Complementarity is the fundamental principle underpinning the International Criminal Court, allowing the Court to exercise its jurisdiction only when a State is unable or unwilling to do so. There are currently two different ICC cases in which admissibility is a central feature, in the two cases in the Libya situation: one on Saif al-Islam Gaddafi and one on Abdullah al-Senussi. Regarding Mr Gaddafi, the admissibility challenge was rejected and so, unless the ICC decides otherwise on appeal, he is currently going to face trial in The Hague. Regarding Mr al-Senussi, the admissibility challenge was approved and so, unless the ICC decides otherwise on appeal, he is going to face trial in Libya. The country has a heritage of impunity, but is working to transition toward a new jurisdiction which is putting an end to impunity for crimes against humanity.

The question, then, is at what point does complementarity kick in when a State is willing to investigate and prosecute but may be unable to do so: in this situation, what does “inability” mean and what is the responsibility of the rest of the international community? This event aims at focusing on complementarity, through these two Libyan cases, to address these questions and to understand more about how complementarity does and should work, also viewed through the lens of the impact on a country’s criminal justice and accountability systems.

Program:
Welcome remarks from the Delegation of Italy

Chair: Wafa B.H. Omar, Director of International Programs at Al-Kawakibi Democracy Transition Center (KADEM) in Tunis

Remarks by:
- Fathi Salem Abouzakhar (Libya), Libyan Centre for Strategy & Future Studies
- Rhiannon Smith, Libya Program Officer for NPWJ in Tripoli
- Marieke Wierda, University of Leiden, on leave from being TJ Adviser at the UN Support Mission in Libya

Interventions and discussion from the floor

Respondent: Niccolò Figà-Talamanca, Secretary-General of NPWJ

Closing remarks
Wafa Ben Haj Omar (MA, Fulbright alumna) is currently the Director of International Programs at Al-Kawakibi Democracy Transition Center (KADEM) in Tunis. She is also a KADEM founding member. From 2008-2012, Ben Haj Omar occupied the position of Director of Research and Programs at the Doha-based Arab Democracy Foundation (ADF). In 2007-2008, Ben Haj Omar served as a Program Officer at Freedom House where she ran the program "A New Generation of Advocates for Political Reform in Egypt." Before changing careers and joining international NGOs, and in 2006, Ben Haj Omar earned a Fulbright scholarship to Brown University in the US, where she conducted research and taught at the Department of English. Ben Haj Omar was Assistant Professor of Contemporary US and GB Literatures for 7 years at the University of Tunis.

Fathi Salem Abouzakhar is CSO at the Libyan Centre for Strategy & Future Studies. Until February 2011 he was Professor at Sirte University. After the revolution, he became a member of the local council in Yefren. He also was in charge of Zahiba refugee camp then Tatawen in Tunisia. During the Gaddafi regime, he was in touch with international organisations including the ICC and he submitted evidence against the regime. Also, he went to Brussels and spoke about Libyan refugees before the European Parliament. Mr Abouzakhar steered the committee for the National Amazigh Libyan Conference on 26-27 September 2011 and became its President. Soon after the liberation of Libya, he joined the Almustakbal organisation for the Environment and Sustainable Development founders of the Libya Center for Strategic and Future Studies. He managed two projects: Tabou in Libya and the constitutional processes, in collaboration with UNDP, and Tackling the issues of Identity and Decentralisation.

Rhiannon Smith is a Program Officer for No Peace Without Justice's Libya team in Tripoli. Rhiannon has been based in Libya since September 2010 working on a variety of research, training and capacity building projects. She is an active member of a number of Libyan civil society organisations focusing on human rights, women's rights and justice. She regularly publishes articles about the socio-political situation in Libya. She graduated from the University of Exeter with a Bachelors of Art in Arabic, French & Persian and is currently working towards an MSc in International Development Management. Her main area of expertise is the Middle East & North Africa and she has travelled, studied and worked extensively in the region.

Marieke Wierda is at the University of Leiden, on leave from being Transitional Justice Adviser at UN Support Mission in Libya. Previously she was the Director of the Prosecutions Program at the International Center for Transitional Justice. She is a Dutch lawyer with degrees from the University of Edinburgh (LL.B.) and New York University (LL.M), and is a member of the New York Bar (2003). Before joining ICTJ, she was an associate legal officer at the International Criminal Tribunal for the former Yugoslavia from 1997-2000. She has published a book on International Criminal Evidence (2002, co-authored with Judge Richard May) as well as numerous articles on international criminal law.

No Peace Without Justice is an international non-profit advocacy organisation working for the protection and promotion of human rights, democracy, the rule of law, accountability and justice, born of a campaign of the Transnational Radical Party. NPWJ has unique field experience in wide-scale documentation of violations of international humanitarian law, conflict mapping and analysis, and in implementing outreach programs on international criminal justice that engage communities in conflict and post-conflict and in complex political environments.

NPWJ has been working on the Libyan transition since early 2011 and has been on-the-ground since early October 2011. It aims to help build and reinforce the capacity of Libyan actors, including NGOs, academics, lawyers and media, public authorities and opinion-leaders, to play their role in incorporating accountability, human rights and the rule of law in the democracy transition and post-conflict reconstruction of their country. NPWJ is working with the Ministry of Justice in providing training and expertise to Libyan judges and prosecutors and has also established a trial monitoring program, which aims to promote transparency and accountability within the Libyan judiciary.