



UNITED NATIONS
SUPPORT MISSION IN LIBYA



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The airstrikes on the Daman building complex, including the Tajoura Detention Centre, 2 July 2019

United Nations Support Mission in Libya

Office of the United Nations High Commissioner for Human Rights

The airstrikes targeting the Daman building complex, including the Tajoura Detention Centre, Libya on 2 July 2019

1. Introduction

1. Published jointly by the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR)¹, this report focuses on two airstrikes that targeted the Daman building complex in Tajoura, on 2 July 2019. It is based on information collected, verified and analyzed by UNSMIL.

2. Tajoura is a town in north western Libya, in the Tripoli district. The Daman building complex, which is located in a former industrial zone, comprises various facilities belonging to the Government of National Accord (GNA)². The complex is also the headquarters of the local Daman Brigade, a pro-GNA armed group from Tajoura affiliated with the Ministry of Interior. At the time of the airstrikes, according to the Department of Combating Illegal Migration (DCIM), the Tajoura Detention Centre was holding around 616 migrants and refugees³, with the section of the hangar directly hit holding some 126 persons.

2. Methodology

3. UNSMIL was informed of the airstrikes by Libyan civilians and security interlocutors in the immediate aftermath of the incident. UN personnel conducted three missions to the Daman building complex between 3 and 6 July 2019 to establish the facts and circumstances of the incident, based on a standard of proof of “reasonable grounds to believe”. UNSMIL documented witness statements and conducted a technical assessment of the type of munitions used in the attack. The team that conducted the missions consisted of analysts, human rights officers and experts on arms and ammunition. It interviewed 25 migrants and refugees (including eight women and four children) at the detention centre, some of whom had been detained for almost two years, as well as officials from the Tajoura branch of the DCIM, including its Director, the Head of the detention centre, an official from the Tajoura Arrest and Investigation Department, and a Ministry of Justice Legal Adviser. Following the airstrikes, UNSMIL was provided with numerous photographs by different sources and video recordings by DCIM from the Tajoura complex.

4. UNSMIL examined the two explosion scenes, which consisted of the Tajoura detention centre (comprised of a large hangar) and a vehicle repair workshop and maintenance facility belonging to the Daman Brigade. On 19 August 2019, UNSMIL travelled to the Gathering and Departure Facility, in Tripoli, where most of the survivors were relocated, to interview them, but was denied entry by the armed group controlling access to the facility. UNSMIL regrets the

¹ The mandate of UNSMIL, most recently extended by the United Nations Security Council on 12 September 2019 (Resolution 2486), maintaining human rights monitoring and reporting. The resolution expressed “grave concern... at the situation faced by migrants, refugees and internally displaced people” and reiterated “concern at the smuggling of migrants and refugees and human trafficking through Libya”.

² These facilities include: components of the Ministry of Interior, namely the Tajoura Security Directorate and the Tajoura branch of the Department for Combating Illegal Migration, including the Tajoura Detention Centre, the Judicial Police in Tajoura; the Tajoura Prison (operational) under the Ministry of Justice; and the Juvenile Rehabilitation Centre (non-operational) under the Ministry of Social Affairs.

³ This report refers to “migrants and refugees” to cover the categories of migrant, refugee or asylum seeker, as well as any person who is not a citizen, national or habitual resident of Libya (including stateless persons), as well as trafficked persons, smuggled migrants, and other categories, unless specified otherwise. See UNSMIL/OHCHR, *Desperate and dangerous: Report on the human rights situation of migrants and refugees in Libya*, p. 8.

obstruction of its work, which occurred despite assurances provided by the GNA Deputy Minister of Interior for Migration, on 6 July 2019, that United Nations entities would be granted access to the site. UNSMIL was eventually able to visit the facility, but only on 3 November 2019. It was then informed that around 110 migrants and refugees at the facility, formerly held at the Tajoura Detention Centre, were not yet registered with the United Nations High Commissioner for Refugees (UNHCR) and were awaiting UNHCR action to be relocated abroad.

