



REPORT

Justice Delayed is Justice Denied: Atrocities in Libya must not Go Unpunished

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Introduction

International pressure to end the violence and chaos in Libya has paved the way for the prosecution of the atrocities committed during the Second Libyan Civil War (2014 to 2020). Nevertheless, the sole indictment of Mahmoud Al-Werfalli by the International Criminal Court (ICC) has not triggered a meaningful investigation into the numerous war crimes and crimes against humanity allegedly committed by the Libyan National Army (LNA) under the command of Khalifa Haftar, and its local and foreign allies such as the Wagner Group, a Russian private military contractor who fought on the side of the LNA. The failure to investigate these acts delays justice for the victims of atrocities and undermines negotiations to bring an end to the decades-long conflict in Libya.

The first section of the report will provide an overview of the global cooperation on international criminal justice, the founding statute of the ICC and the jurisdiction of the Court, with regard to the Libyan conflict. The next section will address the war crimes and crimes against humanity allegedly committed by the Libyan National Army (LNA) under the command of Khalifa Haftar and by his local and foreign supporters. The third section will discuss the responsibility for these crimes under the jurisdiction of the ICC, as well as within other jurisdictions, and look into the consequences of the delay in investigating the aforementioned acts on the implementation of the international humanitarian law and peace-building process in Libya.



*The International Criminal Court's Assembly of States Parties held in The Hague, Netherlands on December 02, 2019.
(Abdullah Aşran - Anadolu Agency)*



Saif al-Islam Gaddafi (R), son of late Libyan leader Muammar Gaddafi, seen on the screen sitting behind bars during his trial at a courtroom in Tripoli, Libya, on May 11, 2014. (Hazem Turkia - Anadolu Agency)

1.1. An Overview of International Criminal Justice and Libya Cases

International humanitarian law, also known as laws of war or *jus in bello*, protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. In the global fight against violations of humanitarian law through international criminal justice, the Rome Statute of the International Criminal Court (Rome Statute) was adopted in 1998 and entered into force in 2002. The aim of the Court is "...to hold those responsible accountable for their crimes and to help prevent these crimes from happening again" (ICC). Currently, 123 States Parties around the world have authorised the ICC to prosecute the following crimes foreseen in Article 5 of the Statute if these are committed in the territory of a State Party or if they are committed by a national of a State Party: Genocide, crimes against humanity, war crimes, and crime of aggression (UNGA, 1998).

Despite the extensive international cooperation to prevent and punish these crimes, a number of nations, including the United States and Libya, are still not party to the Rome Statute and thus are outside the jurisdiction of the ICC. In principle, the Court does not have jurisdiction over crimes committed on territories of non-party States or crimes committed by their nationals; however, this does not provide absolute immunity from the ICC jurisdiction to the non-party States. According to Article 13 of the Rome Statute, "The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (...) (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations" (UNGA, 1998). The Statute stipulates that a referral to the Prosecutor of the ICC by the United Nations (UN) to prosecute aforementioned crimes committed in non-party countries will enable the jurisdiction of the Court over a non-party state. Although Libya is not party to the Rome Statute, a referral from the UN Security Council in 2011 (UNSC, 2011) made it possible for the Court to investigate crimes against humanity and war crimes committed in Libya.

Following the deferral, four arrest warrants were issued against former Libyan dictator Muammar Gaddafi and notable persons in his regime. Until August 2017, all of the indictments were related to Gaddafi. However, during the Second Libyan Civil War, which started in 2014 and went on until the ceasefire in 2020, the Court did not take action as quickly as it did during the uprising against Gaddafi in 2011. This has prompted criticism against the ICC for favouring the anti-Gaddafi forces and interests of the UN Security Council member states, particularly of France, the UK, and the US. Although these countries were among the five permanent members of the UN Security Council that supported the motion to give the ICC jurisdiction in Libya in 2011, the joint statement they released in response to the indictment of Al-Werfalli (US Department of State, 2017) only encouraged Haftar to suspend his subordinate without mentioning Haftar's alleged human rights abuses and his responsibility of the crimes committed by the LNA and its allies. With no reference to the arrest warrant against Al-Werfalli, the statement was interpreted by some critics as a sign that the West was not backing the ICC Chief Prosecutor Fatou Bensouda's move to prosecute war crimes and crimes against humanity in Libya (Xypolia, 2017).

As the international pressure to investigate the atrocities during the Second Libyan Civil War grew on 15 August 2017 the ICC for the first time issued an arrest warrant for a person not related to the Gaddafi regime. Mahmoud Al-Werfalli, the field commander of the Special Forces Brigade (Al-Saiqa), was alleged to have "...directly committed and to have ordered the commission of murder as a war crime in the context of seven incidents, involving 33 persons, which took place from on or before 3 June 2016 until on or about 17 July 2017 in Benghazi or surrounding areas, in Libya as well as murder as a war crime in the context of an eighth incident which took place on 24 January 2018, when Mr. Al-Werfalli allegedly shot dead 10 persons in front of the Bi'at al-Radwan Mosque in Benghazi, Libya" (Al-Werfalli Case, 2017). It is reported that Al-Werfalli was "...answerable to Haftar through Al-Saiqa's close affiliation with the Libyan National Army" (Xypolia, 2017) and the ICC chief prosecutor Bensouda personally appealed to Haftar to turn over Al-Werfalli for trial, which further indicated Al-Werfalli's position as a subordinate of Haftar and indirectly brought up Haftar's wider responsibility of these crimes as the commander of the LNA forces (UN News, 2017). In response, Haftar promoted him to the rank of lieutenant-colonel (Muhammed, 2019). Al-Werfalli was assassinated in Benghazi on March 24th, 2021 (Rezeg & Duz, 2021). No other case was opened before the ICC regarding the atrocities committed in Libya.

