PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
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SECURITY COUNCIL – OPEN DEBATE
PROTECTION OF CIVILIANS IN ARMED CONFLICT
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Mr. President

My delegation aligns itself with the statement delivered by Switzerland on behalf of the Group of Friends. We would also like to thank the Secretary-General for his new report on the protection of civilians in armed conflict, which once again makes for a sobering read. The "abysmal state" of the protection of civilians is of course first and foremost the responsibility of conflict parties, including non-State armed groups. But it is also clear that the mechanisms developed and deployed by the international community so far are not sufficient, and that we must undertake to develop effective mechanisms for monitoring compliance under the core instruments of IHL.

Given the time limit, my remarks today will focus on the issue of **accountability**. We commend the Secretary-General for his initiative to undertake a review of United Nations experience in international **commission of inquiry and fact-finding mission** processes. These investigative tools are increasingly being used in recent years and have time and again shown their tremendous value. We agree that United Nations support for such mandates needs to be improved, and greater dedicated capacity within the UN Secretariat needs to be deployed. Overall, commissions of inquiry and fact-finding missions should be able to rely on specialized back-office support and apply consistent methods and standards, at least to the extent possible in the specific situations. It would also be useful to have a roster of experts available who may be called upon to serve on a Commission if and when the need arises. All these

resources should be available to the Office of the High Commissioner for Human Rights in particular, as the Human Rights Council has emerged as the leading body in establishing these Commissions. We also strongly agree with the notion that such mandates should be established early in a crisis in order to prevent further violations and provide the relevant United Nations organs with a factual basis for further action. Commissions of inquiry and fact-finding missions may also provide important information for judicial processes that may be launched as a follow-up, such as investigations by the International Criminal Court. They may also form the basis for further action taken by the Security Council, as was the case in the first-ever referral decision by the Security Council, regarding the situation in Darfur (resolution 1593).

We fully support the Secretary-General's call on the Council to begin a **dialogue aimed at strengthening the Council's role in enhancing accountability**, at both the national and international levels – this is in fact in line with one of the recommendations that we have advocated as a member of the S-5 group in draft resolution L. 42.

One central element in this regard is a more coherent use of the **Security Council's power to refer situations to the ICC**. This requires predictability and consistency in choosing situations worthy of investigation by the ICC. Also, past practice seeking to exempt certain nationals from the Court's jurisdiction, thus infringing on the powers of the Court under the Rome Statute, needs to be re-considered. Equally problematic is the Council's past practice of implying that the United Nations may not contribute to the financing of such referrals, thus infringing on the powers of the General Assembly under the UN Charter and the UN-ICC Relationship agreement.

Another central element is **greater ownership in following-up on such referrals**. Whenever the Council refers a situation to the ICC, it does so on the basis of its powers under Chapter VII of the UN Charter. Legally, the Security Council is acting as if it was establishing its own tribunal with its own statute, by imposing the obligations of the Rome Statute – in its entirety – upon the situation country, a point that would perhaps be worth emphasizing in future referral decisions. This further implies, as currently relevant in the situation in Libya, that Court officials enjoy immunity from detention under article 48 of the Rome Statute.

The work of the ICC based on Security Council referrals is thus not very different in nature from the work of the ICTY or ICTR. Follow-up to referrals, in particular regarding cooperation, should therefore be much higher on the agenda of the Security Council. **Non-cooperation** with the ICC in case of Security Council referrals is as much of a problem for the Council itself as it is for the ICC. In practical terms, it may be useful to establish a forum to advance questions of cooperation with the ICC at the level of a sub-organ of the Security Council, such as a **new Working Group on the relationship with the International Criminal Court**. This would be a useful and necessary space for concerted action on all related matters, such as notifications from the Court on non-cooperation, but also the ongoing situation regarding the detention of ICC staff in Libya. In this context, we would like to call on the Government of Libya to **release the detained ICC staff without delay**. Overall, the Security Council has a very limited record in following up to the referrals it has made to the Court; a situation that needs to be rectified.

Still within the framework of accountability, I would like to add a few words on the issue of **reparations and amends**. We agree with the Secretary-General that this issue is often overlooked and needs greater attention. It also needs a certain degree of creativity and innovation, since the sheer number of affected victims often makes individual reparation all but impossible. In this regard we would like to commend the work of the International Criminal Court's Trust Fund for Victims, which is actively engaged in assisting affected communities as a whole. We also strongly support efforts to increase the practice of conflict parties to offer amends to civilians harmed in the context of lawful combat operations, despite having no legal obligation to do so. Such policies underline the commitment of conflict parties to legal conduct and to minimizing civilian harm, and contribute to the preservation of the human dignity of civilians caught in the crossfire. An important pre-requisite in this regard is however the systematic tracking of civilian harm, which in itself is indispensable for transparency and effective monitoring of the implementations under international humanitarian law.

I thank you.