

Testimony of Dr. David M. Crane before the Tom Lantos Human Rights Commission—March 25, 2026

Summary of the Agreement and Statute

**Council of Europe – Ukraine (25 June 2025)
Special Tribunal for the Crime of Aggression against Ukraine**

Prepared by David M. Crane*

Opening Remarks

Mr. Chairman, Members of the Tom Lantos Human Rights Commission, thank you for the opportunity to appear before you today. I want to begin by commending the Commission for its leadership in convening this hearing and for its support of H.R. 777, which recognizes and commends the Council of Europe and Ukraine for establishing the Special Tribunal for the Crime of Aggression against Ukraine. At a moment when the international rule of law is under extraordinary strain, your willingness to focus congressional attention on accountability for aggression is both timely and deeply necessary.

Today I will give you a quick overview of the Agreement and the Statute that created the Special Tribunal for the Crime of Aggression against Ukraine. I had the pleasure of chairing a high level working group that worked with and advised the Council of Europe and the Core Group of Nations on the creation of the Special Tribunal. Two of those member of the working group are with me and testifying today. It took us three years and two iterations of the concept we proffered to the world back in June of 2022. Today it is a reality. In a world turned upside down, where the rule of law is being attacked around the world by dictators and strongmen, Europe with Ukraine created a new international tribunal. It is a victory for the law and for justice. It is a first ever court to use the new modern day concept of aggression to hold President Vladimir Putin and his henchmen accountable for the crime of aggression against Ukraine.

Executive Summary

The 25 June 2025 Agreement between the Council of Europe and Ukraine established a treaty-based Special Tribunal to prosecute senior political and military leaders responsible for the crime of aggression against Ukraine. The Agreement itself creates the court institutionally, while the attached Statute defines jurisdiction, structure, procedures, and applicable law. The Tribunal focuses exclusively on leadership responsibility for initiating the war, complements the ICC, allows broad international participation through an Enlarged Partial Agreement, and represents a landmark effort to ensure accountability for aggressive war under international law.

1. Purpose of the Agreement

The Agreement creates an **international criminal tribunal** to prosecute individuals responsible for the **crime of aggression against Ukraine**, namely the decision and leadership actions behind Russia's use of force in violation of the UN Charter.

It was signed in Strasbourg by the Secretary General of the Council of Europe and the President of Ukraine and represents the **first ad hoc criminal tribunal established under the Council of Europe's auspices**.

Core objective:

- Ensure accountability for senior political and military leaders responsible for initiating the war.
- Fill a jurisdictional gap left by existing courts, particularly the International Criminal Court (ICC), which lacks jurisdiction over aggression in this situation.

2. Legal Structure

The legal framework consists of two parts:

(a) The Agreement (Treaty)

The treaty between Ukraine and the Council of Europe:

- Establishes the Tribunal legally.
- Places it within the institutional framework of the Council of Europe.
- Transfers Ukraine's criminal jurisdiction over the crime of aggression to the Tribunal.
- Defines cooperation obligations and institutional arrangements.

(b) The Statute (Annex)

The Statute sets out:

- Jurisdiction
- Structure of the court
- Applicable law
- Procedure and rights of the accused
- Roles of judges, prosecutor, and registry.

3. Jurisdiction of the Tribunal

Subject-Matter Jurisdiction

The Tribunal prosecutes **only the crime of aggression**, defined as:

the planning, preparation, initiation, or execution of an act of aggression by a person controlling a state's political or military action.

This focuses on **leadership responsibility**, not battlefield crimes.

Temporal Jurisdiction

- Covers aggression against Ukraine beginning in **2014** and especially the full-scale invasion from February 2022 onward.

Personal Jurisdiction

- Targets individuals who **bear the greatest responsibility**, particularly:
 - senior political leaders
 - military leadership
 - decision-makers at the highest level.

4. Relationship with Other Courts

The Agreement explicitly provides complementarity:

- The Tribunal **cooperates with the International Criminal Court**.
- Parallel investigations are allowed without duplication.
- ICC handles war crimes, crimes against humanity, and genocide.
- The Special Tribunal handles aggression — the “leadership crime.”

5. Institutional Features of the Tribunal

The Statute establishes:

Judicial Structure

- Independent international judges.
- Chambers for pre-trial, trial, and appeals.
- Independent Prosecutor and Registry.

Independence

- Judicial and prosecutorial independence guaranteed.
- Operates as an internationalized tribunal under international law.

6. Immunities and Proceedings

Key compromises reflected in the Statute:

- Sitting heads of state, heads of government, and foreign ministers retain functional immunity while in office.
- Proceedings (including investigations and indictments) may still advance.
- Trials may occur once immunity ceases.

Some analyses indicate the Statute allows **proceedings in absentia**, addressing likely non-extradition scenarios.

7. Participation by Other States

Although the Agreement itself is bilateral:

- Other states may join through an **Enlarged Partial Agreement (EPA)**.
- Participating states help govern and fund the Tribunal.
- Both Council of Europe members and non-members may participate.

8. Seat and Operations

- The Tribunal is expected to operate in **The Hague**, though formally separate from existing courts.
- Preparatory mechanisms and an advance team were established to build institutional capacity.

9. Broader Legal Significance

The Agreement aims to:

- Close the accountability gap for aggression.
- Reinforce the prohibition on aggressive war.
- Provide justice centered on victims and state sovereignty.
- Establish a precedent for future aggression prosecutions.

It is widely described as a **historic development in international criminal law** and the first tribunal of its kind created within the Council of Europe framework.

10. What can the US House of Representatives Do to Help?

HR 777 is a non-binding house resolution before the House Foreign Affairs Committee that, simply put, commends the Council of Europe and Ukraine in setting up this new international tribunal. Initially drafted by myself on request of the staff of Congresswoman Kaptur in the Summer of 2025, it is an apolitical “pat on the back” showing an acknowledgement by this legislative body of their ground breaking work in creating the Special Tribunal. I would hope you would support this resolution and vote it out of committee for a vote on the House floor.

Thank you for your attention once again on this extraordinary moment in legal history. A moment whose cornerstone is the International Tribunal at Nuremberg created 81 years ago whose purpose was to hold accountable those who committed international crimes to include aggression. I would respectfully ask that my remarks be entered into the record.

*David M. Crane is a global leader in international criminal justice and the founding Chief Prosecutor of the UN Special Court for Sierra Leone. He has spent decades shaping accountability mechanisms around the world, including serving as a driving architect behind the Special Tribunal for the Crime of Aggression against Ukraine. Crane is a distinguished scholar of international law, a former senior U.S. national security official, and a leading voice on the rule of law, state responsibility, and the legal limits on the use of force.

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