1.2. The Principle of Command Responsibility and Pro-Haftar Actors in Libya

The responsibility of a commander of the conduct of his subordinates during an armed conflict is an ancient principle that was first mentioned in The Art of War, which was written in 400 B.C.E. by the Chinese philosopher Sun Tzu. It was later codified in The Hague Convention of 1899 on a multinational level. Since then, the concept of "command responsibility" has been practised and updated with such broad international support that this principle became an essential part of customary international law. According to the Rule no. 153 of the Customary International Humanitarian Law database of the International Committee of the Red Cross (ICRC), "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible" (ICRC). In the context of the Second Libyan Civil War, LNA forces under Haftar's command, local and foreign allies of the LNA and the Russian Wagner Group are alleged to have committed war crimes and crimes against humanity. Commanders and superiors of military and paramilitary groups in Libya are therefore responsible for these crimes committed by their subordinates. Although the indictment of Al-Werfalli provided an opportunity to bring the atrocities in Libya into spotlight and punish those who are responsible, further investigation of the mentioned crimes was not made.

As the strongest military figure in Libya, Khalifa Haftar is one of the main responsible persons for war crimes and crimes against humanity committed in Libya. According to Ghassan Salamé, the former UN special envoy for Libya, Haftar is "no big democrat" and his methods are worrisome "...because where he is governing, he doesn't govern softly, but with an iron fist" (Wintour, 2019). It has been reported that the LNA forces and their local allies fighting among them are responsible for gross human rights violations against both civilians and captured combatants since the 2011 uprising (Al-Shaeri, 2018). The renegade commander is alleged to have had information about the crimes committed by his subordinates but neither took necessary measures in his power to prevent the atrocities, nor punished the responsible subordinates or allied local militia-

men acting on behalf of his self-styled LNA. Airstrikes carried out by foreign militaries were also responsible for war crimes and crimes against humanity during the conflict.

Another important actor on the field is the Wagner Group, a Russian private military contractor with ties to the Government of Russian Federation. It is asserted that the Wagner mercenaries started to emerge in Libya fighting on Haftar's side in September 2019 (Sturdee, 2021) or as early as 2018 according to the resolution 2021/2982 (RSP) of the European Parliament on the human rights violations by private military and security companies, particularly the Wagner Group (European Parliament, 2021). Wagner's mercenaries reportedly "...provided training for LNA fighters, aided artillery teams, guarded high-ranking officers, operated Russian Pantsir air defence systems and repaired military equipment" in Libya (Hilton, 2020). The Wagner fighters also operated as effective snipers and contributed to the stability of the LNA forces near Tripoli. Members of the Wagner are accused of committing war crimes, such as execution of civilians and captured fighters, planting landmines without marking and planting IEDs in residential areas. According to the director of operations of the African Command of the United States (AFRICOM) Major-General Bradford Gering, "The Wagner Group's irresponsible tactics are prolonging conflict and are responsible for the needless suffering and the deaths of innocent civilians. Russia has the power to stop them, just not the will" (Hilton, 2020). AFRICOM stated in July 2020 that it had clear evidence of Wagner planting landmines and improvised explosive devices (IEDs) in residential areas of Tripoli (AFRICOM, 2020). However, the ICC did not initiate an investigation on the actions of the Wagner.

Although the indictment against Mahmoud Al-Werfalli for war crimes was a step forward in bringing justice to the victims, it is disappointing that the Court is yet to conduct a broader investigation on other war crimes and crimes against humanity believed to have been committed in Libya and punish those who are responsible. The failure to indict Khalifa Haftar, along with the responsible fighters of local militias and Wagner, of war crimes and crimes against humanity is a vivid example of de facto impunity for atrocities committed in Libya. The delay in justice not only undermines the international humanitarian law, but also deepens the chaos and hurts the efforts for peace negotiations.

1.3. A Brief History of War Crimes and Crimes Against Humanity

War crimes and crimes against humanity emerged in the second half of the nineteenth century, when international humanitarian law, or the body of laws regulating war, was first mentioned in international treaties. Thanks to the efforts of the International Committee of the Red Cross (ICRC), world powers agreed to sign the Geneva Convention of 1864, which regulated the protection of the sick and wounded during war. This was followed by several other treaties, including the Geneva Conventions of 1906 and 1929. Following the end of World War II, the three Geneva Conventions were updated, and a fourth Geneva Convention was added in 1949. In 1977, Protocols I and II regarding the treatment of victims of armed conflict were accepted (Rowen, 2015).

The concept of "crimes against humanity" in international humanitarian law was first codified with the 1945 Nuremberg Charter, the founding document of the International Military Tribunal of Nuremberg, and later with the 1946 Tokyo Charter, as a response to the massive scale of atrocities committed against civilians and non-combatants during World War II. This category of crimes was further developed and codified in many international treaties such as the Statute of the International Criminal Tribunal for the former Yugoslavia (1993), the Statute of the International Tribunal for Rwanda (1994) and finally the Rome Statute of the International Criminal Court (1998). Elements of crimes against humanity in the Rome Statute are not to be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute (Article 10, Rome Statute), thus the entire body of international humanitarian law must be taken into consideration to determine what acts can be defined as war crimes and crimes against humanity. However, it is important to point out that, providing the most recent and expansive list of crimes against humanity, the Rome Statute does reflect the latest global consensus on the matter and therefore can be considered the most authoritative definition of crimes against humanity (deGuzman, 2011). Individuals bear criminal responsibility for war crimes and crimes against humanity, meaning that those personally responsible for these crimes can be tried and punished according to international or domestic criminal law.

2. Allegations Against the LNA and Wagner Group

The renegade Libyan commander Khalifa Haftar started a brutal military campaign in 2014 to conquer the Western Libya controlled by the internationally recognized Government of National Accord (GNA). Haftar's forces and his allies showed little respect for international humanitarian law and committed gross human rights abuses in areas under their control. The brutality of LNA's tactics increased as Haftar's campaign faced harsh resistance from the GNA forces. The involvement of other foreign actors, such as foreign military airstrikes and operations of the Wagner Group, a Russian private military contractor, in favour of Haftar only deepened the humanitarian crisis in Libya. Fathi Bashagha, the prime minister of the internationally recognized Libyan Government, harshly criticized the actions of Wagner and stated that "[t]he Russians have intervened to pour fuel on the fire and enhance the crisis rather than find a solution. The proof is their deployment of Wagner to Libya. They had sent it to Syria before, and central Africa, and wherever Wagner goes destruction happens" (MEE, 2019).

