



# Asamblea General

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## Consejo de Derechos Humanos

41<sup>er</sup> período de sesiones

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Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

### **Carta de fecha 29 de abril de 2019 dirigida al Presidente del Consejo de Derechos Humanos por el Representante Permanente de Liechtenstein ante la Oficina de las Naciones Unidas en Ginebra**

Tengo el honor de presentar el resumen de la Presidencia del Retiro de Liechtenstein sobre la Rendición de Cuentas, que se celebró en Vaduz el 16 de noviembre de 2018 (véase el anexo). El resumen fue preparado por el Ministerio de Relaciones Exteriores, Justicia y Cultura del Principado de Liechtenstein bajo su propia responsabilidad.

En este contexto, le agradecería que tuviera a bien hacer distribuir la presente carta y su anexo\* como documento del 41<sup>er</sup> período de sesiones del Consejo de Derechos Humanos.

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\* Se reproduce como se recibió, en el idioma en que se presentó únicamente.



## **Annex to the letter dated 29 April 2019 from the Permanent Representative of Liechtenstein to the United Nations Office at Geneva addressed to the President of the Human Rights Council**

### **Chair's summary: Liechtenstein accountability retreat**

Vaduz, Liechtenstein, 16 November 2018

Liechtenstein convened an accountability retreat as its contribution to the 70th anniversary of the Universal Declaration of Human Rights (UDHR). The one-day retreat was held under the Chatham House rule and hosted by the Minister for Foreign Affairs of Liechtenstein, H.E. Aurelia Frick. The purpose of the retreat was to identify trends and to reflect on innovative approaches to accountability challenges. Participants were encouraged to take a comprehensive view of accountability approaches. In addition to the well-established focus on criminal justice, the concepts of restorative justice and the specific needs of transitional justice were also part of the discussion.

The primary goal of the one-day retreat was to hold open, out-of-the-box discussions to develop creative and innovative ideas how to address the current accountability challenges in a comprehensive way. The retreat was structured in several thematic discussions, namely on the effectiveness of responses to accountability challenges in Colombia and Libya, the role of victims in accountability mechanisms, the creation of the Syria Mechanism, accountability options for Myanmar and interlinking criminal and other forms of justice.

### **Background**

The UDHR is the milestone text in the history of human rights. The UDHR are customary international law and the document as a whole is one of the proudest achievements in the history of multilateral norm setting. And yet, many of its basic tenets are violated routinely and sometimes systematically around the globe. The anniversary of the Universal Declaration coincided with the 20th anniversary of the Rome Statute. In the past two decades, the international community has made significant progress in the area of international criminal justice. Challenges to accountability work in international organizations such as the United Nations (UN) remain and in some respect have become more pronounced, both due to political attacks on institutions such as the International Criminal Court (ICC) and the overall trend to undermine the rule of law at the international level.

Under international law, States hold the primary responsibility to ensure criminal accountability for the most serious crimes. International criminal justice mechanisms only become necessary where States fail to carry out this responsibility, due to inability or unwillingness. The ICC, whose creation represents the most significant development to combat impunity for the most serious crimes of international concerns, is based on this principle of complementarity and is designed as a court of last resort. Twenty years after the adoption of the Rome Statute, the ICC has carried out judicial work in a significant number of countries from across the globe, including criminal proceedings resulting in convictions. Even though the ICC has attracted a very positive response from States from all regions of the world, more than one third of the UN membership has yet to join the Rome Statute, and their populations therefore do not benefit from the legal protection offered by the ICC. The UN Security Council, which has the competence to refer situations to the ICC, has not been able to fill the resulting impunity gap, as it has largely been politically deadlocked, in particular on questions of accountability. Three of the five permanent members of the Security Council are not supportive of the ICC. Prominently, the proposal to refer the situation in Syria to the ICC found strong support in both the Security

Council itself and the UN membership as a whole, but was vetoed by two of the Council's Permanent Members.

Working towards the universality of the Rome Statute remains crucial, but this will require persistence and be a lengthy process. Advocacy for an effective role of the Security Council on justice issues also remains essential, but it would be naïve to expect the Council to break out of its current negative dynamic in the near future. In order to avoid impunity gaps, other accountability options must be explored, on the basis of the principle of complementarity. The General Assembly and the Human Rights Council have both been active in the area of accountability and developed a range of inventive mandates and tools aiming at strengthening accountability, by documenting and reporting on serious human rights violations and abuses – e.g. through Special Procedures, Commissions of Inquiry, Fact-Finding Missions and similar investigative mechanisms.

