



Inside the International Criminal Court

Part 5

Narrator:

The International Criminal Court is currently preparing a case against two Libyans accused of crimes against humanity. The defendants are Colonel Gaddafi's son Saif Al-Islam Gaddafi and former intelligence chief Abdullah Al-Senussi.

Both men are reported to be in custody in Libya.

The Libyan authorities are insisting that they want to try Saif on home territory.

Fadi Al Abdallah:

We are requesting their surrender, however the Libyan authorities are requesting the court to stop this case before the ICC, based on the principle of complementarity which means basically that if the national system is capable and willing of prosecuting a suspect then the ICC should not intervene in this case.

Narrator:

The international community is concerned that the two men will not get a fair trial in Libya and that they could be sentenced to the death penalty.

If they are tried at The Hague the toughest sentence they'd face would be life imprisonment.

Geoffrey Bindman:

In Libya there is a particular problem because it's in a sense a newly established state. It's not at all clear that the legal system is capable of conducting a fair trial for war crimes to the standards at any rate that the International Criminal Court would expect. And there is that purely practical question could there be a proper trial conducted by the Libyan authorities? Do they have the resources?

Do they have the procedural structure to conduct a proper trial?

Robert Cryer:

I think it would be better for these two cases to be tried by the ICC rather than by domestic Libya. Libya is again a post-conflict society and it is still a divided society. The chance of a fair trial, particularly if your name is Gaddafi, I think are limited as it stands in Libya.

Melinda Taylor:

He very clearly indicated to us that he wants to be tried before the ICC that he thinks that's in his best interests, and he strongly advocated to us to do everything we can in terms of advancing his case or his rights before the ICC.

Narrator:

The ICC's pre-trial chamber will decide in 2013 whether Saif Al-Islam Gaddafi is genuinely being prosecuted for the same crimes in Libya.

When a state is holding a suspect and refusing to surrender them to The Hague, the International Criminal Court has fewer enforcement powers than any national court system.

Geoffrey Bindman:

There is obviously a problem if there's a complete stand-off between the International Criminal Court and the Libyan authorities because the Libyan authorities have got Saif Gaddafi in custody. If they decline to hand him over, then what happens? The United Nations doesn't have an army and this is the problem that recurs in international law.