2.1. Crimes Against Humanity

According to Article 7 of the Rome Statute, crimes against humanity must involve a series of acts committed "...as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". The following acts, which comprise the physical elements of the crimes against humanity, were allegedly committed by Haftar's forces during the Second Libyan Civil War: (a) murder; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (i) enforced disappearance of persons; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Article 7, Rome Statute). In addition to the physical element of the crime against humanity, Article 7 requires contextual and mental elements as well, which consist of commission of aforementioned acts "as part of a widespread or systematic attack directed against any civilian population" and "with knowledge of the attack" respectively (Article 7, Rome Statute). The contextual element requires that the

act involve either "...large-scale violence in relation to the number of victims or its extension over a broad geographic area (widespread), or a methodical type of violence (systematic)" in order to qualify as a crime against humanity (UN). Accidental, random, or isolated acts, as well as acts committed without an organizational policy, do not qualify as crimes against humanity. The UN Office on Genocide Prevention and the Responsibility to Protect underlines that "... [a] plan or policy does not need to be explicitly stipulated or formally adopted and can, therefore, be inferred from the totality of the circumstances" (UN). An organizational policy to attack can be carried out as part of State policies, as well as by non-state armed groups or paramilitary forces. Unlike war crimes, crimes against humanity can be committed both in peacetime and wartime and these crimes are not necessarily committed against a specific national, ethnic, racial, or religious group (TRIAL International, 2021). A simple intent to commit any of the listed acts exists, the act is committed in an organized manner and the perpetrator acts with knowledge of the attack against the civilian population suffices for the constitution of a crime against humanity (UN).

2.2. Crimes Against Humanity Allegedly Perpetrated by the LNA and Pro-Haftar Militias

In the context of the Second Libyan Civil War, certain atrocities alleged to have been committed by the LNA under the command of Khalifa Haftar and its allies both local and foreign clearly constitute crimes against humanity. The mass graves and detention facilities discovered by the forces of the internationally recognized Government of National Accord (GNA) after the retreat of LNA and their allies from Tarhuna shocked the world due to the extent of barbarity committed against civilians and non-combatants. The evidence gathered from the burial sites proved that systematic mass murder against civilians took place in the city, prompting UN Secretary-General António Guterres to express his deep shock and call for a transparent investigation (Hilton, 2020) (The Guardian, 2020). According to Mohammed Ali al-Kosher, the mayor in charge of a temporary municipality set up by the GNA, "The killings were a message: even opposing the fighting in Tripoli can

lead to death. This was all done with the blessing of Haftar and his allies." According to the testimonies of the survivors, Pro-Haftar militias murdered civilians on a daily basis in order to ensure their control over the city (Hilton, 2020). Fatou Bensouda, the ICC's prosecutor, stated on 22 June 2020 that the Office of the Prosecutor received "...credible information regarding eleven alleged mass graves of men, women, and children" in Tarhuna and that these findings "may constitute evidence of war crimes or crimes against humanity" (ICC Office of the Prosecutor, 2020). In response to the discovery of the mass graves in Tarhuna, LNA spokesman Major General Ahmed Al-Mismari claimed that the murders "...were committed before the army went to Tripoli when the Kaniyat militia was affiliated with the forces of the Government of National Accord" (Hilton, 2020). Although the LNA described the mass graves as "crimes against humanity," Major General Al-Mismari did not commit to sending any person in LNA territory to The Hague if requested by the ICC and declined to answer questions regarding the responsibility of Haftar's forces for crimes committed by militias fighting on their side (Hilton, 2020).

In addition to the mass graves, the prison and detention facilities used by Pro-Haftar Al-Kaniyat militias demonstrated the level of inhumanity perpetrated against those portrayed as opponents to the LNA (Hilton, 2020). After the recapture of Tarhuna, GNA forces liberated the prison complex, where there were "seven, square-metre compartments, each of which was just large enough to accommodate a crouched man" (Hilton, 2020). Above these compartments were masses of ash from fires. It was confirmed with testimonies of the victims that the Kaniyat used to turn these tiny compartments into ovens as a method of torture. Ali Asaid Abu Zweid, who was held in one of these cells for 45 days, lost 30kg over a month and a half. It is unknown why he was seized and held there, but Abu Zweid suspects it was because he had refused to take up arms against the GNA forces in Tripoli (Hilton, 2020). The majority of people held in prison or detention centres in Tarhuna by Pro-Haftar militias are still missing. Use of imprisonment and torture is also commonplace in the infamous Qirnada prison, near Al-Bayda, in order to suppress any criticism. People from Derna are known to be held at Qirnada, where LNA military police torture the inmates. Survivors describe being "stripped naked, insulted, and in at least one case, being forced to sit on a red-hot electric stove" (Al-Shaeri, 2018).

Widespread and systematic torture, abduction, and forced disappearances against civilians were reported from the East of Libya also, where former Gaddafi-era security offi-

cers of the Internal Security Agency (ISA) have re-emerged in recent years and started operating on behalf of Haftar. According to Heba Morayef, Regional Director of Amnesty International's Middle East and North Africa Regional Office, the ISA "abducted, tortured and forcibly disappeared hundreds on the basis of their tribal affiliations or in reprisal for their opinions with the clear aim of crushing any criticism" (Hilton, 2020). Amnesty International documented that "...heavily armed men affiliated to the ISA seized men, women, and children from their homes, streets, or other public places, without a warrant, sometimes blindfolding or fully covering their faces and physically assaulting them during their abduction. Those taken were held at locations controlled by the ISA without any access to lawyers and families for prolonged periods of time, in conditions that amount to enforced disappearances and facilitate torture and other ill-treatment. Since 2014, ISA members have abducted hundreds across LAAF (LNA) controlled areas" (Amnesty International, 2021).

