europe with the mandate to prosecute senior leaders for the crime of aggression against Ukraine. This crime refers to the decision to use armed force against another state, in violation of the UN Charter.

2. Why is a new tribunal necessary? Is the International Criminal Court (ICC) not already handling this?

The ICC has the jurisdiction to investigate war crimes, crimes against humanity, and genocide in Ukraine. However, it currently lacks the legal authority to prosecute the crime of aggression in this case due to jurisdictional limitations for the crime of aggression. A special tribunal would fill this gap.

3. Is there a plan/agreement setting out how the Special Tribunal will interact with the ICC (for example if they are dealing with the same suspects)?

The Special Tribunal will be complementary to the ICC, and the Special Tribunal and the ICC are expected to conclude agreements on mutual cooperation. When a person concerned is detained by the ICC, that will have primacy over proceedings before the Special Tribunal.

4. What exactly is the crime of aggression?

The crime of aggression is when a State's leaders launch or plan a war. It is considered a "leadership crime," meaning it concerns those in positions of power who made or facilitated the decision to go to war.

5. Who would be held accountable by this tribunal? Is the Russian Federation not already being held accountable in other ways?

The tribunal would focus on senior political and military leaders who are responsible for planning, preparing, initiating, or executing the crime of aggression against Ukraine.

The Russian Federation is also being held accountable in other ways — through sanctions, political condemnation, and ongoing legal proceedings before the European Court of Human Rights and other international courts.

However, holding individuals criminally accountable for the decision to wage a war of aggression is a separate and crucial step toward justice and deterrence. As pointed out above, although the ICC can prosecute individuals responsible e.g. for war crimes and crimes against humanity committed in the course of the war, it will not be possible to bring the waging of the war as such before the ICC in this case.

6. Would it also be possible for the Special Tribunal to prosecute the leaders of Belarus, and maybe even North Korea?

As the Special Tribunal deals with establishing accountability for the crime of aggression committed against Ukraine, Belarusian or North Korean individuals could potentially be prosecuted if evidence shows they played a significant role in the crime of aggression against Ukraine.

7. How will the tribunal be established? Who decides this?

The tribunal will be established within the framework of the Council of Europe and financed by a group of supportive states, going beyond the membership of the Council of Europe, in co-operation with

Ukraine. Setting up the Special Tribunal through the Council of Europe aims to ensure that it is international, independent and legitimate. The jurisdiction of the Special Tribunal will be based on Ukrainian territorial jurisdiction.

8. Will this tribunal be fair and impartial? How does this tribunal fit into the broader system of international justice?

The Special Tribunal will follow internationally and regionally recognised standards of due process and the rule of law – for instance, those of the European Convention on Human Rights – ensuring fair trials, defence rights and judicial independence.

The Special Tribunal will complement the existing work of the ICC and other international and national efforts to ensure accountability. Co-operation with the ICC and other international accountability mechanisms will be fundamental to the work of the Special Tribunal.

9. What political support exists for the tribunal? How does this help Ukraine?

The Core Group on the Establishment of a Special Tribunal for the Crime of Aggression against Ukraine is a group of senior legal experts from around 40 states who have been working together with the Ukrainian authorities, the Council of Europe, the EU Commission and the European External Action Service to seek justice for Ukraine in the face of the Russian Federation's aggression. The Core Group held its final meeting in Strasbourg on 19-21 March 2025.

Over 38 states have expressed political support for the establishment of the tribunal, as well as the European Union. The Parliamentary Assembly of the Council of Europe and the European Parliament have adopted resolutions in favour of its creation. Ukraine has been a key advocate, in particular in reaching out to states beyond Europe.

The establishment of the Special Tribunal through the Council of Europe gives Ukraine a path to justice for the top-level decision to invade its territory — a wrong that no other international court or tribunal can currently address.

The tribunal would reaffirm the fundamental principle that war must not be waged as a tool of state policy. It upholds the global international law-based order, deters future acts of aggression by state leaders and strengthens mechanisms for accountability and the peaceful resolution of disputes. In short, it is an investment in global peace, justice and the credibility of international law.

10. Which are the participating countries?

Some countries that support the idea of the Special Tribunal are still engaged in sensitive diplomatic discussions. They may be weighing how to balance their legal commitments, political alliances and broader foreign policy goals. Once the key legal documents for the establishment and functioning of the tribunal are formally accepted by states and come into force, the names of the Members and Associate Members will be made public.

