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Asamblea General
Undécimo período extraordinario de sesiones de emergencia
Tema 5 del programa
Carta de fecha 28 de febrero de 2014 dirigida a la
Presidenta del Consejo de Seguridad por el
Representante Permanente de Ucrania ante las
Naciones Unidas (S/2014/136)

Consejo de Seguridad
Septuagésimo séptimo año

Carta de fecha 12 de agosto de 2022 dirigida al Secretario General por las representaciones de Letonia, Liechtenstein y Ucrania ante las Naciones Unidas

Tenemos el honor de transmitirle el resumen de la Presidencia del evento titulado “Yale Club roundtable: a special tribunal for the crime of aggression recommended by the UN General Assembly?” (Mesa redonda del Club de Yale: ¿un tribunal especial recomendado por la Asamblea General de las Naciones Unidas para el crimen de agresión?), organizado en junio de 2022 por las Misiones Permanentes de Letonia y Liechtenstein ante las Naciones Unidas (véase el anexo)*.

Le agradecería que tuviera a bien hacer distribuir la presente carta y su anexo como documento del undécimo período extraordinario de sesiones de emergencia de la Asamblea General, en relación con el tema 5 del programa, y del Consejo de Seguridad.

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* Se distribuye únicamente en el idioma en que fue presentado.



**Anexo de la carta de fecha 12 de agosto de 2022 dirigida al
Secretario General por los representantes de Letonia,
Liechtenstein y Ucrania ante las Naciones Unidas**

**Yale Club Roundtable:
A Special Tribunal for the Crime of Aggression
Recommended by the UN General Assembly?**

22 June 2022, New York City

Chair's Summary

(prepared by the organizers)

I. Purpose of the Meeting and Background

On 22 June 2022, State representatives, academics and representatives of civil society, at the invitation of the Permanent Missions of Latvia and Liechtenstein to the United Nations, met at the Yale Club in New York City for a roundtable discussion exploring the legal and political questions relevant for the creation of a special tribunal on the crime of aggression.

The discussion was based on the recognition that the aggression committed against Ukraine illustrates the imperative of investigating and prosecuting the crime of aggression in order to uphold the rules-based international order grounded in the United Nations Charter's prohibition on the use of force. As the International Criminal Court does not have jurisdiction over the crime of aggression in this case, an alternative avenue for accountability must be found. The roundtable discussion focused on the option of proceeding through the UN General Assembly which – building on its resolution ES-11/1 of 2 March 2022: “Aggression against Ukraine” – can recommend the creation of a special tribunal for the crime of aggression. Such a recommendation would provide the UN Secretary-General with a mandate to negotiate and conclude a treaty between the UN and Ukraine establishing a special tribunal for the crime of aggression.

The Yale Club Roundtable was divided into five sessions: Two sessions were focused on political discussions and three on technical and legal questions. The three technical and legal sessions included detailed presentations on the elements in the annexed discussion paper: ‘A Special Tribunal for the Crime of Aggression Recommended by the UN General Assembly’.

This chair's summary was prepared by the organizers of the Yale Club Roundtable and only attributes the comments of presenters and the opening and closing speakers, as discussions among the participants were held under the Chatham House Rule.

II. Discussions

Introductory remarks

Ambassador Christian Wenaweser (Liechtenstein), Ambassador Andrejs Pildegovičs (Latvia) and Ambassador Sergiy Kyslytsya (Ukraine) welcomed the participants and expressed their hope that the Yale Club Roundtable would clarify relevant issues regarding the possible creation of a Special Tribunal for the Crime of Aggression (STCoA) on the recommendation of the United Nations General Assembly (UNGA), highlighting the advantages of the option of a UN-backed tribunal in comparison to other ideas under consideration. Ambassador Kyslytsya

highlighted that the STCoA would not compete with the International Criminal Court's (ICC) investigation into atrocity crimes committed in Ukraine, but complement it by filling an important accountability gap. It was stressed that it was not only Ukraine that has been attacked, but also the rules-based international order, warranting a UN-led response to protect the core norm against aggression at the heart of the UN Charter.

