



**PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
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CHECK AGAINST DELIVERY

THIRD COMMITTEE

**ITEM 72 (B): HUMAN RIGHTS QUESTIONS / ITEM 72 (C): HUMAN RIGHTS SITUATIONS AND
REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES**

STATEMENT BY H.E. CHRISTIAN WENAWESER, PERMANENT REPRESENTATIVE

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Mr. Chairman

The importance of accountability for human rights violations to ensure their effective protection has long been recognized by the Human Rights Council as well as by this Assembly. When committed as part of a systematic or widespread attack against a civilian population, certain types of human rights violations constitute crimes against humanity – which, together with genocide and war crimes as well as the crime of aggression, define the scope of jurisdiction of the International Criminal Court (ICC). Together with almost two-thirds of the membership of the United Nations, we believe that the ICC is the centerpiece of the international fight against impunity. But the Court is an institution that is not universal - nor is it likely to be in the near future. Almost twenty years after the adoption of the Rome Statute, billions of people still do not enjoy the legal protection offered by the ICC. It is customary, in this context, to criticize the Security Council for its unwillingness to consistently refer situations to the ICC, where such crimes are committed with impunity and where the Court cannot otherwise exercise its jurisdiction. We share this criticism in principle. But at the same time, we cannot turn a blind eye to the facts. As long as the Security Council exists in its current power structure, it will not consistently make referrals to the ICC – and this, we should be under no

illusion about, is likely to be the case for a very long time. In addition, such referrals are only desirable, if they are driven by a genuine political will to ensure accountability and to adopt enforcement measures, where necessary, for instance in the case of non-cooperation. These conditions are not met today.

Therefore, we must explore alternatives to criminal proceedings before the ICC – and indeed, they exist. The Rome Statute itself gives clear primacy to national proceedings, under the principle of complementarity. This offers the point of departure for accountability projects that can take on different forms. The easiest and most obvious option is the situation in which a State is willing to investigate and prosecute, but unable to do so for reasons of capacity. The United Nations system, regional organizations and also individual States can provide technical assistance and capacity-building in such situations, ideally in a manner that makes a lasting contribution to the State's judiciary. A very interesting model in this respect is the International Commission against Impunity in Guatemala (CICIG), created as a result of an agreement between the Government and the United Nations. CICIG has given essential assistance to the Guatemalan judiciary and thus contributed significantly to the fight against impunity in the country. There are also hybrid courts, such as the Extraordinary Judicial Chambers for Cambodia or the Special Court for the Central African Republic. These institutions are very much *sui generis* and tailored to the specific needs of the situations, for which they were created. Their functioning and outcomes as well as the challenges they encountered will inform similar approaches in the future and allow us to make use of lessons learned.

A more difficult situation arises, when the State in question is unwilling, rather than unable, to investigate the most serious crimes – which often happens when the State itself is the perpetrator or when actors are committing crimes on its behalf. Under the principle of complementarity, this is where the ICC should exercise jurisdiction. The ICC's jurisdiction, however, is based on the consent of the State concerned, which it expresses through ratification or ad hoc submission to the Court's jurisdiction. And of course, that consent is usually not given, and the Security Council does typically not use its competence to create

jurisdiction under Chapter VII of the United Nations Charter. In these situations – and sadly they are frequent – inaction has usually been the result, accompanied by rampant impunity. But this does not have to be the case.

In adopting resolution 71/248 and thus creating the International, Impartial and Independent Mechanism (IIIM) for the crimes committed in the Syrian Arab Republic the General Assembly has, with overwhelming support from the UN membership, asserted the role it can play in the area of accountability – and in fact, it has done so in the past.¹ The statement made in such a step is twofold: First, the General Assembly sends the clear message that accountability for the most serious crimes in Syria is essential, irrespective of the affiliation of the perpetrators. Second, it provides its assistance to any court or tribunal that can exercise jurisdiction over these crimes by preparing case files on the basis of evidence available. The first courts to have this competence are Syrian national courts – provided that they do their work in accordance with relevant international standards, including on due process. The IIIM therefore does not interfere in the sovereignty of Syria, as it fully recognizes the primacy of its role to investigate and prosecute. The IIIM offers a concrete prospect that the atrocious crimes committed in the course of the armed conflict will not go unpunished. It will assist courts with jurisdiction in ensuring efficient trial proceedings.

In addition, the IIIM can also serve as an example for other accountability projects undertaken by the General Assembly. This illustrates the relevance of the Assembly and thus makes the most meaningful contribution to its revitalization, but also underscores that the fight against impunity is a collective commitment of the UN membership. The ICC is the lasting landmark achievement in the area of international criminal justice. But it alone cannot fill the impunity gap that still exists today.

I thank you.

¹ J. Cockayne and C. Wenaweser (2017), Justice for Syria?: The International, Impartial and Independent Mechanism and the Emergence of the UN General Assembly in the Realm of International Criminal Justice, *Journal of International Criminal Justice*, Volume 15, Issue 2.