

**Seminar on the Special Tribunal for the Crime of Aggression against Ukraine – what role for regional organisations such as the Council of Europe?**

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**Closing remarks**

Jörg Polakiewicz, *Legal Adviser/Director*

Dear colleagues & friends,

First, I would like to say a huge thank you to all our wonderful speakers and moderators who have participated in two very interesting and dynamic discussions today.

My apologies for those who could not find a place in the room. We took one of the biggest rooms in the Council but were overwhelmed by the interest.

Before presenting my brief concluding remarks, I would like to give the floor to Anton, co-organiser of this seminar.

It is neither necessary nor my ambition to summarise today's proceedings which will enrich discussions in the Council of Europe as well as in the Core Group.

I thank Professor Kreß for his opening remarks, which recalled the important role of the Assembly and emphasised the Council of Europe's suitability for this endeavour. This should not be seen as a European solution to what is a global challenge. Rather, it could indeed be understood in the sense that 'Europe places the Council of Europe in the service of the international community as a whole'.

Our first panel made clear that regional organisations such as the Council of Europe have a role to play in supporting the establishment and implementation of the mandate of international criminal justice institutions.

But can the Council of Europe play an active role in establishing a Special Tribunal through a bilateral agreement with Ukraine? Our panellists seem to think so. Professor Peters analysed the relevant principles and practices of international law. In my view, the scope of the powers of the Council of Europe to take binding decisions for member states is not so decisive in the current context. For one, Professor Giorgetti reminded us that also the Special Court for Sierra Leone was based on non-coercive powers of the UN Security Council under Chapter VI of the UN Charter. Moreover, the bilateral agreement between the Council of Europe and Ukraine would not create direct obligations for the member states as such. The Council of Europe would not be acting in lieu of its member states. No parallelism to the way the European Union concludes international agreements, for example trade agreements, can hence be drawn here. The Council of Europe would merely be acting upon the request of Ukraine to conclude the bilateral agreement to establish the Tribunal. The other member states would only be associated to the extent that they must accept that the Council of Europe follows up on this request. Any resulting financial obligations can be based on an enlarged partial agreement, following the successful example of the Register of Damage.

Not only is the Special Tribunal an expression of the Council's ultimate mandate – 'the pursuit of peace based upon justice and international cooperation' – but the Council also has the ability to create such an institution. One need not look further than the European Court of Human

Rights for an example of a successful judicial institution established within the institutional framework of the Council.

If this avenue is pursued, we shall have to address the critical matter of legitimacy and cross-regional support. The crime of aggression is not a European crime, but an international one and there are various ways to demonstrate this.

Apart from political endorsement by the United Nations General Assembly with which the Council of Europe cooperates closely, we can invite other regional organisations to collaborate and exchange views once the special tribunal has been established – for example, the Organisation of American States, the African Union or ASEAN.

Associating civil society across the globe to the process could ensure that global perspectives on criminal justice are understood and implemented.

Finally, as mentioned by Professor Kreß, one could imagine that candidates for judges need not be limited to only nationals of member states of the Council of Europe, with the intent that the judiciary have an appropriate geographic and equal gender distribution.

We have also heard from our second panel, how international courts and tribunals rely on state cooperation for various vital processes. The same will apply to the Special Tribunal.

Cooperation with non-members and our strategic partner, the European Union, will be essential. For this reason, we can envisage an Enlarged Partial Agreement to coordinate the funding and non-judicial operations of the Special Tribunal through a 'Management Committee'.

Building on its rich experience in matters of judicial cooperation in criminal matters, the Council of Europe would be able to facilitate the negotiations of cooperation treaties with the possibility of providing up to date as well as in-depth expertise, state practice compilations or guidelines for best practices.

I heard Foreign Minister Dmytro Kuleba on 2 April at The Hague conference arguing that the Ukrainian people does not want to hear that justice will be served, they want to see it already served, in the court rooms and real decisions.

What is said about the wheels of justice, that they 'turn slowly, but grind exceedingly fine' applies also to multilateralism which is a complicated and often painfully slow process. And yet, it is the only realistic option for democratic states to come together and join their forces to defend an international legal order founded on the principle that might cannot make right.

Creating the Tribunal in connection with the Council of Europe was a distant, unrealistic idea two years ago, when, at the 62nd CAHDI meeting in March 2022, Dapo Akande was a keynote speaker, and our Ukrainian friends organised a dedicated side event.

We now have a real possibility to do so. As Ambassador van Schaack - whom I also met in The Hague – declared the world is "at a critical moment in history".

What we are doing is to some extent unprecedented, but we do not start from scratch. There are examples of international tribunals created by regional organisations, as recalled by Prof Giorgetti. We have pieces of a puzzle, building blocks, we only have to put them together creatively.

It is now for the Council, Committee of Ministers and Parliamentary Assembly, and the Core Group to seize this opportunity.

I am confident that I and my wonderful team will be able to continue providing further expert support to the work of the Core Group.

Finally, thank you to our audience both here and online for participating in this event. We hope you have found it insightful, and we look forward to seeing many of you tomorrow for the CAHDI meeting.