



# Security Council

Sixty-eighth year

*Provisional***7059**<sup>th</sup> meeting

Thursday, 14 November 2013, 10.05 a.m.

New York

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*President:* Mr. Liu Jieyi . . . . . (China)

*Members:*

Argentina . . . . .	Mrs. Perceval
Australia . . . . .	Ms. King
Azerbaijan . . . . .	Mr. Musayev
France . . . . .	Mr. Araud
Guatemala . . . . .	Mr. Rosenthal
Luxembourg . . . . .	Mr. Maes
Morocco . . . . .	Mr. Laassel
Pakistan . . . . .	Mr. Masood Khan
Republic of Korea . . . . .	Mr. Oh Joon
Russian Federation. . . . .	Mr. Zagaynov
Rwanda . . . . .	Mrs. Uwizera
Togo. . . . .	Mr. Menan
United Kingdom of Great Britain and Northern Ireland . . . .	Mr. McKell
United States of America. . . . .	Mrs. DiCarlo

## Agenda

The situation in Libya

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*The meeting was called to order at 10.05 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **The situation in Libya**

**The President** (*spoke in Chinese*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of Libya to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I now give the floor to Prosecutor Bensouda.

**Ms. Bensouda:** This is the sixth time that my Office reports to the Security Council since the adoption of resolution 1970 (2011), by which the Council, acting under Chapter VII of the Charter of the United Nations, referred the situation in Libya to the International Criminal Court (ICC). My Office appreciates the opportunity to once again engage with and update the Council on developments in the Libya situation and the related proceedings before the Court.

Libya has come a long way since the 2011 uprising that paved the way for the Libyan people to rebuild their country towards a more promising future. The new Libya has had notable successes, including the holding of the first democratic elections in half a century, but the country still faces formidable challenges. The security situation in Libya remains volatile and precarious, marked by car bombings, abductions and assassinations of public and security officials. That unfortunate fact has understandably hampered my Office's ability to operate in Libya in furtherance of its investigative activities. We hope the security situation in Libya will improve, in order to enable my Office to effectively follow up and intensify its investigations. My Office welcomes initiatives aimed at helping to rebuild Libya's military and law-enforcement agencies to reinforce security for Libya and all Libyans. We call on all States to assist Libya in its efforts to become a fully fledged, secure, democratic society that adheres to the highest standards of justice. The Libyan people deserve no less.

In this new country, Libya desires to become and be recognized as a stable, democratic society that fully observes the rule of law and punishes perpetrators of crimes that shock the conscience of humankind. Those aspirations, while genuine and praiseworthy, have yet to be fully realized. There have certainly been promising gains. For instance, the draft law that would make rape during armed conflict a war crime in Libya is a most welcome step in the right direction. Conversely, it is a matter of great concern that thousands of detainees remain in uncertain conditions in the country, with multiple and apparently well-founded allegations of torture and even killings in detention reported. My Office fully shares the concerns of the United Nations that unless this problem is effectively addressed now, it will only escalate with time. It is incumbent upon the Ministers of Justice, the Interior and Defence of the State of Libya to speedily ensure that detainees are transferred to proper Government-controlled detention facilities, where they can be either charged, with their due-process rights fully respected, or, where appropriate, released. Torture and inhumane treatment of prisoners should have no place in the new Libya.

Equally disturbing are the simmering tensions around the Tawergha minority issue. Those tensions and the possibility of reprisals have the potential to reignite violence in the country. It bears stressing that those who seek to defend the revolution and see to it that it succeeds are at real risk of burying it if they do not take concrete and immediate steps on this issue. The fact-finding and reconciliation commission to be established following the adoption of the new transitional justice law must bring all parties together with a view to resolving the issue sooner rather than later. I should recall that ordering the displacement of the civilian population for reasons related to the conflict other than for security or military imperatives is a crime over which my Office can still exercise jurisdiction.

As I remarked during my previous briefing to the Council (see S/PV.6962), Libya has embraced the Rome Statute process and chosen to engage with the Court. The admissibility challenges that are before the Court are testing the application of the Rome Statute provisions in an unprecedented manner. Through its active involvement in related proceedings before the Court, Libya is setting an example of how States can invoke complementarity to protect their sovereign right to investigate and prosecute their nationals. My Office and the Libyan Government have robustly advanced

our respective positions in court on the question of who should prosecute two accused Libyan nationals who we both believe are most responsible for serious crimes under the Court's jurisdiction committed within the territory of Libya. On 11 October, the Court's Pre-Trial Chamber issued its decision on the admissibility of the *Abdullah Al-Senussi* case, finding it inadmissible before the ICC.

In essence, the Chamber was satisfied that, in this specific case, Libya met the statutory criteria for stopping my Office from continuing its investigations and prosecution of Abdullah Al-Senussi. After fully studying the decision, my Office has concluded that there is no legal basis for appeal. Should new facts arise in the future that negate the basis on which the case was found inadmissible, my Office will not hesitate to request a review of the decision. The challenge now is for Libya to demonstrate to the world that Al-Senussi will receive a genuinely fair, impartial and speedy trial that respects all his rights and fundamental guarantees, including the right to counsel of his choice. It also falls on the Council and the international community to assist Libya in that process and to ensure that justice is not only done, but is seen to be effectively done.

By contrast, in the case of *Saif Al-Islam Al-Qadhafi*, the Pre-Trial Chamber has ruled the case admissible before the ICC, on the grounds that Libya has failed to meet the legal criteria for making the case inadmissible. In its subsequent admissions to the Chamber, the Government of Libya has sought further time to provide additional information, and the matter is currently under consideration by the Chamber. In the meantime, the Court has reiterated the obligation of the Government of Libya to surrender Mr. Al-Qadhafi to its custody. It is fundamentally important that the Council both remind and urge the Libyan Government to comply with the decisions of the Chamber, even when they do not suit the Government's position. I stress how critically important it is that all States respect and implement the decisions of the Court's judges. The obligation to surrender persons against whom arrest warrants have been issued to the Court must be respected. Political considerations have no place in law that is impartially and independently applied. I strongly urge the Government of Libya to surrender Saif Al-Islam Al-Qadhafi to the Court without further delay.

There are many others who are alleged to have committed crimes or who have continued to commit

crimes in Libya since February 2011. Some are still in the country, while others are abroad, where they continue to use their influence to destabilize the country and pose a security threat to civilians. It is impossible for the ICC to investigate and prosecute all perpetrators alone. Neither can Libya undertake that demanding task by itself. The investigation and prosecution of a few by both the International Criminal Court and the Government of Libya should not result in impunity for the many. Joint, complementary efforts by both the Government of Libya and the Court, strongly and actively supported by the international community, are thus crucial to ending impunity in the country.

To that end, my Office and the Government of Libya have recently concluded a burden-sharing memorandum of understanding, whose purpose is to facilitate our collaborative efforts to ensure that individuals allegedly responsible for committing crimes in Libya as of 15 February 2011 are brought to justice either at the ICC or in Libya itself. While my Office will prioritize its investigations and prosecutions of those who are outside the territory of Libya and thus largely inaccessible to the Libyan authorities, the Government of Libya will prioritize investigations of those suspects who are within Libyan territory.

I am also pleased to report that my Office and the Government of Libya have committed to supporting each other's investigations and prosecutions through the exchange of information, subject to confidentiality and protection obligations. To be absolutely clear, this agreement neither relieves the International Criminal Court or the Libyan courts of their respective jurisdictions, nor does it apply and/or affect the ongoing judicial proceedings in either the Saif Al-Islam Al-Qadhafi or the Al-Senussi cases.

