

## 1532<sup>nd</sup> meeting, 18 June 2025

2 Current political questions

### 2.3 Consequences of the aggression of the Russian Federation against Ukraine

Draft Resolution CM/Res(2025)... establishing the Enlarged Partial Agreement on the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine

The representatives in the Committee of Ministers of ..., as well as the representatives of ...,

Having regard to the Statute of the Council of Europe (ETS No. 1), which in its preamble emphasises that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation;

Recalling the obligations of all States under Article 2 of the Charter of the United Nations, including the obligations to refrain, in their international relations, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means;

Reiterating their unwavering commitment to the independence, sovereignty and territorial integrity of Ukraine within its internationally recognised borders;

Recalling that the United Nations General Assembly, in its Resolution A/RES/68/262 of 27 March 2014, called upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine's borders through the threat or use of force or other unlawful means;

Recalling that the United Nations General Assembly, in its Resolution A/RES/71/205 of 19 December 2016, reaffirmed the responsibility of all States to refrain from the threat or use of force against the territorial integrity or political independence of any State and from acting in any other manner inconsistent with the purposes of the United Nations and urged the Russian Federation to immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice;

Recalling that the United Nations General Assembly, in its Resolution A/RES/73/194 of 17 December 2018, condemned the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol, and recalled that this temporary occupation and the threat or use of force against the territorial integrity or political independence of Ukraine by the Russian Federation are in contravention of commitments made to respect the independence and sovereignty and the existing borders of Ukraine;

Recalling that the United Nations General Assembly, in its Resolution A/RES/76/70 of 9 December 2021, urged the Russian Federation to completely and unconditionally withdraw its military forces from Crimea and end its temporary occupation of the territory of Ukraine without delay and further stressed that the presence of Russian troops in Crimea is contrary to the national sovereignty, political independence and territorial integrity of Ukraine and undermines the security and stability of neighbouring countries and the European region;

<sup>1</sup> This document has been classified restricted until examination by the Committee of Ministers.

Recalling that the United Nations General Assembly, in its Resolution A/RES/ES-11/1 of 2 March 2022, recognising that the military operations of the Russian Federation inside the sovereign territory of Ukraine were on a scale that the international community had not seen in Europe in decades, deplored in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2, paragraph 4, of the Charter of the United Nations, demanded that the Russian Federation immediately cease its use of force against Ukraine and deplored the involvement of Belarus in this unlawful use of force against Ukraine;

Recalling that the United Nations General Assembly, in its Resolution A/RES/ES-11/6 of 23 February 2023, emphasised the need to ensure accountability for the most serious crimes under international law committed on the territory of Ukraine through appropriate, fair and independent investigations and prosecutions at the national or international level, and ensure justice for all victims and the prevention of future crimes;

Recalling that the United Nations General Assembly, in its Resolution A/RES/79/184 of 17 December 2024, condemned the war of aggression against Ukraine by the Russian Federation in violation of Article 2, paragraph 4, of the Charter of the United Nations, and the use of Crimea for this and to support the attempted illegal annexation of the Kherson, Zaporizhzhia, Donetsk and Luhansk oblasts;

Recalling that, on 15 March 2022, the Parliamentary Assembly of the Council of Europe through Opinion 300 (2022) condemned the Russian Federation's aggression against Ukraine in the strongest terms, noting that the escalation of military activities as of 24 February 2022 represented a continuation of the war of aggression by the Russian Federation against Ukraine since 20 February 2014;

Recalling that, on 16 March 2022, the Committee of Ministers decided to exclude the Russian Federation from the Council of Europe as a result of its aggression against Ukraine, such aggression constituting a serious violation by the Russian Federation of its obligations under Article 3 of the Statute of the Council of Europe and under international law;

Convinced of the exigent necessity to ensure comprehensive accountability in the context of the Russian Federation's aggression against Ukraine and acknowledging the role played by the Council of Europe in providing a robust response to this aggression, as recalled in the Reykjavik Declaration adopted at the 4th Summit of Heads of State and Government of the Council of Europe on 16 and 17 May 2023 and its Appendix I entitled "Declaration in support of the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine";

