

Open letter from the Foreign Ministers of Liechtenstein and Slovenia

Law over politics: why we need the ICC now more than ever

As the international community continues to struggle to address some of the world's most brutal conflicts and worst human rights abuses, we are time and again reminded of how limited the tools are that we have at our disposal. The United Nations Security Council has failed to stop what has become a three-year civil war in Syria, killing over 100,000 human beings, most of them civilians, and displacing almost half of the country's population. The Human Rights Council and its Commission of Inquiry do not appear to have any leverage over North Korea, where most basic human rights have been systematically violated with total impunity for decades. These and many other situations cry out for action by the international community. The results are mixed though, especially since the UN's most powerful organ, the Security Council, often remains deadlocked and unable to act due to the veto of its permanent members.

But in recent years, a new actor has entered the scene and brought new dynamics into a number of situations: the International Criminal Court (ICC). The ICC currently pursues the perpetrators of the worst crimes committed in eight countries in Africa – mostly upon request by the respective governments. It has convicted rebel leaders operating in the Democratic Republic of the Congo and helped prevent further escalation following military violence in Guinea 2009. It has issued arrest warrants against the notorious leader of the Lord's Resistance Army Joseph Kony, alleged to have committed abhorrent crimes in northern Uganda, and Sudan's President Omar Al-Bashir, relating to atrocities in Darfur. It is pursuing accountability for post-election violence in Kenya in 2008 and preparing proceedings against the former President of Côte d'Ivoire, Laurent Gbagbo, for his alleged involvement in widespread crimes in that country. Moreover, it is investigating in Mali and the Central African Republic, and it is actively considering investigations regarding Honduras, Afghanistan, Korea, Comoros and Ukraine. It is also assessing if there are genuine national proceedings being carried out in Georgia, Guinea, Colombia, and Nigeria.

In addition, there are many situations where the Court should become active, but cannot, because the countries in question have not accepted the Rome Statute. In these instances, only the UN Security Council can authorize ICC investigations – as it has done regarding Darfur (2005) and Libya (2011). Many countries, including Liechtenstein and Slovenia, have therefore called upon the Security Council to refer the situation in Syria to the ICC for investigation and prosecution. Another situation where the Security Council should consider such a move is North Korea.

Never before has international criminal justice been such an important factor in the international community's response to violent conflict. But ever since the ICC started its work to end impunity and to bring justice to victims of the most serious crimes, emotions have run high about the effects of the pursuit of justice on efforts to make peace, about the presumed political motives of those in charge of applying the law, and about how justice just never seems to reach all corners of the world.

These are complex issues that deserve discussion far beyond what we can debate here. Let us therefore say only this much: In today's conflict-laden world, the International Criminal Court is our one important chance to advance the rule of law where conflict reigns, and to have power and politics yield to principles of humanity and law.

Remember what the Rome Statute of the ICC is all about. It is not a conspiracy to meddle in internal affairs of sovereign States. Rather, it is a landmark treaty that aims first and foremost to prevent the occurrence of atrocities and, when this fails, to prosecute the most heinous crimes known to mankind: genocide, crimes against humanity, and war crimes – and is, in fact, intended to strengthen national judiciaries and thus State sovereignty. These crimes have been universally outlawed by the international community for decades, but the laws were barely enforced because the powerful did not want them to be. And so it was not the large and powerful, but the small and mid-sized countries in the world that advocated for the establishment of the ICC, ultimately with great success. They did not have politics in mind. What they had in mind were the victims of crimes, innocent men, women and children, millions of which had been murdered, mutilated and abused in past and present conflicts at the hands of criminals up and down the chain of command. This is the Rome Statute's greatest innovation: it acknowledges that victims have all too often been sidetracked. It therefore grants victims the right to participate in the proceedings and envisages reparations, thus empowering the survivors of mass atrocities.

Liechtenstein and Slovenia were among those countries that strongly supported the establishment of the ICC, and today we fight for an even stronger Court. Our countries knew that delivering justice for crimes committed during conflict would be difficult. We knew that the era of accountability would not have a perfect start, and would certainly not be perceived to be perfect. True, not all those who deserve to be brought to justice need to fear that prospect, at least not yet. But it would be unthinkable to deny to victims in one part of the world their day in court, just because it has been denied to others elsewhere. And it would be wrong to neglect the role of the ICC in fostering reconciliation and rebuilding of post-conflict societies. In this imperfect world, we need more justice, not less. More principled action, less politicization.

Our countries were also among those that led the way in making the Rome Statute more complete. At the 2010 Review Conference in Kampala, Uganda, which was presided by Liechtenstein, States Parties agreed by consensus on a definition of the crime of aggression and to empower the ICC to prosecute those responsible for this crime. The ICC will thereby help enforce the Charter of the United Nations, which prohibits the illegal use of force by one State against another. Only political and military leaders of States that manifestly violate the United Nations Charter by illegally using force against other States will be prosecuted for this crime. Aggression has been called the “supreme crime” under international law. Nevertheless, since the Nuremberg and Tokyo Tribunals after World War II, no international court has had the power to enforce the prohibition of illegal war-making. Recent events in Ukraine have underlined the importance of an internationally agreed definition of aggression and the need to ensure that these new provisions, which require 30 ratifications, will soon become operational. With a view to contributing towards the operationalization of the Kampala amendments, Liechtenstein and Slovenia will gather representatives of States of the Eastern European region in Brdo, Slovenia, on 15 and 16 May 2014. With the Kampala compromise on the crime of aggression we have a new opportunity to allow principles to triumph over politics. Let us show to the world that we care more about the victims than about the perpetrators. We invite all our fellow ICC States Parties to join us on this path and call upon States not Parties to the Rome Statute to embrace the ICC and, by so doing, join the fight against impunity.

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