Session 1: The history of outlawing war and presentation of the discussion paper

Professor Oona Hathaway (Yale Law School) presented on the history of outlawing war and introduced the discussion paper: 'A Special Tribunal for the Crime of Aggression Recommended by the UN General Assembly'. She explained that the UN Charter's prohibition on the use of force has been the essential norm to secure peace in the decades after the two world wars. She stressed that the norm against aggression must be protected. She further explained that the crime of aggression was the foundational charge at the Nuremberg and Tokyo Trials and recounted the Nuremberg judgement's description of the crime of aggression as "the supreme international crime that contains within itself the accumulated evil of the whole". She emphasized that Russia's war is not only an attack on Ukraine, but an attack on the post-World War Two international order. Professor Hathaway described the aggression against Ukraine as a crisis moment that includes an important opportunity to make history by strengthening the rules-based international order and helping the UN keep its promise of maintaining international peace and security in the future. She explained that the special tribunal would be created by agreement between Ukraine and the UN and provided examples of relevant precedents at the UN: The Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC). Professor Hathaway stressed that the STCoA should be created on the recommendation of the UNGA since Russia's aggression is not only a European issue, but one that concerns the entire international community. She explained that prosecuting the crime of aggression at the European-level could unhelpfully play into Russia's narrative of "the West versus Russia". She also argued that if the UN were not to resolve to hold those that decided to commit brazen aggression to account in this situation, then it would be unlikely to ever do so in the future. She noted that the existing accountability gap with respect to aggression against Ukraine could be addressed either by amending the ICC's Rome Statute to give the ICC jurisdiction over the crime of aggression committed by nationals of non-States Parties to the Rome Statute or creating a special tribunal for the crime of aggression on the recommendation of the UNGA. She stressed that the two are not mutually exclusive and advocated for them to be pursued in parallel, as amending the Rome Statute would take much more time than the urgency of the current situation demands. Finally, Professor Hathaway described the STCoA as a lean court with a narrow focus on the crime of aggression, which would work closely with both ICC and Ukrainian prosecutors.

During the discussion segment of the first session, questions were raised regarding the wisdom behind establishing the STCoA without first having the perpetrators in custody, how to ensure an expeditious establishment of the special tribunal, and the likelihood of securing a UNGA recommendation for the creation of the STCoA. Some participants emphasized that discussions on the establishment of the STCoA were warranted since the international community would require clarity on the important legal and political questions related to a possible special tribunal. Participants also noted that it was not enough to have ICC prosecutions of atrocity crimes, even if some of the perpetrators of the crime of aggression are the same, because aggression is the umbrella crime from which the other atrocity crimes flowed;

accountability for the crime of aggression is therefore imperative. It was further noted that, as a short window of opportunity to bring forward a UNGA resolution recommending the STCoA could come unexpectedly, it would be important for UN Member States to be prepared. The view was expressed that arrest warrants in and of themselves are powerful tools leading to political isolation: Even without having perpetrators in custody, indicted persons could have their assets frozen, face severe travel restrictions and suffer massive reputational harm. Several participants highlighted that similar questions were raised in the past with respect to the creation of other international tribunals, and recalled that many of those tribunals eventually managed to bring senior leaders into custody and issue convictions. The view was also expressed that it was important to have the discussion about the creation of the STCoA at the UN because its absence would send the wrong signal. It was argued that it was important to advance swiftly with the discussions given the sense of urgency to protect the rules-based international order and Ukraine's desire for quick and concrete results.

Session 2: The Statute of the Tribunal I

Professor Astrid Reisinger Coracini (University of Vienna) made a presentation on the below elements of the special tribunal for the crime of aggression.

- The definition of the crime of aggression: The crime of aggression is part of customary international law. The crime of aggression is a continuing crime until the sovereignty, territorial integrity and political independence of the victim State are re-established. The statute of the STCoA should include the definition of the crime of aggression codified in Art.8 *bis* of the ICC's Rome Statute, which was negotiated and consensually agreed by all interested UN Member States, including the Russian Federation. The definition of the crime of aggression in the Rome Statute has a very high threshold and narrow scope, but clearly covers aggression against Ukraine.
- Location of the tribunal: The STCoA should be located in The Hague, which would facilitate synergies with other international justice mechanisms, in particular the ICC.
- Organization of the Tribunal: Given its narrow focus on the crime of aggression, the STCoA should be small in size. It could consist of Chambers (for example a Pre-Trial Chamber of 3 judges; a Trial Chamber of 3 judges; and an Appeals Chamber of 5 judges); The Prosecutor; and Registry. If financial considerations are a concern, the STCoA could also reduce the number of Pre-Trial Chamber judges to one following the model of the ad-hoc tribunals established by the UN Security Council.
- Selection of Judges and the Prosecutor: The International appointment of STCoA officials by the UN Secretary-General will ensure the highest degree of impartiality. While impartiality is critical for all international courts, a tribunal focused solely on the crime of aggression will face even greater scrutiny in this respect because the definition of aggression is based on the commission of an act of aggression by one state against another. In having all international judges and an international prosecutor, the STCoA would be modeled on the ad-hoc tribunals established by the UN Security Council.
- Working languages: The working languages of the STCoA would be English, French, Ukrainian and Russian because English and French are the working languages of the ICC and Ukrainian and Russian are important to allow for possible victim participation, safeguarding the rights of the accused, as well as maximizing outreach in Ukraine and Russia.