In 2016, the General Assembly created an innovative mechanism to facilitate and enable criminal prosecutions at the national, regional, or international level: the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (commonly referred to as the Syria Mechanism or IIIM), which has the mandate to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with relevant standards of international law. The IIIM is currently assisting in investigations and prosecutions in national courts and is in close contact with States and civil society organizations for the purpose of information sharing and beyond.

While not created by consensus, the IIIM has quickly gained strong political acceptance and established itself as a viable and important accountability model for situations where other options are not available. The strongest expression thereof is the Human Rights Council's establishment of an IIIM-type accountability mechanism for Myanmar in 2018. This illustrates both the support that the IIIM enjoys in the UN membership and also the need for such accountability mechanisms in cases of glaring impunity gaps.

There is also a growing recognition that accountability goes beyond individual criminal responsibility and often needs to be complemented by measures in the area of restorative justice such as truth and reconciliation processes or other transitional justice mechanisms. Past practice with respect to transitional justice work has made clear that every situation is unique and therefore requires a tailor made response, with the help from the international community and on the basis of experience.

### **Effectiveness of responses to accountability challenges in Colombia and Libya**

#### *Colombia*

The Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (the Peace Deal), signed on 24 November 2016, between Colombia and the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) is internationally seen as an important achievement in bringing a long-lasting conflict to an end. Its broad scope focussing on land reform, political participation, the issue of illicit drugs, criminal accountability, the establishment of a truth commission, reparations and the search for the disappeared, among others – was presented to the participants. It was pointed out that the question of accountability had been one of the thorniest issues in finding an agreement and that some aspects of the solution found had been subject to strong national and international criticism.

Particularly controversial were the sentencing measures agreed in the criminal accountability chapter – more specifically the absence of commensurate prison terms. It was pointed out that there was a problem of sheer scale: bringing justice for the over 8 million registered victims of the conflict comes with serious capacity and resource demands that exceed the capacity of the Colombian Justice system (which already suffers obstacles

and limitations to deal with ordinary crimes). The goals and mechanisms created by the Peace Deal aim to deliver the highest possible degree of justice, in theory. However, there are practical, technical and political challenges. Colombia's Special Jurisdiction for Peace has prioritized its work and currently opened five big cases, which include several thousand incidents in which both Army members and FARC combatants are being prosecuted.

Participants discussed the role of the ICC with respect to the situation in Colombia and the Final Agreement. In June 2004, the ICC had put the situation in Colombia under preliminary examination focusing on alleged crimes against humanity and war crimes committed in the context of the armed conflict in Colombia. The ongoing examination, with the looming possibility of a formal investigation, put pressure on the Government. In the negotiations leading to the peace agreement, it served as an incentive for and had a catalytic effect on the inclusion of an accountability dimension. Parallels were drawn between the impact of the ICC on the situation in Colombia and in Kenya and the starkly different outcomes. Participants suggested that the reasons for the ICC's positive impact in the case of Colombia are due to Colombia's well-established, sophisticated and independent legal system, the strong role of civil society as well as in the country's political aspirations in taking on a more prominent role in international relations.

Participants underscored that the Colombia situation illustrates how the ICC can support and guide national justice efforts. The spotlight put on Colombia by the ICC preliminary examination provided a boost to the national peace process, and the high standards of the Rome Statute served as guidance in the negotiations of the peace deal. The ICC therefore played its role, in accordance with the principle of complementarity enshrined in the Rome Statute, to mostly positive effect. It was also pointed out, however, that the positive outcome was not so much the result of a long-term strategy on behalf of the Court, but due in good part to the confluence of positive factors specific to the Colombia situation.

While it is important to display Colombia as a very positive example of the Court's involvement, it is also of the essence not to apply the approach taken in Colombia automatically to other situations. Furthermore, the role of the ICC in Colombia is not finished and there are challenges ahead. The meeting also discussed the dimension of funding since the ICC's positive impact had come at minimal cost for the ICC and the State Parties, given that a formal investigation had never been opened. Some participants also underlined the disparity between, on one hand, the expectation of the ICC being able to deal with all situations and cases that would fall under its jurisdiction, and the lack of sufficient funding on the other. In this context, participants also referred to accountability as a development issue, demanding for more investment in infrastructure and capacity building for justice and sustainable peace. On balance, however, the potential for the ICC to have a powerful positive impact with a minimum level of involvement is an important lesson learned.