3. Background

5. Based on the site visits, interviews conducted and the evidence obtained, UNSMIL confirms that between 23:28 and 23:39 on 2 July 2019, a foreign aircraft conducted an attack on the Daman complex in Tajoura, which struck two buildings in the complex. The first explosion occurred in a vehicle repair workshop and maintenance facility approximately 105 meters eastwards of the detention centre. According to DCIM officials, the vehicle repair workshop and maintenance facility were overseen by the Daman Brigade and used to provide services to all GNA security agencies in Tajoura. DCIM officials stated that the workshop had no connection to the detention centre. The second explosion took place 10 minutes later and struck a section of the large hangar housing the detention centre holding migrants and refugees. According to witnesses interviewed by UNSMIL, both explosions were followed by the sound of a fighter jet. Witnesses reported that they heard the sound of a drone overhead after the second explosion.

6. DCIM reported that at least 53 migrants and refugees were killed in the attack, namely 47 men and six boys. Those killed were reportedly citizens of Algeria, Chad, Bangladesh, Morocco, Niger and Tunisia. DCIM also stated that 87 male migrants and refugees were injured. Injured migrants and refugees were transferred to four different hospitals in Tripoli, namely the Tripoli University Hospital, Mitiga Hospital, Abu Slim Hospital, and the National Heart Center (also called Tajoura Heart Hospital). Fifteen of those injured were returned to detention following treatment. The management of DCIM was not able to provide the names of the victims, and UNSMIL did not receive death certificates for any of those killed.

7. Following the attacks, 380 migrants and refugees remained inside the Tajoura detention centre, including 25 women and 15 children under the age of 12. Forty-one women were detained in the facility at the time of the airstrikes, and whilst there were no casualties among them, female migrants and refugees interviewed in connection to the incident showed signs of trauma and anxiety. Migrants and refugees interviewed by UNSMIL confirmed they feared reprisals and, therefore, did not provide names of victims during interviews.

8. According to DCIM officials in Tajoura, all the casualties at the detention centre were caused by the airstrikes. Migrants and refugees interviewed by UNSMIL alleged that three fatalities occurred through gunfire.

4. Incident

4.1. Airstrike on the vehicle repair workshop and maintenance facility

9. On 2 July 2019, the first airstrike hit the vehicle repair workshop and maintenance facility at 23:28. This was confirmed by DCIM, as well as video footage from a surveillance camera on site. The airstrike damaged the structure. According to DCIM officials, the same facility had been hit by an airstrike on 7 May 2019, resulting in the destruction of a vehicle. Interlocutors of the Daman Brigade stated that combat vehicles and ammunition had been moved out of the Daman complex in mid-April to avoid airstrikes.

4.2. Technical examination of the workshop explosion scene

10. Based on its investigation, UNSMIL assesses that the vehicle repair workshop and maintenance facility, located 105 meters to the east of the detention centre, were hit by an air-delivered bomb. The facility is a one-story structure with a concrete roof reinforced with rebar (metal). The explosion occurred on the roof of the eastern wing of the structure where it left a hole estimated 2.5-3 meters in diameter. While debris remained visible at the time of the visit, it was apparent that efforts had been made to clear up the area inside the building as earth-moving equipment was in use in the vicinity of the structure. There were no signs of a secondary explosion.

11. From the damage and the lack of any crater on the floor of the building, it appeared that the bomb had detonated on impact with the roof. Daman Brigade interlocutors stated that the explosion had destroyed a pickup vehicle parked for repairs under the impact site and that the remains had been removed from the site in the morning of 3 July. UNSMIL observed some rounds of 23 mm ammunition on the floor of the building. Interlocutors reported that this was old ammunition left at the start of the conflict. Imagery retrieved by UNSMIL confirms that a pickup vehicle, equipped with a twin machine gun or machine cannon, was probably inside the workshop at the time of the explosion.⁴ Other destroyed military-type equipment was visible on site, which was likely destroyed earlier and, according to Daman Brigade interlocutors, also dated to the onset of the conflict.

4.3. Airstrike on the detention centre

12. The second airstrike struck the Tajoura hangar housing the migrants and refugees at 23:39 on 2 July 2019. This was confirmed by representatives of Tajoura DCIM as well as video footage from a surveillance camera on site. Three sections of the hangar were affected by the airstrike. The second section from the southern end of the building – the section for men and boys – sustained a direct hit and was completely destroyed, while the sections to its north and south sustained light damage.