- Territorial jurisdiction: The crime of aggression is committed in at least two states, the “aggressor state” (or states) and the “victim state”, which includes Ukraine, the Russian Federation and Belarus. The STCoA statute could also include the formulation found in the Statute of the International Criminal Tribunal for Rwanda (ICTR), which includes a reference to the territory of ‘neighboring States’.
- Temporal jurisdiction: The temporal jurisdiction of the STCoA could start either in February 2014 with the attempted illegal annexation of Crimea or in February 2022 with the continuation of Russia’s aggression against Ukraine. It seems clear that the attempted illegal annexation of Crimea also meets the high threshold of the definition of a crime of aggression found in the Rome Statute, which as a result makes the decision on the date of commencement of jurisdiction a political one that might also take into account financial considerations.

During the discussion segment, there was general agreement that the subject-matter jurisdiction of the STCoA should be restricted to the crime of aggression as defined under Art. 8 *bis* of the Rome Statute. In addition, participants asked questions regarding the sufficiency of existing mutual legal assistance treaties to facilitate the cooperation of States with the STCoA, how the ICC and the STCoA would formally cooperate and share evidence, and whether adding ‘and neighboring States’ to the territorial jurisdiction clause of the STCoA’s statute could act as a deterrent against further Russian aggression in the region. Participants also discussed the question of whether the STCoA’s temporal jurisdiction should start in 2014 or 2022. It was suggested that the STCoA and the ICC should sign a memorandum of understanding regarding cooperation and the sharing of evidence, which could also address the issue of primacy since neither the ICC nor the STCoA could dictate primacy with regard to the overlapping of cases to the other tribunal. It was further noted that if the STCoA is established as an independent legal entity, new legal assistance and cooperation instruments with States might need to be adopted. It was explained that a reference to ‘neighboring States’ in the territorial jurisdiction clause of the STCoA statute would not expand jurisdiction on the victim-side, but on the side of aggressor States if a third state in addition to Russia and Belarus were to join the aggression against Ukraine. With respect to the selection of the prosecutor, it was suggested that the ICC might already have collected evidence of the crime of aggression in its Ukraine investigation, raising the question of having a single prosecutor for both the ICC and STCoA, similar to the single prosecutor of the ICTY and ICTR. There were different views on the question of temporal jurisdiction. While it was generally agreed that the Russian aggression against Ukraine started on 20 February 2014, it was also recalled that the language of the 2014 UNGA resolution [68/262](#) “Territorial Integrity of Ukraine” addressing Russia’s attempted illegal annexation of Crimea did not use the term aggression, and did not reference UNGA resolution 3314 from 1974 containing the definition of acts of aggression. It was also pointed out, however, that later UN General Assembly resolutions on Crimea, in particular the most recent UNGA Resolutions [76/179](#) “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine” and UNGA Resolution [76/70](#) “Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov” contain references to UNGA resolution 3314. It was also pointed out that the 2022 UNGA resolution deploring Russia’s aggression against Ukraine did not mention the attempted illegal annexation of Crimea, while the resolution covers the entire territory of Ukraine in its internationally recognized borders. It was noted that, irrespective of the language used in the relevant UNGA resolutions, the STCoA would make its own determination with respect to the crime of aggression. It was suggested

that extending the temporal jurisdiction of the STCoA would raise a series of practical issues, including increased financial considerations in connection with evidence-gathering. The view was also shared that having the STCoA's temporal jurisdiction start from February 2022 might be helpful to secure political support. It was pointed out that there was likely strong overlap amongst the individuals who were criminally responsible for the acts of aggression committed in 2014 and 2022 respectively. It was also noted that the Rome Statute definition that would serve as the basis for the STCoA's subject-matter jurisdiction had only been activated at the ICC on 17 July 2018, which could lead some to argue that the start of the STCoA's temporal jurisdiction could not precede that date.

Session 3: The Statute of the Tribunal II

Professor Jennifer Trahan (New York University) made a presentation on the below elements of the special tribunal for the crime of aggression.

