

Libya's acceptance of the International Criminal Court's jurisdiction: stakes and implications

Questions & Answers



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On 12 May 2025, the Government of National Unity (GNU) – the internationally recognized government of Libya based in the capital Tripoli, in the West of the country – lodged a declaration, pursuant to article 12(3) of the Rome Statute of the International Criminal Court ("ICC" or "the Court") with the Registrar of the Court, accepting the exercise of jurisdiction by the Court "with respect to alleged crimes in its territory from 2011 to the end of 2027" (the "article 12(3) declaration").¹ The International Commission of Jurists (ICJ) publishes this Q&A to assess the significance of this declaration and its legal implications for the ICC and for Libya.

Historical background and context of the article 12(3) declaration

On 26 February 2011, the UN Security Council, acting under Chapter VII of the UN Charter and pursuant to article 13(b) of the Rome Statute, referred the situation of Libya since 15 February 2011 to the Prosecutor of the ICC.² On 3 March 2011, the Office of the Prosecutor (OTP) opened an investigation.³ Since then, it is known that the Court has issued 13 arrest warrants. Four arrest warrants were withdrawn because of the suspect's death or because the case was declared inadmissible; eight warrants are pending for individuals who remain at large; and a suspect, Khaled Al-Hishri, was recently arrested in Germany.⁴

Following the ouster of Libya's former Head of State Muammar Gadhafi in 2011, Libya experienced a significant split between two rival administrations based in the West and the East of the country, respectively. In February 2021, the Libyan Political Dialogue Forum (LPDF) – a UN-led conference bringing together around 70 Libyan political stakeholders – agreed on the establishment of the GNU, led by Abdulhamid Dbeibeh, and the Presidential Council (PC), chaired by Mohamed Al-Menfi, in Tripoli. The GNU and PC's stated priority, as affirmed in the LPDF Roadmap, was to organize presidential and parliamentary elections by December 2021.⁵

In March 2022, following the GNU's failure to hold presidential elections by the deadline, the House of Representatives (HoR) – the legislative body elected in 2014, based in Tobruk, in the East of the country – voted for the creation of a rival government, the Government of National Stability (GNS) based in Benghazi, in the East.⁶ The HoR and the GNS are supported by the Libyan Arab Armed Forces (LAAF), formerly known as the Libyan National Army (LNA). The LAAF is a coalition of militias led by Khalifa Haftar's family, which has military control over most of the East and South of Libya.

In early May 2025, the GNU launched military operations in Tripoli against militias that had been controlling certain areas of the capital for years, including the Stabilization Support Authority (SSA) and the Special Deterrence Forces (SDF or RADA). The operations resulted in the killing of SSA commander Abdelghani Al-Kikli (also known as "Ghaniwa") and the dispersal of the SSA. The operations also caused civilian casualties.⁷

As Libyans took the streets in Tripoli to protest the escalation of hostilities and calling for the fall of the GNU, militias affiliated with the GNU responded by indiscriminately firing at the protestors, injuring at least one.⁸

After GNU-affiliated militias had gained control of Abu Salim, an area in Tripoli previously controlled by the SSA, it was reported that mass graves had been found in the zoo.⁹ Additionally,

1. ICC, Registry, [Libya accepts ICC jurisdiction over alleged crimes from 2011 to the end of 2027](#), 15 May 2025.

2. UN Security Council, [Resolution 1970](#) (2011), UN Doc. S/RES/1970(2011), 26 February 2011, paras 4-8.

3. ICC, OTP, [Statement to the United Nations Security Council on the situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 \(2011\)](#), 4 May 2011.

4. ICC, Registry, [Situation in Libya: Khaled Mohamed Ali El Hishri arrested for alleged crimes against humanity and war crimes](#), 18 July 2025. At the time of writing, Mr Al-Hishri was in custody in Germany.

5. LPDF, [Roadmap "For the Preparatory Phase of a Comprehensive Solution"](#), 2020.

6. See, International Crisis Group, [International Unity is Needed to Prevent a Divided Libya](#), 3 March 2022.

7. See, Libya Crimes Watch, [Statement: LCW condemns civilian casualties and calls for an end to the clashes in Tripoli](#), 15 May 2025.