The support of the Council and of the international community will be crucial for the colossal task of collecting evidence to untangle the modus operandi of the networks responsible for committing crimes. Among other things, we will require telephone intercepts and sustained follow-up on transfers of funds to establish the whereabouts and movements of persons under investigation. This is all information that we can access only with the assistance of States. Above all, we hope we can count on the cooperation of States in facilitating the smooth arrest and surrender of those against whom warrants will be issued. This is key to sending a clear message to would-be Libyan and all other would-be perpetrators that the international community is

watching and will no longer allow impunity to reign unchecked.

I view the memorandum of understanding as an important confidence-building measure in the working relationship between my Office and the Government of Libya, and my hope is that it will pave the way to closing the impunity gap in Libya. I welcome the memorandum as a positive commitment of the Government of Libya to accountability and providing justice to Libya's victims, and indeed to cooperating with the ICC in the investigation and prosecution of additional cases against those most responsible for the most serious crimes under the Court's jurisdiction committed in Libya.

I will conclude by reiterating that Libya's challenges are our own, and we will all share in the successes or failures of these efforts to bring justice to the victims in Libya and peace and security to its people. Towards that end, I again encourage the Government of Libya to make public a comprehensive strategy to address serious crimes committed in the country, regardless of who is the perpetrator and who is the victim, and I encourage Libya's partners to step up to the challenge ahead of us and to make effective not only the ICC mandate in Libya, but that of the Council.

**The President** (*spoke in Chinese*): I thank Prosecutor Bensouda for her briefing.

I now give the floor to the members of the Security Council.

**Mr. Menan** (Togo) (*spoke in French*): I would like at the outset to thank the Prosecutor of the International Criminal Court (ICC) for her briefing on the situation of Libya with respect to the Court, pursuant to resolution 1970 (2011), in which she provided in particular information concerning the issues of cooperation, the admissibility of the cases of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi, torture and other crimes. Our observations will be limited to these issues.

Togo welcomes the healthy development of cooperation of States and non-State institutions with the ICC. Togo thanks the Prosecutor for sounding the alarm concerning the ongoing climate of insecurity in the country, to the detriment of investigations. It fervently urges the adoption of innovative solutions with the Libyan authorities, other States and concerned non-State institutions to ensure the safety and security of the population.

My country welcomes in that regard the signing this month of a memorandum of understanding between the Prosecutor's Office and Libya on the sharing of responsibilities in future investigations. We hope that the memorandum does not endorse the amnesty laws adopted to ensure impunity for certain acts, on the grounds that they were committed to protect the revolution. With that condition, we seek a quick agreement between the Libyan authorities and the Prosecutor's Office on how to implement this memorandum.

Concerning the admissibility of the cases of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi, Togo urges all parties concerned to respect the decision of the competent Chamber, which has ruled, on the one hand, that the Saif Al-Islam Al-Qadhafi is admissible before the ICC, but that, on the other, that of Abdullah Al-Senussi is inadmissible before the Court and may be tried in Libya. Togo hopes that the process will be respected and that the competent Chamber shall decide without delay on the appeal of Al-Senussi against the decision to dismiss before the ICC so as to allow a quick resolution of the case. My country calls on the players to carry out those decisions and those that will follow in the spirit of effective cooperation and in the utmost respect of the principle of complementarity and the relevant provisions of the Rome Statute governing the work and mandate of the ICC.

Regarding torture and other crimes, we express our deep concern about the difficulties facing the Libyan national authorities in taking control of all detention centres and in preventing the mistreatment of prisoners in the hands of armed groups and people with no respect for human rights in judicial proceedings and the administration of justice. We express the hope that, for the sake of sustainable national reconciliation, the new law on transitional justice will be promptly and properly implemented in order to ensure a fair trial for those involved. We hardly need recall that the role of justice must be not to keep victims and perpetrators at odds indefinitely, but rather to serve as an interface between them so as to bring them together and allow them to follow the psychosocial treatment necessary for lasting reconciliation.

While stressing that the Libyan national authorities bear the primary responsibility for protecting the Libyan people, Togo urges them to take the measures necessary to halt the deterioration of the security

situation in Libya, and calls on the international community to provide the assistance, as required.

In conclusion, Togo insists that any assistance to the Libyan authorities to protect the population should be undertaken in strict compliance with the relevant provisions of the Charter of the United Nations.

**Mr. Zagaynov** (Russian Federation) (*spoke in Russian*): We, too, wish to thank Ms. Bensouda for her briefing on the investigation into the situation in Libya pursuant to resolution 1970 (2011). We support the efforts of the Court to bring to justice the perpetrators of the most serious crimes committed during the events in Libya. They must not go unpunished.

We would be grateful to the International Criminal Court (ICC) for providing a more detailed explanation of the adoption of diametrically opposed decisions regarding the admissibility before the Court of the cases of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. The Court declared the Al-Qadhafi case admissible, noting that the Libyan cases were unable to guarantee due judicial process, yet only four months later it came to the completely opposite conclusion in the Al-Senussi case, stating that Libya wished to and was able to conduct that judicial investigation.

We continue to harbour serious doubts about the ability of the Libyan authorities to conduct a national investigation at this stage, as reflected by the information contained in section 4 of the report on cases of death in detention centres and the ongoing practice of torture in that country. In that context, we note the absence of any progress in investigations by the ICC of crimes committed by the rebels during the Libyan conflict. The report fails to note any positive developments in that regard. It is well-known that the rebels committed atrocities both during and after the armed conflict.

Unfortunately, according to various sources, armed violence, clashes and lawlessness in Libya continue to this day. The central authorities are clearly unable to exert control over the whole country. Under such circumstances, it is unclear how effective the work of the national fact-finding and national reconciliation commission can be and what its potential role could be when it comes to bringing to justice rebels accused of committing crimes. We believe that the ICC should take up investigations into crimes committed by the rebels.

We reiterate our call to the Court not to confine the investigation to just the inner-circle of the former

Libyan leader, and to deliver instead an objective legal assessment of the actions of all parties to the conflict and to post-conflict violence. Again, we urge the Court to investigate cases of the disproportionate and indiscriminate use of force during the NATO-led operation, which led to casualties among the civilian population.

Finally, we continue to be troubled by the absence of information on developments and steps taken regarding the detention in Zintan, in June 2012, of a group of ICC officials. Such incidents have a very negative impact on the cooperation of the Court with States and undermines efforts to combat impunity.

**Mr. Laassel** (Morocco) (*spoke in Arabic*): At the outset, I would like to thank Ms. Bensouda, Prosecutor of the International Criminal Court (ICC), for her comprehensive briefing and the sixth report on the activities of her Office pursuant to the relevant Security Council resolutions on the situation in Libya.

Since the referral of this situation to the ICC, the Libyan authorities have always declared their readiness to cooperate with the Court in accordance with mechanisms established by the Security Council, including the sanctions regime, and to try those who committed violations against the Libyan people in accordance with just laws that guarantee justice and promote national reconciliation and transitional justice. The Libyan authorities have always supported the ICC and declared their readiness to cooperate with it to guarantee justice for victims, as reflected in the report by the Prosecutor on the implementation of resolution 1970 (2011).

Earlier this month, a memorandum of understanding was signed between the Office of the Libyan Prosecutor and the ICC Prosecutor, a step we welcome. The Libyan Government has also pledged that trials at the national level will focus on high-level officials who committed crimes against humanity, while other investigations will take place in the context of national reconciliation and transitional justice.