11. How is the EU involved?

The European Union has been one of the strongest political supporters of the initiative. The EU has helped coordinate political backing among its member states and – through the establishment of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) in The Hague – provided a stepping stone for important preparatory work. The legal service of the Council of Europe cooperated closely with the EU legal services when drafting, refining and finalising the three legal documents setting up the Special Tribunal.

12. When will the Special Tribunal start its work?

The formal legal process for establishing the Special Tribunal through the Council of Europe can start only after the President of Ukraine formally invites the Secretary General to start work.

This is expected to happen in at the annual session of the Council of Europe's Committee of Ministers in Luxembourg on 14 May 2025. The Minister of Foreign Affairs of Ukraine, Andrii Sybiha, is expected

to deliver a letter to the Secretary General inviting him to start the process of establishing the Special Tribunal.

The legal work within the Council of Europe could be completed relatively quickly, and certainly before the end of the year. States would then need to approve the legal documents through their domestic proceedings. Financing for the tribunal should also be ensured.

13. Is it realistic to think this tribunal can bring Russian leaders to trial? Under what circumstances could the “troika” feasibly be tried?

There are clear legal, political and practical obstacles — notably, the immunity of sitting Heads of State, Heads of Governments and Foreign Ministers (so-called “troika members”) and difficulties in obtaining physical custody over potential defendants. However, international law is evolving, and personal immunity is not a carte blanche for impunity.

The “troika members” could only be brought to trial before the Special Tribunal if they were no longer in power or their immunity had been waived. However, investigations and the gathering of evidence can be conducted, indictments can be prepared and a legal body to prosecute and try the persons concerned stands ready if and when circumstances allow.

14. Will it be possible to carry out trials in absentia, and in which circumstances?

Yes, it will be possible to conduct proceedings in absentia where the interests of justice so require and where the person concerned waives his or her right to participate in the proceedings or where all reasonable steps have been taken to secure his or her presence but to no effect.

Persons tried in absentia will have the right to request the reopening of proceedings if they subsequently appear before the Special Tribunal in person, unless they waive that right or accept the initial judgment.

15. Whose idea was this in the first place?

The proposal to establish a Special Tribunal to prosecute the crime of aggression against Ukraine originated from Ukrainian legal experts and government officials soon after the full-scale invasion in February 2022. The idea quickly gained support from international lawyers, human rights organisations and several countries, particularly in Europe, who saw a clear legal gap in that no existing court could hold senior leaders accountable for the specific crime of aggression. The Parliamentary Assembly of the Council of Europe was the first international body to call for the establishment of such a tribunal in April 2022, just two months after the full-scale invasion.

16. How much would this cost? And who would pay for it?

While exact costs are still being worked out, the cost is likely to be similar to that of other international or internationalised criminal tribunals such as the Kosovo Specialist Chambers and the International Criminal Court. The Special Tribunal will be financed and managed by the Members and Associate Members of the Enlarged Partial Agreement set up for that purpose.

17. How would the judges and prosecutors be chosen?

Members and Associate Members of the Management Committee may propose candidates for the roster of judges. Nominated candidates would not need to be a national of a state that is Member or Associate Member of the Management Committee. The roster will include 15 judges. An independent advisory panel will recommend the most suitable candidate for the roster of judges to the Management Committee. The Management Committee will elect the judges to the roster by secret ballot, by an absolute majority and for a nine-year period.

Candidates for the Prosecutor shall be proposed by states that are Members or Associate Members of the Management Committee. Nominations for the post of the Prosecutor should preferably be made with the support of multiple states. The nominated candidate would not need to be a national of a state that is Member or Associate Member of the Management Committee. The advisory panel will recommend the most suitable candidates to the Management Committee. The Prosecutor will be elected by secret ballot by an absolute majority of the Management Committee. The term will be

seven years, without the possibility of re-election. The Deputy Prosecutor(s) would be elected in the same way as the Prosecutor, from a list of candidates provided by the Prosecutor for a term of seven years and without the possibility of re-election.

18. How would the tribunal ensure respect for its rulings or warrants, given recent developments concerning the ICC?

The Special Tribunal will be able to engage in co-operation agreements with states which will be bound by international law to ensure respect for its rulings and warrants.

International justice often faces challenges when states refuse to co-operate, but legal and political pressure can produce tangible results to ensure compliance with international judicial rulings and warrants.

19. How do moves towards setting up the tribunal relate to ongoing peace talks?

The Special Tribunal is about accountability. It is a long-term effort to address the crime of all crimes and uphold the rule of law. While peace talks focus on ending hostilities, justice mechanisms like this one ensure that those responsible for aggression do not get away unpunished.

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