

The Proposed Establishment of the War Crimes and Crimes of Aggression Tribunal in Ukraine from The Perspective of International Criminal Law and The Investigation Initiated by The International Criminal Court. In Search of Practical Rationality

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Abstract

Since 2022, there is talk of establishing a War Crimes and Crimes of Aggression Tribunal for Ukraine, when Recommendation 2231 (2022)¹ and Resolution 2346 (2022)² were adopted to "*sanction war crimes, crimes against humanity, possible genocide, as well as the crime of aggression in connection with the military aggression of the Russian Federation against Ukraine.*" The present study aims to analyse the necessity of the establishment of this tribunal, starting from the theory of the renowned professor Vespasian Pella³ of the organisation of preventive and repressive actions of the war of aggression, as well as from the role and competence of the International Criminal Court, and the adjacent role of Eurojust which has a new operational task, that of supporting Member States' measures to combat genocide, crimes against humanity, war crimes and related offences, by preserving and storing evidence relating to those crimes and by facilitating the exchange of such evidence or otherwise making it directly available to the competent national authorities and in particular to the International Criminal Court. This study should equally be seen in the light of the recent Ljubljana-Haga International Convention on Cooperation in the Investigation and Prosecution of War Crimes, Crimes against Humanity and other International Crimes and the recently established International Centre for the Prosecution of the Crime of Aggression⁴. In the context of the international criminalisation of war crimes and other international crimes, it is worth exploring the extent to which the planned repressive and preventive measures to combat collective crime through these bodies will achieve the desired effective and efficient results, the extent to which international solidarity will help to strengthen pacifism and prevent the war of aggression, and their international moral functionality.

Keywords: war crimes and crimes of aggression tribunal, international criminal law

¹ <https://pace.coe.int/en/files/30025/html>

² <https://pace.coe.int/en/files/30024/html>

³ Vespasian V. Pella, author of a legal work of great scientific value, recognized and established in European doctrine as the founder of international criminal law and promoter of international criminal justice. The theory was set out and analysed in the work "The Collective Criminality of States and the Criminal Law of the Future", 1926.

⁴ to be launched by the European Commission this summer, <https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine>