

**AMERICAN BRANCH OF THE  
INTERNATIONAL LAW ASSOCIATION  
INTERNATIONAL CRIMINAL COURT COMMITTEE**

March 13, 2012

To the Members of the  
United Nations Security Council  
760 United Nations Plaza  
New York, NY 10017

Re: Security Council Referral of Syria to the International Criminal Court

Your Excellencies:

The International Criminal Court Committee of the American Branch of the International Law Association<sup>1</sup> writes to urge that the U.N. Security Council refer the situation in Syria to the Prosecutor of the International Criminal Court.

The International Criminal Court has jurisdiction under Rome Statute article 5(1) over “the most serious crimes of concern to the international community as a whole.” Syria, however, is not a party to the International Criminal Court’s Rome Statute. Accordingly, for the International Criminal Court to have jurisdiction over crimes being committed in Syria, the Security Council, acting under Chapter VII of the U.N. Charter, must refer the situation to the Court.

It is estimated that more than 7,500 civilians have been killed by Syrian forces over the last year, and there are credible reports that over 100 civilians continue to be killed each day.<sup>2</sup> The Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/19/69, published on February 22, 2012, as well as the High Commissioner for Human Rights herself, have both characterized the crimes that are occurring as “crimes against humanity.” Underlying crimes are thought to include rape, murder and torture. To the extent that the fighting rises to the level of armed conflict, civilian deaths as well as rape and torture could potentially constitute war crimes as well.

Prompt action by the Security Council is needed to stop the appalling atrocities being committed. While two permanent members of the Council have made it clear that they are unprepared to endorse robust action, at minimum, all Security Council members should refer the situation to the International Criminal Court’s Prosecutor for investigation, and possible prosecutions, if warranted. Such a referral does not supplant the need for additional measures, but nor does it require or constitute the type of stronger measures to which those members have objected.

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<sup>1</sup> Two members of the ABILA ICC Committee have chosen not to be associated with this letter.

<sup>2</sup> “Syria Unrest: ‘Humanitarian’ Vote Pressed at UN,” BBC News, February 29, 2012.

Referring the Syrian situation to the ICC is not tantamount to taking any side in the conflict. Such a referral operates in a neutral way, requiring the Prosecutor to investigate crimes in the situation country. Nor would a referral increase the possibility of escalating the conflict. It would simply ensure that justice for the most responsible perpetrators of the gravest crimes is eventually achieved.

The Security Council has previously referred two situations to the International Criminal Court: (1) the situation in Darfur (UNSC Resolution 1593) and (2) the situation in Libya (UNSC Resolution 1970). At the time of the Libya referral, far fewer fatalities were known to have occurred than have been documented in Syria. Thus, the referral is urgently needed both for the sake of the people of Syria and the Security Council's credibility. A referral may possibly create additional deterrence with respect to crimes not yet committed, thereby saving lives.

Violators of the most horrific crimes must be held accountable, and U.N. Security Council Member States should uphold their responsibility to protect the Syrian people and the people of Syria by referring the situation to the ICC.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Jennifer Trahan". The signature is written in a cursive, flowing style.

Jennifer Trahan  
Chair, American Branch of the International Law  
Association, International Criminal Court  
Committee  
jennifer.trahan@att.net