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Draft letter to the Security Council calling for a referral of the situation in Syria to the International Criminal Court

Dear Colleagues

Please find attached a draft letter to be addressed to the Security Council which calls for a referral of the situation in Syria to International Criminal Court. We seek your views on this initiative with the hope to get broadest possible support in order to transmit the letter on behalf of as many delegations as possible.

The Council may not be ready, at this point of time, to decide on such a referral. But we believe that we owe it to the victims of the crimes committed in Syria and to ourselves as States Parties and supporters of the ICC to send a strong message to the Council. The High Commissioner for Human Rights repeatedly called for such a referral and we cannot stand by idly while gross and systematic violations of human rights and humanitarian law have been committed and continue to be committed in Syria. Our letter will be an expression of our determination to do everything in our power to ensure that the authors of such atrocities shall not go unpunished. Such a call, if supported by a broad and representative number of States, may also have a deterring effect on the ground. It will demonstrate that accountability is not only an abstract idea, but a concrete consequence of systematic violations of international law.

We have discussed our proposal among a small group of friends of the ICC on Tuesday, 5 June, and it generated overwhelming support in substance. A number of delegations have already indicated their willingness to co-sponsor the letter. Two issues were raised at this meeting: the timing and the need for broad, cross-regional support. Regarding the latter, we intend to send to letter only to the Council if we can generate a critical mass of cross-regional support. As regards the timing, we are aware that the issue has political implications and may influence both the discussions in the Security Council as well as attempts to find a political solution to the situation in Syria. We are in informal contacts with all relevant stakeholders and are ready to listen to their concerns before submitting the letter.

We would be very interested in receiving your reaction both to the initiative as such and to the content of the letter either in writing (contact our legal adviser, Nikolas Stürchler, email nikolas.stuerchler@eda.admin.ch) or at a meeting we intend to convene next week among States Parties. An announcement will follow.

We thank you for your attention to and your support for this initiative.

Sincerely,

Paul Seger
Ambassador
Permanent Representative



H.E. Mr. Li Baodong
President of the Security Council for
the month of June 2012

Security Council Secretariat
United Nations Headquarters
New York, NY 10017

New York, XX June 2012

Excellency,

I am writing to you on behalf of ... and my own country, Switzerland.

Already on 23 November 2011, the UN's Independent International Commission of Inquiry on the Syrian Arab Republic documented patterns of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children's rights. It also expressed its grave concern that crimes against humanity had been committed since the beginning of protest in Syria in March 2011. The massacres in El-Houleh of 25 May 2012 and those following it must be understood as the latest in a series of deeply disturbing events in Syria. They underscore the concern of the Commission of Inquiry.

We are firm in the belief that an international investigation must urgently be carried out to establish the facts and that the United Nations must do its part to ensure that those responsible, no matter their association, are held to account before a court of law. The Human Rights Council, in its latest resolution on the situation in Syria, on 1 June 2012 unambiguously requested its Commission of Inquiry "to urgently conduct a comprehensive, independent and unfettered special inquiry, consistent with international standards, into the events in El-Houleh and, if possible, to publicly identify those who appear responsible for those atrocities, and to preserve the evidence of crimes for possible future criminal prosecutions or a future justice process, with a view to hold to account those responsible."

In view of the mounting evidence that gross violations of human rights law, international humanitarian law and international criminal law have been committed and continue to be committed, the need to ensure accountability becomes all the more pressing. The perpetrators of crimes cannot get away unpunished.

In its resolution of 1 June 2012, the Human Rights Council noted the repeated encouragement by the UN High Commissioner for Human Rights to refer the situation in Syria to the International Criminal Court. As permanent and independent institution, it is indeed best suited to avert impunity in Syria. We therefore call upon the Security Council to act immediately and unanimously by referring the situation in Syria to the International Criminal Court. In case of a referral, we urge the Council to pledge its full commitment and necessary resources to the subsequent efforts of the Court to investigate crimes and to implement potential arrest warrants.

.../..

We would appreciate if this letter could be circulated to all members of the Council. Please accept, Your Excellency, the assurances of my highest consideration.

Sincerely,

Paul Seger
Ambassador
Permanent Representative