



November 2014 Monthly Forecast

AFRICA

Libya

Expected Council Action

In November, ICC Prosecutor Fatou Bensouda will deliver her semi-annual briefing on recent developments concerning cases in Libya.

The mandates of the UN Support Mission in Libya (UNSMIL) and the Panel of Experts assisting the 1970 Libya Sanctions Committee expire on 13 March and 13 April 2015, respectively.

Key Recent Developments

On 25 July, Bensouda expressed great concern about recent reports of alleged attacks carried out against civilians in Tripoli and Benghazi and said she will not hesitate to investigate and prosecute crimes under the ICC's jurisdiction irrespective of the perpetrators' official status or affiliation. (Pursuant to [resolution 1970](#), the Office of the Prosecutor may exercise its jurisdiction over international crimes committed within the territory of Libya since 15 February 2011.)

Until recently, the investigations of the Office of the Prosecutor had focused on crimes committed during the 2011 revolution and had only started proceedings against then-high-level Libyan officials. Relations between Libya and the ICC have been tense since the decision by the ICC to try Saif Al-Islam Qaddafi, son of deposed leader Col. Muammar Qaddafi, in The Hague, as per the ICC referral in resolution 1970. In May, the Appeals Chamber of the ICC upheld the decision of Pre-trial Chamber I, which directed Libya to hand Qaddafi over to the Court. Briefing the Council on 13 May, Bensouda stated that national judicial proceedings can never be an excuse for failure to comply with the Chamber's order. A decision from the Pre-Trial Chamber on a request for a finding of non-compliance for the non-surrender of Qaddafi is now expected. Such a finding might result in the referral of the case back to the Security Council to ensure compliance by Libya.

In a 11 October 2013 decision, Pre-Trial Chamber I concluded that the case against former intelligence chief Abdullah Al-Senussi was being investigated by Libya, thus making it inadmissible before the ICC. The decision, which had been challenged by Al-Senussi's legal counsel, was upheld on 24 July by the Appeals Chamber, bringing proceedings against Al-Senussi before the Court to an end.

A trial of 37 Qaddafi-era officials accused of serious crimes during the 2011 revolution—including Qaddafi testifying via video link as well as Al-Senussi—has been ongoing intermittently in Tripoli since 24 March and was postponed on 12 October until early November. UNSMIL has raised concerns about difficulties in ensuring full and fair legal representation for all defendants. The UN Working Group on Arbitrary Detention characterised Qaddafi's detention as arbitrary.

In her last briefing to the Council, the Prosecutor noted that her Office was collecting evidence against pro-Qaddafi officials outside of Libya. Bensouda also stated that the forced displacement of civilians from Tawergha in the period from August 2011 to April 2014 appears to meet the elements of deportation or forcible transfer of the civilian population as a crime against humanity and a war crime under the Rome Statute. On 27

May, Libya signed a Memorandum of Understanding with the Registry of the Court recognising the privileges and immunities of Court staff conducting investigations in Libya.

Briefing the Council on 23 October during a [debate](#) on working methods, Bensouda argued for the Council to use stronger language in its referrals to counter the current ambiguity as to whether all states are obliged to cooperate and for the Council to support carrying out the arrest warrants issued by the Court. She also informed the Council how the lack of bilateral or UN financing for Council referrals negatively impacts the ability of her Office to conduct investigations in both Darfur and Libya.

Clashes continue in Libya between Misrata-based and Islamist militias (Libya Dawn) and Zintan-based militias that supported the 16 May failed coup by rogue General Khalifa Haftar. Currently, the new Tobruk-based House of Representatives (which is considered the only legitimate legislative body by the Security Council and most in the international community) is being challenged by the former parliament, the General National Congress, which sits in Tripoli. Both parliaments have appointed rival governments. Following an agreement of military cooperation between the House of Representatives and Egypt, new airstrikes were reportedly conducted by Egypt in mid-October against militia-held positions in Benghazi. While Tripoli remains under the control of Libya Dawn, fighting continues in the west and dozens were reported killed in Benghazi in clashes and as part of a campaign of targeted assassinations that has been ongoing for months. In a 25 September meeting about Libya on the margins of the UN General Assembly, French Foreign Minister Laurent Fabius called for the listing of terrorist group Ansar al-Sharia under the 1267/1989 Al-Qaida sanctions regime.