All claims filed against Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi should be dealt with through a clear commitment by the Government to cooperate with the ICC. That was demonstrated when the Court decided not to accept the case against Al-Senussi, believing that the Libyan authorities would be able to conduct a trial in accordance with international law. It is in that context that we understand the focus by the

Libyan authorities on giving priority to the national judiciary in dealing with all cases affecting its people, with due respect for Libya's sovereignty and with Libyan laws that respect international fair-trial norms, so as to try senior officials for grave human rights violations, ensure justice for victims and promote transitional justice and national reconciliation. That would help Libya overcome the legacy of the past and build an open, democratic society that is inclusive of all Libyans and meets all their basic needs.

In view of the transitional period in Libya, the international community should cooperate with and support the Libyan Government in all its efforts to ensure justice for all Libyans, fight impunity, promote the rule of law and address both internal and external security threats. We should all do our utmost to demonstrate to the Libyan people that we and the whole world are committed to helping them to establish peace and stability in the country.

The Kingdom of Morocco would like to reiterate its full support for the Libyan Government in carrying out its important responsibilities. We call upon the Security Council and all the friends of Libya to provide the necessary assistance to enable the Government to deal with the great challenges still facing that brotherly country, in particular problems having to do with security concerns, the smuggling of weapons, controlling the border, immigration and so on, in a manner that respects human rights and promotes national reconciliation. We have also expressed our willingness to cooperate with our brothers in Libya in the areas of institution-building and transitional justice. We underscore the fact that a free, democratic and independent Libya is necessary for all of us to achieve the necessary unity among countries of the region and to face the challenges of terrorism and violence in the Sahel and in Sub-Saharan Africa.

**Mr. Araud** (France) (*spoke in French*): I thank the Prosecutor for her report and presentation. I would like to reiterate our support for her as well as for the International Criminal Court (ICC).

Following 42 years of dictatorship, Libya is now in transition. Violent acts are continuing, including against diplomatic missions. But the Libyan authorities, including Prime Minister Ali Zeidan, have reiterated their commitment to pursuing the country's democratization. While the Libyan revolution exposed the shortcomings of State structures and the disastrous legacy of Qadhafism, Libyans have shown

an unwavering determination in a post-revolutionary context, which is, by definition, difficult. The Council has mobilized to help them, and must continue to do so.

Despite its difficulties, Libya has asked to try Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi itself. That courageous decision, which is in line with the Rome Statute and resolution 1970 (2011), points to the willingness of the Libyan authorities to shoulder their responsibilities. The judges of the ICC have authorized the Libyans to try Al-Senussi themselves, believing that Libya had the willingness and due competence to conduct that trial. On the other hand, the judges rejected the request of the Libyan authorities to hear the case of Saif Al-Islam Al-Qadhafi. The Libyan Government has stated its intention to provide additional evidence to the Court on that matter. We have no doubt that Libya, pursuant to resolution 1970 (2011), will comply with the decision of the ICC judges. Libya's respect for its international obligations is a key indicator of its commitment to the rule of law.

The Prosecutor also indicated that she was continuing her investigation into allegations of crimes committed in Libya by those close to Al-Qadhafi who today might be situated outside Libyan territory, posing a threat to the new authorities. The Prosecutor can rest assured of our support.

As for other allegations, we welcome the work carried out to establish a comprehensive strategy to put an end to crimes and impunity in Libya. As stated by Ms. Bensouda, the adoption of a new Libyan law on transitional justice and the establishment of a United Nations fact-finding and national reconciliation commission could help respond to allegations of crimes such as those committed in Misrata and Tawergha during the armed conflict of 2011 or those that were allegedly committed in Bani Walid in 2012.

Like the Prosecutor, we also welcome reports of a new Libyan draft law making rape in armed conflict a war crime. Finally, we express our grave concern at the practice of torture and cases of deaths in detention in centres under the control of armed brigades. As he stated before the Council (see S/PV.7031), Mr. Tarek Mitri, the Special Representative of the Secretary-General and Head of the United Nations Support Mission in Libya, the Libyan authorities are well aware of this problem. Those practices must come to an end.

Resolution 1970 (2011) is an example of the capacity of the Security Council and, more generally, of the

international community for unity and quick action. Given the atrocities committed by the Libyan leadership, the United Nations and regional organizations together condemned such acts. Resolution 1970 (2011), referring the situation in Libya to the Prosecutor of the International Criminal Court, was at the heart of a process marking the isolation of criminals, regardless of their rank. It is now a matter of ensuring follow-up to that approach.

The process initiated by resolution 1970 (2011) must take its course, as the Council reaffirmed in resolutions 1973 (2011), 2009 (2011), 2040 (2012) and 2095 (2013). The ongoing process will require the full cooperation of Libya with the Office of the Prosecutor and the full support of the Council.

**Mr. Rosenthal** (Guatemala) (*spoke in Spanish*): We thank you, Sir, for convening this meeting, and we welcome the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, to the Council. We thank her for introducing her the sixth report to the Council on the topic under consideration.

Guatemala believes that all the authorities in Libya have an obligation to respect the work of the Court and the Office of the Prosecutor. To that end, we need to guarantee that they can work without impediment or restriction. We hope that the Government will provide all the necessary support to the staff of the Court and the Office of the Prosecutor so that they can conduct their investigations in an appropriate manner. In that regard, we welcome the memorandum of understanding that was recently signed between the International Criminal Court and the Government of Libya. We are convinced that the document will help to promote close cooperation between the two parties and lay the foundation for achieving a more direct relationship between the Court and the Government of Libya.

Moreover, it is vital that both the Court and the Office of the Prosecutor enjoy the support and necessary assistance of States parties and those that are not yet party to the Rome Statute. We value the work of the Office of the Prosecutor of the Court to date, but we also see the involvement and interest of the Libyan authorities in the process as a positive sign. We welcome the progress achieved by the Office of the Prosecutor in the cases of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi.

We trust that, as the transition process continues, greater institutional consolidation will take place,

which will enable Libya to create a State that can guarantee human rights, the rule of law and an end to impunity. Nevertheless, we must not forget the climate of insecurity that prevails in Libya today. Mr. Tarek Mitri, Special Representative of the Secretary-General in Libya, pertinently has stressed in this Chamber that security remains the principal concern in Libya (see S/PV.7031). Attacks on diplomatic missions and their staff, armed conflict between military forces, bomb attacks on public offices and even the abduction of high-level Libyan Government officials are only some of the acts that reflect the gravity of the situation that the people must face on a daily basis. It cannot be denied that, in such a landscape, the judiciary and the institutions responsible for preventing crime are at high risk.

Guatemala therefore appreciates the efforts of the international community to resolve or at least alleviate the pressure created by that situation. We believe that the Council can play a fundamental role in expanding such aid and support. However, we also think that those problems cannot be resolved in the short run. Change will take time. Much will depend on the impartiality, independence and capacity that the Libyan judiciary is able to develop. Only through the strengthening of the judicial system can one speak of the true rule of law in Libya.

As to the investigations conducted by the Office of the Prosecutor on other crimes committed in Libya, we believe that they are of the utmost importance. We urge the Office of the Prosecutor to pursue its very important efforts in that regard. We reaffirm our call for the investigation of all possible violations of human rights and of crimes against humanity committed in Libya, regardless of their perpetrators. We are extremely concerned about gender-based crimes that took place during the conflict, and we hope that the investigation into those grave crimes will result in justice for their victims. Investigations into all crimes committed against detainees and minority groups must also continue.

Finally, we reiterate our support and commitment to the Court and the Office of the Prosecutor. We hope that their good work in Libya will continue and that cooperation and understanding achieved in that instance will serve as a model for other cases.