13. According to migrants, refugees, and DCIM representatives interviewed by UNSMIL, 126 migrants and refugees were detained inside the section hit by the airstrike. Migrants and refugees indicated that they were not allowed to leave following the initial airstrike and that some who had done so were forced to return to the hangar that was later hit by the airstrike. Moreover, migrants and refugees stated they were locked inside the hangar during the attack and that some in another section managed to escape after opening the doors. DCIM officials confirmed to UNSMIL that the door of the section impacted by the airstrike was kept locked to prevent migrants and refugees

⁴ <https://www.nytimes.com/2019/07/17/reader-center/libya-migrant-center-airstrike-reporting.html>

from escaping following the first airstrike, stating they had not expected a second airstrike to take place.

14. UNSMIL observed a large amount of rubble in the section of the hangar that was directly hit, as well as a significant amount of blood on a damaged partition separating the different sections of the hangar during its first visit on 3 July to the Detention Centre following the airstrikes. DCIM reported that ambulance staff had already taken away all the injured and killed to different hospitals in Tripoli and that the rubble had been searched for hidden bodies and body parts. Security personnel on the ground reported to have collected many body parts. UNSMIL personnel entered the blast crater and the smell of human flesh was palpable. According to a respected international humanitarian organization that arrived at the Detention Centre one hour after the airstrike, there were “bodies everywhere, and body parts sticking out from under the rubble. Blood [was] all around”.⁵ Photos viewed online taken in the immediate aftermath of the airstrike depict extensive destruction and blood.⁶ During UNSMIL’s second visit to the Detention Centre, on 6 July, it was evident that the area had been extensively searched and some of the rubble removed outside of the hangar.

15. The surveillance camera footage shows some migrants, refugees, and DCIM personnel moving outside the hangar between the first and the second strike. The footage also shows migrants and refugees, and possibly DCIM personnel, carrying what appears to be a fire extinguisher towards the site of the first explosion. At least one DCIM guard is seen moving about the complex with a gun. Following the second explosion, the footage shows migrants and refugees attempting to open from the outside a door in the remainder of the collapsed wall.

16. In addition to the migrants and refugees killed and injured in the incident, 96 migrants and refugees allegedly went missing after the incident, according to DCIM. Neither the Head of Tajoura DCIM nor migrants and refugees could confirm this number to UNSMIL or provide information on the whereabouts of the missing.

17. Most migrants and refugees held at the detention centre during the incident were relocated to the Gathering and Departure Facility in central Tripoli in the days following the attack. On 6 July, UNSMIL was also informed by DCIM that it had returned 15 migrants and refugees to Tajoura detention centre who had been injured in the attack and had received treatment at a hospital.

4.4. Technical examination of Detention Centre explosion scene

18. Based on its investigation, including examination of the munitions found at the site, UNSMIL assesses that the Tajoura detention centre was hit by an air-delivered bomb. The detention centre is a hangar structure with light masonry walls and a thin metal/fibre roof. The

⁵ MSF published a firsthand account of the airstrikes as follows . <https://www.msf.org/first-hand-account-fatal-airstrike-tajoura-detention-centre-libya>

See also photos taken in the immediate aftermath of the airstrikes <https://twitter.com/saracreta/status/1146184814841737217>

According to an initial short Ministry of Health statement issued on 3 July the death toll was 33 deaths, with more than 60 injuries, see <https://www.facebook.com/179576752131176/posts/2323693921052771?d=n&sfns=mo> .

UNSMIL would note that this short statement provided initial information and followed the visit of the Head of the Crisis Committee in the Ministry of Health and the Under Secretary for Migration, Ministry of Interior. The death toll continued to rise in the following days

⁶ <https://twitter.com/saracreta/status/1146184814841737217>

floor of the building had a thin concrete base with sand underneath it. The entry point of the bomb appears to have been in the centre of the hangar. The impact site was located at ground level, in the middle of the second section of the hangar from a southern direction. The bomb entered the building through the roof and most likely exploded on contact with the ground. The crater measurements were 4.2 meters in diameter and approximately 2.6 – 2.8 meters in depth. On one side of the building, the roof was totally destroyed. One large fragment of the bomb was recovered from the crater, whilst other components found may be of the bomb's tail assembly. At the time of the UNSMIL visit on 3 July 2019, a Libyan forensic investigation, led by the Ministry of Interior, was being conducted at the site of the explosion. UNSMIL officially requested to be informed of the outcome of the investigation. At the time of finalization of this report, this information had yet to be received.