- Rules of Procedure and Evidence: For many of the past international and hybrid tribunals, the drafting of the rules of procedure and evidence has been left to the judges. This has been the case, for example, with the ICTY, ICTR, and Special Court for Sierra Leone, and would be recommended for the STCoA as well.
- How many to prosecute: The crime of aggression only covers “persons in a position effectively to exercise control over or to direct the political or military action of a State”. This suggests that only a limited number of perpetrators, at the highest-levels of leadership, would be prosecuted, while the precise number would be left to the discretion of the Prosecutor. While the STCoA is recommended to be international, it would not be the size of the ICTY or ICTR, but closer to the much smaller Special Court for Sierra Leone.
- Rights of the accused: International and hybrid tribunal statutes typically contain listings of fair trials rights and due process protections, which should also be contained in the STCoA's statute.
- Judgment: Similar to other international tribunals, the statute of the STCoA should require a reasoned opinion, rendered in writing, by a majority of judges of the trial or appeals chamber, and that there may be dissenting and separate opinions.
- Non bis in idem: The STCoA's statute should include a provision providing that an accused may not be prosecuted twice for the same crime.
- Amnesty: An amnesty granted to any person falling within the jurisdiction of the tribunal would not be a bar to prosecution. The statute of the STCoA could contain a provision such as “An amnesty granted to any person falling with the jurisdiction of the STCoA in respect of the crime defined in the Statute, shall not be a bar to prosecution.” This language is derived from Art. 10 of the Statute of the Special Court for Sierra Leone.
- Immunity: The question of immunities, in particular head of state immunity, was described as critical with respect to the STCoA because the crime of aggression is a leadership crime. There is no immunity before international tribunals. The STCoA's Statute should contain a provision similar to Art. 27 of the ICC's Rome Statute: “This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.”

- Penalties: The STCoA's sentences should be limited to serving prison time and exclude the death penalty. The STCoA's judges could also consider aggravating and mitigating factors and asset forfeiture as an additional penalty.

During the discussion segment, there was general agreement that a major advantage of the creation of the STCoA on the recommendation of the UNGA would be the absence of immunities for high-level political or military officials. Some referenced the ruling in the *Prosecutor v. Taylor* case before the SCSL and the proceedings against Jordan before the ICC for its failure to arrest then Sudanese president Omar al-Bashir, noting that even heads of state lack immunities before international tribunals. Others recalled that such immunities, by contrast, could prove a significant bar to high-level prosecutions before national courts or court's relying on the pooled-jurisdiction of several States. It was also questioned, however, whether such an immunities clause would be sufficient to ensure clear rulings with respect to immunities challenges, and that the ICC decision in the Jordan case illustrated that there was not sufficient State practice to guarantee such an outcome. In response, it was explained that there could be no doubt that there was no immunity of heads of state under existing international law, and that the Jordan case in question was limited to the obligation to arrest. It was also suggested that the International Law Commission's Draft Articles on Immunity could serve as an additional resource. It was emphasized that because the crime of aggression is a leadership crime, full legal certainty concerning the question of immunities for high-level political or military leaders is critical for effective prosecutions. This favors prosecution in an international court rather than a domestic one. With regard to penalties, it was suggested that fines could also be leveled in the event of a guilty verdict. A question was raised about the role of the Ukrainian constitution with regard to the establishment of tribunals, to which it was answered that there is no problem with respect to the Ukrainian constitution if the STCoA is created as an international tribunal and not as a domestic court. It was also suggested the draft Statute of the International Criminal Tribunal for Malaysia Airlines Flight MH17 should be studied for potential provisions that can be included in the statute of the STCoA.

Session 4: The Statute of the Tribunal III

Ambassador David Scheffer (Northwestern Law) made a presentation on the below elements of the special tribunal for the crime of aggression.

- Sharing of classified information: Because the crime of aggression is a leadership crime and the relevant decisions are made at the highest levels of government and the military, it is essential for the statute of the STCoA to include provisions that permit it access to and use of classified information that can be made available to it by various governments.
- Witness Protection: The STCoA will inherently differ from other international tribunals with regard to witness protection. Unlike witnesses of atrocity crimes, those that have witnessed the crime of aggression must have been close to the high-level decision-making process at the time and will therefore need serious protection. There has to be some innovative thinking as to how the STCoA can provide special protection to these witnesses including until long after trials have concluded. The ECCC's rules on witness protection, in particular Rule 29 of the Court's internal rules, can provide guidance. The witness protection provisions of the STCoA's statute should be drafted in a way to incentivise witnesses to come forward, intertwining it with prosecutorial strategy.
- Outreach: The STCoA will very likely be widely covered by the media, so there will be less need for the special tribunal itself to spread word about its work in the general public. However, given the nature of the STCoA's work and the use