### *Libya*

Participants also discussed the role of the ICC in Libya. They touched upon the ICC cases against Libyan officials and recognized that there were a number of missed opportunities. Generally, the role of the ICC was not predominantly seen as having a positive impact in Libya. In contrast, the limited personnel resources vis-à-vis the immense tasks of the Court were raised during discussions. Concrete ideas were discussed on how the Court could take a more active role in Libya. It was suggested that this could be achieved through a symbolic case with a big impact on the perceived role of the ICC or by a much more active role of the Court in addressing Libya's role in the migration crisis. It was criticized that the Court had not made better use of the opportunity presented by the highly publicized cases of slavery in Libya, including slave markets, which have led to international outcry and to calls for accountability and justice. It was emphasized that the Rome Statute provided for jurisdiction over human trafficking and other slavery-related crimes and that the Court could play a prominent and positive role in this area – in Libya and beyond. It was also suggested that the ICC could be more effective in the freezing of assets of indicted individuals.

### **The role of victims in accountability mechanisms**

With the creation of the position of Victims' Rights Advocate for the United Nations, the UN has taken a big step forward in ensuring accountability as well as in strengthening prevention efforts. While the provision of victim assistance is one of the primary tasks of the Advocate, she only has limited resources at hand to do so. The UN Trust Fund in Support of Victims of Sexual Exploitation and Abuse can be used to support a broad variety of projects to assist victims. A more far-reaching fund would help in supporting the work of the Victims' Rights Advocate. The experience of several participants shows that while bringing perpetrators to justice is extremely important to victims, they often feel that they are treated as a means to an end by investigators. This lack of dignity and respect vis-à-vis the victims exacerbates their suffering. A more nuanced approach to accountability which focuses on the victims and their stories, accompanied by a thorough and context-specific risk analysis, appropriate medical, psychosocial and legal support and assistance as well as reparations is required. To this end, participants offered three recommendations:

First, a victim should not be treated as a mere information provider. Enabling victims to give informed consent to any interview was indispensable to this end. Victims have the right to know why they are being interviewed and how the information they provide will be used. They also need to be considered as actors in a wider setting and allowed to play an active role in bringing peace and justice to a situation. In addition, current discussions on substituting the term "victim" with "survivor" also seek to challenge the picture of a passively suffering victim versus a "survivor" with agency. In this respect, it was also pointed out that the term "victim" was the established term in international law and more specifically in the human rights context.

Second, a victim's age and needs should be given due consideration, particularly where children and other victims in vulnerable situations are concerned. Their stabilization should be prioritized over interviewing. Interviewers also need to understand that children and other victims are part of the solution to a conflict and the future of a country. This is particularly complex where children are not only victims, but also perpetrators of crimes, such as in the Ongwen case currently before the ICC. Participants also underlined the importance of ensuring that only specially trained individuals conduct interviews, in particular with children. They noted that intersectional discrimination based on age, gender, social status and other factors must be taken into account.

Third, a victim's protection and dignity should be ensured at all times. Cultural components and possible stigmatization need to be taken into account before, during and after interviewing a victim. A victim or witness can suffer further stigmatization in their community as a consequence of testifying. Depending on power dynamics, further measures need to be included in the process, such as relocation. Also, the background of the interviewers themselves is relevant. For example, if crimes were committed by police forces, entrusting police officers with interviewing may lead to further trauma. Repeated interviews and/or testimonies must be avoided. In some conflict situations several actors conduct interviews and collect testimonies, as do the press. In some contexts, such as Myanmar, there have been reports of victims being interviewed over a dozen times. Video testimonies are now being introduced, yet in some jurisdictions evidentiary and procedural rules require prosecutors to have the opportunity to examine victims and/or witnesses in court. In addition, the role of media is also often seen as controversial, especially in cases where the fate of victims is used predominantly to promote their own outlet.