8. Ibid.

9. See [Facebook post](#) of the General Authority for the Search and Identification of Missing Persons, 15 May 2025 (in Arabic only). See also, ICJ, [Libya: Investigate unidentified bodies and reported mass graves in](#)

the remains of 67 unidentified individuals have been discovered in refrigerators at the Abu Salim and Al-Khadra hospitals.¹⁰

Soon after its operations, the GNU dissolved the Directorate for Combatting Illegal Migration and the Department of Operations and Judicial Security of the Judicial Police Authority, and replaced the head of the Tripoli-based Internal Security Agency.¹¹ The UN Human Rights Council's mandated Independent Fact-Finding Mission on Libya, which operated from June 2020 to March 2023, had accused these three militias of committing violations and abuses of international human rights law and international humanitarian law.¹² Moreover, the head of the recently dissolved Department of Operations and Judicial Security of the Judicial Police Authority, Osama Elmasry Njeem, is the subject of an arrest warrant issued by the ICC for alleged crimes against humanity and war crimes committed in Mitiga prison, in Tripoli.¹³

A week before the hostilities, a video showing Ibrahim Al-Dersi, a member of the HoR was leaked on social media. The video, which the ICC deemed authentic upon request from the Libyan authorities,¹⁴ features Mr Al-Dersi shackled around the neck, in his underwear and bearing signs of torture. Approximately a year earlier, on 16 May 2024, unidentified gunmen had abducted Mr Al-Dersi in Benghazi, in the East of Libya; his car was later found with traces of blood inside.¹⁴ In reaction to the leaked video, on 5 May 2025, the GNU called for an "urgent international investigation",¹⁵ and on 12 May 2025, the Attorney General announced the launch of an official investigation.¹⁶

Alongside the adoption of a number of decrees dismantling the militias that had controlled Tripoli, the GNU accepted the ICC's jurisdiction through the article 12(3) declaration of 12 May 2025.

1. Was the article 12(3) declaration lodged by the competent authority?

On 18 May 2025, the HoR rejected the GNU's article 12(3) declaration. In a letter to the ICC Prosecutor, the HoR Speaker, Aguila Saleh, claimed that the GNU, as a transitional government tasked only with preparing the upcoming elections, was not competent to lodge an article 12(3) declaration. Rather, according to the HoR Speaker, accepting the ICC's jurisdiction is an "inherent power" of the HoR.¹⁷

The GNU is recognized by the international community as the government of Libya. Such recognition is evidenced, for instance, by the fact that the UN Protocol List names Abdulhamid

[Abu Salim](#), 27 May 2025; OHCHR, [Libya: Sites of gross human rights violations must be sealed and impartially investigated – Türk](#), 4 June 2025.

10. See, ICJ, [Libya: Investigate unidentified bodies and reported mass graves in Abu Salim](#), 27 May 2025; OHCHR, [Libya: Sites of gross human rights violations must be sealed and impartially investigated – Türk](#), 4 June 2025.

11. [Decree No. 227 of 2025 amending the structure of the Ministry of Interior](#) and [Decree No. 327 of 2025 concerning the organizational structure of the Judicial Police Authority](#), both adopted by the GNU on 13 May 2025 (in Arabic only). See also, Libya Herald, [Tripoli PM Aldabaiba appoints Mustafa Al-Wahishi as the new head of the Internal Security Agency](#), 14 May 2025. On 14 May 2025, however, the PC suspended these decisions and, on 1 June 2025, appointed a new head to the SSA: [Decree No. 2 of 2025 concerning the consolidation of the ceasefire and the enforcement of security arrangements](#) (in Arabic only). See also, Libyan Observer, [New appointments for Stability Support Apparatus and Judicial Police Authority](#), 24 June 2025.

12. FFM, [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/52/83, 3 March 2023, paras 3-4, 42-44, 46-47, 52-53, 66-67, 83 and 98.

13. ICC, Pre-Trial Chamber I, *Situation in Libya*, [Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem](#), ICC-01/11-152-US-Exp-Anx, 18 January 2025. See also, FFM, [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/52/83, 3 March 2023, para. 66.

14. ICC, OTP, [Statement of ICC Prosecutor Karim A.A. Khan KC to the United Nations Security Council on the Situation in Libya, pursuant to Resolution 1970 \(2011\)](#), 15 May 2025.

15. See, [X post](#) of the Libya Observer, 5 May 2025.

16. See, Amnesty International, [Libyan MP Disappeared for Over a Year: Ibrahim al-Dersi](#), 9 June 2025.

17. [Letter from Aguila Saleh to the ICC Prosecutor](#), 18 May 2025 (in Arabic only).

Dbeibeh as Libya's Head of Government,¹⁸ and the OTP similarly refers to him as Prime Minister.¹⁹ The GNU may therefore be considered competent to lodge an article 12(3) declaration.