19. The ordnance used appeared similar in explosive content to that employed in the airstrike on the vehicle repair workshop and maintenance facility. Due to the soil conditions at the site, it was difficult to estimate the explosive content of the ordnance used. However, military experts of the UNSMIL team assessed that it had a Net Explosive Content (NEC) in the range of approximately 50 to 100 kg (TNT equivalent), with the overall weight of the bomb significantly higher, suggesting a bomb of at least 250 kg.

20. The entry points of the bombs at both buildings – approximately the centre of the structures - suggest that the ordnance used was guided. There is however, insufficient evidence to determine the type of guidance system used. Guided bombs of the type indicated in this incident have so far not been known to be in the possession of the Libyan armed forces, LNA or armed groups in Libya.

4.5. Alleged shootings at the detention centre

21. According to several witnesses interviewed, the Head of the detention centre entered the hangar between the first and the second airstrike and shot dead three male migrants and refugees who were trying to open the doors and escape from the building. Interviewees did not provide the names of the victims or any other details, noting their fear of reprisals by Tajoura DCIM personnel. Migrants and refugees also stated they had heard gunshots fired at migrants and refugees who tried to escape from the complex. The surveillance camera footage shows at least one DCIM guard handling what appears to be an assault rifle outside the hangar between the two attacks. The surveillance camera footage, however, does not confirm whether shots were fired in any direction or at migrants and refugees between the two airstrikes.

22. UNSMIL raised the allegations with the Director of Tajoura DCIM, who rejected them. While confirming that DCIM security personnel were equipped with guns, including at least three AK-47 assault rifles, he stated that no DCIM security personnel had used guns to attack or shoot any migrants and refugees at the detention centre. Other officials also denied these allegations, as did other credible independent sources.

5. Detention conditions and treatment in detention

23. Migrants and refugees interviewed by UNSMIL reported that prior to the airstrikes; they were routinely subjected to torture and other ill-treatment by personnel at the Tajoura detention

centre. They indicated having been beaten with various objects (such as water pipes, metal bars, rifle butts and sticks), forced into uncomfortable positions (such as squatting for prolonged periods), punched and kicked. UNSMIL monitors observed the serious consequences of the squalid conditions of detention of migrants and refugees on their physical and mental health, particularly as many had already suffered from traumatic experiences. The accounts of torture and ill-treatment and the conditions observed at the Tajoura detention centre were consistent with the findings described in the report published by UNSMIL and OHCHR in December 2018, entitled ‘Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya’⁷.

24. Migrants and refugees also stated that a number of them were forced to work in the vehicle repair workshop, especially those with experience in vehicle maintenance. UNSMIL was not able to ascertain the exact number of persons who may have been forced to work there. In interviews conducted by UNSMIL in May 2019, two migrants and refugees had stated that at least four migrants and refugees at the Tajoura detention centre were taken to the workshop and ordered to repair damaged cars, load, clean weapons, and ammunition after the outbreak of hostilities around Tripoli on 4 April 2019.

25. On 6 July 2019, migrants and refugees remaining at the Tajoura detention centre started a hunger strike, refusing daily food. They stated that the centre was not a safe location and complained about forced labour. Some migrants and refugees reported being forced to work inside the facility, including cleaning, cooking, offloading heavy items, and washing the vehicles of DCIM officials. They also reported that some of them were taken out of the detention facility to work in the port offloading military items.

26. As previously noted, DCIM officials stated that the total number of migrants and refugees at the Tajoura detention centre following the airstrikes was 380. They indicated that all had made requests to be relocated to a safe third country due to fears around the current conflict. At the time of the attack, many were registered with UNHCR and awaiting the intervention of the latter on their behalf, including relocation from Libya. Following the attack, DCIM officials requested the International Organization for Migration (IOM) to provide food for the migrants and refugees due to scarce resources.

27. On 9 July 2019, all migrants and refugees were released from the Tajoura detention centre on the orders of DCIM, and 316 made their way spontaneously to the Gathering and Departure Facility in central Tripoli, whilst approximately 100 remained at the detention centre awaiting transportation to the GDF.

28. On 1 August, GNA announced the closure of three detention centres for migrants and refugees in Libya, including the Tajoura detention centre. However, at the date of release of this report, the centre remained open, holding 200 migrants and refugees. As of 5 December, 60 persons of concern, who had been held at the Tajoura detention centre had either been evacuated or resettled abroad by UNHCR.

⁷ UNSMIL, *Desperate and dangerous: Report on the human rights situation of migrants and refugees in Libya*, p. 44.