Recent cases show that interviewers need to assume responsibility to prevent wrongful acts. One participant suggested that policy condemning all forms of misconduct and defining the consequences is a first and very important step. The policy has to outline clearly to whom the victim should report and talk to about the alleged wrong, and how information will be handled. Standard and guidance tools already exist, in particular in UN entities, and are constantly under review. Participants highlighted the fact that mental health consequences for interviewers, investigators, legal professionals, including prosecutors and judges should not be underestimated. Working with victims, hearing their testimonies and reviewing incriminating material can have serious mental health consequences, even for

specially trained and experienced individuals. Cases involving child victims are particularly challenging and may lead to essential professionals dropping out of these fields.

### **The creation of the Syria-Mechanism (IIIM)**

The conflict in Syria laid bare the limits of existing approaches to the maintenance of international peace and security, as well as to international justice. The UN Security Council had largely failed in its responsibility to maintain peace and security in various areas, but in particular with respect to justice and accountability. A proposed referral of the situation to the International Criminal Court was supported by a significant part of the UN membership and a clear majority of the Council's membership, but vetoed by two Permanent Members of the Council.

In light of this situation and the dynamic of the assault on Aleppo, the UN General Assembly took the lead and created the IIIM on 21 December 2016 – an initiative launched by Liechtenstein, in partnership with various States, and accompanied by a short consultation process involving not only States, but also the Commission of Inquiry created by the Human Rights Council and civil society organizations. The IIIM represents a new tool with respect to international criminal justice and illustrates the important role that the General Assembly can play in the area of accountability. It was created out of frustration over and in response to the prolonged inaction of the Security Council. Its creation would likely not have been possible without these conditions in place.

While the General Assembly often works on the basis of consensus, the awareness that consensus was impossible from the very beginning created a strong positive dynamic around this project. This, as well as the very significant majority of the General Assembly voting in favour of creating the IIIM was of essential importance for the subsequent success of the Mechanism, as was the very low number of States who voted against its creation. While legal challenges were mounted initially against the competence of the General Assembly to create the IIIM, these views have had no impact on the implementation of the mandate and have not gained traction. Thanks in no small part to the strong leadership of the IIIM, the mechanism now enjoys strong political acceptance. The best expression of the broad approval within the UN membership is the fact that the IIIM served as a template for the creation of a very similar mechanism for Myanmar by the Human Rights Council – a situation where a Security Council referral was equally unlikely. In this regard, participants highlighted that the IIIM, as an international body, can function as a springboard for accountability initiatives globally.

Participants welcomed the IIIM's close cooperation with the Independent International Commission of Inquiry on the Syrian Arab Republic (COI), its solid commitment to working with civil society and its impartiality demonstrated by the broad range of sources it employs for its work. These range from the material the COI shared with the IIIM (provided the consent obtained from its sources) to material from civil society, the UN and States. With the latter the collection of intelligence or evidence gathered in a judicial context can require the adoption of adequate legal frameworks allowing for such collection. Bearing in mind that there are more hours of videos of the Syrian conflict than hours of the conflict itself, participants underlined the absolute necessity of having state of the art information and evidence management systems in place in order to ensure the integrity of the collection. They also highlighted that any type of information available apart from video material, e.g. social media posts, news reports, satellite imagery, weather reports and other data, will help in corroborating evidence – even in situations, where the truth is vigorously contested.

The building of case files on the basis of evidence available is at the heart of the IIIM's mandate. The IIIM's structural investigation, focusing on the big picture and on a contextual view, was referred to as an important resource for national actors, since it can help map crime patterns and understand structures of power. When focusing on the mapping of such patterns, participants emphasized the important analytical work done by other national, regional and international entities, even though the IIIM cannot import their conclusions. Participants noted that technology can help the IIIM to process the vast volumes of data and make it possible to find important corroborating evidence. It was emphasized that the IIIM will need to develop effective methods in the preparation of the

data collected for their presentation in courts. Participants mentioned in this regard the opportunity for the IIIM to adopt an integrated model, taking into account the standards of various jurisdictions. The redaction of information and the assistance with translation were mentioned as important tasks of the IIIM in its cooperation with prosecutors.

The process whereby national prosecution authorities can submit requests for assistance to the IIIM was discussed. It was highlighted that up until November 2018 the IIIM has received twelve such requests and eight remained pending. It was mentioned that the focus of these requests were mainly on receiving information and evidence. In this regard the establishment of a joint investigation team by the German and French war crimes units was commended. This joint investigation started its work on the basis of the Caesar photos and testimonies received in their respective jurisdictions. A participant recognized the IIIM's potential to support the work of war crimes units in general and the German and French joint investigation team in particular. In this regard, attention was drawn to arrest warrants issued by German and French prosecutors targeting senior officials of the Syrian intelligence services.

