



**PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
NEW YORK**

NEW YORK, 12 JUNE 2013

SECURITY COUNCIL

**INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) AND INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA (ICTR)**

STATEMENT BY H.E. AMBASSADOR CHRISTIAN WENAWESER

PERMANENT REPRESENTATIVE OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE UNITED NATIONS

Mr. President,

The initiative to request the opening of this debate originated in the ACT (Accountability, Coherence, Transparency) Group which is dedicated to enhancing the working methods of the Council. While we appreciate this opportunity to speak, we find it unfortunate that Council was not able to accede to the request of 17 States to hold this important discussion in the context of an open debate, especially given the 20th anniversary of the establishment of the ICTY in late May. This is a good opportunity to reflect on the work and impact of the ICTY, and on the Council's future work on accountability – and on the lessons the experience with the *ad hoc* tribunals teaches us.

I have the honor to speak today on behalf of Albania, Austria, Belgium, Bosnia and Herzegovina, Chile, Costa Rica, Croatia, Estonia, Finland, Hungary, Ireland, Jordan, Montenegro, Netherlands, Norway, Papua New Guinea, Peru, Slovenia, Sweden, Switzerland, Timor Leste and Uruguay. The establishment of the International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR) were milestones in the history of international criminal justice. The Council

thus acknowledged for the first time that accountability for the most serious crimes under international law is an integral part of the maintenance of international peace and security. In so doing, the Council asserted itself as the key player that it is today in the area of accountability, including through its referral power under the Rome Statute of the International Criminal Court. The *ad hoc* tribunals, in turn, made history through their judicial work: for example through the first trial against a former Head of State before an international tribunal, as well as through groundbreaking cases such as the *Akayesu* verdict, which established sexual violence as a form of genocide. The tribunals have also been important for victims, whose sufferings have been acknowledged and whose dignity has, in some measure, been restored. The International Criminal Court built on this experience and enhanced the capacity of the Court by ensuring victims a participatory role in its proceedings.

Without any doubt the experiences and lessons learned of the *ad hoc* tribunals are of great significance to the work of other international tribunals, as in the case of the ICC. However, it is too early to assess the full legacy of either of the tribunals, given that some of the most prominent cases are still in the trial phase. At the same time, the work of the tribunals reminds us – especially in recent months – that the worst crimes under international law are difficult to prove beyond reasonable doubt, and that every defendant has the right to due process. If some aspects of the work of the tribunals may continue to be subject to controversy, they must not cloud our overall judgment and reduce the historical importance of the tribunals.

Mr. President,

We firmly believe that this Council should continue to be a key player to ensure accountability for the most serious crimes under international law. Part of this work will be done pursuant to the referral power of the Council under the Rome Statute. But there are many other ways in which the Council – and indeed other organs of the United Nations – can effectively work to ensure accountability, in particular by enhancing the capacity of States who are willing to fight impunity through their national judiciaries. It is very likely and in our view desirable that the era

of *ad hoc* tribunals is soon coming to an end. The Council has moved on to different types of accountability work and should continue on its path – but it is essential that we draw some key conclusions from the chapter written by the *ad hoc* tribunals.

- International criminal justice requires **diplomatic support and follow-up** by the relevant States and institutions. This is particularly important with respect to the arrest of indictees, which can only be carried out by Member States and which will not happen unless States muster the political will and join forces to do so. The history of the ICTY illustrates very clearly that arrests do not happen unless States decide to put their political weight behind the enforcement of arrest warrants. The Council has acknowledged this much with respect to the International Criminal Court in adopting its most recent Presidential Statement on the Protection of Civilians (S/PRST/2013/2). In concrete cases, however, this type of follow-up is still often insufficient or lacking altogether.
- There must be a **solid financial basis** for international criminal justice mechanisms. The fact that all UN Member States of the United Nations were under an obligation to fund the *ad hoc* tribunals for which we have all paid just about 4 billion US dollars, was an indispensable part of their functioning. The experience with other international criminal justice mechanisms clearly shows that voluntary funding models are not working. Not only are these tribunals pretty much constantly in financial difficulties, which can delay judicial work, but the voluntary funding can also lead to questions concerning their judicial independence. Any serious accountability work undertaken by the Council in the future should therefore have a solid financial foundation. This means in particular that future ICC referrals should be financed by the UN membership as a whole – especially given that these costs are significantly lower than they would be under any new *ad hoc* mechanism.
- For international criminal justice to be effective, there must be ownership in the affected countries. The best means to achieve this is to **strengthen national capacities** where

countries are willing to fight impunity themselves, but lack the means to do so. The experience of the past 20 years has shown that the international community has numerous possibilities to help national justice processes in countries seeking to come to terms with past crimes. These range from hybrid tribunals of the sort employed in Sierra Leone and Cambodia to entities that work entirely within the affected country's legal system, such as the Commission Against Impunity in Guatemala and the Court of Bosnia and Herzegovina. If a permanent effect is intended, as it should be, investing in national mechanisms gives also the best return for the money invested. International justice and local solutions are not mutually exclusive. Indeed, given the principle of complementarity, such solutions can even be used in conjunction with an ICC referral or in cases where the ICC already has jurisdiction, to the benefit both of the ICC and the national processes. This would allow the ICC to step in should the local or hybrid solution prove to be unsatisfactory or indeed unavailable.

- Finally, from a perspective of the **working methods of the Council**, the existence of the Informal Working Group on Tribunals is noteworthy. This Working Group is an important space in which to discuss the interaction between the Council and the international justice mechanisms it has created. We believe, however, that the Security Council should take a broader approach and also establish the means to discuss other accountability issues, be it in a purpose-made Working Group or in the framework of the Informal Working Group on Tribunals, not least in light of the institutional linkages between the Council and the ICC. Given the apparent high level of importance the Council attaches to issues of accountability, these should also be reflected in a more prominent manner in the mechanisms through which the Council communicates with the public, in particular its annual report, the most important tool in this respect. A better reflection on the website would also be helpful. Having the necessary mechanisms in place is one prerequisite for the Council to continue effective accountability work – political will of course is another.

Mr. President,

The creation of the ICTY 20 years ago was the dawn of the age of accountability. At the heart of this age of accountability is also a realization that issues are intricately linked with international peace and security. We therefore hope that the Security Council will draw the necessary lessons from the past 20 years and continue to make accountability for the worst crimes under international law a priority in its work.

I thank you.