2. Does the article 12(3) declaration affect the pre-existing Court's exercise of jurisdiction over the situation in Libya?

While the February 2011 Security Council's referral of the Libya situation to the Prosecutor of the ICC does not provide an end date, the time elapsed since then raises the question of whether the ICC may still exercise jurisdiction over any Rome Statute crimes committed recently in Libya.

ICC Pre-Trial Chamber I has determined that, for a case not to exceed the parameters defining the situation under investigation pursuant to a referral, (i) "the crimes referred to in the Prosecutor's Application must have occurred in the context of the ongoing situation of crisis that triggered the jurisdiction of the Court through the [...] referral", and that, (ii) "it is only within the boundaries of the situation of crisis for which the jurisdiction of the Court was activated that subsequent prosecutions can be initiated". The Pre-Trial Chamber I went on to state that such a situation "can include not only crimes that had already been or were being committed at the time of the referral, but also crimes committed after that time, in so far as they are sufficiently linked to the situation of crisis referred to the Court as ongoing at the time of the referral".²⁰

Applying these criteria in the situation of Libya, the ICC Pre-Trial Chamber I judges disagreed on the temporal scope of the Court's exercise of jurisdiction when examining the OTP's application for arrest warrants for members of the Kaniyat militia in relation to crimes allegedly committed when it controlled Tarhuna – a city some 100 km South-East of Tripoli – from at least 2015 to June 2020. While Judge María del Socorro Flores Liera, in her dissenting opinion, considered that the alleged crimes were not sufficiently linked to the Security Council referral,²¹ the majority found the link to the referral was sufficient, holding, therefore, that the Court had jurisdiction over crimes committed until at least 5 June 2020 in that case.²²

In this regard, the article 12(3) declaration has the effect of dispensing with any uncertainty about whether the Court could exercise jurisdiction over Rome Statute crimes committed in Libya at a later stage, and of clarifying that the Court may exercise its jurisdiction over Rome Statute crimes committed in Libya between 2011 and the end of 2027, irrespective of any link with the situation of crisis that triggered the UN Security Council's referral in February 2011. As a result, the temporal scope of the OTP's ongoing investigation may too be affected.

18. UN Protocol and Liaison Services, Heads of State, Heads of Government, Minister for Foreign Affairs, 22 May 2025. In May 2014, the ICC had rejected a purported article 12(3) declaration relating to alleged crimes committed in Egypt. The declaration had been lodged on behalf of Mohamed Morsi, Egypt's ousted President. The Prosecutor explained that, "[a]fter careful consideration of all the facts, the Office concluded that as a matter of international law, the applicants neither exercised the requisite authority, nor were they in possession of 'full powers', on behalf of the State of Egypt". The OTP noted, among other criteria, that Mohamed Morsi was not listed as Head of State on the UN Protocol List. ICC, OTP, The determination of the Office of the Prosecutor on the communication received in relation to Egypt, 8 May 2014. See also, ICC, Registry, Communication seeking to accept the ICC's jurisdiction over Egypt is dismissed, 1 May 2014.

19. See, for example, ICC, OTP, *Twenty-Ninth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 (2011)*, May 2025, para. 12, referring to Abdulhamid Dbeibeh as Prime Minister.

20. ICC, Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, *Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana*, ICC-01/04-01/10-1-US, 28 September 2010, para. 6, with respect to State referral pursuant to arts 13(a) and 14.

21. ICC, Pre-Trial Chamber I, Judge María del Socorro Flores Liera, *Dissenting Opinion in Situation in Libya, Warrant of Arrest for Abdurahem Khalefa Abdurahem Elshgagi ('Abdurahem Al Kani')*, ICC-01/11-141-Anx1, 6 April 2023, paras 4-14.

22. ICC, Pre-Trial Chamber I, Situation in Libya, *Warrant of Arrest for Abdurahem Khalefa Abdurahem Elshgagi ('Abdurahem Al Kani')*, ICC-01/11-141-Anx1, 6 April 2023, paras 5-13. The majority of the Pre-Trial Chamber noted, in particular, that the Kaniyat militia "emerged as a result of the 2011 crisis that triggered the 2011 Resolution" and was affiliated with the LNA, an armed group taking part in violence that "amplified the existing proxy conflict that took shape after 2011".

3. Does the article 12(3) declaration have an impact on the scope of the Office of the Prosecutor's ongoing investigation into the Libya situation?