Participants welcomed that the IIIM explores accountability avenues in national, regional and international courts and tribunals. Even though international judicial avenues are not available at least for the moment, the IIIM is carrying out the preparatory work. This work is based on a criminal law methodology necessary to build cases with a view to share them with the relevant international or regional courts that may have jurisdiction for these cases in the future. In identifying possible lines of inquiry, it was highlighted that the IIIM keeps an eye on jurisprudential developments at the ICC. It also analyses the evidence it collects with a view to identifying possible cases for which the ICC could potentially exercise jurisdiction in the Syrian context.

The recognition of the crucial role of civil society in the IIIM's mandate in paving the way for accountability and justice in Syria was discussed. A participant highlighted that 2018 the IIIM's engagement with Syrian civil society took the form of twice-a-year meetings with a group of about 28 NGOs facilitated by Switzerland and the Netherlands. This platform provided the IIIM with an opportunity to explain its mandate and methodologies to civil society actors. The signing of a protocol of collaboration between the IIIM and Syrian NGOs on 3 April 2018 in Lausanne was highlighted by participants as a foundational moment in the IIIM's dialogue with Syrian civil society. This protocol outlines a set of overarching principles to guide engagement between the IIIM and civil society. It also seeks to ensure mutual understanding regarding opportunities for cooperation and dialogue. In addition to the Protocol, the Mechanism has developed a Memorandum of Understanding template, which it shares with civil society seeking to cooperate with the IIIM. Participants also recognized the limits of the Lausanne meetings and highlighted the need for direct engagement of the IIIM with groups of civil society actors in the region where they operate, as well as one-on-one contact with them.

### **Accountability options for Myanmar**

The Fact Finding Mission Report on Myanmar released in August 2018 was received very positively by the participants. The report offers evidence of genocide against the Rohingya and other atrocity crimes and expresses a clear view on the need for accountability. Participants highlighted the clear chain of command the report established, unmistakably pointing to the military leadership as responsible for the crimes committed against the Rohingya and thus allowing for the identification of individuals bearing the most responsibility for these crimes. The pro forma mechanisms put in place by Myanmar to investigate and prosecute these crimes have shown no genuine willingness to investigate and prosecute. It served the main purpose of shielding those responsible from prosecution and international scrutiny. Participants concluded that this clear unwillingness displayed by Myanmar requires action on the international level to bring justice to the victims.

Reference was made to the 2018 report of the United Nations Secretary-General on conflict related sexual violence, particularly the listing of the Tatmadaw, the armed forces of Myanmar, in the annexe of the report as a party credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence in situations of armed conflict on the agenda of the Security Council. The listing was meant to prompt

action by Myanmar to end sexual violence committed against civilians and to bring perpetrators to justice. Another reference was made to the expression of interest by the Government of Myanmar to sign a Joint Communiqué with the UN on addressing conflict-related sexual violence, in line with Security Council resolution 2106. Accountability is at the heart of this communiqué and Myanmar is required to undertake genuine, concrete and time-bound steps to bring perpetrators of sexual violence in conflict to justice including in its military. The participant highlighted that the signing of any agreement with Myanmar is an entry point for national accountability, but this entry point can only be fully leveraged if a full and unfettered technical assessment of Myanmar's justice system is carried out and if victims and witnesses who participate in accountability processes are fully protected from reprisal.

Furthermore, the signing the Framework of Cooperation with the Government of Bangladesh and the SRSG was mentioned by a participant. The Framework of Cooperation has two pillars that focus on justice and accountability and service provisions for survivors of sexual violence. Considering that a primary challenge to prosecution of sexual violence crimes is rooted in the investigation stage with insufficient evidence hampering effective prosecution, the office of the SRSG is strengthening the capacity of the Bangladesh National Human Rights Commission to document such cases.