**Mr. Musayev** (Azerbaijan): At the outset, I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing and

for presenting her sixth report to the Security Council, pursuant to resolution 1970 (2011). The contribution of the International Criminal Court to fighting impunity is evident, and the Court's activity to that end should be further supported.

Azerbaijan welcomes the commitment of the Government of Libya to restoring the rule of law in the country and ensuring accountability for the crimes committed in the course of the conflict. We also acknowledge the existence of serious challenges and threats facing the country and undermining the progress made so far.

We commend the Libyan Government for its cooperation with and assistance to the Court and the Office of the Prosecutor. We welcome the signing of a memorandum of understanding between the Government of Libya and the Office of the Prosecutor on burden-sharing in further investigations and prosecutions. As the report notes, the signing of the memorandum of understanding is a positive commitment on the part of the Government of Libya to providing justice to victims and to cooperating with the ICC in the investigation and prosecution of additional cases against those responsible for the most serious crimes in Libya.

The Libyan authorities continue to demonstrate their commitment to ensuring an effective and genuine investigation and fair trials, consistent with the required international standards. Thus, by employing available legal proofs and acting in compliance with the process set out in the Rome Statute, the Government challenged the admissibility of the *Saif Al-Islam Al-Qadhafi* and *Abdullah Al-Senussi* cases. In its decision issued on 11 October, the Pre-Trial Chamber found the latter case inadmissible before the ICC, stressing that Libya is willing and genuinely able to carry out its proceedings in relation to that case. We also note the Government's further submission, filed on 23 September, regarding the case against Saif Al-Islam Al-Qadhafi and its readiness to share the supporting evidence with the ICC in accordance with Libya's national legislation.

We commend the recent efforts towards setting up mechanisms to address allegations of other crimes that reportedly took place during the armed conflict. The adoption of Libya's new transitional justice law and the establishment of the fact-finding and reconciliation commission are essential steps in that regard.

We also take positive note of the Libyan Government's efforts to improve the conditions and

treatment of detainees and its commitment to securing the handover of detainees to effective State control and to ensuring the proper functioning of the criminal justice system.

In conclusion, we encourage the international community to continue providing the necessary support to the efforts of the Libyan Government towards ending impunity for the most serious crimes committed during the conflict and advancing its development and security agenda.

**Ms. King** (Australia): I would like to thank the Prosecutor, Ms. Bensouda, for her briefing on the work of her Office in relation to Libya.

More than two years into its transition process, Libya has made real and substantial progress, but serious political and security challenges remain. Central to Libya's completing a successful transition to democracy is the establishment of the rule of law. We recognize that the challenging security situation in Libya makes the work of all accountability actors more difficult. It is vital that nascent legal institutions be strengthened and that accountability for serious crimes be pursued. The International Criminal Court (ICC) is playing an important role in that endeavour. The Council's referral of the situation in Libya to the ICC has not only demonstrated a determination that those responsible for the most serious crimes will be held accountable; it has been an important catalyst for the reform of Libya's judicial system.

We commend the Libyan Government for the constructive manner in which it has continued to engage with the ICC. In particular, we acknowledge the manner in which Libya has invoked its rights by challenging the ICC's jurisdiction regarding the cases against Mr. Saif Al-Islam Al-Qadhafi and Mr. Abdullah Al-Senussi, in compliance with the Rome Statute. We also welcome the close consultation that is taking place between Libya and the Office of the Prosecutor on those matters. Those actions reflect the principle of complementarity, a central element of the Rome Statute, working in practice. Indeed, as Ms. Bensouda has said, Libya, through its active involvement in related proceedings before the Court, is setting an example of how States can invoke the principle of complementarity to protect their sovereign rights to investigate and prosecute their nationals.

We note the Pre-Trial Chamber decision that the ICC case against Mr. Al-Senussi is inadmissible on the

basis that Libya itself is willing and able to exercise jurisdiction over him. While that decision is the subject of an appeal, it is important to recognize that the Pre-Trial Chamber's decision reflects the significant steps taken by Libya to re-establish the rule of law. We note Ms. Bensouda's advice that her Office has concluded that there is no legal basis for appeal of the Pre-Trial Chamber decision.

Libya's adoption of the transitional justice law and the establishment of the fact-finding and reconciliation commission are important and welcome steps in re-establishing the rule of law. We urge Libya to use those and other mechanisms to ensure that those most responsible for the commission of serious international crimes are brought to justice, regardless of whether they fought in defence of the Al-Qadhafi regime or were among those who raised arms to establish a new Libya. In that context, we welcome the conclusion of the memorandum of understanding between the Office of the Prosecutor and the Government of Libya on burden-sharing in relation to future investigations and prosecutions.

While we recognize significant progress in some areas, we remain concerned at the distinct lack of progress in addressing the situation of conflict-related detainees. Reports that many such detainees continue to be held by armed brigades without due process and have been subject to torture and other ill treatment are of grave concern. We urge Libya to ensure that detainees are transferred to effective State control in accordance with the recommendations of the United Nations Support Mission in Libya and the Office of the United Nations High Commissioner for Human Rights. We also urge Libya to ensure that those responsible for such mistreatment, or other crimes, such as enforced disappearances, are held to account.

While we commend the Libyan Government's record of cooperation with the Court, it is essential that the Libyan Government also cooperate with the Court in all matters, pursuant to its obligations under resolutions 1970 (2011) and 2095 (2013). In particular, we note that Libya remains under an obligation to surrender Mr. Al-Qadhafi to the ICC, and we urge Libya to do so as soon as possible. We note with particular concern the advice from Mr. Al-Qadhafi's legal counsel that his client is being detained in isolation, denied visits from family and friends and denied access to legal advisers. That cannot continue.

We note the Prosecutor's advice that the focus of her ongoing investigations is on persons outside of Libya. In that context, Australia calls on States, particularly Libya's neighbours, to cooperate with the Court to ensure that those most responsible for the most serious international crimes committed in Libya are brought to justice.

It is also essential that the Council continues to offer its support not only for the efforts of Libya, but also the ongoing investigations of the Prosecutor. The active and ongoing support of the Council is essential to ensure that the objectives of the Council's referrals to the ICC, namely, that justice is delivered and peace and security are maintained, are met.

**Mr. McKell** (United Kingdom): Let me also thank the Prosecutor for her report and briefing on the situation in Libya.

The United Kingdom has been concerned about the ongoing difficulty in Libya's internal political situation since the Prosecutor delivered her previous briefing (see S/PV.6962). Those challenges are, to some extent, to be expected after four decades of misrule. Security and justice sector reform are, however, more crucial now than ever before if Libya is to rebuild its State institutions and return to stability in the aftermath of the revolution. We, along with our international partners, remain committed to working with Libya to provide it with the support it needs to meet the serious challenges it faces.

We welcome the ongoing efforts to investigate and bring to justice all those who are guilty of war crimes and crimes against humanity since 15 February 2011. We particularly welcome the signing of the memorandum of understanding between the Office of the Prosecutor and the Government of Libya on burden-sharing on further investigations and prosecutions, and we hope that swift progress can be made on its implementation.

The United Kingdom welcomes Libya's positive response to the recommendations made in the United Nations report on torture and death in detention in Libya. We echo the Office of the Prosecutor's call upon the Libyan Government to fully implement its April 2013 law criminalizing torture, enforced disappearances and discrimination.

We also share their concerns about Libya's slow progress on processing detainees. We echo calls for Libya to work closely with the United Nations and

the International Committee of the Red Cross to help independently confirm the screening and processing of detainees, releasing those against whom there is little or no evidence and submitting the remainder to trial. In doing so, we believe that it will help to establish confidence in the Libyan justice system.