6. Reactions to the attacks by Libyan authorities and the international community

6.1 Libyan authorities

29. During a press conference on 3 July 2019, the LNA spokesperson, Mr. Ahmad Mismari, reported that the LNA air force had conducted air strikes in the Tripoli area on 2 July and had targeted the Daman Brigade site because the latter had received ammunition supplies.⁸ Mr. Mismari added that in the night between 2 to 3 July, the LNA air force had attacked a legitimate target in Tajoura following intelligence gathering on the ground. He stated that LNA was not responsible for the second explosion that hit the detention centre, which he termed as a crime carried out by terrorist groups. He expressed hope that an independent investigation would be conducted into the incident.

30. The statements of the LNA spokesperson were preceded by reports on pro-LNA social media that LNA fighter planes had carried out airstrikes against an ammunition depot of armed groups in Tajoura, blaming these groups for using migrants and refugees as human shields. Other posts on pro-LNA social media claimed that the Tajoura detention centre had been hit by “mortar fired from militias.”

31. On 3 July 2019, GNA issued a statement condemning the attack and accusing the LNA of having targeted the Tajoura detention centre.⁹ The statement described the attack as a war crime involving direct, purposeful and precise targeting. The statement called upon the United Nations to investigate the incident, welcoming the call by the African Union for an independent investigation.

6.2 United Nations Security Council

32. On 3 July, Under-Secretary-General for Political and Peacebuilding Affairs, Rosemary Di Carlo, briefed the Security Council on the air strikes on Tajoura Detention Centre. On 5 July 2019, Members States of the Security Council in a Presidential Statement condemned the attack on the detention centre and stressed the need for all parties to urgently de-escalate the situation and to commit to a ceasefire.¹⁰ They expressed deep concern over the worsening humanitarian situation in Libya and called on the parties to allow full access for humanitarian agencies. They further underlined that they remained concerned about the conditions in detention centres across Libya, and emphasized the responsibility of the Government of Libya in this respect. The Security Council also called for full respect for the arms embargo by all Member States, in line with its resolution 1970 (2011). On 6 November, the ICC Prosecutor referred to the attack on Tajoura Detention Centre in her briefing to the UN Security Council.¹¹

⁸ <https://www.youtube.com/watch?v=neknSRTBcao>

⁹ <https://www.facebook.com/LibyanGovernment/photos/a.509963192457125/2284434691676624/?type=3&theater>

¹⁰ <https://www.un.org/press/en/2019/sc13873.doc.htm>

¹¹ <https://www.icc-cpi.int/Pages/item.aspx?name=191106-stat-icc-otp-UNSC-libya>

6.3 United Nations Secretary-General

33. On 4 July 2019, the United Nations Secretary-General condemned the attack on the Tajoura detention centre and called for an independent investigation of the circumstances of the incident to ensure that the perpetrators were brought to justice.¹² OHCHR¹³, UNSMIL¹⁴ and UNHCR jointly with and IOM¹⁵ also issued statements condemning or expressing shock about the attack on the detention centre.

7. Applicable law

34. A number of armed conflicts involving multiple parties exist in Libya. The incident examined in this report took place in the context of the most recent ongoing round of hostilities that begun with the LNA “march on Tripoli”. These recent hostilities mainly took place in the context of a non-international armed conflict opposing on one side GNA, its affiliated armed groups and supportive third States and LNA on the other side. In addition, a number of airstrikes appear to have been conducted by foreign aircraft in support of LNA against GNA and its affiliated armed groups. This raises the question of whether, in addition to the non-international armed conflict, a parallel situation of international armed conflict may also exist between third States supporting the LNA and the GNA.

7.1 International humanitarian law

35. International humanitarian law binds all parties to an armed conflict. Libya is a party to the four Geneva Conventions of 1949 and to Additional Protocols I and II of 1977. It is also a party to a range of other international humanitarian law instruments concerning means and methods of warfare. In relation to non-international armed conflicts, the provisions of Protocol II, together with the provisions of the common Article 3 of the Geneva Conventions (“Common Article 3”), are of particular significance. All parties to the conflict are also bound by the provisions of customary international humanitarian law.

36. The fundamental rules on the conduct of hostilities, found in international customary humanitarian law, are equally applicable in international and non-international armed conflicts and are the most relevant to the analysis of the incident examined in this report. They include the principles of distinction, proportionality and precautions in attacks and against the effects of attacks.

