

International Conference on the Special Tribunal for the Crime of Aggression against Ukraine

Brief contribution by

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Distinguished Participants in the International Conference on the Special Tribunal for the Crime of Aggression against Ukraine,

Thank you for inviting me to participate in this very important conference.¹ Before addressing the topic of Panel 4, of which I am a member, I would like to say a few words about the discussion in Panel 1 that focused on the modality of the tribunal: “United Nations, international treaty, hybrid format. Which one to choose?” I trust that you all understand that I have to limit my intervention to the few minutes that I have at my disposal.

Like Richard Goldstone, I would like to say that I think that Panel 1 was excellent and that the message was very clear: it is necessary to create an international tribunal for the purpose of prosecuting the crime of aggression against Ukraine. I refer in particular to what was said by Philippe Sands, Claus Kress, Aarif Abraham, and Rein Tammsaar.

In the discussion, reference was made to the Special Court for Sierra Leone. Since I, as the Legal Counsel of the United Nations at the time, negotiated the agreement between the United Nations and Sierra Leone, I would like to add that this agreement should be the model for a special tribunal for the crime of aggression against Ukraine. However, there is a tremendous difference here: the crime that the special tribunal for Ukraine would focus on is only one specific crime, namely the crime of aggression where there are very few suspects.

An agreement between Ukraine and the United Nations could be negotiated in a few weeks. It would be very efficient. Such an agreement would have an important difference from a solution where several States would have to ratify an international agreement, which might take years.

And to those States that are worried about the fact that the court will be endorsed by the UN General Assembly, I would like to add that there is an important additional element here. The General Assembly is now acting under the Uniting for Peace system, which means that it is not meeting on Ukraine to discuss an ordinary item on its agenda. It is meeting specifically on Ukraine at the request of the UN Security Council. This is a very important element that must

¹ See <https://www.ngotribunal.org/conference>

influence the decisions by UN Member States in this particular case. I cannot stress this element enough.

Let me now focus on the topic of our Panel 4, which is “The political significance of the tribunal and why is it needed now?”

My first reference is to the Charter of the United Nations. It was adopted in 1945 “to save succeeding generations from the scourge of war”. The decision was made by a generation that had experienced two world wars. We should honour and respect this heritage.

A serious problem is that Member States of the United Nations sometimes violate the UN Charter. This is particularly serious when such violations are committed by permanent members of the UN Security Council. The Russian Federation's war of aggression against Ukraine is a flagrant violation of a fundamental provision in the UN Charter, namely Article 2, paragraph 4. This provision reads:

All Members shall 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.

This violation of the UN Charter by the Russian Federation is unacceptable. The international community now has a responsibility to act with firm determination. The result of this aggression is crystal clear: on a daily basis Russia is committing war crimes, crimes against humanity, and possibly also genocide in Ukraine. It is therefore absolutely necessary to hold those suspected for the crime of aggression responsible.

The problem is that the International Criminal Court in The Hague does not have jurisdiction over the crime of aggression in the present case. It is therefore necessary to establish a special international tribunal for the crime of aggression against Ukraine.

My co-panellists Irwin Cotler and David Crane and I are the main authors of a proposal for such a tribunal. The proposal is based on our experiences from the establishment and the work of the Special Tribunal for Sierra Leone. Because of the high official positions of the suspects for the crime of aggression against Ukraine it is absolutely necessary to create a similar international tribunal for Ukraine. I refer to what I said about this above relating to Panel 1. Our proposal can be found on my website.² There it is, together with reflections on the role of the UN General Assembly in the present situation.³

In this context, it is important to emphasize that a tribunal of the kind we propose will not compete with the International Criminal Court – it will be complementary. I refer to what Irwin Cotler just said and to what David Scheffer and Jennifer Trahan said in their excellent statements on Panel 3.

² See Proposal for a Resolution by the United Nations General Assembly & Accompanying Proposal for a Statute of a Special Tribunal for Ukraine on the Crime of Aggression. Ukraine Task Force of the Global Accountability Network. 7 September 2022

<https://www.havc.se/res/SelectedMaterial/specialtribunalukraine7sep2022.pdf>

³ See A Special Tribunal for Ukraine on the Crime of Aggression – The Role of the U.N. General Assembly. In: Just Security, February 14, 2023 <https://www.justsecurity.org/author/corellhans/>

The topic of our Panel 4 is the political significance of the tribunal and why it is needed now. As former Legal Counsel of the United Nations, I must first emphasize that democracy and the rule of law at the national and international levels are necessary preconditions for a world in which human beings can live in dignity with their human rights protected. The situation in the Russian Federation is an example of a State where these requirements must be met. Of particular importance is that politicians understand their responsibility for advancing democracy and the rule of law.⁴

Against this background I think that it is absolutely necessary that the international community acts with firm determination in a situation which is as serious as the aggression against Ukraine. As many have said, we have not seen anything similar since the Second World War. We therefore need a tribunal now. The political significance of this is also that it would send a powerful signal to potential warlords in the world in the future: you will be prosecuted! Not to react now would send an opposite signal: impunity! Here I also refer to what Claus Kress said about this problem on Panel 1 and to what Mark Ellis and David Crane said on our panel.

The world community simply must act here and now to protect the rule of law and the integrity of the United Nations.

Thank you for your attention!

⁴ See *Rule of Law – A guide for politicians*. A Guide elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, and the Hague Institute for the Internationalisation of Law (HiIL), the Netherlands

<https://rwi.lu.se/publications/rule-law-guide-politicians/>

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