We fully support the ongoing investigations in relation to gender crimes and in relation to the situation of internally displaced persons, including Tuaregs. Those efforts continue to play an important part in challenging impunity and ensuring accountability for those who bear the greatest responsibility for the most serious crimes. We urge the Libyan Government to resolve that situation as quickly as possible.

The United Kingdom is grateful for the update from the Prosecutor on the cases of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. We note in particular the recent decision of the Pre-Trial Chamber that the Al-Senussi case is to proceed in Libya. The United Kingdom supports the right of Libya to hold national trials for crimes committed within its jurisdiction. Any action must be taken in line with the decisions of the International Criminal Court. Detention must be in accordance with international law, including access to legal advisors, and trials must be consistent with Libya's international human rights obligations. We encourage Libya's full cooperation with the Court on the Saif Al-Islam Al-Qadhafi case and the Abdullah Al-Senussi case.

The United Kingdom continues to be a friend of Libya and a supporter of the International Criminal Court. We look forward to future cooperation between Libya and the Court as Libya returns to stability in the aftermath of the revolution.

**Mrs. Perceval** (Argentina) (*spoke in Spanish*): Argentina thanks the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for introducing the sixth report of the Office of the Prosecutor pursuant to resolution 1970 (2011).

The constructive dialogue between the Libyan authorities and the Office of the Prosecutor is a work in progress. In May, we recognized that the constraints in contact with the Government of Libya had been overcome, and that the Office of the Prosecutor had re-established contact with the new Administration following the 2012 elections. At that time, we commended the fact that Office of the Prosecutor and the Prosecutor-General of Libya had recently signed

a memorandum of understanding concerning the distribution of work in future investigations and trials.

With regard to the cases of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi, which had been suspended by the Office of the Prosecutor when Libya questioned their admissibility, Argentina has always stressed that, in accordance with sub-paragraphs (a) and (c) of article 17 (1) of the Rome Statute, this was a judicial matter under the exclusive purview of the Chambers of the Court. The Court also ruled on the admissibility challenge in the case against Saif Al-Islam Al-Qadhafi. The Appeals Chamber rejected the Libyan request to suspend the decision of the Pre-Trial Chamber, which had found that the case was admissible before the ICC. Argentina notes that the Pre-Trial Chamber decided on 11 October that the case against Abdullah Al-Senussi was inadmissible before the ICC, a decision that Mr. Al-Senussi has appealed. Argentina reminds Libya, as the Prosecutor does in her report, that it is obligated to hand over Saif Al-Islam Al-Qadhafi to the Court.

Argentina commends the Prosecutor for pursuing her investigations into other possible suspects, including those outside Libyan territory. My country also recognizes the Prosecutor's concern regarding the report "Torture and deaths in detention in Libya," released in October by the United Nations Support Mission in Libya and the Office of the High Commissioner for Human Rights, covering detention centres held by armed brigades, in which torture is routinely employed. It is imperative for such detention centres to be placed under State control. In that regard, we urge Libya to make every effort to comply with the timeline established by the new law of transitional justice, which establishes that the cases of detainees associated with the previous regime and accused of crimes should be transferred prior to 21 December 2013 to the competent prosecutor to be handled according to due process. We join the Prosecutors call for Libya to effectively apply the law it adopted in April, penalizing torture, discrimination and forced disappearance.

The members of the Council once again have before them a report that emphasizes Libya's willingness to cooperate with the Court. Argentina, like the Prosecutor, fully understands the multiple challenges facing the Libyan authorities and commends the Office of the Prosecutor for its willingness to continue to support the Government in its efforts to address the greatest possible number of cases under its jurisdiction.

Above and beyond the matter of the competency of the Court, whose focus is naturally on the worst offenders, it is important and auspicious that the Libyan Government should continue to solidify its fight against impunity and render justice for the heinous crimes that have been committed, because only accountability before justice will consolidate peace and bring relief to the victims.

As is the case each time the Prosecutor presents a report to the Council, there are several additional points that my delegation would like to highlight. First of all, referrals by the Council — including the situation in Libya — entail an obligation for follow-up. In Argentina's view, the Council must do more than take note of these reports. We are pleased that in its presidential statement S/PRST/2013/2, on the protection of civilians in armed conflicts, the Council expressed its commitment to providing follow-up to its decisions with respect to ad hoc tribunals and the ICC. Given that a follow-up mechanism for ad hoc tribunals already exists, it is now urgent to implement that commitment by establishing a specific mechanism for the International Criminal Court.

Secondly, Argentina is concerned by the provision, contained in the two referrals made so far, exempting nationals of non-party States to the Rome Statute from the Court's jurisdiction for acts or omissions derived from operations established or authorized by the Council or related to such operations. Argentina believes that the Court's jurisdiction is universal and should remain so.

Another matter that could seriously affect the Court is that, in both referrals, the Council has determined that the expenses involved should be borne not by the United Nations but rather by the States parties to the Rome Statute. That deviates from the provisions of article 115 (b) of the Roma Statue and article 13 of the Relationship Agreement between the International Criminal Court and the United Nations. The legitimate concerns of many members with respect to seeing a more efficient Court and one able to deliver justice with greater speed — concerns such as those raised by the representative of the Russian Federation— cannot be satisfied if the Court faces serious financial problems in the execution of justice.

To conclude, my delegation would like to stress that the International Criminal Court is one of the most notable contributions to the struggle against impunity and the prevention of atrocities. Just this morning in my

country, the Senate approved a law for full reparations to political prisoners, union members and students detained under the last military dictatorship. This morning in my country, the Federal Appeals Chamber finally returned a verdict in the case of two priests, Carlos de Dios Murias and Gabriel Longueville, who were illegally deprived of liberty and murdered under the military dictatorship. Today in my country, at 8 a.m., we heard the testimony of Eduardo Pinchersky, a victim of the civil-military dictatorship. Speaking not only as a political activist but also as a Jew, he said, "The gods decided who would die and who would live. They thought they were gods."

We need the International Criminal Court.

**Ms. Uwizera** (Rwanda): I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, for her sixth report on the implementation of resolution 1970 (2011) and for the additional information she has provided today.

Let me begin by acknowledging the efforts undertaken by the Government of Libya and its people in rebuilding their State institutions, particularly the judicial system, at a moment when the country continues to face challenges on the security and political fronts. Rebuilding State institutions is not an easy task; it requires the time and concerted efforts of all actors. In that regard, we call upon all key partners of Libya to continue providing the necessary support and to enhance collaboration with the Government of Libya.

In the cases of Abdullah Al-Senussi and Saif Al-Islam Al-Qadhafi, it has always been our belief that the primary responsibility to investigate and prosecute the crimes against humanity of which those individuals are accused lies with the Libyan national jurisdiction. We therefore welcome the recent decision by the Pre-Trial Chamber to uphold its principles of complementarity by recognizing the steps already taken by the Libyan courts in prosecuting Al-Senussi.

As far as Saif Al-Islam Al-Qadhafi is concerned, the Government has begun legal proceedings at home, thus showing the ability and the willingness of the national judicial institutions to uphold their duty. We hope that démarche of the Libyan Government will be considered a demonstration of goodwill and on the same path of ensuring accountability, hence upholding the same principle of complementarity. It should be noted that the Libyan Government has taken steps recently in its legislative development. We believe that this is an

indication that Libya is willing to prosecute those who committed crimes and to put an end to impunity.