37. The principle of distinction states that parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants and military objectives and must not be directed against civilians or civilian objects.¹⁶ In order for an object or building to be considered a military objective, it must meet two cumulative criteria, namely that (1) by its “nature, location, purpose or use [it] make[s] an effective contribution to military action”

¹² <https://www.un.org/sg/en/content/sg/statement/2019-07-03/statement-attributable-the-spokesman-for-the-secretary-general-libya>

¹³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24784&LangID=E>

¹⁴ <https://unsmil.unmissions.org/unsmil-condemns-strongest-terms-attack-tajoura-causing-dozens-civilian-fatalities-and-calls>

¹⁵ <https://www.unhcr.org/news/press/2019/7/5d1c836c4/unhcr-iom-condemn-attack-tajoura-call-immediate-investigation-responsible.html>

¹⁶ 1977 Additional Protocol II to the Geneva Conventions, Article 13(2); ICRC Customary International Humanitarian Law Study, Rules 1 and 7.

and, (2) its “total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage.”¹⁷

38. The principle of proportionality prohibits attacks that are expected to cause incidental loss of life or injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.¹⁸ Finally, the principle of precautions in attack requires all parties to take all feasible measures to avoid, and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. This includes: verifying that the target is a military objective and that the attack respects the proportionality requirement; choosing weapons and timing for the attack with a view to avoiding or minimizing civilian casualties; issuing advance warnings when feasible; and suspending an attack if it becomes apparent that it does not respect the principle of proportionality.¹⁹

7.2 International human rights law

39. In addition, to international humanitarian law, international human rights law also forms part of the applicable legal framework. As such, Libya must respect its obligations under international human rights law with respect to individuals within its territory or subject to its jurisdiction. In addition, non-state actors that have effective control of a territory and exercise government-like functions must respect applicable human rights norms.

40. Libya is a party to eight of the nine core United Nations human rights treaties, namely the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. It is also a party to the Convention on the Prevention and Punishment of the Crime of Genocide. Accordingly, Libya is bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. This includes the right to afford an effective remedy to those whose rights have been violated (including the provision of reparations) and the responsibility of the State to investigate and bring to justice perpetrators of human rights violations. Libya is also bound by relevant rules of international human rights law, which form a part of customary international law.

7.3 International criminal law

41. International criminal law provides the means of enforcement at the international level for egregious violations of international human rights law and serious violations of international humanitarian law, which are recognized as attracting individual criminal liability. Libya is not party to the Rome Statute of the International Criminal Court. However, pursuant to the Rome Statute, the Security Council referred the situation of Libya to the Prosecutor of the Court in

¹⁷ Additional Protocol I, Article 52(2). ICRC, *Database on customary international humanitarian law*, Rule 9.

¹⁸ Additional Protocol I, Articles 51(5) and 57(2). ICRC, *Database on customary international humanitarian law*, Rule 14.

¹⁹ Additional Protocol I, Article 57. ICRC, *Database on customary international humanitarian law*, Rules 15-21.

resolution 1970 (2011). The Court in consequence possesses jurisdiction over war crimes, crimes against humanity and genocide as defined in the Rome Statute committed in Libya. A detailed listing of acts constituting war crimes under the Rome Statute is contained in Article 8 of the Statute. In the context of non-international armed conflict, these comprise serious violations of Common Article 3 of the Geneva Conventions and other serious violations of the laws and customs of international law applicable in non-international armed conflict. In the context of international armed conflict, these comprise grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict.

42. A web of amnesties, immunities and defences continues to pose significant barriers to accountability in Libya.²⁰ Efforts by authorities undertaken since 2011 to remedy inadequacies of the legal framework remain incomplete and include insufficient or inappropriate criminalization of offences, in particular torture, enforced disappearance, arbitrary deprivation of life, rape and other forms of sexual and gender-based violence, slavery; failure to criminalize war crimes and crimes against humanity; lack of codification of modes of liability, including superior responsibility; failure to exclude the defence of superior orders for manifestly unlawful orders; and expansive or overbroad application of amnesties, immunities and limitations preventing the investigation and prosecution of crimes under international law, in particular crimes committed during and after the 2011 conflict and crimes committed by public officials in the performance of their duties.