Participants agreed that a Security Council referral of the situation to the ICC remains unlikely. The ICC Prosecutor's Office was commended for its approach to the situation in Myanmar, which had resulted in the possibility of exercising jurisdiction over the crime of forced deportation to Bangladesh, as well as other crimes with a cross-border element. It was also pointed out that the resulting jurisdiction is limited and does for example not cover sexual and gender-based crimes which seemed to have been committed systematically and at a large scale. At the same time, it was noted that the crime of forced deportation was "the mother of all crimes" as the forcible displacement of the Rohingya population appeared to have been the principal policy goal of the Myanmar authorities. It was also mentioned that all States Parties to the Rome Statute now had the possibility to refer the situation in Bangladesh to the ICC, on the basis of the Court's ruling that it could exercise jurisdiction over the crimes with a cross-border element. Participants recognized that it would be worthwhile contemplating such a step, taking into account all relevant factors, and in close consultation with the Government of Bangladesh.

Participants also welcomed the Human Rights Council's creation of the Myanmar Mechanism in 2018. They recognized that this mechanism is an essential part of accountability for Myanmar. It was recognized by a participant that the mechanism can also examine fully on acts of sexual violence against the Rohingya. It was stated that it is essential that this new mechanism look at serious international crimes committed against other minority groups in Myanmar. A participant highlighted that outreach of this mechanism will be important so that victims know of its existence and that it is critical that victims and witness protection be built in from the start. In order to put dramatic public pressure on Myanmar, it was mentioned that states might wish to consider a change from the Syria IIIM model, and allow the Myanmar Mechanism to specifically name individual perpetrators for whom the mechanism believes there is probable cause to bring criminal charges.

Other ways to put pressure on Myanmar to comply with accountability mechanisms were also discussed. Strong and effective sanctions against those entities and individuals who command, condone or commit atrocities were mentioned as an option. It was further stated that for those who enjoy impunity, targeted sanctions can remove their means of doing harm, divest them of resources, and limit their freedom of manoeuvre, through arms embargoes, travel bans and asset freezes. In this regard the already imposed sanctions on military officials were commended. Some expressed the hope that the Security Council could vote on establishing a UN sanctions regime for Myanmar, while it was acknowledged that the prospects in this respects were slim.

On the refugee crisis caused by the mass displacement of the Rohingya population, it was stated that the return of refugees cannot be separated from the question of impunity. Accountability for the crimes committed was therefore not only the morally right thing to do, but also necessary to achieve the policy goal of voluntary return of the displaced



population. It was pointed out that repatriation in the present circumstances may amount to a violation of the principle of non-refoulement. It was mentioned that the UN Refugee Agency (UNHCR), advised against imposing any timetable or target figures for the repatriation to respect the voluntary nature and sustainability of the return.

The significant role of the media in the Rohingya crisis was also raised. Participants discussed particularly the role of social media, including Facebook, especially with regard to videos and photos that can potentially serve as evidence to corroborate information given in testimonies. A participant also quoted the report of the Fact Finding Mission that through Facebook the Myanmar authorities have emboldened those who preach hatred and silenced those who stand for tolerance and human rights and that they created an environment where extremists' discourse thrived, human rights violations were legitimized, and incitement to discrimination and violence facilitated. It was highlighted that social media platforms active in Myanmar should apply international human rights law as basis for content moderation on their platforms.

### **Interlinking criminal and other forms of accountability**

The expectations and demands for accountability have never been more extensive. In order to address these demands, it was suggested that there was a need not only to think, but also to act outside the box to achieve accountability and sustainable peace in the broader sense. It was also suggested that the international community be much more vocal in the demand for justice.

Participants proposed that accountability expectations can be fulfilled by adopting a wider approach to accountability itself, for example by including transitional justice elements in criminal accountability mechanisms, particularly truth commissions and reparations processes. Yet, this requires some conceptual thinking beforehand and also calls for extensive consultations and thorough preparation between the involved actors. Even though there are a lot of other possible complications in the interlinking of processes, participants felt that the more accountability is ensured the better. Yet participants also cautioned from the duplication of accountability efforts.

During the discussion, participants underlined that accountability mechanism should bear in mind the voices of victims. In this regard, participants noted the need for better coordination among accountability actors, particularly with regard to collecting evidence. To this end, participants observed that the issue of different evidence collection methodologies must be considered when interlinking accountability measures, in order not to undermine cases when evidence is collected differently. The better accountability mechanisms communicate their needs, also to civil society actors, the better evidence they will receive. It was further emphasized that ensuring accountability can become difficult when accountability mechanisms have to deal with inconsistent statements collected during different processes. Conducting interviews should be taken very seriously by accountability mechanisms. They should also take into consideration that the interviews can be exchanged with and used by other accountability actors. In this regard, UN actors could showcase how they use statements in their reports and cases.