of propaganda by the perpetrator States in question, it can be anticipated that dis/misinformation will be a big issue for the STCoA. To combat dis/misinformation, outreach about the work of the STCoA within the perpetrator States is suggested. The STCoA should have a sophisticated strategy to deal with dis/misinformation, particularly on social media. The STCoA should also have a portal on its website so that individuals with relevant information can contact its prosecution office.

- Standing Defense Unit: The defendants for the crime of aggression will be very high-level individuals. There may be need for a defense unit if the defendants are not cooperating or if they are claiming indigency.
- Victim participation: There is no need for a similar provision in the STCoA's statute on victim participation to those of the ICC or ECCC because atrocity crimes have individuals as victims, while the aggressed State was technically the victim in the case of the crime of aggression.
- Evidence: It is imperative for the STCoA's statute to have provisions on evidence collected prior to its establishment, which can be similar to Art. 19 of the Statute of the Special Tribunal for Lebanon (STL).
- Trial in absentia: The Ukrainian penal code permits trials in absentia in its domestic courts. The STL is the only international tribunal that has allowed such trials. Trials in absentia were rejected by other international tribunals on fair trial grounds. Rule 61 of the ICTY Statute anticipated the absence of defendants and provided a procedure by which the prosecutor could at least present all of the evidence without the indicted person being present, which could serve as a model for the STCoA.
- Seizure and freezing of property: the STCoA should not directly concern itself with reparations, as that is a question of State responsibility. Dealing with reparations could bog down the STCoA, which contradicts the vision of it as a lean tribunal. Given that the primary suspects are high-level Russians and Belarussians, some of those indicted by the STCoA will be extraordinarily wealthy. The STCoA would have the option of seizing and freezing the assets of indicted persons in line with the practice of the ICC.
- Residual Function: The international community has a lot of experience with residual functions from other international tribunals that the STCoA could draw from.

During the discussion segment, participants voiced different opinions on questions of victim participation and reparations. Some agreed with the presenter that the broader question of reparations is a matter of state responsibility that is better left to other relevant bodies. Others questioned whether the STCoA would miss an important opportunity given the alleged wealth of some of primary suspects of the crime of aggression against Ukraine. In response, there was acknowledgement that a narrower reparations scheme mirroring that used by the ICC could be provided in case of a guilty verdict before the STCoA. With regard to victim participation, some expressed the view that the STCoA should have a victim participation scheme similar to that of the ICC and argued that questions of capacity could be addressed by allowing groups and associations to represent victims in the criminal proceedings. This could also include the representation of Russian soldiers, who were also victims of an illegal war waged by their leadership. Others questioned the purpose of victim participation at the STCoA because the crime of aggression is committed against a State rather than against individuals. If individuals were to be recognized as victims, it could mean that all persons living in Ukraine at the time of aggression would qualify as victims, which in turn raises difficult questions of selection for participation. The

view was also voiced that illustrating the impact that the decision to wage an aggressive war has on the lives of individuals was an essential and potentially powerful part of the proceedings, which might otherwise run the risk of becoming abstract and legalistic. As a result, victim participation should be provided for, while in an innovative and sui generis format. Another suggestion was that a Truth and Reconciliation commission that runs parallel to the STCoA could be established. It was further recalled that victims would have an opportunity to participate in ICC proceedings on atrocity crimes committed in Ukraine, which may have many of the same defendants. A question was raised about the possibility of the STCoA to hold some of its trials ‘in situ’ in Ukraine, in order to provide Ukrainian citizens with an opportunity for greater involvement. In this respect, reference was made to the very strong public interest in the proceedings of the ECCC, and the enormous impact that participation in these proceedings had had on the way in which the genocide in Cambodia was addressed in that country. In response, it was recalled that holding trials in situ often involves significant security and cost concerns.

Session 5: The Way Forward

The final session included introductory comments on the way forward by Ambassador Christian Wenaweser (Liechtenstein), followed by a discussion with all participants moderated by Prince Zeid Ra’ad Al Hussein (International Peace Institute).