According to victim testimonies, ISA members had "...beaten them or their loved ones with objects including backs of rifles and water pipes and threatened them with execution, sexual violence, indefinite detention, and violence against their family members for the purpose of extracting information or confessions. Former detainees also described being kept in dirty, overcrowded, and unventilated cells; being given limited food; and subjected to forced labour" (Amnesty International, 2021). In Ajdabiya, accounts gathered by Amnesty International revealed that several members of the Maghabra tribe were tortured by the ISA because of their tribal affiliation with Ibrahim Jadran, former leader of the Petroleum Facilities Guard, an armed group opposed to the LNA (Amnesty International, 2021). Upon examination of photos showing marks on the body of a man, his account of how ISA-Ajdabiya members beat him with water pipes and tied his leg with a barbed wire was confirmed by Amnesty International (Amnesty International, 2021). Arbitrary detention of critics by the ISA is also commonplace, such as the detention of Haneen al-Abduli, the daughter of assassinated lawyer Hanan al-Barassi. She was abducted on 25 March 2021 from the street and detained until 28 June 2021 solely due to her public calls for accountability for her mother's death (Amnesty International, 2021). Some of those abducted by the ISA are still missing, and no information regarding their whereabouts has been provided. For example, activist and director of the Ajdabiya branch of the Red Crescent, Mansour Atti was abducted by the ISA on 3 June 2021 by unidentified armed men and his fate is still unknown (Amnesty International, 2021).

Another case of abduction involved the 128th Brigade, a group affiliated with the LNA. According to Amnesty International, Tarek Abdelhafiz was allegedly abducted in front of his shop on 26 June 2020 and was detained at the brigade's base in the southwestern town of Houn, where he was "severely beaten, suspended for prolonged periods, and deprived of food and water. His lifeless battered body was thrown in front of a hospital in the town two weeks later" (Amnesty International, 2021). Photographs of his body, the preliminary medical report and the autopsy report was consistent with the claims of torture. The Brigade's commander, however, refused to give reasons for Abdelhafiz's arrest or present him to a court. Moreover, Tarek Abdelhafiz's brother Ahmed was also abducted in September 2019. His fate is unknown (Amnesty International, 2021).

The abduction of MP Seham Sergiwa in Benghazi after her criticism of Haftar's alliance with local extremist groups on a TV programme caused international outrage. Sergiwa, known for her repeated criticism of the Tripoli offensive, was allegedly abducted by masked members of the 106th Brigade, hours after she told on a TV channel that there were "extremists" among Haftar's supporters and called for the Muslim Brotherhood, the major Islamist organisation seen as a principal foe by Haftar, to be included in a unity government (Burke, 2019). During the raid in her home, her husband was shot in the legs and was badly beaten, while her 14-year-old son was also assaulted. According to witness accounts, fighters from another militia faction with a reputation for brutal treatment of civilians were also present during the raid (Burke, 2019). According to Tim Eaton, an analyst at London's Chatham House, the abduction was a clear indication that Haftar or his associates would not tolerate dissent about the Tripoli offensive (Burke, 2019). The incident prompted the UN Support Mission in Libya (UNSMIL) to call on Libyan authorities to investigate the incident (UNSMIL, 2019). The Mission warned against "unlawful arrest and abduction based on political views". Similarly, a joint statement by the European Union's delegation and the embassies of Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom expressed concerns over the disappearance of Sergiwa and called for her "immediate release" (Al Jazeera, 2019). The signatories warned that violations of international humanitarian and human rights laws in Libya will not go unnoticed and perpetrators will be held accountable. The statement called the attacks against politicians and members of civil society, and especially women, "unacceptable" (Joint Statement, 2019). On the other hand, the French government, the closest European ally of LNA, denied any prior information of the assault (Burke, 2019).

In order to justify the arbitrary imprisonment and torture of civilians, the LNA set up military courts, which greatly lack legal safeguards. Military courts are considered to lack independence and impartiality on account of the military hierarchy, to which the prosecutors and judges must obey. Therefore, the international consensus on the jurisdiction of military courts is that these must be restricted to military personnel solely for breaches of military discipline. Civilians, on the other hand, should not be tried in military courts for civil matters. Despite this, military courts were set up in areas controlled by the LNA. These courts have sentenced civilians to death or imprisonment in show trials, in an effort to cover up the use of systematic torture, imprisonment and other inhumane treatment against those critical of LNA and its allies in eastern Libya. These courts clearly fail to provide any fair judgement due to the fact that the principles of a fair trial –such as the rights to legal counsel before and during the trial; to remain silent; to a fair and public hearing in front of a competent, independent, and impartial court; to be present at the trial; to a reasoned judgement and to a genuine review— are not observed (Amnesty International, 2021). Those charged by the military prosecution are often abducted by the military police and are subjected to torture while being detained incommunicado for months before they are brought before a military judge. Some of the detainees claim that they were forced to sign confessions to crimes they did not commit (Amnesty International, 2021). Moreover, defendants are not even told of the exact charges against them until trial and are often not granted access to the case files or evidence against them, or to reasoned judgements once convicted. Closed hearings and in absentia trials are also common practices. The findings of Amnesty International clearly demonstrate the partiality of these courts:

Both military prosecutors and judges lack independence and impartiality, as they are affiliated with the LAAF or allied armed groups. For example, Faraj Al Soussa'a the current head of the military prosecution in eastern Libya is also representing the LAAF in the UN-mediated Libyan (5+5) Joint Military Commission talks, while Khairi al-Sabri the head of the General Military Judiciary Authority previously led the military intelligence under the LAAF. In turn, the judge of the permanent military court in Benghazi is subordinate to the head of the General Military Judiciary Authority. (Amnesty International, 2021)

Furthermore, verdicts by military courts can only be appealed by a higher military court (Amnesty International, 2021), making it effectively impossible to seek legal remedy against unfair decisions of the first instance military courts. The trials of civilians before these courts are there-

fore considered sham trials, which only serve the purpose of terrorizing civilians with fear of unfair prosecution, imprisonment, torture, and other unlawful practices.

2.3. Crimes Against Humanity Allegedly Perpetrated by the Wagner Group

Wagner personnel were reportedly deployed on the Tripoli frontline to support the LNA as snipers and to direct artillery fire from at least September 2019 to May 2020 when reports about their withdrawal emerged, according to the Working Group on the use of mercenaries under the Human Rights Council of the United Nations. In September 2019, some of the Wagner personnel allegedly arbitrarily detained five civilians and summarily executed three of them in al-Sbeaa village near Tripoli (OHCR, 2020). The European Parliament resolution of 25 November, 2021 on the human rights violations by private military and security companies, particularly the Wagner Group, states that the Russian military contractor "...has been involved in logistical support and combat operations to support Libyan rebel General Khalifa Haftar since at least 2018; whereas according to the report of the UN Fact Finding Mission in Libya of October 2021, the Wagner Group has been involved in war crimes, including summary executions of ci-

vilians and detainees, enslavement, the planting of internationally banned anti-personnel landmines, and the killing or maiming of civilians including children, for example in al-Sbeaa village south of Tripoli; whereas the report documents multiple and repeated violations of the UN arms embargo and the use of Russian military cargo aircraft by the Wagner Group; whereas support by Russian mercenaries and military instructors for radical armed groups has further destabilised the EU's southern neighbourhood" (European Parliament, 2021).