However, let us encourage the Government of Libya to show its goodwill by putting into practice the laws promulgated, including the transitional justice law. We particularly stress the need for the Libyan Government to ensure that article 28 of that law, related to ending the detention of those associated with the former regime without due process, is fully implemented. In that regard, we are concerned about the reported crimes committed against the Tawergha civilians who, to this day, have been unable to return to their homes in Tawergha. We hope that the Libyan Government will ensure the equal protection of its citizens.

From our experience of the gacaca jurisdictions, we believe that national initiatives like the fact-finding and reconciliation commission in Libya can implement strategies that could address allegations of crimes committed at the local level, such as those committed in Misrata and Tawergha in 2011. The international community shall provide the necessary assistance in supporting and strengthening that mechanism. We stress that, fundamentally in order for the Libyan people to reconcile, justice has to be rendered by the Libyans themselves.

As for the other perpetrators of crimes against humanity committed during the uprising who may reside outside Libya, we encourage the Government of Libya, in collaboration with the concerned countries and other partners, to ensure that those who committed crimes and who may continue to pose a threat to the Libyans are brought to justice.

To conclude, let me reiterate that the International Criminal Court should be used as a court of last resort. It is therefore important for the international community to support and provide assistance to enhance national capacities — in this case, Libyan capacities — to deal with past crimes, promote the rule of law, establish a sound judicial system and investigate and prosecute serious crimes. Only by strengthening national capacity are we really fighting impunity.

**Mr. Oh Joon** (Republic of Korea): I thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing on the recent developments regarding Libya. We agree with her that Libya has come a long way, despite all the challenges it faces, by working closely with the international community, including the International Criminal Court.

Regarding the recent developments between the ICC and Libya, I would like to make a couple of observations based on what the Prosecutor has just explained. First, I believe that close cooperation between the ICC and Libya is absolutely vital if the ICC is to fulfil its mandate, as given by the Security Council. We commend the Libyan Government's cooperation so far, but also expect it to continue to implement its obligations under resolution 1970 (2011) and to further enhance its cooperation with the ICC. In that context, we welcome the conclusion of the memorandum of understanding on burden-sharing between the ICC Prosecutor and the Prosecutor-General of the Libyan Government. We hope that this new instrument will help enhance their cooperation for the common goal of fighting impunity.

With respect to the progress made in the cases against Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi, we think that the Court's decision set the criteria for the questions regarding admissibility. We hope that those decisions will also make a positive contribution to the interpretation of the principle of complementarity.

We support the Prosecutor's efforts to investigate the allegations of crimes committed by pro-Al-Qadhafi officials outside Libya, as well as those committed by rebel forces. We look forward to a thorough investigation of all those allegations with the full cooperation with the Libyan authorities. It will be desirable for the ICC Prosecutor to keep assisting and encouraging the Libyan authorities in prosecuting criminal cases domestically, whenever possible, in accordance with the policy of positive complementarity.

Ms. Bensouda mentioned concerns about challenges in the investigations and corrections process at the national level. My delegation shares her concerns. In that regard, we would like to stress the importance of capacity-building in Libya and the continued support of the international community to that end.

With all of those developments, we understand that many tasks remain in Libya. However, with the continued efforts and cooperation of the Libyan authorities, the ICC and the Security Council, we believe that Libya will successfully achieve sustainable peace and democracy based upon the rule of law. As we have done, my delegation will continue to work with other Council members to that end with a firm commitment to the Charter and the vision of the ICC.

Like the Permanent Representative of Argentina, we also believe that we need the ICC.

**Mr. Masood Khan** (Pakistan): We thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for her briefing and welcome her back to the Security Council Chamber. We have taken note of the sixth report of the ICC Prosecutor to the Security Council. We commend Ms. Fatou Bensouda for her hard work and commitment to the international criminal justice system.

Libya continues to face serious challenges in the consolidation of its democratic system. The best way for the international community to assist Libya in overcoming those challenges is to help it strengthen the capacity of Libyan institutions. Justice and security institutions alike need to be supported in enhancing their capacity and effectiveness. We call on armed groups in Libya to lay down their arms and engage in the democratic process and dialogue to resolve their differences and grievances.

We welcome the memorandum of understanding on burden-sharing in regard to further investigations and prosecutions signed by the Government of Libya and the Office of the Prosecutor this month. Libya is cooperating with the ICC, in accordance with resolution 1970 (2011). The memorandum of understanding, as recognized by the ICC, is a sign of the commitment of the Libyan Government to ending impunity and to providing justice to victims. We call upon the Libyan Government to maintain its constructive engagement with the Court.

We welcome the Pre-Trial Chamber's decision on the inadmissibility of the Abdullah Al-Senussi case, in accordance with the principle of complementarity enshrined in the Rome Statute. On the basis of that principle, a case in The Hague is a matter of last resort. We appreciate the determination of the International Criminal Court that Libya is willing and able to carry out its proceedings against Abdullah Al-Senussi.

The Court's evaluation that the general security situation in Libya has not affected the capacity of Libyan institutions to obtain evidence and testimony and to conduct proceedings in the specific case of Al-Senussi is heartening. It is important that the Libyan Government maintain the quality of evidence, testimony, witness protection and fairness in the proceedings against Saif Al-Islam Al-Qadhafi and provide convincing additional information to the Appeals Chamber in that regard.

The Prosecutor's Office is in the process of collecting evidence against other individuals of the previous regime outside Libya who might be responsible for serious crimes. The Council would appreciate receiving additional information on such investigations.

As regards the investigation of other alleged crimes committed in Libya, we underline the need to conduct thorough and impartial investigations regardless of which side has perpetrated the crime. We also encourage NATO to fully cooperate with the Court and with Libya's national efforts to investigate the civilian casualties during the conflict.

The formation of a democratically elected Government is leading to positive results in Libya. We welcome the adoption of Libya's new transitional justice law. We hope that that law will be used to ensure due process for all detainees. The country has now entered the important phase of implementation of the transitional laws. That is critical to a stable and prosperous Libya.

The international criminal justice system has demonstrated that national judicial mechanisms can ultimately be more efficient and cost-effective in dealing with such serious crimes. The International Criminal Court and other international tribunals have succeeded in dealing with only a handful of cases. For the bulk of the cases, greater reliance on national judicial systems will continue to produce more salutary results. The strengthening of the Libyan judicial system is therefore essential to address the crimes that occurred in that country. The Libyan Government must continue to formulate and to implement a comprehensive strategy to address those crimes.

The international community should extend its full support to Libya to achieve that objective. In the long run, the promotion of reconciliation is essential to fostering national unity and to bridging the fissures caused by conflicts. The success of the Fact-finding and Reconciliation Commission is important for promoting unity in the country. Achieving a balance between the imperatives of justice and peace is always a difficult challenge. That can best be achieved through national mechanisms and institutions.

Finally, we underscore Pakistan's fullest support for the well-being and prosperity of the people of Libya. We wish them success in their quest for reconciliation, stability and institution-building.

**Mrs. DiCarlo** (United States of America): We are pleased to welcome Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), and would like to thank her for her briefing on her sixth report pursuant to resolution 1970 (2011).

The United States welcomes the commitment and efforts of the Government and people of Libya during their country's transition following 40 years of dictatorship. We recognize that the process of building a democratic and secure nation is a long-term endeavour with many challenges. An important part of that process is in the field of the rule of law, where Libya will need to continue to build on ongoing efforts to bolster accountability mechanisms that help support and develop a more robust, fair and effective system of justice.