Special Representative and head of UNSMIL, Bernardino León, facilitated two meetings of members of the House of Representatives in Ghadames and Tripoli on 29 September and 11 October (some had refused to attend the meetings of the House). Secretary-General Ban Ki-moon presided over the latter meeting. Despite calls for a ceasefire, the security situation remains critical.

Human Rights-Related Developments

A joint report by UNSMIL and the Office of the High Commissioner for Human Rights, released on 4 September, provides an overview of violations of international human rights and humanitarian law in Tripoli and Benghazi, including indiscriminate shelling and attacks on civilian targets, shelling of hospitals, abduction of civilians, torture and unlawful killings. The report also details accounts of civilian casualties, including women, children and foreign nationals.

High Commissioner for Human Rights Zeid Ra'ad Al Hussein warned on 14 October that human rights defenders, political activists, bloggers and media professionals have been under increasing attack from armed groups in Libya since mid-May, with numerous reports of intimidation, harassment, abductions and murder of members of civil society. In Benghazi on 19 September, ten people were murdered on a single day, including two prominent young civil society activists. In Derna, east of Benghazi, lawyer Usama al-Mansuri was killed on 6 October, apparently after publicly criticising a declaration by armed groups pledging allegiance to the Islamic State of Iraq and al-Sham. The High Commissioner condemned these and other attacks, adding that female activists are particularly vulnerable, and urged the Libyan authorities to investigate and hold those found responsible accountable.

Key Issues

A key issue for the Council is the disagreement between Libya and the ICC regarding the Qaddafi trial. A possible issue in the near future is the Council's response if the ICC refers the matter back to the Council, following Libya's failure to cooperate with the Court.

An ongoing overarching issue is the continuing conflict among militias and the fragile security and political situation.

Options

With respect to the ICC, receiving a briefing and taking no action seems the most likely option, but the Council could use the opportunity to issue a presidential statement signalling its ongoing concern about the overall situation, including:

- expressing concern about attacks against civilians in Libya that can amount to international crimes;
- urging Libya to implement the provisions of the December 2013 law regarding transitional justice and the mandate of the fact-finding and reconciliation commission;
- reiterating its call for armed militias to disarm and accept the authority of the state, including transferring Qaddafi to the custody of the state;
- urging the government and militias to ensure the protection of the estimated 7,000 conflict-related detainees being held without due process; and
- reiterating its support for the ongoing ICC investigations into serious crimes committed by other former regime officials and by rebel forces during the revolution.

A further option for the Council is to impose measures under [resolution 2174](#) against armed militias and other spoilers that threaten the peace, stability or security of Libya by significantly undermining state authority and its monopoly on the legitimate use of force.

Council and Wider Dynamics

The overall deterioration of the security situation and the fragility of the political situation are sources of concern for Council members.

Regarding the tension between Libya and the ICC over the trial of Qaddafi, it seems unlikely that the Council will take a strong stance on this unless the ICC issues a finding of non-compliance.

An 18 October joint statement by France, Germany, Italy, the UK and the US showed these countries' concerns about Haftar's attacks in Benghazi. The statement—which emphasises the need to counter terrorism “by regular armed forces under the control of a central authority which is accountable to a democratic and inclusive parliament”—constitutes a departure from previous statements by key international actors in Libya that had for the last five months avoided mentioning the Haftar by name. A similar attempt to do so in the Council encountered the opposition of Russia who claimed that naming and shaming Haftar could have a negative impact in the political process.

The UK is the penholder on Libya.

UN DOCUMENTS ON LIBYA

Security Council Resolutions

27 AUGUST 2014
[S/RES/2174](#)

This was a resolution imposing sanctions on individuals and entities obstructing or undermining the successful completion of the political transition and tightening the arms embargo.

26 FEBRUARY 2011
[S/RES/1970](#)

This resolution referred the situation in Libya to the ICC, imposed an arms embargo and targeted sanctions (assets freeze and travel ban) and established a sanctions committee.

Secretary-General's Report

5 SEPTEMBER 2014
[S/2014/653](#)

This was the Secretary-General's report on the UN Support Mission in Libya.

Security Council Meeting Records

23 OCTOBER 2014
[S/PV.7285](#)

This was the fifth annual open debate on working methods.

13 MAY 2014
[S/PV.7173](#)

This was the seventh briefing by the Prosecutor of the ICC on Libya.

Security Council Press Statement

2 OCTOBER 2014
[SC/11585](#)

This press statement welcomed the UN-facilitated meeting between members of the House of Representatives in Ghadames.