8. Findings

43. The Daman building complex includes installations and sites of the Ministries of Interior (including the local DCIM branch and its detention centre, which have been located at the complex for several years), Justice, and Social Affairs. The Daman complex also houses the headquarters of the Daman Brigade and contains other military objects directly contributing to the current hostilities, such as weapons systems, munitions and military vehicles. Personnel of the Daman Brigade, which controls the complex, are administratively part of the Ministry of Interior and carry service numbers and service ranks. At the same time, the Daman Brigade maintains its de facto command structure, making it a hybrid security actor. The Daman Brigade forms part of the fighting forces of GNA and actively participates in the current hostilities in Tripoli.

44. While it appears that the airstrikes of 2 July 2019 were conducted by aircraft belonging to a foreign State, it remains unclear whether these air assets were under the command of the LNA or were operated under the command of that foreign State in support of the LNA²¹. In any event

²⁰ Accountability for serious crimes under International Law in Libya: an assessment of the Criminal Justice System, International Commission of Jurists, 2019, page. 11.

²¹ Both airstrikes delivered similar airdropped bombs. The UN Panel of Experts in its Tajoura report: S/2019/914 (page 126, paragraph 14) established that: “until now, the only night operational capability for the delivery of explosive ordnance by the HAF [Haftar Armed Forces] was the Wing Loong unmanned combat air vehicle (UCAV), and possibly the IOMAX Archangel. The HAF is not operating any assets under its sole control with a night operational capability to accurately and precisely deliver HE A/C bombs of the type used in this incident. The attack on Tajoura shows some of the hallmarks of the use of precision guided munitions (PGM), as the odds of two unguided ‘dumb’ aircraft bombs both hitting the roofs of buildings, in what is a relatively under developed area in terms of low spatial density infrastructure, would be very low. 15. The Panel also has independent evidence from a reliable confidential source that an unknown number of Mirage 2000-9 fighter ground attack (FGA) were using Al Khadim airbase, and Jufra as operating bases at that time. The HAF does not possess such aircraft types. A full maintenance and weapons support team would also need to be provided by the supplying Member State, as the HAF has neither the training, equipment or explosive ordnance types to support the operation of such an aircraft type. The Mirage 2000-9 has a fully night operational capable airframe, with the capability to also deliver PGM”).

the party under whose command the aircraft was operating is bound by international humanitarian law. The first airstrike struck a vehicle repair workshop and maintenance facility that very likely included an armed pickup vehicle at the time of the attack. Beyond small amounts of 23 mm ammunition possibly belonging to the vehicle, UNSMIL did not find evidence of other ammunition located at the site.

45. The second airstrike struck the Tajoura detention centre, causing the death of at least 53 migrants and refugees and injuring at least 87. UNSMIL is not able to verify the precise number of those killed and injured, due to the fact that bodies and body parts were strewn widely following the airstrike, and the authorities have not provided a list of those injured and killed. The above figures were triangulated with DCIM, UN and humanitarian agencies present on the ground, including those present in the Daman complex in the immediate aftermath of the airstrikes. The above figures are also consistent with the numbers of migrants and refugees present in the section of the hangar that was directly hit.

46. The Tajoura detention centre is a civilian object, albeit located in a complex which includes other objects that may have constituted military objectives at the time of the attack, including the headquarters of the Daman Brigade and a workshop and maintenance facility. The precise location of the detention centre within the Daman complex was well known, and UNSMIL had additionally provided its coordinates to the parties to the internal armed conflict, including to the LNA Crisis Committee, on 5 May 2019. The airstrike which hit the detention centre, therefore, raises significant concerns as to compliance with the principles on the conduct of hostilities, in particular whether all feasible measures had been taken to avoid or minimize incidental loss of civilian life, notably precautions to adequately verify whether the specific buildings targeted in the complex were indeed lawful military objectives, and if the attack respected the principle of proportionality.

47. The Daman Brigade led by Adel Dridir, which controls the Daman complex, is bound by international humanitarian law. The Brigade made insufficient efforts to protect the civilian detainees under their control by locating the detention facility in a complex housing their headquarters and other military objectives, which put detained migrants and refugees in grave danger.

48. The failure by the Daman Brigade to remove the detainees from the vicinity of a potential military objective or to remove military objects from the vicinity of the detention centre despite a previous strike against the Daman complex in May 2019, which injured two migrants²², likely amounts to a violation by the Daman Brigade and GNA of their obligation to take all feasible measures to protect civilians under their control from the effects of attack. This failure in no way absolves the party responsible for the airstrike from its own obligations under international humanitarian law of distinction, taking precautions in attack and proportionality of attack.