In that regard, we welcome Libya's continued commitment to fulfilling its international obligations, including those related to the International Criminal Court under resolution 1970 (2011). We also welcome Libya's continuing cooperation in the ongoing proceedings before the International Criminal Court. We note with interest the recent memorandum of understanding on burden-sharing between the Libyan authorities and the International Criminal Court regarding investigations and prosecutions.

Under the Rome Statute, the International Criminal Court is complementary to national jurisdictions. The Pre-Trial Chamber's October decision granting Libya's admissibility challenge in the case against Abdullah Al-Senussi, the first such decision by the International Criminal Court, is a significant development in that regard. We note that the Court found that the Libyan authorities are taking concrete and progressive steps in the domestic proceedings against Mr. Al-Senussi and that Libya has demonstrated that it is willing and able to genuinely investigate and prosecute the case.

In those proceedings, we see the principle of complementarity applied in the context of a country transitioning out of conflict. The Prosecutor's report notes a number of efforts that Libya has undertaken to develop its justice institutions and mechanisms. Those include Libya's new transitional justice law, the Fact-finding and Reconciliation Commission and a new draft law on rape as a war crime. We welcome those and other initiatives, including those that help build much needed capacity in the justice system so that justice can be delivered more effectively.

Finally, we would like to emphasize that the Libyan Government must work to ensure that those in detention centres are not held without due process and that they are treated humanely, including in accordance with Libya's law criminalizing torture, adopted in April. In the end, much of the responsibility for ensuring accountability for crimes in Libya will fall to the domestic authorities. Even where it has jurisdiction, the International Criminal Court cannot pursue every case, nor is it charged with the general monitoring or oversight of Libya's overall progress in implementing justice and rule of law initiatives.

In the light of that mandate, we appreciate the Prosecutor's briefing and how she intends to focus her Office's work as the Court carries out its responsibility to investigate and prosecute those who bear the greatest responsibility for crimes. The United States stands ready to assist Libya as it works to reform its justice sector, strengthen the rule of law and advance human rights. We strongly believe that those and other areas of Libya's transition need to be fully addressed.

We look forward to working with the international community, including the United Nations Support Mission in Libya, and other international partners in a targeted and coordinated way to ensure adequate support to Libya as it undertakes such critical efforts. The United States also looks forward to continuing our active engagement with the Office of the Prosecutor and the International Criminal Court, consistent with our law and our policy to advance accountability for atrocities.

**Mr. Maes** (Luxembourg) (*spoke in French*): I would like to thank Ms. Bensouda, Prosecutor of the International Criminal Court (ICC), for her sixth report pursuant to resolution 1970 (2011) and for her briefing today. Let me reiterate our full support and appreciation for her work. I would also like to welcome the Permanent Representative of Libya, Mr. Dabbashi, to the Council.

Luxembourg is a firm advocate of the International Criminal Court. We think that justice and peace are complementary and that the fight for the rule of law and against impunity is of fundamental importance. In that regard, we believe that the ICC Prosecutor and her Office have a real role to play in Libya at a time when the country is laying the foundations for its new State. For that reason, like previous speakers we welcome the fact that the Libyan authorities have reiterated their willingness to cooperate with the Court by signing

a cooperation and burden-sharing memorandum of understanding on new investigations and prosecutions with the Office of the Prosecutor at the beginning of the month. That is a promising development and an example to be followed by other countries, some of which are calling into question the very principle of their cooperation with the Court. We are confident that the Libyan Government will do its utmost to ensure the effective implementation of that important agreement.

We understand and respect the fact that the Libyan authorities wish, in some cases, to try individuals accused of committing crimes that fall under the Statute of Rome on their territory. In that regard, we must welcome the fact that Libya has always complied with the procedures of the Rome Statute when it has raised objections of inadmissibility in the *Saif Al-Islam Al-Qadhafi* and *Abdullah Al-Senussi* cases. With regard to the latter case, the Court's Pre-Trial Chamber handed down a judgement on 11 October, while a decision has yet to be issued in connection with the *Al-Qadhafi* case.

We trust that the Libyan authorities will respect the final decision of the Court on the case of *Saif Al-Islam Al-Qadhafi* case. We are confident that they will appropriately follow up on the rejection of the request for suspensive effect of the requirement to surrender Saif Al-Islam Al-Qadhafi to the ICC and will deliver the accused to the ICC pending a definitive decision of the Court on the admissibility challenge.

The Libyan authorities have the ultimate responsibility to ensure respect for the rule of law in their country. However, the current situation of major insecurity is a serious obstacle to achieving that goal. We therefore call on the Libyan authorities to do more to create a favourable security environment, for there cannot be real justice or genuine freedom without security and stability also being guaranteed. For the memorandum of understanding on the division of labour between the Court and the Libyan authorities to be properly implemented, it is important that the Office of the Prosecutor be able to move unhindered throughout Libya.

The international community must stand with Libyans to help them meet the twin challenges of security and national reconciliation. However, that does not excuse us from remaining vigilant in ensuring respect for fundamental freedoms. We therefore note with concern the report published on 1 October by the United Nations Support Mission in Libya and the Office of the United Nations High Commissioner for

Human Rights on torture and mistreatment in detention centres. The Libyan authorities have recognized the seriousness of the problem, and we have no doubt they will implement the recommendations contained in the report, in particular concerning the transfer of prisoners to detention centres controlled by the State, in order to make a definitive break with the dark practices inherited from the Al-Qadhafi regime. We also support, along with Prosecutor Bensouda, the idea of a periodic review of the implementation of the law criminalizing torture that was adopted in April.

Let me conclude by acknowledging the very positive development represented by the adoption, on 22 September by the Libyan General National Congress, of the law on transitional justice. That text was long overdue. It contains, among others, provisions relating to the rights of and compensation for victims and the identification of responsibilities for the crimes of the past. It is our hope that the implementation of the law will be swift and will facilitate the process of national reconciliation.

**The President** (*spoke in Chinese*): I shall now make a statement in my capacity as the representative of China.

I thank Ms. Bensouda for her briefing.

With the efforts by the Government of Libya, the political transition process in Libya has continued to make progress. We support Libya in continuing to advance the political transition, and we hope that all parties in Libya will attach importance to the interests of the country and the people, maintain national unity, commit themselves to resolving differences through dialogue and properly meet all the challenges in the political transition so as to achieve national reconciliation and accelerate national reconstruction and development. China welcomes the efforts made by the Government of Libya to achieve justice through the judiciary. China's position on international judicial bodies remains unchanged.

I now resume my functions as President of the Council.

I give the floor to the representative of Lybia.

**Mr. Dabbashi** (Libya) (*spoke in Arabic*): I congratulate you, Sir, on your assumption of the presidency of the Security Council for this month. I would also like to express my gratitude to Ms. Fatou Bensouda, Prosecutor of the International Criminal

Court (ICC), for her briefing on the ICC and the crimes committed in Libya.

The Libyan authorities believe that the restoration of justice and the fight against impunity are the cornerstones of efforts to bring about national reconciliation and stability. That objective cannot be met through national efforts alone, especially in the light of the precarious situation of the country's institutions and the complex demands imposed due to the transitional phase.

We welcome the support that has been received by the Libyan authorities from the United Nations and from friendly nations, as well as the understanding between the Libyan judicial authorities and the ICC. Moreover, we are even more optimistic now that we have read the report of the Prosecutor on the cooperation between her Court and various countries aimed at reaching creative solutions, given the security gaps faced by the investigations in Libya and the difficulties encountered in trying to restore the rule of law in the country.