2.4. War Crimes

War crimes are generally considered 'grave breaches' of the Geneva Conventions and Protocol I, which governs international armed conflicts (Rowen, 2015). Legal decisions in war crimes tribunals have extended the definition of 'grave breaches' to include internal armed conflicts, which are governed by Common Article 3, an article found in all four Geneva Conventions, as well as by Protocol II. The ICRC describes grave breaches as including wilful killing, torture, or inhumane treatment (including biological experiments), wilfully causing great suffering or serious injury to body or health, and wilfully depriving a protected person of the right to a fair trial if accused of a war crime. The Fourth Geneva Convention also restricts the taking of hostages, unnecessary and extensive destruction of property, and unlawful deportation, transfer, or confinement.



Relatives of victims look at photos to identify their loved ones who were killed during the siege of the militia affiliated with the warlord Khalifa Haftar's armed forces, and found at mass graves in Tarhunah. Al-Kaniyat militia affiliated with Khalifa Haftar's armed forces controlled Tarhunah for years and withdrew on 5th of June in 2020 by leaving numbers of mass graves. Identification of victims' bodies still continue in Tripoli.

(Hazem Turkia - Anadolu Agency)

2.5. War Crimes Committed by the LNA and Its Allies

Since the beginning of the conflict in Libya, countless war crimes have been committed, prompting the ICC to warn the warring sides about the alleged violations of international humanitarian law. The statement of Chief Prosecutor Bensouda reminded the parties to the conflict that "... intentionally directing an attack against a civilian population, or against individual civilians not taking direct part in hostilities, is a war crime under the Rome Statute. The Rome Statute also prohibits the intentional directing of attacks against hospitals and other buildings protected under international law, such as those dedicated to religion or education, when they are not military objectives. Even where a military objective is involved, the attack must not cause clearly excessive harm to civilians" (ICC Office of the Prosecutor, 2020). Although the Chief Prosecutor avoided mentioning Haftar, it is asserted that Haftar is directly or indirectly connected to countless war crimes committed by forces under his command as well as by his local allies.

International humanitarian law seeks to protect civilians and non-combatants during armed conflicts, strictly prohibiting intentional killing of non-combatants or civilians. Article 48 of the 1977 Protocol Relating to the Protection of Victims of International Armed Conflicts states: "Parties to the conflict ... shall at all times distinguish between the civilian population and combatants ... [and] direct their operations only against military objectives." The Protocol stipulates that civilian population as such, as well as individual civilians, shall not be the object of attack (Article 51(2)) and further emphasizes that "Attacks shall be limited strictly to military objectives" (Article 52(2)), obliging the warring sides to not target civilians. Making the civilian population or individual civilians the object of attack is a grave breach of the Protocol according to Article 85(3)(a). It should also be noted that pursuant to Article 8(2)(b)(i) and (e)(i) of the 1998 ICC Statute, "intentionally directing attacks against the civilian population as such or against individual civilians not taking a direct part in hostilities" constitutes a war crime in both international and non-international armed conflicts.

Non-combatants (persons hors de combat) are also subject to protection during armed conflicts. Pursuant to common Article 3(1) of the 1949 Geneva Conventions, "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race,

colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." Article 41(1) of the 1977 Additional Protocol I provides: "A person who is recognized or who, in the circumstances, should be recognized to be hors de combat shall not be made the object of attack" and Article 85(3)(e) of the same Protocol stipulates that "making a person the object of attack in the knowledge that he is hors de combat" is a grave breach of the Protocol.

Intentional attacks on non-combatants or civilians are grave breaches of the Protocol, and thus constitute war crimes. It is asserted that the LNA under the command of Khalifa Haftar and its local allies committed war crimes by allegedly executing captured fighters following the capture of Derna and exerting brutal violence against civilians and captured soldiers (Kirchgaessner & Michaelson, 2017) in an attempt to 'choke' the city (Al-Shaeri, 2018). Videos showing Major Mahmoud Al-Werfalli executing captured soldiers shocked the international community and prompted the ICC to issue arrest warrants for Al-Werfalli. The capture of Benghazi unfolded similarly to that of Derna: LNA forces were photographed "killing, beating, executing, mutilating and desecrating the bodies of opposition fighters" (Al-Shaeri, 2018). Allied militias of the LNA in Benghazi admitted to Frederic Wehrey in 2015 that they had carried out summary executions and stoked tribal divisions (Wehrey, 2020). As the commander of these forces, Haftar is responsible for these crimes under the principle of command responsibility.

Under Haftar's watch, intentional killing or injuring of civilians took place on a daily basis, along with attacks on non-military targets such as hospitals, as a tactic to lower the morale of the enemy. Indiscriminate attacks targeting civilians and civilian infrastructure has caused hundreds of civilian deaths in Libya. The acting Special Representative of the Secretary-General on Libya stated in his Oral Update to the 44th Session of the Human Rights Council, Pursuant to Human Rights Council Resolution 40/271 that "Between 1 January and 31 March 2020, UNSMIL documented at least 131 civilian casualties (64 deaths and 67 injuries), caused mainly by ground fighting, with 81% of casualties attributed to the LAAF, representing an increase in civilian casualties of 45 per cent compared to the last quarter of 2019. Between 1 April and 11 June of this year, civilian casualties further increased dramatically, with UNSMIL documenting 250 civilian casualties, including 82 civilians killed and 168 civilians injured. In 2020, WHO documented at least 21 attacks on medical facilities, ambulances, and

medical personnel, in one of the most shocking ongoing manifestations of this conflict” (Department of Political and Peacebuilding Affairs, 18 June 2020).