An important element in the interlinking discussion pertained to the principle of universal jurisdiction. Participants expressed their strong hope that more countries make use of this principle. The legislation of countries providing for national prosecution under this principle provides a template for those that do not yet have this possibility enshrined in their national laws. Participants referred in this regard to the Fact Finding Mission on Myanmar and the COI on Syria that gave new tools to national prosecutors that have universal jurisdiction to initiate criminal investigations and issue arrest warrants.

A longer discussion emerged on the complementarity of the COI on Syria with other accountability mechanisms, particularly the IIIM. The COI, established in 2011, is the longest serving Commission of Inquiry, which is operating during an on-going conflict with no access to the country. It was recognized that the COI is not only important for criminal accountability but also for other accountability processes. Participants were generally enthusiastic about the establishment of the IIIM and the fact that its mandate was carefully designed in a manner that ensured that it was complementary to the work of the COI. It was

highlighted that there was an urgent need for the international community to address the issue of detainees and of disappeared persons. Estimations range between 60'000 and 100'000 individual persons missing or forcibly disappeared. It was therefore suggested that the international community should establish an international mechanism to coordinate efforts on collecting information on missing and forcibly disappeared persons, as all families of the victims have a right to know the truth.

## Conclusion

International human rights and humanitarian law are increasingly under pressure, with direct effects on accountability efforts, but also increasing the need for effective accountability work. The calculated disregard of perpetrators for international norms fuelled by the lack of response from intergovernmental bodies, have complicated any efforts to bring justice for the atrocities committed.

International standards in the area of human rights and international humanitarian law are of essential importance, and accountability work is crucial in this respect. The role of the ICC must be acknowledged and universality of the Rome Statute remains an important goal. The ICC should be regarded as the centrepiece of an international accountability system anchoring other tools and mechanisms that can provide accountability. The ICC is not the only body that can deliver justice for atrocity crimes, but it can provide direction, identify accountability challenges in national systems and play a catalytic role through successful criminal proceedings.

The jurisdictional reach of the ICC is still limited, but the Court also has limited capacity, meaning that trials can only be held on a select number of individuals. Complementary efforts through national courts or possibly also truth and reconciliation mechanisms are necessary in order to provide for accountability in all its aspects. There is also a need to continue thinking outside the box and to be innovative in creating accountability mechanisms, on the basis of the principle of primary responsibility of national judiciaries, complemented by international mechanisms and judicial activity on the basis of the principle of universal jurisdiction. The IIIM is a great and innovative tool to help in this respect, while of course it needs to be complemented by other efforts, as it is not a court.

A continuing issue in international criminal justice is the emergence of social media, which is a mixed blessing. On one hand, social media can play an important role in documenting human rights violations which in turn can be used for accountability efforts. On the other hand, social media is instrumentalized by perpetrators to disseminate human rights abuses. This challenge requires more sustained and in-depth discussion.

More discussions are needed to improve support for victims in accountability mechanisms. Full respect of their rights can only be achieved by allowing for their active participation in relevant proceedings and taking their perspectives into consideration. There is an urgent need to map services and pathways for victims. At the same time, it is of particular importance that re-traumatizations are avoided at any cost, particularly by avoiding multiple interviews of victims.

Ensuring accountability is complex and requires the involvement of various stakeholders. The need for multisector dialogues on accountability questions remains strong, cultural backgrounds and legal traditions are important success factors for accountability processes. It is essential to link accountability discussions with the 2030 Agenda on Sustainable Development, in particular through SDG 16. An investment in justice can only be successful if understood as contribution to sustainable development capacity building efforts are undertaken to strengthen national judiciaries and accountability work.