In his introductory comments, Ambassador Wenaweser described the way forward as essentially a matter of political will. He emphasized the connection between the creation of the STCoA and defending the international order grounded in the UN Charter, and further underscored the vision of the STCoA as one that is lean and complementary to the ICC. He also concurred with those who supported changing the jurisdictional regime of the crime of aggression amendments to the Rome Statute – which exempt the nationals of non-State Parties from the Court’s jurisdiction – as an endeavour to be pursued in parallel. While there was no guarantee that the effort to create a STCoA would garner the necessary political support, there is a collective responsibility for those committed to upholding the post-World War Two international order to engage in an effort to this effect and to involve the UN membership in this discussion. He noted that the day’s discussions illustrated that the establishment of an STCoA would certainly be legally possible, while some issues would have to be subject to in-depth negotiations on complicated questions, such as whether similar tribunals would need to be established for other situations in the future, from when to set the STCoA’s temporal jurisdiction, and the utility of trials in absentia. Ambassador Wenaweser also emphasized that the next steps would have to be made under the leadership of Ukraine.

During the discussion segment of the final session, the view was expressed that while the creation of a StCoA was complementary to the ICC’s investigation into atrocity crimes in Ukraine, it could nevertheless be perceived as competing with the ICC given the latter’s existing jurisdiction over the crime of aggression. In this regard, it was stressed that is essential to equally prioritize amending the jurisdictional regime of the Rome Statute’s crime of aggression amendments to remove the exemption for non-States Parties. It was suggested that, in order to pursue this course of action, relevant amendments to the Rome Statute could be tabled immediately. It was further suggested that the next step towards the creation of the STCoA would ideally be the creation of a like-minded group composed of States from all regions who agree to move discussions forward together, while it was also emphasized that wide and inclusive consultations with the UN membership as a whole would be necessary. There was general agreement with the introductory comments that such engagement with the wider UN membership on the creation of the STCoA would likely involve

discussions of several specific questions noted above. It was expressed that questions regarding funding would inevitably be raised, and stressed that insisting on UN regular budget funding for the STCoA should be the point of departure for such discussions. It was widely agreed that a resolution establishing the STCoA would not likely receive the same numerical level of support as the 2 March 2022 UNGA resolution deploring Russia's aggression against Ukraine, while at the same time stressing that a solid majority vote in the UNGA could be achieved. Some stressed that the UN should have the leading role in accountability for the aggression against Ukraine, and recalled that the UNGA had already spoken powerfully twice on 2 March 2022 and on 24 March 2022, which should provide hope for similar outcomes. Others acknowledged that Russia's actions and the UN's lack of resolve in response had powerfully eroded the UN's credibility, and that this was exactly why the UNGA should act in a way that protects and reinvigorates the rules-based international order and the UN system. It was suggested that in order to trigger a process in the framework of the UNGA, Ukraine should send a letter to the UN Secretary-General that asks for specific action at the UN, similar to the letter sent by the President of Sierra Leone that led to the establishment of the Special Court for Sierra Leone. It was also suggested that, given the authority of the Security Council to refer the aggression against Ukraine to the ICC for its exercise of jurisdiction over the crime of aggression, the next step should be an attempt to have the Security Council refer the situation in Ukraine to the ICC. Although a veto against such a referral would be all but guaranteed, some argued that this action could trigger the creation of the STCoA by the UNGA. In this connection, the idea of a joint letter from UN Member States to the Security Council recommending a referral to the ICC was proposed.

Closing remarks

Closing remarks were provided by Ambassador Andrejs Pildegovičs (Latvia), Ambassador Christian Wenaweser (Liechtenstein), Professor Claus Kress (University of Cologne) and Professor Oona Hathaway (Yale Law School). The closing speakers emphasized that the crime of aggression was the crime at the origin of all the atrocity crimes committed in Ukraine. They emphasized that the aggression against Ukraine was one of the most blatant violations of the prohibition of the use of force since the creation of the UN Charter. They advocated continuing to explore the possibility of establishing a Special Tribunal for the Crime of Aggression on the recommendation of the UN General Assembly and recognized that the Yale Club Roundtable offered a very useful overview of all the relevant legal issues necessary to advance the discussion. It was recalled that the more multilateral the establishment and international the design of the STCoA, the easier it would be to address any legal and political challenges to it, including questions of personal immunity, legitimacy and impartiality. It was recalled that the rules-based international order did not just come into being, but was created through hard work, and is worth every effort to reinvent, improve, strengthen and maintain. The meeting was closed by recalling that the day's discussions were exploratory, thanking all participants for a comprehensive exchange on the legal issues related to the STCoA and noting that the political discussion had only begun.