According to the UN Support Mission in Libya (UNSMIL), between 1 April and 30 June 2020 at least 358 civilian casualties were documented (106 deaths and 252 injuries), indicating an overall increase in civilian casualties of 173 per cent compared to the preceding period in the first quarter of 2020. The victims include 45 women, 44 boys, and eight girls. Indiscriminate attacks and targeting of civilians in civilian populated areas is the leading cause of civilian casualties, followed by explosive remnants of war, and airstrikes (Department of Political and Peacebuilding Affairs, 29 July 2020). The second leading recorded cause of civilian casualties were explosive remnants with 43 victims (two deaths and 41 injuries). The report also indicates that the Libyan National Army (LNA) laid “...mines and Improvised Explosive Devices (IEDs), Explosive Remnants of War (ERWs) and booby traps, imperilling the safety and security of returning residents and resulting in civilian casualties, including children, as well as security personnel tasked with clearing these deadly devices,” as it withdrew from Tripoli’s southern suburbs.

Airstrikes were the third leading cause of civilian casualties with 40 victims (26 killed and 14 injured), according to the report (Department of Political and Peacebuilding Affairs, 29 July 2020). After early territorial gains, LNA forces were eventually pushed back by forces loyal to the GNA. As a result, Haftar resorted to the use of air power to gain tactical advantage and prevent further military casualties (Burke & Salih, 2019). Jalel Harchaoui, a senior fellow at the Global Initiative Against Transnational Organized Crime, stated that: “Airpower is playing a bigger role and drones are very useful. We have seen a greater tendency to go after soft targets. Slowly but surely, there is a higher tolerance for civilian casualties and there has been no real international condemnation” (Sabbagh et al., 2019).

On July 2, 2019, the Tajoura Detention Centre, which held some 616 migrants and refugees, was hit with an air-delivered bomb, killing 47 men and 6 boys and wounding 87 other male migrants and refugees (Wintour, 2019). The report of the UNSMIL found that the airstrikes on the detention centre were probably conducted by an aircraft belonging to and operated by a foreign State (OHCHR, 2019). Nevertheless, the report emphasized that the precise location and coordinates of the detention centre were known by the parties of the conflict, thus an intentional attack on the centre clearly constituted a war crime. Condemning the destruction, Then UN special envoy for Libya, Ghassan Salamé, stated that the attack “clearly could constitute a

war crime, as it killed by surprise innocent people whose dire conditions forced them to be in that shelter,” while UN Secretary-General, António Guterres, called the bombing “outrageous” (Wintour, 2019). There were multiple calls for an investigation of the attack by the UN secretary-general, the African Union, and the European Union, and supported by states including Germany, France, Turkey, Qatar, and the UK. (Wintour, 2019). Following the bombing of Tajoura Detention Centre, another missile attack was carried out on Mitiga Airport, Tripoli’s only airport. At least two civilians were injured, while the tarmac and several buildings were damaged. The UNSMIL stated that “attacks against civilian targets, especially public facilities, represent a blatant violation of International Humanitarian Law, and that repeated attacks against Mitiga Airport deprived two million residents in the capital of their only functioning airport,” (UN News, 2020).

In August 2019, Chinese-made drones targeted a town hall meeting in Marzuq, south-western Libya, killing at least 45 people (Sabbagh et al., 2019). The attack was conducted with the controversial “double tap” technique, which means that a second strike is carried out a few minutes later to target first responders, assuming they would be connected to the original targets. When the bombs hit, more than 200 local dignitaries were present in the targeted government building meeting to resolve local disputes. Those killed in the second strike were guests at a nearby wedding who had come to help. All of the victims were from the Tebu tribe, which has opposed Haftar and has fought against local Arab tribes allied with the LNA (Sabbagh et al., 2019). A spokesperson of the LNA claimed in a video on Facebook that the airstrikes had targeted militias from neighbouring Chad. Both the EU and the UNSMIL warned that indiscriminate attacks on civilians may amount to war crimes (Burke & Salih, 2019).

Another airstrike by forces loyal to eastern commander Khalifa Haftar hit a riding club close to the UN compound in Tripoli on October 6th, 2019, injuring several children (Sabbagh et al., 2019). The United Nations Support Mission in Libya (UNSMIL) stated that it was “...appalled by an airstrike conducted by General Haftar’s forces, targeting the Equestrian Club in Tripoli’s Janzour neighbourhood. (...) The assessment mission was able to confirm that a fighter jet dropped four unguided bombs on the Equestrian Club, a civilian facility, and that neither military assets nor military infrastructure were observed at the targeted site. UNSMIL condemns in the strongest possible terms this horrific attack and reiterates that attacks against civilians and civilian infrastructures constitute a grave violation of international humanitarian and human rights law and may constitute a war crime” (Department of Political and Peace-

building Affairs, 6 Oct. 2019). According to analysts, some of the airstrikes have been carried out by what appear to be more modern F-16 or Mirage fighters, while other precision strikes have taken place at night, suggesting the involvement of foreign military units (Burke & Salih, 2019).

Another air strike, believed to be carried out by a foreign military aircraft, hit the Al-Sunbulah biscuit factory in Wadi al-Rabie, Libya, south of Tripoli, on November 18, 2019, killing 8 and injuring at least 27— all of them civilian factory workers. According to Eric Goldstein, the acting Middle East and North Africa director at Human Rights Watch, the attack on a factory that produces food products with no indication of military targets shows that foreign military actors take “little or no action” to prevent harm to civilians, indicating “recklessness and bad intelligence” (HRW, 2019). It is asserted that the military college in al-Hadba, Tripoli, was hit with the same type of weaponry, killing at least 30 military cadets and injuring 33 more. The GNA blamed the LNA for the attack, but LNA denied any involvement (Reuters, 2020).