In November 2023, the Prosecutor announced that his office planned to complete the investigation in the situation of Libya by the end of 2025.²³ On 15 May 2025, three days after Libya lodged its article 12(3) declaration, he confirmed that some lines of inquiry would be completed by the end of the year, with the remaining ones by the end of March 2026.²⁴

The Prosecutor is independent²⁵ and retains discretion over whether to initiate investigations.²⁶ Accordingly, the fact that Libya lodged an article 12(3) declaration with respect to alleged crimes committed until the end of 2027 does not compel the Prosecutor to continue its ongoing investigation or request authorization to open another investigation beyond March 2026. However, it is possible that the OTP considers broadening the scope of its investigation in Libya in light of the article 12(3) declaration, particularly if certain incidents were previously excluded from the ongoing investigation on the basis that they were not sufficiently linked to the UN Security Council's referral to fall under the Court's jurisdiction.

Should this be the case, then such incidents would have to be considered under a *proprio motu* investigation subject to authorization from the Pre-Trial Chamber pursuant to article 15 of the Rome Statute, to ensure that the Court may exercise its jurisdiction according to article 13(c). Indeed, contrary to the UN Security Council's referral, an article 12(3) declaration is only a precondition to the exercise of the Court's jurisdiction, and the Pre-Trial Chamber must have authorized the Prosecutor to initiate an investigation.²⁷ According to article 15, the Pre-Trial Chamber shall authorize such an investigation if it "considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court".

4. Does the article 12(3) declaration enable the Libyan authorities to influence the ICC prosecution policy?

The Court has previously clarified that, when lodging an article 12(3) declaration, the State accepts the Court's jurisdiction over a situation as a whole, rather than over specific crimes or parties. The Court explained that States' "discretion in framing the situation" is limited, to ensure they do not use the Court "opportunistically".²⁸ In the present situation, the Court may therefore exercise its jurisdiction over any perpetrator of all and any Rome Statute crimes committed in Libya between 2011 and 2027,²⁹ irrespective of their political affiliation, subject to the admissibility of the case, and the Prosecution retains its discretion in this regard.

23. ICC, OTP, [Statement of ICC Prosecutor Karim A.A. Khan KC to the UN Security Council on the Situation in Libya, pursuant to Resolution 1970 \(2011\)](#), 9 November 2023.

24. ICC, OTP, [Statement of ICC Prosecutor Karim A.A. Khan KC to the United Nations Security Council on the Situation in Libya, pursuant to Resolution 1970 \(2011\)](#), 15 May 2025.

25. Rome Statute, art. 42(1).

26. See for example, relating to a State Party referral pursuant to article 13(a): ICC, Appeals Chamber, *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Judgment on the appeal of the Prosecutor against Pre-Trial Chamber I's 'Decision on the 'Application for Judicial Review by the Government of the Union of the Comoros''*, ICC-01/13-98, 2 September 2019, para. 76.

27. See, ICC, OTP, [Statement of ICC Prosecutor Karim A.A. Khan QC, on the Situation in Ukraine: "I have decided to proceed with opening an investigation."](#), 28 February 2022; ICC, Registry, [Questions and answers on the Palestinian National Authority article 12\(3\) declaration](#).

28. ICC, Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on the "Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12\(3\), 19\(2\), 21\(3\), 55 and 59 of the Rome Statute](#), ICC-02/11-01/11-212, 15 August 2012, para. 59.

29. Rule 44 of the ICC [Rules of Procedure and Evidence](#) provides that a declaration under article 12(3) of the Rome Statute "has as a consequence the acceptance of jurisdiction with respect to crimes referred to in article 5 [of the Rome Statute] of relevance to the situation".

5. What is the impact of the article 12(3) declaration on Libya's obligation to cooperate with the International Criminal Court?

Even before its article 12(3) declaration, and despite not being a State Party to the ICC, Libya was obliged to cooperate with the Court. When the Security Council referred the situation in Libya to the ICC, it also called on the Libyan authorities to "cooperate fully with and provide any necessary assistance to the Court".³⁰ Considering the Security Council adopted the resolution referring the situation of Libya to the Prosecutor of the Court under Chapter VII of the UN Charter and used binding language in doing so, the resolution is legally binding on UN Member States, including Libya.³¹