Recalling the Charter of the International Military Tribunal of 8 August 1945, whose Article 6.a established individual criminal responsibility for crimes against peace;

Recalling the Rome Statute of the International Criminal Court and recognising the jurisdiction of the International Criminal Court with respect to the situation in Ukraine, but also recognising that, notwithstanding Ukraine ratifying on 25 October 2024 and becoming a State Party to the Rome Statute on 1 January 2025, the jurisdictional regime for the crime of aggression in the Rome Statute prevents the International Criminal Court from exercising jurisdiction with respect to the crime of aggression in this particular context;

Recognising the efforts of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) in co-ordinating and strengthening national investigations into the crime of aggression against Ukraine, in order to ensure appropriate investigation into the crime of aggression;

Recalling that the United Nations General Assembly, in its Resolution A/RES/79/284 of 16 April 2025, acknowledged the contribution of the Council of Europe to the work of the core group towards the establishment of a special tribunal for the crime of aggression against Ukraine, and its willingness to examine possible options to provide expert and technical support for the establishment and, as appropriate, operation of such a special tribunal;

Having regard to Statutory Resolution Res(93)28 of the Committee of Ministers on partial and enlarged agreements;

Having regard to Resolution Res(96)36 of the Committee of Ministers establishing the criteria for partial and enlarged agreements of the Council of Europe, as amended by Resolution CM/Res(2010)2;

Conscious of the need to provide a forum in which non-members of the Council of Europe may also participate in Council of Europe initiatives to fight impunity for international crimes;

Having regard to the decision of [...] whereby the Committee of Ministers authorised the establishment of the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Management Committee") in the form of an enlarged partial agreement within the framework of the Council of Europe and the decision of [...] whereby the Committee of Ministers authorised the Secretary General of the Council of Europe (hereinafter "Secretary General") to sign the Agreement between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Agreement") on behalf of the Council of Europe,

Resolve to establish the Enlarged Partial Agreement on the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine governed by the Statute of the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Statute") appended hereto;

Invite all member and observer States of the Council of Europe, as well as other States and international organisations, to become members of this Enlarged Partial Agreement, in accordance with this Statute;

Call on all Council of Europe member and observer States, the European Union, the United Nations and other States and international organisations to co-operate with the Management Committee and the Special Tribunal so as to facilitate its work and the fulfilment of its mandate.

*Appendix to Resolution CM/Res(2025)...*

## **Statute of the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine**

### **Article 1 – Aim of the Management Committee**

1. The Management Committee is hereby established as a platform for intergovernmental co-operation, acting within the institutional framework of the Council of Europe.
2. The aim of the Enlarged Partial Agreement on the Management Committee of the Special Tribunal for the Crime of Aggression against Ukraine is to finance the Special Tribunal for the Crime of Aggression against Ukraine (hereinafter "Special Tribunal") and to assist in other administrative and managerial aspects of its operation for the purpose of enabling the Special Tribunal to fulfil its mandate as set out in the Statute of the Special Tribunal.

### **Article 2 – Functions of the Management Committee**

The Management Committee shall:

- a. ensure the provision of the necessary funding for the Special Tribunal and the Management Committee, including its secretariat;
- b. approve the annual budget of expenditure of the Special Tribunal, as prepared by the Secretary General in consultation with the Registrar of the Special Tribunal;
- c. adopt the activity report of the Special Tribunal, as prepared by the President of the Special Tribunal;
- d. provide non-judicial advice and policy direction on all administrative aspects of the operation of the Special Tribunal, including questions of efficiency;
- e. recommend to members and associate members measures to advance the aims of the Special Tribunal and the Management Committee;
- f. draw up rules of procedure governing the work of the Management Committee and any other arrangements required for the implementation of its activities, and review the Rules of Procedure and Evidence adopted by the judges of the Special Tribunal and any amendments thereto;
- g. consider and adopt strategies, as appropriate, to further advance cross-regional support for the Special Tribunal;