During the second offensive on Tripoli by the LNA between 26 March and 5 June 2020, residential areas, and non-military targets were indiscriminately bombed. Al-Khadra General Hospital in Tripoli, designated to treat COVID-19 patients, was shelled by the LNA, injuring at least 14 civilians, and causing material damage (Amnesty International, 2020). Schools and administrative buildings were hit as well. Shelling near the Turkish embassy and the Italian ambassador’s residence in the city’s Zawiat al-Dahmani neighbourhood alone is thought to have killed at least two civilians and injured three others (UN News, 2020). The UNSMIL expressed its “deep alarm” at the intensification of such attacks taking place during the holy month of Ramadan, while the Libyans were simultaneously fighting the COVID-19 pandemic (UN News, 2020). The following statements from the UN describe the horror of indiscriminate shelling in Tripoli:

Over the first eight days of May, several Libyan neighbourhoods suffered indiscriminate attacks, said the Mission, mostly attributable to forces affiliated to the LNA, including Abu Salim, Tajoura, al-Hadba al-Bari, Zanata and Zawit al-Dahmani. On 5 May 2020, houses were shelled in the al-Hadba neighbourhood of Tripoli, killing two civilians, and injuring three others, including a child. The following day, 6 May, houses were shelled in Tripoli’s Abu Salim neighbourhood of Tripoli, resulting in at least one death, and 27 individuals were injured. On the same day, rockets hit several homes in Tajoura, reportedly resulting in the killing of three individuals and injuring 10 others, including three children. (UN News, 2020)

Ghassan Salamé condemned the attacks with a tweet: “A horrible night of random shelling of residential areas. For the sake of 3 million citizens in Greater Tripoli, these attacks should stop now,” while the internationally recognized government in Tripoli denounced attacks on residential areas as “barbaric” (Wintour & Beaumont, 2019). The UNSMIL warned that these attacks, which displayed “a blatant disregard for international humanitarian law and human rights law,” could amount to war crimes. The statement of the Mission emphasized the obligation of the warring parties to “comply with the principles of distinction, proportionality and precautions in attacks, to prevent civilian casualties” and reiterated that those guilty of crimes under international law will be held responsible before the ICC (UN News, 2020). Similarly, Fatou Bensouda, the chief prosecutor at the ICC, released a statement warning that she would bring charges against “any person who incites or engages in such crimes including by ordering, requesting, encouraging or contributing in any other manner to the commission of crimes within the jurisdiction of the court” (Wintour & Beaumont, 2019).

2.6. Wagner’s Record of War Crimes in Libya

UN human rights investigators asserted that Russian mercenaries in Libya killed detainees and thus committed the war crime of murder, adding that they had drawn up a confidential list of suspects (Nebehay, 2021). The report of the UN fact-finding mission, led by Mohamed Auajjar, specifically accused mercenaries from Wagner of having shot prisoners in September 2019. It was also stated that Wagner personnel had left behind a computer tablet with a map showing 35 locations where land mines were planted near civilian buildings, in areas abandoned by retreating LNA forces. According to the report, the mines, mostly made in Russia, had killed and maimed civilians returning to their homes since June 2020 (Nebehay, 2021).

According to the Article 2(2) of the 1980 Protocol II to the Convention on Certain Conventional Weapons, booby-trap “...means any device or material which is designed, constructed, or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act”. Article 3(2) of the same Protocol provides: “It is prohibited in all circumstances to direct [mines, booby-traps and other devices], either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians.” Article 7 of the 1996 Amended Protocol II to the Convention on Certain Conventional Weapons further clarifies the restrictions on the use of booby-traps as follows:

"1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, **it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:**

(...)

(e) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing, or education of children;

(...)

2. It is prohibited to use booby-traps or other devices **in the form of apparently harmless portable objects** which are specifically designed and constructed to contain explosive material.

3. Without prejudice to the provisions of Article 3, **it is prohibited to use weapons to which this Article applies in any city, town, village, or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:**

(a) they are placed on or in the close vicinity of a military objective; or

(b) measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences."

Moreover, pursuant to the Article 5 of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) 10 October 1980, use of remotely delivered mines is prohibited unless such mines are only used within an area which is itself a military objective or which contains military objectives, and unless: (a) their location can be accurately recorded in accordance with Article 7(1)(a); or (b) an effective neutralizing mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position is used on each such mine, or a remotely-controlled mechanism which is designed to render harmless or destroy a mine when the mine no longer serves the military purpose for which it was placed in position. Article 6(2) of the Protocol II prohibits in all circumstances the use of any booby-trap which is designed to cause superfluous injury or unnecessary suffering.

After the retreat of the LNA forces from Tripoli, civilian casualties continued to mount because of the large number

of anti-personnel landmines and booby traps extensively planted in civilian properties by the Wagner Group (Amnesty International, 2020), in violation of the abovementioned international rules. Due to the mines and other explosives, it is asserted that "...hundreds, perhaps thousands, of families are still unable to return to their homes" (Raghavan, 2021). According to the Libyan deminers, the Wagner mercenaries "...attached explosives to toilet seats, doors, and teddy bears, designed to detonate upon touch." The mercenaries intentionally laid explosives in residential areas in violation of international humanitarian law in order to cause as many casualties as possible, be it military personnel or civilian. The deployed booby-traps reportedly use a broad range of different settings and items, which are prohibited by international law and constitute war crimes. Free Fields Foundation teams, who were among the first deminers to go into the districts following the withdrawal of Wagner in the summer of 2020, reported to have discovered 107 improvised explosive devices on a single street in Tripoli's southern enclave of Salahideen (Raghavan, 2021). Inside houses graffiti in Russian and Serbian was found on walls, along with instructions on how to open doors or go to the bathroom without triggering the explosive traps designed by the Wagner fighters. Different settings of traps in residential areas included a toilet designed with a sensor to ignite nine pounds of TNT when a person sat on the seat, a teddy bear with six trip wires attached so it would explode when someone walked toward it from any direction and an empty soda-can bomb designed with a pressure-plate system to be triggered by the weight of half of an AK-47 bullet, according to the deminers (Raghavan, 2021). Innovative mines such as "...a Russian "scattering mine" that deploys itself and self-destructs in 100 hours, an antipersonnel mine with laser beams as trip wires, and sinister combinations of mines such as an arrangement in which one mine is a decoy and another explodes" were also reported (Raghavan, 2021). Upon identification of the explosives and traps, the Libyan deminers consulted the experts in the US and Europe. The traps and mechanisms resembled those used during the conflict in Crimea, where Wagner mercenaries also fought, according to a Ukrainian adviser (Raghavan, 2021). These actions, which clearly constitute war crimes, demonstrate Wagner's disregard of international humanitarian law and civilian life. Wagner mercenaries intentionally used booby-traps as a means of causing superfluous injury or unnecessary suffering indiscriminately.

