

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/11
Date: 19 March 2025**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN LIBYA

Confidential

Decision on a request to participate in the proceedings under article 87(7) of the Statute

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☐ Counsel for the Defence

☐ Legal Representatives of the Victims

☒ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☒ States' Representatives
Italian Republic

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations Section

☐ Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’ or ‘ICC’) hereby issues this decision on a request to participate in the proceedings concerning the failure of the Italian Republic (‘Italy’) to surrender a suspect comply to the Court.

1. On 18 January 2025, the Chamber issued, by majority, a warrant of arrest for Mr Njeem (the ‘Warrant of Arrest’)¹ as part of the Situation in the *Libyan Arab Jamahiriya*.
2. On 19 January 2025, Mr Njeem was arrested in Turin (Italy), but subsequently released by Italy and transported back to Libya.
3. On 17 February 2025, the Chamber invited Italy to provide submissions on its failure to surrender Mr Njeem to the Court and to comply with the request for cooperation related to the search and seizure of materials found on or with Mr Njeem.²
4. On 21 February 2025, the Prosecution submitted a request for a finding of non-compliance under article 87(7) of the Statute.³
5. On 27 February 2025, two individuals representing a person who claims to be a victim in the present situation requested the Chamber ‘to allow [the victim] to exercise his right to participate in the proceedings by submitting his focused observations, including on the submissions of the Prosecutor and Italy’ (‘Request’).⁴

Determination by the Chamber

6. Pursuant to article 68(3) of the Statute, if the stage of the proceedings is determined to be appropriate by a chamber, it shall permit views and concerns to be presented when the personal interests of the victims are affected.
7. The Chamber emphasises that the matter of non-cooperation is a separate and ancillary procedure to the proceedings against Mr Njeem. As Pre-Trial Chamber II recently stated,

[u]nder article 87(7) of the Statute, if a State Party fails to comply with a request to cooperate with the Court, including requests to cooperate in the arrest and surrender of suspects, contrary to the provisions of the Statute, thereby preventing the Court from exercising its functions and powers under the Statute, the Court may make a finding to

¹ Warrant of arrest for for Osama Elmasry / Almasri Njeem, ICC-01/11-149-US-Exp. Unsealed on 24 January 2025, together with the Dissenting Opinion of Judge Socorro Flores Liera, as filing ICC-01/11-152-Anx.

² Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest, ICC-01/11-162.

³ Prosecution's request for a finding of non-compliance under article 87(7) against the Republic of Italy for the release of Osama Elmasry / Almasri NJEEM, 21 February 2025, ICC-01/11-163-US-Exp, reclassified as public (ICC-01/11-163) on 24 February 2025.

⁴ See Annex to Registry Transmission of ‘Victim’s Request to Submit Observations Concerning a potential finding of noncompliance under article 87(7) against the Republic of Italy, following the release of Osama Elmasry / Almasri NJEEM’, ICC-01/11-164-Conf-Anx, para. 23.

this effect and refer the matter to the Assembly of States Parties. The primary aim of these referrals is not to enforce a sanction against the non-complying State but rather to notify the relevant bodies of the breach to the Statute, which in turn prevents the Court from exercising its functions. It follows that a chamber's determination under article 87(7) [...] does not constitute a formal ruling on the merits or on a procedural matter of the case, but rather a compliance assessment concerning the duty to cooperate with the Court. In other words, this notification does not concern a procedural issue that would directly impact the rights of the parties or the outcome of the trial.⁵

The Chamber considers that the same applies to participants (e.g., victims) or persons who may at some point be eligible to become participants (e.g., persons who are not yet admitted to participate as victims). The Chamber therefore does not consider the present determination under article 87(7) of the Statute to be an appropriate juncture for any victims to present views and concerns.

8. The Chamber notes that the Request relies on findings made by different chambers granting victims authorisation to make observations on certain issues at different stages of the proceedings, but the case law referred to is not relevant for the present consideration. Furthermore, the Chamber notes that, at present, the person on whose behalf the Request is made is not admitted to participate as a victim and thus does not have legal standing to respond to filings such as the Prosecution's request or Italy's observations.

9. In light of the foregoing, the Chamber rejects the Request.

⁵ Pre-Trial Chamber II, *Situation in Ukraine*, [Decision on Mongolia's requests for leave to appeal, temporary stay of the proceedings and related matters](#), 29 November 2025, ICC-01/22-111, para. 26.

FOR THESE REASONS, THE CHAMBER HEREBY,

REJECTS the Request.

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Iulia Antoanella Motoc,
Presiding**



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Wednesday, 19 March 2025

At The Hague, The Netherlands