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Pénale
Internationale**

**International
Criminal
Court**



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PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

Confidential
with Confidential Annexes I and II

**Prosecution's Observations on the
Italian Republic's Submissions under Regulation 109**

Source: Office of the Prosecutor

Pursuant to Pre-Trial Chamber I's instruction dated 05.08.2025, this document is reclassified as "Public"

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A. INTRODUCTION

1. On 30 April 2025, the Italian Republic ("Italy") filed its submissions pursuant to regulation 109 of the Regulations of the Court.¹
2. On 12 June 2025, Pre-Trial Chamber I ("Chamber") granted the Prosecution's request for leave to submit observations on Italy's Submissions² and instructed the Prosecution to submit its observations by no later than 26 June 2025.³
3. Having considered Italy's Submissions, the Prosecution maintains its requests to make a formal finding of non-compliance against Italy and to refer the matter to the Assembly of States Parties ("ASP") and/or the United Nations Security Council ("UNSC") pursuant to article 87(7) of the Rome Statute.⁴
4. Notably, over three months after the release of Osama Elmasri / Almasri NJEEM ("NJEEM"), Italy raises the existence of an allegedly competing extradition request from Libya for the very first time.⁵ As discussed below, Italy failed to comply with its obligations under the Statute by misapplying article 90 of the Rome Statute. Moreover, the documentation provided by Italy does not include any arrest warrant against NJEEM allegedly issued by the Libyan Authorities.⁶ Ultimately, it appears that Italy, allegedly having received two competing requests, did not comply with either: NJEEM was neither surrendered to the Court nor was he extradited to (and arrested in) Libya upon his return. Instead, he was released and transferred in full freedom to Tripoli where he was welcomed by a celebrating crowd.⁷

¹ [ICC-01/11-177-AnxII](#) ("Italy's Submissions").

² [ICC-01/11-178](#).

³ [ICC-01/11-181](#).

⁴ [ICC-01/11-163-Red2](#), para. 49.

⁵ Italy's Submissions, pp. 5-8. The Prosecution notes that representatives of the Italian Government did not mention the existence of a concurrent request for extradition from Libya even when they were called to appear before the Italian Chamber of Deputies and Senate in February 2025 concerning the release of NJEEM (*See Camera dei Deputati, Resoconto Stenografico, Seduta di Mercoledì 5 febbraio 2025*, <https://documenti.camera.it/leg19/resoconti/assemblea/html/sed0422/stenografico.pdf>).

⁶ *See* [ICC-01/11-177-AnxIII-tENG](#).

⁷ In an interview on 18 May 2025 to Al Ahrar TV discussing NJEEM's arrest and release, the Libya Prime Minister Abdul Hamid Dbeibeh does not refer to any extradition process, and indicates that NJEEM was *released* by Italy upon pressure by Libyan militia groups (*see* <https://x.com/LibyaAlAhrarAR/status/1923866356195135768>, last accessed on 19 June 2025). The Prosecution also notes that on 9 February 2025, 20 days after the alleged extradition request to Italy, a meeting was held at the Libya Ministry of Justice to discuss the findings of the United Nations Panel of Experts about crimes committed in detention facilities including by NJEEM and the Judicial Police (*see* <https://docs.un.org/en/S/2024/914>, para. 42 at pp. 13-14; paras. 1-9 at pp. 103-105). At the meeting it was concluded that "the report is merely a narrative without evidence concerning the facts and the names of those against whom the allegations were made, and that we have not received any complaints against members of the Judicial Police Authority." (Informal translation. *See* <https://www.facebook.com/moj.gov.ly/posts/pfbid0iPODuCb8fDPT6s6L43SaPDTcYdPtT5YqoL4ME4UUy6j796zpnBr32eu9dKNW3SDI?rdid=Xj3LVG7bJ5JRG0JC#>).

B. CLASSIFICATION

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this filing is classified as confidential, since it refers to documents in Annex II provided to the Prosecution by Italy further to a Request for Assistance and that Italy may consider it should be treated confidentially. Annex II (and this filing) should then remain confidential until such time as the Chamber instructs otherwise. Annex I is filed confidentially based only on the classification of this filing, and therefore the Prosecution requests that it be reclassified as public once the Prosecution files a public redacted version of the present filing.