3. Conclusion

Without justice, peace cannot last. A future free of violence can only be achieved if international humanitarian and human rights law is respected. In the context of the Libyan Civil War, the ongoing conflict can only be resolved by delivering justice to Libyans. To do so, those who have committed, ordered, assisted, or had to command responsibility for war crimes and crimes against humanity since February 15, 2011, must be tried before a fair court. The declaration of the Human Rights Watch states that: "All parties to the conflict in Libya are obliged to abide by the laws of war. Civilians and civilian objects may never be the object of attacks. Warring parties are required to take all feasible precautions to minimize harm to civilians and civilian objects and to refrain from attacks that would disproportionately harm civilians or fail to discriminate between combatants and civilians" (HRW, 2019). Evidence for Khalifa Haftar's responsibility for war crimes and crimes against humanity is strong and therefore he must be brought before the ICC. The failure of the ICC to indict him not only delays justice to Libyans but also legitimizes Haftar, an alleged war criminal, as a presidential candidate and prolongs the conflict in Libya by rendering the unification of Libya impossible.

The principle of universal jurisdiction holds that some crimes, such as war crimes and crimes against humanity, are "...so heinous that they should be subject to trial in any country, regardless of where or by whom committed, has begun to make its way into the legislation and courts of a number of countries" (Weiss, 2008). Some countries recognize the doctrine of universal jurisdiction through case-law, while others passed legislations allowing domestic courts to try nationals who allegedly committed these crimes or the individuals who have committed these crimes against its nationals in a third country. The sentencing of Adolfo Scilingo, a former Argentine naval officer, to 1,084 years of prison for multiple crimes against humanity committed in Argentina by the Spanish Supreme Court in 2007 is an example of this practice. The section "XII. Spain" from the Universal Jurisdiction in Europe: The State-of-the-Art report of the Human Rights Watch describes the history of legal proceedings against war criminals in Spain in the following statement:

Article 23.4 of the Organic Law 6/1985 confers on Spanish courts universal jurisdiction over genocide and any offense that Spain is obliged to prosecute under international treaties, including the Convention against Torture and the Geneva Conventions and their first additional protocol.

Crimes against humanity have been criminalized under the Spanish Criminal Code since 2004. Cases initiated in Spain based on universal jurisdiction include the case of former Chilean dictator Augusto Pinochet, which started when a Spanish investigative judge opened an investigation into Pinochet under Spain's universal jurisdiction laws and subsequently asked for Pinochet's arrest and extradition from the United Kingdom in 1998. Although Pinochet was not extradited, the case was a starting point for subsequent universal jurisdiction cases in Spain. Since Pinochet, completed cases include that against former Peruvian President Alberto Fujimori, and the case of Argentine military officer Adolfo Scilingo, who was convicted and sentenced by the Spanish National Court to 640 years of imprisonment for attempted genocide and other crimes committed during Argentina's "dirty war" in the 1970s. (HRW, 2006)

Although Scilingo was originally sentenced to 640 years in prison for crimes against humanity in 2005, his sentence was increased to 1,084 years in 2007, after "...he was found guilty of acting as an accomplice to 255 crimes of illegal detention" (Buenos Aires Times, 2020). Being the first Argentinian to be convicted of crimes against humanity, Scilingo's case was a great success for the struggle against impunity of war crimes and crimes against humanity committed in Argentina and set an example against those who are responsible of these crimes committed in other parts of the world. As a result of this doctrine, it is possible for the third countries to try those who are responsible for war crimes and crimes against humanity committed in Libya - especially warlord Khalifa Haftar, his subordinates, and Wagner personnel. By recognizing the principle of universal jurisdiction, domestic courts can claim complementary jurisdiction to the jurisdiction of the ICC and try those who are allegedly responsible for the abovementioned crimes. Delivering justice to the victims in national courts is not only complementary jurisdiction but also is an international responsibility to fight impunity of war crimes and crimes against humanity.

The alternative viewpoint on international criminal jurisdiction emphasizes that countries can have jurisdiction for war crimes and crimes against humanity only if these are committed by their own nationals. In addition to this restriction, there must be national legislation that criminalises such acts and provides jurisdiction over the aforementioned crimes committed by the nationals in the domestic law. The case of Khalifa Haftar, who is a Libyan-

American dual citizen, represents a case in point. Haftar's status as a US citizen makes him subject to the US federal laws, which criminalise violations of the laws of war. Relying on the Torture Victim Protection Act of 1991, lawsuits have been filed against Haftar in US courts for the use of torture, wilful killing and forced disappearance by his forces. Being a decades-long Virginia resident, Haftar is currently facing many lawsuits against himself for his crimes in Libya. Although the renegade commander objects to these lawsuits through his lawyers on the grounds of diplomatic immunity, recently a case filed in September 2020 by two relatives of Haftar's alleged victims, Ali Abdalla Hamza and Salimah Jibreel was ordered to continue by the federal court in the US state of Virginia, which was "...put on pause in November after federal judge Leonie M. Brinkema ruled that it was "too closely intertwined" with the December elections in Libya" (Farooq, 2022). It is claimed that hundreds of civilians were allegedly pinned down in Ganfouda district of Benghazi by Haftar's forces with repeated airstrikes during the campaign of LNA to capture Benghazi in 2016. One of the claimants described having sought shelter in an unoccupied apartment in a Ganfouda with his wife, two brothers and three sisters "...where they ate tree bark and grass and drank water from puddles in order to survive took shelter" (Farooq, 2022). A ruling in the favour of victims could lead to Haftar being sought by US authorities and could put further pressure the ICC to take action against him.

It is also noteworthy that, despite the allegations against him, that Haftar is still allowed to meet European leaders, including the French president, Emmanuel Macron, without facing a single charge. Although some notable EU leaders have strongly condemns the war crimes and crimes against humanity committed in Ukraine and has imposed sanctions on persons close to the Government of Russian Federation, these same leaders have persistently shows support for an alleged war criminal in Libya. European leaders who embrace the renegade commander are not only contributing to the suffering of Libyans but are also violating the international humanitarian law by legitimizing war crimes and crimes against humanity committed in Libya. Furthermore, the double standards on the recognition of these crimes make mockery of international law and deny justice to Libyans.

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