In February 2011, civilians began to participate in political protests demanding an end to Libyan Leader Muammar Gaddafi’s 42-year reign. Protests that began in the capital of Tripoli spread within weeks across the country to the city of Benghazi, which became the opposition’s stronghold and was soon subject to bombing brutality as Gaddafi dispatched the national police to crush the unrest. The Libyan leader expressed clear intent to continue committing massive human rights violations by announcing that he would “show no mercy.”

The International Community Reacts

Rather than stand by and risk facing trial while more civilians had been subject to mass violations, the international community jointly took action. The UN Security Council adopted two Resolution 1970 and Resolution 1973. These resolutions, adopted by a vast number of states and non-governmental bodies.

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<th>Resolution Date</th>
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<th>Main Actions</th>
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UNSC Resolution 1970

4 binding measures taken under article 4 of the UN Charter:
1. The referral of the situation in Libya to the Prosecutor of the ICC
2. The imposition of an arms embargo
3. The imposition of a number of travel bans and asset freezes on certain individuals
4. The creation of a sanctions committee

The ICC and Libya

The International Criminal Court (ICC) has jurisdiction over war crimes, crimes against humanity, and genocide committed since July 2002. To date, the ICC has an active case list of 93 cases, including the ICC’s investigation of the situation in Libya.

Jurisdiction

For the ICC to have jurisdiction over a country that is not a State Party (such as Libya), a situation must be referred to the Court by the Security Council of the United Nations.

Admissibility

However, jurisdiction over a situation is not enough, the case must also be admissible. One of the requirements in the form is that there be no State, who wants to put the jurisdiction. But that is willing and able to prosecute (article 15(2)(c)). On these grounds, Libya challenged the admissibility of the Gaddafi case and Al-Senussi case.

Complementarity

Under the principle of complementarity, States have a duty to prosecute if they can provide “sufficient, tangible and credible reasons” and only when the ICC is not considered as “engaging” and it is genuinely willing and able to conduct such investigations. Libya, in its admissibility challenge, has to prove these elements in order to establish that it is able to prosecute.

Compliance

The ICC requested the sieve for Gaddafi, citing Libya’s inability to obtain outside help. A ruling of non-compliance was issued, restricting the non-execution of Gaddafi’s sentence, requiring the matter to the UNSC. The Court ruled that the admissibility case was unsuitable on the basis that Libyan authorities were both willing and able to effectively prosecute the case.

For more on Libya and RtoP, see the RtoP’s Libya crisis page at www.r2pproject.org

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The ICC and Questions of...

Arrest Warrants

Muammar Gaddafi

Head of state

Al-Saff al-Islam Gaddafi

De Facto Prime Minister, son of Muammar Gaddafi

Deemed to be in custody is a result of a lack of evidence. However, it is still being by in Libya. If he does not engage in the authority of the armed forces, he is considered to be in custody.

Abdulah Al-Senussi

Deputy Foreign Minister

Charged were dropped in the case was deemed inadmissible by the ICC fearing the possibility of death threats to his family in Libya.

The ICC and Questions of...

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