C. SUBMISSIONS

6. Italy submits that it has not failed to fulfil its obligations under the Statute because:
- First, in the exercise of its autonomous and independent judicial powers, the Court of Appeal of Rome ("Court of Appeal") ordered the release of NJEEM for alleged procedural errors committed by the Italian Police at the time of his arrest;⁸
 - Second, the Minister of Justice ("MOJ") could not remedy the alleged procedural error by transmitting the relevant documentation to (and as requested by) the General Prosecutor of Rome ("General Prosecutor"),⁹ because of (i) the allegedly competing Libyan extradition request¹⁰ and (ii) the alleged inconsistencies within the ICC's arrest warrant;¹¹
 - Third, the Minister of Interior ("MOI") independently ordered the expulsion of NJEEM from the Italian territory as it was the "swiftest" measure to ensure national security.¹²
7. In its Submissions, Italy carefully separates the roles played by several State branches and powers in the failed arrest and surrender of NJEEM. By finely dividing the responsibilities between multiple actors, Italy appears to suggest that there was no breach of duty when considered altogether. However, what matters under article 87(7) is not to identify who within the State apparatus is most responsible for an alleged breach of duties, but to establish whether *overall* a State Party has failed to comply with a request to cooperate thereby preventing the Court from exercising its functions and powers. That is why "the fact that the relevant authorities have not taken the necessary internal coordination steps is not in itself a valid justification for not taking the required action".¹³

⁸ Italy's Submissions, Section 1, pp. 3-5.

⁹ Italy's Submissions, Section 2, pp. 5-9.

¹⁰ Italy's Submissions, Section 2.1.

¹¹ Italy's Submissions, Section 2.2.

¹² Italy's Submissions, Section 3, pp. 9-11

¹³ [ICC-02/05-01/12-21](#), para. 12.

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8. Further, alleged impediments under domestic law are inapposite as to the States' obligation to "ensure that there are procedures available under national law for all the forms of cooperation" under the Statute:¹⁴ "[a]ny purported deficiency in domestic legal procedures (or *interpretation* thereof), cannot be raised as a shield to protect a State Party from its obligation to cooperate with the Court, or to undermine any application for non-compliance under article 87(7) of the Statute that may result."¹⁵

9. In this case, considering the relevant circumstances holistically, Italy undoubtedly failed to implement the Chamber's request for arrest and surrender of NJEEM under article 92 of the Rome Statute,¹⁶ as well as the request for search and seizure of materials found on or with NJEEM¹⁷ ("Requests"). On this basis alone, the Chamber can make a finding under article 87(7) of the Statute.

10. In any event, the Prosecution will address Italy's Submissions in turn.

I. Italy lawfully arrested NJEEM

11. While it is true that the Italian Government could not interfere with the assessment of an independent judicial body,¹⁸ the Court of Appeal's order to release NJEEM¹⁹ is premised on an erroneous interpretation of the law n. 237/2012. The MOJ also endorsed this erroneous interpretation.²⁰ The arrest carried out by the Judicial Police in Turin based on an Interpol red-notice—*after* Italy had received the Requests through the established diplomatic channel—was legitimate and was not vitiated by any procedural error.

¹⁴ Report of the Court on cooperation, [ICC-ASP/15/9](#), para. 19 (stressing that article 88 "requires States Parties to review their national law and procedures and where necessary introduce through legislation, treaty implementation, or administrative practice, procedures in their domestic regimes to meet the cooperation obligations. Unavailability of domestic procedures for cooperation with the Court is thus not sufficient to justify a State's refusal to execute a cooperation request from the Court."); Kai Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary*, Beck, Hart, and Nomos, 4th ed., 2022 p. 2493 mn. 3. ("[Article 88 of the Statute] emphasizes that procedures are to be used to meet, not to defeat the obligation to comply with requests").

¹⁵ [ICC-01/09-02/11-908](#), para. 47 (emphasis added).

¹⁶ [ICC-01/11-162](#), para. 3, fn. 3.

¹⁷ [ICC-01/11-162](#), para. 4, fn. 4.

¹⁸ Italy's Submissions, Section 1, pp. 3-5.

¹⁹ Corte d'Appello di Roma, Sezione IV Penale, Ordinanza in materia di consegna ex lege 237/2012 corte penale internazionale, Prc n. 11/2025, on 21 January 2025.

²⁰ See Camera dei Deputati, Resoconto Stenografico, Seduta di Mercoledì 5 febbraio 2025, p. 6: "*Conviene sinora notare che la comunicazione della questura di Torino era pervenuta al Ministero ad arresto già effettuato e, dunque, senza la preventiva trasmissione della richiesta di arresto a fini estradizionali emessa dalla CPI al Ministro, come prescritto dagli articoli 2 e 4 della legge n. 237 del 2012*" (Informal translation: "It should be noted that the communication from the Turin police headquarters had reached the Ministry after the arrest had already been made and, therefore, without the prior transmission of the request for arrest for extradition purposes issued by the ICC to the Minister, as required by articles 2 and 4 of law n. 237/2012"), <https://documenti.camera.it/leg19/resoconti/assemblea/html/sed0422/stenografico.pdf>.