- h. appoint members to the Advisory Panel and elect judges, the Prosecutor of the Special Tribunal (hereinafter “Prosecutor”) and Deputy Prosecutor(s) in accordance with the procedures prescribed by the Statute of the Special Tribunal;
- i. ensure the effective co-operation of members and associate members across all relevant sectors, based on a system of burden sharing;
- j. adopt rules governing the transition to a residual mechanism, in particular concerning the protection of witnesses, the supervision of the execution of sentences, the processing of requests for early, interim and final release, the preservation of evidence and records of the Special Tribunal, and financing of such residual functions;
- k. consider arrangements for the co-ordinated transition of certain non-judicial residual functions of the Special Tribunal to the Council of Europe, in particular regarding the management of records and archives;
- l. consider mechanisms to assist members and associate members with costs related to the enforcement of sentences, the release of sentenced persons and the protection of witnesses after the termination of the Enlarged Partial Agreement, including possibly through the establishment of a trust fund; and
- m. perform any other function necessary to perform its mandate.

### **Article 3 – Participation**

1. Any member or observer State of the Council of Europe and the European Union, any other State that has voted in favour of the United Nations General Assembly Resolution A/RES/ES-11/6 of 23 February 2023, or any State and international organisation that has participated in the Core Group on the Establishment of a Special Tribunal for the Crime of Aggression against Ukraine may become a member or associate member of the Management Committee by notification addressed to the Secretary General.
2. The Management Committee may authorise any other State or international organisation having so requested to join the Management Committee as member or associate member.
3. Associate members may, at any time, become members by notification addressed to the Secretary General.

### **Article 4 – Composition**

1. Each member shall, and each associate member may, appoint a delegation to the Management Committee consisting of not more than two representatives. One of the representatives shall be appointed as head of the delegation.
2. The Management Committee shall elect from among its members a chair and two vice-chairs for a non-renewable period of three years.

### **Article 5 – Meetings**

1. The Management Committee shall meet as often as is necessary, but at least once a year. Travel and accommodation costs relating to the participation in meetings of the Management Committee shall be borne by each member and associate member. The Management Committee may exercise its decision making through written procedure and by electronic means.
2. The first meeting of the Management Committee shall be convened by the Secretary General. Any further meetings and the location thereof shall be determined by decision of the Management Committee.
3. The Management Committee shall adopt its decisions by a two-thirds majority of the votes cast, with each member having one vote. Procedural matters shall be settled by a majority of the votes cast.
4. Without prejudice to paragraph 5 of this article, associate members may participate in the meetings of the Management Committee without the right to vote. Associate members may make oral or written statements in the meetings of the Management Committee.

5. Associate members having made voluntary contributions to the Management Committee of an amount equal to the amount determined by the Management Committee in accordance with Article 8 of this Statute, shall have the full range of rights of members during the financial year for which they made such a contribution.

6. The Secretary General may participate or be represented in the meetings of the Management Committee without the right to vote. The Management Committee may invite representatives of relevant Council of Europe bodies or international organisations to attend its meetings or a part of its meetings, without voting rights, according to the items on its agenda. It may also invite experts to be present for specific items of its agenda, without the right to vote.

#### **Article 6 – Secretariat**

1. The Management Committee shall be assisted by a secretariat provided by the Secretary General. The secretariat shall be headed by an Executive Secretary appointed by the Secretary General.

2. The Executive Secretary shall be entitled to enter into contracts and arrangements on behalf of the Management Committee upon its approval.