Despite this, the Libyan authorities have repeatedly failed to cooperate with the Court. For example, notwithstanding the fact that the Libyan authorities have detained some suspects against whom the ICC has issued arrest warrants, including Abdullah Al-Senussi,³² Mohamed Salheen,³³ and at least another suspect from Tarhuna,³⁴ they have consistently failed to transfer any of them to the Court. When Osama Elmasry Njeem – who is also the subject of an arrest warrant issued by the ICC – was arrested in Italy, Libya's Attorney General sent a letter to Italy's Ministry of Foreign Affairs requesting his repatriation to Libya. He claimed Mr Elmasry Njeem's transfer to the ICC would be in violation of the principle of complementarity as the Attorney General's office had been investigating him for the same conduct which formed the basis of the crime for which the Court sought his surrender.³⁵ Furthermore, in its last report to the Security Council in May 2025, the ICC Prosecutor noted that, despite agreeing with the Attorney General to: (1) the establishment of an internal working group among the Libyan authorities to facilitate cooperation with the ICC, and (2) that the OTP could access information collected by the Attorney General during his investigation into the crimes committed in Tarhuna, these agreements had yet to materialize.³⁶

Now that Libya has accepted the jurisdiction of the Court, it is additionally bound by Part 9 of the Rome Statute on International Cooperation and Judicial Assistance, which is more comprehensive than the Security Council-mandated generic obligation to cooperate and provide assistance. Pursuant to article 12(3), Libya is obliged to "cooperate with the Court without any delay or exception". It must, for example, surrender suspects to the Court,³⁷ and assist in identifying and locating persons, exhuming and examining grave sites, providing official records and documents, protecting victims and witnesses, and preserving evidence.³⁸ Rule 44(2) of the Rules of Procedure and Evidence expressly provides that the provisions of Part 9 and any rules thereunder concerning States Parties shall apply to accepting States such as Libya.

30. UN Security Council, [Resolution 1970](#) (2011), UN Doc. S/RES/1970(2011), 26 February 2011, para. 5.

31. UN Charter, art. 25.

32. See, ICC, Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on the admissibility of the case against Abdullah Al-Senussi](#), ICC-01/11-01/11-466-Red, 11 October 2013, para. 294; ICC, Pre-Trial Chamber I, *Situation in the Libyan Arab Jamahiriya*, [Warrant of Arrest for Abdullah Al-Senussi](#), ICC-01/11-15, 27 June 2011.

33. See, [Facebook post](#) of the 444th Brigade announcing the arrest of Mohamed Salheen and his handover to the Attorney General, 23 November 2024 (in Arabic only); ICC, Pre-Trial Chamber I, *Situation in Libya*, [Warrant of Arrest for Mohamed Mohamed Al Salheen Salmi \('Mohamed Salheen'\)](#), ICC-01/11-141-Anx4, 6 April 2023. The 444th Brigade is a Tripoli-based militia affiliated with the GNU.

34. See, ICC, OTP, [Twenty-Ninth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 \(2011\)](#), May 2025, para. 65.

35. [Letter from Attorney General of Libya to Italy's Minister of Foreign Affairs and International Cooperation](#), 20 January 2025. See the original in Arabic [here](#). See also, ICC, OTP, [Twenty-Ninth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 \(2011\)](#), May 2025, para. 66, noting that some Libyan authorities "appear to have been directly engaged in efforts to secure the return of Mr NJEEM from Italy". On 9 July 2025, the Attorney General announced his investigation against Mr Elmasry Njeem was ongoing, having interrogated him a first time on 28 April 2025, and that he would send a request for judicial assistance to the OTP, [Facebook post](#) of the Attorney General, 9 July 2025 (in Arabic only). On 13 July 2025, the GNU Ministry of Justice declared it would not extradite Mr Elmasry Njeem to the Court, [X post](#) of Alwasat Libya, 13 July 2025.

36. ICC, OTP, [Twenty-Ninth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 \(2011\)](#), May 2025, para. 64.

37. Rome Statute, art. 89.

38. Rome Statute, art. 93.

6. Conclusion

While welcoming Libya's article 12(3) declaration, the ICJ stresses that such declaration will only be meaningful if the Libyan authorities fully cooperate with the Court and take concrete steps to support the OTP's investigation and prosecutions, including by promptly arresting and transferring all the suspects subject to an ICC arrest warrant to the Court and providing the OTP unrestricted access to crime scenes in all regions of the country. The ICJ also calls on the OTP to use the opportunity of the article 12(3) declaration to reassess and broaden the scope of its investigation in light of this full reassertion of the Court's jurisdiction over the period concerned to ensure that the most serious crimes committed in Libya do not go unpunished.

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