49. In addition, the guards prevented detainees from fleeing the building following the first airstrikes thereby preventing them to seek shelter. There are grounds to believe that migrants and

16. Therefore, the Panel finds it highly probable that the air strike was conducted using PGM at night by a modern FGA aircraft owned and operated by a Member State, acting in direct support of the HAF. The Panel reserves identification of this Member State until further physical evidence or imagery emerges to increase attribution confidence levels, and continues to investigate the circumstances of the air strikes” (internal footnotes omitted).

²² <https://www.unhcr.org/news/press/2019/5/5cd317644/move-refugees-tripoli-harms-way-urges-unhcr.html>

refugees could have been saved, and their right to life protected, had they not been prevented from exiting following the first airstrike. UNSMIL collected accounts from migrants and refugees indicating that DCIM personnel had shot and killed migrants and refugees attempting to escape, although this was disputed by other credible and reliable sources, indicating the need for further investigation.

50. UNSMIL documented accounts that some migrants and refugees were required to work at the maintenance facility repairing vehicles, cleaning and loading weapons and ammunition, although it is not known how many migrants and refugees were involved. Depending on the precise facts, such work may have constituted forced labour, in violation of Libya's international human rights obligations under article 8(3) (a) of the International Covenant on Civil and Political Rights,²³ and potentially forced conscription.²⁴ Furthermore, allegations of torture received are consistent with previous findings at the Tajoura detention centre.

9. Recommendations

51. To the parties to the conflict, particularly the GNA and the LNA, as well as any other parties to the conflict and any relevant third States supporting either party to the conflict:

- Conduct independent, impartial and thorough investigations into the airstrikes on the Daman complex, in particular into the related alleged violations of international human rights and international humanitarian law, including violations of the right to life, with a view to ensuring swift prosecution of those responsible; and make the findings public,.
- Grant adequate reparations to the victims or their families, and take all appropriate measures to prevent the recurrence of such violations.
- Fulfil their respective obligations under international humanitarian law, particularly those regarding the protection of civilians, the principles of distinction, precautions in attack and against the effect of attacks, and proportionality in attack, as well as the facilitation of immediate, free and unimpeded access for humanitarian personnel to all persons in need of assistance, in accordance with applicable international law.

To the responsible Libyan authorities:

- Conduct an independent, impartial and thorough investigation into allegations that three migrants and refugees were shot dead by DCIM at the Tajoura detention centre.
- Close all Migration Detention Centres, ensuring that released migrants and refugees promptly receive protection and assistance, giving urgent priority to closing detention centres located on or next to compounds controlled by parties to the conflict.

²³ Article 8(3) provides "1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude. 3. (a) No one shall be required to perform forced or compulsory labour". See also UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), rule 97, provides "Prison labour must not be of an afflictive nature. 2. Prisoners shall not be held in slavery or servitude".

²⁴ Additional Protocols I and II to the Geneva Conventions prohibit the recruitment of children. This prohibition is also found in the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Convention on the Worst Forms of Child Labour. Under the Statute of the International Criminal Court, "conscripting or enlisting children" into armed forces or groups constitutes a war crime in both international and non-international armed conflicts. See also <https://www.nytimes.com/2019/07/17/reader-center/libya-migrant-center-airstrike-reporting.html>

- Take immediate steps to ensure that migrants and refugees are not held in the vicinity of potential military objectives.
- Amend Law No. 6 (1987), amended by Law No. 2 (2004), and Law No. 19 (2010) in order to decriminalize irregular migration.
- Enact laws that criminalize war crimes and crimes against humanity, as defined under international humanitarian law and international criminal law, and take necessary steps to ensure that allegations of such crimes are promptly investigated and tried.

To the international community

- Continue to advocate with the Libyan authorities for the closure of all Migration Detention Centres, with urgent priority to closing such centres located on or next to compounds controlled by parties to the conflict, and ensure that released migrants and refugees promptly receive necessary protection and assistance.
- Continue to advocate for improved access for the United Nations, humanitarian NGOs and other relevant actors to provide life-saving assistance and monitoring of all places of detention. All efforts to protect and assist migrants and refugees should be made in full respect of their human rights, including the principle of non-refoulement, regardless of their status or nationality.
- Ensure full compliance with the arms embargo, in line with UN Security Council resolution 1970 (2011).