3. The Executive Secretary shall carry out the following functions:

- a. convening meetings of the Management Committee, in consultation with the chair;
- b. having day-to-day responsibility for overseeing and administrating the work of the secretariat of the Management Committee;
- c. together with the secretariat, ensuring administrative and organisational support for the work of the Management Committee, including regular liaison and preparation of its meetings;
- d. liaising with the President and the Registrar of the Special Tribunal on matters related to the work of the Management Committee;
- e. being responsible for forwarding documents from the President and the Registrar of the Special Tribunal to the Management Committee;
- f. liaising with relevant national and international bodies on various issues related to the work of the Management Committee;
- g. liaising with the government of the host State and Ukraine on various administrative matters related to the work of the Management Committee; and
- h. performing any other function vested in him or her by this Statute.

4. The Executive Secretary shall carry out any other function assigned by the Management Committee.

5. Without prejudice to paragraph 6 of this article, the secretariat shall have full administrative autonomy from the Council of Europe and its bodies.

6. The Council of Europe Staff Regulations shall apply to the secretariat, subject to Article 11 of this Statute.

#### **Article 7 – Independence**

1. As prescribed by the Statute of the Special Tribunal, the judges, the Prosecutor, the Deputy Prosecutor(s) and staff of the Special Tribunal shall be independent in the performance of their functions.

2. Each member and associate member of the Management Committee, as well as the Council of Europe and its bodies, commit to respecting the independence of the Special Tribunal, including its staff, judges, Prosecutor, Deputy Prosecutor(s) and offices, and to not seeking to influence them in the discharge of their responsibilities. Each member and associate member commits to respecting the exclusively independent character of the secretariat and to not seeking to influence it in the discharge of its responsibilities.

3. In accordance with the Staff Regulations of the Council of Europe, in the performance of their duties, members of the secretariat shall neither seek nor accept instructions from any government, authority, non-governmental organisation or other third party.

### **Article 8 – Financing and budget**

1. The Enlarged Partial Agreement shall have its own budget in accordance with Statutory Resolution Res(93)28, comprising the budget of expenditure of the Special Tribunal and of the Management Committee. The budget shall be financed through the annual contributions of its members and voluntary contributions of its associate members.

2. The Management Committee shall determine the amount of the annual contributions of its members and the recommended voluntary contributions of its associate members. These contributions should be based, as a rule, on the criteria for the determination of the annual scale of contributions to the general budget of the Council of Europe and can be adjusted in accordance with the principles on which that scale is based, while also taking into account any other contributions made in accordance with paragraph 3 of this article.

3. The Management Committee may receive and utilise additional voluntary grants and other contributions connected with its work, including contributions in kind and seconded staff. These contributions shall be consistent with the aims and functions of the Management Committee.

4. The Management Committee shall approve every year the budget of expenditure of the Special Tribunal, as proposed by the Secretary General in consultation with the Registrar of the Special Tribunal. The Management Committee shall also adopt its own budget of expenditure and that of its secretariat, as drawn up by the Secretary General.

5. The Management Committee shall approve every year the annual accounts of the Enlarged Partial Agreement, which shall be drawn up by the Secretary General in accordance with the Financial Regulations of the Council of Europe (hereinafter “Financial Regulations”) and submitted to the Management Committee accompanied by the report of the external auditor, as provided for in the Financial Regulations.

6. In order to discharge the Secretary General from responsibility for the management of the financial year in question, the Executive Secretary shall transmit to the Committee of Ministers the annual accounts of the Enlarged Partial Agreement, together with its approval or any comments, and the reports drawn up by the external auditor, as provided for in the Financial Regulations.

7. The Financial Regulations shall apply to the adoption and management of the budget of the Enlarged Partial Agreement, taking into account the provisions of this Statute.

8. The Management Committee’s financial resources shall benefit from the provisions of the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2).

### **Article 9 – Co-operation**

1. The Management Committee shall seek to co-operate with relevant national and international partners for the purposes of fulfilling its mandate.

2. Each member or associate member shall seek to co-operate, within the limits of its national legislation, with the Management Committee, Ukraine and the host State for the purpose of fulfilling the mandate of the Management Committee.