**Program**

08.45	Welcoming remarks by H.E. Minister of Foreign Affairs of Liechtenstein, Aurelia Frick
09.00	Introductory remarks by Ambassador Christian Wenaweser on the purpose of the meeting
09.15–10.45	Discussion I on effectiveness of responses to accountability challenges in Libya and Colombia  Moderator: Pablo de Greiff, Director, Transitional Justice Program, CHRGJ, School of Law, NYU  Key discussants: Rod Rastan, Legal Adviser of the ICC Chief Prosecutor, and Fernando Travesí, Executive Director, International Center for Transitional Justice
11.00–13.30	Discussion II on the role of victims in accountability mechanisms  Moderator: Jane Connors, Victims' Rights Advocate, United Nations  Key discussants: Krishna Patel, Justice Initiative Director, Grace Farms, and Sarah Blakemore, Chief Executive, Keeping Children Safe
13.30–14.30	Working lunch with keynote by Catherine Marchi-Uhel, Head of the Syria-Mechanism (IIIM), with subsequent comments by Ambassador Christian Wenaweser on the establishment of the IIIM, followed by Q and A
14.30–16.00	Discussion III on accountability options for Myanmar  Moderator: Kate Gilmore, Deputy High Commissioner for Human Rights  Key discussants: Radhika Coomaraswamy, Fact-Finding Mission on Myanmar, and Pramila Patten, Special Representative of the Secretary-General on Sexual Violence in Conflict
16.30–18.00	Discussion IV on interlinking criminal and other forms of accountability  Moderator: Henrik Attorps, Swedish Public Prosecutor  Key discussants: Paulo Pinheiro, Chair, UN Commission of Inquiry on Syria, and David Tolbert, Ford Fellow/Visiting Scholar, Duke University
18.00–18.45	Final wrap-up session and closing remarks by Ambassador Peter Matt

## **Participants**

Cécile Aptel, Director, Policy, Strategy and Knowledge Department, International Federation of Red Cross and Red Crescent Societies

Henrik Attorps, Senior Public Prosecutor, Swedish Prosecution Authority

Sarah Blakemore, Chief Executive, Keeping Children Safe

H.E. Rosemary McCarney, Ambassador, Permanent Representative, Permanent Representation of Canada to the UN in Geneva

Jane Connors, Victims' Rights Advocate, United Nations

H.E. Radhika Coomaraswamy, Fact-Finding Mission on Myanmar Office of the High Commissioner for Human Rights

H.E. Monique van Daalen, Ambassador, Permanent Representative, Permanent Representation of the Netherlands to the UN in Geneva

Richard Dicker, Director, International Justice Program, Human Rights Watch

Kate Gilmore, Deputy High Commissioner, Office of the High Commissioner for Human Rights

Pablo de Greiff, Senior Fellow and Director, Transitional Justice Program, Center for Human Rights and Global Justice, School of Law, New York University

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Lotte Leicht, EU Director, Human Rights Watch

Anna Neistat, Senior Director for Research, Amnesty International

Krishna Patel, Justice Initiative Director, Grace Farms Foundation

Pramila Patten, Special Representative of the Secretary-General on Sexual Violence in Conflict, United Nations

Paulo Pinheiro, Chair, Commission of Inquiry on Syria

Hilary Power, Senior Advocate UN, Amnesty International

Stephen Rapp, Former US Ambassador at large for Global Criminal Justice

Rod Rastan, Legal Advisor, Office of the Prosecutor, International Criminal Court

Nina Suomalainen, Executive Director, Justice Rapid Response

David Tolbert, Ford Fellow/Visiting Scholar, Duke University

Fernando Travesí, Executive Director, International Center for Transitional Justice

Catherine Marchi-Uhel, Head, International, Impartial and Independent Mechanism for Syria

H.E. Valentin Zellweger, Ambassador, Permanent Representative, Permanent Representation of Switzerland to the UN in Geneva

## **Liechtenstein officials**

Minister Aurelia Frick, Ministry for Foreign Affairs, Justice and Culture

Martin Frick, Ambassador, Director, Office for Foreign Affairs

Stefanie Gassner, Intern, Permanent Representation of Liechtenstein to the UN in Geneva

Karin Lingg, Head Human Rights Division, Office for Foreign Affairs

Peter Matt, Ambassador, Permanent Representative, Permanent Representation of Liechtenstein to the UN in Geneva

Claudio Nardi, Human Rights Division, Office for Foreign Affairs

Kathrin Nescher-Stützel, Human Rights Division, Office for Foreign Affairs

Robert Wallner, Prosecutor General, Office of the Public Prosecutor

Christian Wenaweser, Ambassador, Permanent Representative, Permanent  
Representation of Liechtenstein to the UN in New York

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