



**PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
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SECURITY COUNCIL – OPEN DEBATE

PROTECTION OF CIVILIANS IN ARMED CONFLICT

STATEMENT BY H.E. AMBASSADOR CHRISTIAN WENAWESER

PERMANENT REPRESENTATIVE OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE UNITED NATIONS

Mr. President

My delegation aligns itself with the statement delivered by Switzerland on behalf of the Group of Friends. The statement raises a host of important issues, including the nascent discussion about reparations and amends. Given the time limit, my remarks today will concentrate on one single topic: the practice of the Security Council in exercising its competencies under the Rome Statute of the International Criminal Court. This was a central topic of the workshop that you have organized in preparation for this debate. We commend this very useful initiative as a way to make thematic debates in the Council more meaningful events and hope that it will be replicated by others.

The Security Council has a double competence under the Rome Statute: First, to refer situations to the Court (art. 13b) and second, to defer ongoing investigations or prosecutions (art. 16) for a renewable period of one year. These two functions complement each other, while they are not precise mirror images: The deferral power is limited in time and requires an active decision of the Council to be renewed, while the referral is a one time and irreversible act. Also, it is worth noting that a decision to refer a situation does not automatically trigger an investigation. This decision remains with the Prosecutor and is based on the merits of the case. As a third function, the Security Council will have a role to play with regard to the exercise of jurisdiction of the Court over the crime of aggression – once the relevant regime under the Rome Statute is activated, which can be no earlier than January 2017.

The Council has resorted twice in its history to the use of article 16: It adopted resolutions 1422 and 1487, which are widely considered as contradicting both the Rome Statute and the UN Charter. Also, it has made two referrals in adopting resolution 1593 on the situation in Darfur and 1970 on the situation in Libya. There is no doubt that in particular the unanimous adoption of resolution 1970 is a landmark in the Council's engagement on individual criminal accountability – and that it is of outstanding importance for the international acceptance of the Rome Statute system. States Parties to the Rome Statute have therefore for the most part celebrated these referrals as significant gains in the fight against impunity. We agree with that assessment. But we also believe that referrals are not automatically effective tools in the fight against impunity and by extension for the protection of civilians. This is therefore a good moment for the Council to reflect on its role vis-à-vis the Court, to the mutual benefit of the Court and of the Council itself.

The most important element that makes referrals effective is follow-up action by the Council, in particular where there is a lack of cooperation with the Court. Such cooperation is a legal obligation for the State in question, under Chapter VII of the Charter, and for all States Parties to the Rome Statute. The Council has a broad range of means to promote and enforce such cooperation, but has so far not made use of them. This can lead to ineffective and prolonged proceedings before the Court that are expensive and create the perception of ineffectiveness, compounded by accusations of political bias. For the Council, the effects are equally damaging because it leads to the view that the referral was less an expression of a genuine commitment to ensure accountability for the most serious crimes under international law than a decision that was politically expedient at the time. This is particularly true for the practice of exempting certain categories of persons from the referral decision – a practice that may at some point have to stand the test of judicial scrutiny by the Court. There are of course quite different perspectives among individual Council members on this, given that some are and some are not parties to the Rome Statute. Finding the strongest possible support for referral decisions – ideally unanimous support – is therefore a key component in this respect.

The Council has a rich experience as a source for mechanisms to provide for individual criminal accountability, dating back to the early 90s. The models adopted by the Council have been diverse in

nature, ranging from ad hoc to hybrid tribunals, with different modalities for financing attached to them. They are all still actively functioning, and a final “lessons learned” is therefore not possible at this point. It seems clear, however, that this chapter in the history of the Council is largely a thing of the past. For political and financial reasons it is unlikely that the Council will continue establishing tribunals for specific situations on a regular basis. Referrals to the Court will therefore likely become the main tool of the Council to act in situations where genocide, crimes against humanity, war crimes and eventually aggression are committed with impunity.

Resorting to the services of the ICC will, however, also require a fresh look at the financing of such investigations. Under the current practice, these costs are shouldered by the States Parties to the Rome Statute. This practice is at odds with the treaty, which foresees a system under which the UN membership should shoulder the costs arising from a Security Council mandate – just as the Court reimburses the UN for services provided to it. The costs for the Libya investigation next year, for example, will amount to a projected 7 Mio. Euros. This is not much money compared to the costs of some of the accountability mechanisms set up by the Council, not to mention other activities it mandates, but an increase of more than 5% for the budget of the Court. Competence in this respect of course lies with the General Assembly, not with the Security Council. We therefore hope that a constructive discussion can be held in the appropriate fora to bring this to a successful closure.

I thank you.