3. The Management Committee shall seek to ensure fair burden sharing in all relevant forms of co-operation with the Special Tribunal and shall discuss preferable modalities of co-operation between the Special Tribunal and members and associate members of the Management Committee. Members and associate members of the Management Committee will endeavour to conclude the necessary agreements and arrangements to facilitate the effective operation of the Special Tribunal, including on matters such as the identification and location of persons; service of documents; arrest, transfer or detention of persons; protection and relocation of witnesses; and enforcement of sentences.

4. The members and associate members of the Management Committee note that the entry into force of the host State agreement allowing for the exercise of jurisdiction of the Special Tribunal on the territory of the host State will be conditional upon the conclusion of [x] co-operation agreements and a minimum number of commitments relating to co-operation in each of the following areas:

- a. witness protection and relocation;
- b. enforcement of sentences;
- c. release, including interim release.

#### **Article 10 – Confidentiality**

Unless otherwise decided by the Management Committee, its meetings and documents shall be treated as confidential.

#### **Article 11 – Derogations from Council of Europe rules and regulations**

The Management Committee, with the approval of the Committee of Ministers, may derogate from applicable Council of Europe rules and regulations if doing so is required for the efficient exercise of the Management Committee's functions.

#### **Article 12 – Amendments**

The Statute of the Management Committee may be amended only by decision of the Committee of Ministers, in its composition restricted to the representatives of the States that are members of the Management Committee, by the majority stipulated in Article 20.d of the Statute of the Council of Europe and an identically worded decision of the Management Committee.

#### **Article 13 – Duration**

1. To protect the judicial independence of the Special Tribunal and ensure the effective fulfilment of its mandate, the Enlarged Partial Agreement shall not be subject to the three-year trial period requirement specified in paragraph 6 of the Committee of Ministers' Resolution Res(96)36 establishing the criteria for partial and enlarged agreements of the Council of Europe.

2. The Committee of Ministers may decide, upon the recommendation of the Management Committee, to terminate the Enlarged Partial Agreement.

3. Upon receiving a notification from the President of the Special Tribunal of the fulfilment of the mandate of the Special Tribunal, the Management Committee shall examine appropriate modalities for the establishment of a residual mechanism to succeed the Special Tribunal through a separate international instrument. The Management Committee may recommend to the Parties to the Agreement to dissolve the Special Tribunal and to establish a residual mechanism.

4. In a situation as described in paragraph 3 of this article, the Management Committee shall adopt a detailed transition plan upon recommendation of the Parties to the Agreement, the host State and the President of the Special Tribunal. This plan shall cover in particular the protection of witnesses; the supervision of the execution of sentences; the processing of requests for early, interim and final release; the preservation of evidence and records of the Special Tribunal; and financing. The members and associate members of the Management Committee shall seek to co-operate to ensure an orderly winding-down of operations of the Special Tribunal.

#### **Article 14 – Settlement of disputes**

The members and associate members shall seek to resolve any dispute which may arise concerning the application or interpretation of the provisions of this Statute by negotiation or by any other means of peaceful settlement accepted by mutual agreement between them.

#### **Article 15 – Withdrawal and expulsion**

1. Any member or associate member may withdraw from the Management Committee by means of a notification sent to the Secretary General.

2. The Secretary General shall acknowledge receipt of the notification and inform the members and associate members of the Management Committee.

3. The withdrawal of a member shall take effect at the end of the financial year in which it is notified, if such notification is given before 1 June of that financial year, or at the end of the following financial year, if notification of withdrawal is given on or after 1 June of the financial year. The withdrawal of an associate member shall come into effect upon receipt of the notification.

4. In accordance with applicable provisions of the Financial Regulations, the Management Committee shall examine the financial consequences of the withdrawal or expulsion of a member or an associate member and shall make the appropriate arrangements.

5. The Secretary General shall immediately inform the member concerned of the consequences of its withdrawal in accordance with paragraph 3 of this article.

6. The Management Committee may decide that any member or associate member acting in a manner inconsistent with the mandate of the Management Committee or impeding its functions ceases to be a member or associate member of the Management Committee as from such date as the Management Committee determines.

\*\*\*