As I have said before in the Council, the International Criminal Court is a significant and necessary partner for Libya at this stage, in particular in restoring justice and fighting impunity, particularly with respect to the serious crimes committed in Libya since 15 February 2011. The memorandum of understanding signed between the two parties at the beginning of this month crystallizes their partnership and provides for burden-sharing in investigations and trials.

The judicial authorities in Libya have come a long way in terms of investigations and trials in the cases of perpetrators of the most heinous crimes committed in Libya who are currently detained in Libya. However, those authorities are encountering some difficulties with respect to investigating cases against people who are outside of Libya due to non-cooperation by the States where those people are residing. Some of the high-level authorities of the former system who fled to neighbouring countries continue to engage in activities aimed at destabilizing Libya. They do so by promoting discord and massacres, and they use, to that end, property pillaged from the Libyan people. Unfortunately, the countries in which they are residing have not made enough efforts to follow the money trail and freeze their funds, in violation of the relevant resolutions of the Security Council in that respect.

With regard to paragraph 21 of the Office of the Prosecutor's report, we are pleased about the

collection of testimony concerning suspects residing outside the country and concerning trials. However, we reiterate the responsibility of pro-Al-Qadhafi forces living outside Libya. We are very committed to judicial complementarity between the Libyan judicial system and close cooperation between Libya's General Prosecutor and the Prosecutor of the ICC, with a view to restoring justice and combating impunity in the context of stabilizing Libya's institutions and promoting peace in society.

In addition to Libya's respect for the decisions handed down by the International Criminal Court, our intention is to cooperate with the Court as much as possible. Nevertheless, above and beyond the judicial context, the televised images of Saif Al-Islam Al-Qadhafi threatening people on 20 February 2011 are still very fresh in the minds of our people, especially the families of the victims. Those families tend to place responsibility for murder and destruction throughout the country squarely on the shoulders of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. And they want to see justice done to them.

No Government, regardless of its popularity, can accept a trial taking place outside Libya, as that would destabilize the peace of our society, which is quite precarious. Indeed, it might even pose a threat to the lives of the perpetrators of the crimes. The Libyan judiciary has begun trials against against Al-Islam Al-Qadhafi and Al-Senussi, and it is clear that the international criteria for justice will be respected, either in the Al-Qadhafi case or in cases concerning some of his accomplices, including Al-Senussi. We hope that the International Criminal Court will very soon recognize Libya's responsibility in terms of trying those perpetrators and rendering justice and accountability for those two men.

Libya is deeply committed to the rule of law, in spite of the exceptional circumstances prevailing in the country. The Libyan people are clear about the fact that the path to prosperity includes bearing witness to the truth, restoring justice and compensating victims. Without justice, it is impossible to bring about national reconciliation; without national reconciliation, it is impossible to restore stability. Without stability, it is impossible to achieve development; without development, our people will not enjoy prosperity.

Our authorities are working as hard as they can to restore security using the various elements in place, including the army, security forces and the judiciary.

That is taking place in spite the difficulties faced by the Government in connection to being able to establish a national army and reforming the police and security services. Nevertheless, it has gone a long way towards bringing about a reform of the judiciary through the separation of power, especially between the executive and legislative branches of Government, and by issuing indictments for serious crimes in accordance with the law, including the transitional law. The latter is geared towards bringing about national reconciliation and helping the country emerge from the current phase and move to a new stage of prosperity and development — all the while holding accountable the perpetrators of the most serious crimes, including crimes against humanity and genocide.

In addition, we have criminalized torture, while the Minister of Justice is also addressing the issue of compensating victims. We hope that the relevant legislation will be adopted very soon. The national transitional Government is taking the necessary steps to put in place an entire transitional justice system. We hope that, very soon, we will be able to restore overall security, as well as administrative security, in order to restore the rule of law as soon as possible.

The Libyan Government fully understands the concerns of human rights organizations, as well as the concerns of some countries with regard to certain excesses that have taken place in detention centres over the past couple of years. The competent Libyan authorities have affirmed that they will not neglect any violations of human rights: all of them will be addressed, in spite of the fact that those are individual, isolated events. The international community, civil society organizations and others have noted that cases of human rights violations are constantly decreasing, which is due to the law just adopted on torture and other crimes.

The Libyan Government stresses punishing the perpetrators of all crimes and ending impunity. We are working energetically to bring all perpetrators of crimes to justice. However, we face a number of security problems — of which all members are aware — resulting from the murder of judges and army and security officers. That is a great challenge for our authorities, as is the use of weapons by some elements intent on impeding the export of gas and oil from Libya. Those elements are attempting to use to their own ends the flexibility of the Libyan authorities over the past two years, aimed at avoiding further bloodshed.

We would like to thank the Prosecutor and the ICC for their efforts to cooperate with my country. We very much aspire to the same goals. We hope for more support from the Security Council, especially with regard to encouraging countries that have not yet done so to send all suspected criminals back to Libya in order that their cases may be prosecuted in our country — people who are responsible for very grave crimes. We also await further support in terms of freezing assets and helping us to restore security and the rule of law and protect judges.

**The President** (*spoke in Chinese*): I now give the floor to Prosecutor Bensouda to respond to comments made and questions raised.

**Ms. Bensouda**: I take this opportunity to thank all speakers for their statements of support regarding my Office's work and the work of the International Criminal Court.

On the question relating to the difference between the cases of Al-Senussi and Al-Qadhafi before the Court, which I believe was raised initially by the representative of the Russian Federation, let me state that the assessment of admissibility is on a case-by-case basis. It is not enough for a State to assert that it can undertake a trial, and the Court does not judge the system as a whole.

In the case of Al-Senussi, the volume of information submitted was sufficient to show that the Libyan courts are trying the same case, that is, of the same individuals for the same crimes. Furthermore, the case is factually different from that of Saif Al-Islam Al-Qadhafi. Al-Senussi is in detention and benefitting from the due process guarantees that are offered by confident State control. That is not entirely the case with respect to Saif Al-Islam Al-Qadhafi. The judges found that the information that was submitted in the case of Saif Al-Islam Al-Qadhafi lacked the degree of specificity that is necessary to meet the test. The Libyans have offered to submit more information, and the Court is considering that request. I think that the different positions of the Court's judges and my Office highlight respectively in these two cases the impartial legal proceedings before the Court, which are always in strict conformity with the legal framework of the Rome Statute.

On the question of the detentions in Zintan, the Court takes the matter very seriously and is intent on decyphering precisely what transpired during the

course of that mission. We are taking appropriate measures. The matter is in the hands of President Song and the Registry, and they are doing the assessment. I understand that both the Presidency and the Registry have been in contact with the legal authorities in that regard. I respect the President's and the Registrar's respective mandates in this regard.

On NATO's conduct during its operation in Libya, I noted in my last report that the Office had found no information to conclude that NATO's air strikes, which may have resulted in civilian deaths or injury, or damaged civilian objects, were the result of the intentional directing of attacks against the civilian population, as such, or against civilian objects, which would be clearly excessive to the anticipated military objective and advantage. My Office has encouraged NATO to cooperate fully in Libya's national efforts to

investigate civilian casualties. In the current report, my Office welcomes the agreement between NATO and the Government of Libya to work more closely together in the future.

Allow me to conclude by stating firmly that the Office will always conduct its mandate impartially and in strict conformity with the Court's legal framework, devoid of extraneous considerations, and that we will pursue perpetrators where we have jurisdiction. The establishment of international rule of law, impartially applied, requires this of us.

**The President** (*spoke in Chinese*): There are no more names inscribed on the list of speakers. The Security Council has thus concluded this stage of its consideration of the item on its agenda.

*The meeting rose at 11.55 a.m.*