

Declaration of Judge Christine Van den Wyngaert

1. I agree with my colleagues that, on the basis of the record as it stands today, the case against Mr Al-Senussi is inadmissible within the meaning of article 17 of the Statute. In particular, I agree with the proposition that Libya is only “unable to carry out its proceedings” under article 17(3) of the Statute if the evidence demonstrates that Libya is unable to carry out the proceedings against *Mr Al-Senussi* specifically. Accordingly, generalised security concerns in Libya, even those which lead to a substantial collapse of the national judicial system, only become dispositive under article 17(3) of the Statute if Libya is unable to proceed against Al-Senussi “due to” these concerns.
2. Nevertheless, I cannot help but note the widely reported abduction and release of Libyan Prime Minister Ali Zeidan on 10 October 2013. It is unclear, at this point in time, what effect these events might have on the already precarious security situation in Libya. Further deterioration of the security situation could extend to Mr Al-Senussi’s legal proceedings and, accordingly, affect Libya’s ability to carry out those proceedings.
3. Prior to ruling on the present challenge, I would have preferred to seek submissions from the parties and participants as to whether Libya’s security situation remains sufficiently stable to carry out criminal proceedings against Mr Al-Senussi.



Judge Christine Van den Wyngaert

Dated this Friday, 11 October 2013

At The Hague, The Netherlands