12. Contrary to Italy's Submissions,²¹ while law n. 237/2012 does not expressly provide for the arrest *proprio motu* by the Judicial Police, it does not exclude it either. The law is simply silent about it. In this scenario, article 3(2) of law n. 237/2012 should apply: "[...] unless otherwise provided by this law and the Rome Statute, the general provision contained in [...] the Code of Criminal Procedure shall be observed".²² This includes the arrest *proprio motu* by the Judicial Police under article 716 of the Code of Criminal Procedure, as properly applied in the arrest of NJEEM.

13. That the *proprio motu* arrest by the Judicial Police was possible in the execution of an ICC's request was also the view of the Minister of Interior's Office for International Police Cooperation (*Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, Direzione Centrale Polizia Criminale, Servizio per la Cooperazione Internazionale di Polizia*). On 19 January 2025, having reviewed the ICC's arrest warrant, it expressly requested the Office of the Chief of Police of Turin (*Questura di Torino*) to assess whether to proceed with the arrest of NJEEM pursuant to article 716 of the Code of Criminal Procedure.²³

14. This interpretation is also consistent with the limited role of the MOJ in the arrest and surrender process under law n. 237/2012. Under article 2, the MOJ is the exclusive recipient of the Court's cooperation requests. However, under article 4 (execution of judicial cooperation), the MOJ should merely *execute* the request by transmitting it to the General Prosecutor. Exceptions to this general principle are expressly provided by the law. For instance, under article 5(2)—regarding the transmission of documents and other investigative steps—the MOJ retains the discretion to refuse cooperation for reasons of national security. To the contrary, articles 11 (arrest) and 13 (surrender) do not mention, let alone recognise, any of such discretion.²⁴

²¹ Italy's Submissions, p. 4.

²² Law n. 237/2012, art. 3(2), informal translation (original Italian version: "*In materia di consegna, di cooperazione e di esecuzione di pene si osservano, se non diversamente disposto dalla presente legge e dallo statuto, le norme contenute nel libro undicesimo, titoli II, III e IV, del codice di procedura penale*").

²³ The Ministry of Interior, Department of Public Security, Central Directorate of Criminal Police, Office for Police International Cooperation (*Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, Direzione Centrale Polizia Criminale, Servizio per la Cooperazione Internazionale di Polizia*) in Rome, informed the Office of the Chief of Police of Turin (*Questura di Torino*) of the ICC arrest warrant against NJEEM and invited the Chief of Police in Turin "to evaluate the existence of the conditions and the opportunity to proceed in accordance with art. 716, in relation to 715, of the Code of Criminal Procedure" (informal English translation from original Italian: "*si prega codesto Ufficio di Polizia di valutare la sussistenza delle condizioni e l'opportunità di procedere ai sensi degli art 716, in relazione al 715, del c.p.p.*", emphasis in the original) (see Annex II, pp. 2, 4).

²⁴ See Piccirillo, *Il Caso Almasry. Come e perché l'Italia ha mancato la prima occasione utile per cooperare con la Corte Penale Internazionale nella consegna di un ricercato per crimini di guerra e contro l'umanità* (The Almasry case. How and why Italy missed the first opportunity to cooperate with the International Criminal Court in the surrender of a man wanted for war crimes and crimes against humanity. Informal translation.), in Cassazione Penale n. 5, May 2025, p. 1465. See original Italian and machine-generated translation in Annex I pp. 1-38.

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15. In contrast, Italy's interpretation of law n. 237/2012 "leads to results that are completely incompatible with the rationale of the law itself" which requires Italy to cooperate "in compliance with the Statute [which in turn] specifically contemplates the possibility of transmitting the arrest warrant via Interpol (art. 87 paragraph 1 letter b)."²⁵ As former ICC Judge Cuno Tarfusser remarked: "[t]he interpretation [of the Court of Appeal] will not allow the execution of any arrest warrant of the ICC on Italian territory. Not today, not ever."²⁶

II. Italy could and should have remedied any purported internal procedural error

16. Even if the Court of Appeal was correct in its conclusion that NJEEM's arrest was affected by procedural errors, the MOJ could (and should) have remedied them by transmitting the requested documentation to the General Prosecutor.²⁷ Italy acknowledges that in principle the MOJ could have remedied the alleged procedural errors,²⁸ but argues that it could not do so in this case "due to issues arisen from the formulation of the arrest warrant by the ICC and the presence of a competing extradition request by Libyan Authorities for the same facts".²⁹

17. The Prosecution submits that neither of these alleged issues prevented the MOJ from transmitting the documents to the General Prosecutor (as he had requested) to ensure NJEEM's detention and surrender to the Court.

²⁵ M. Caianiello, C. Meloni, *Caso Almasri: una discutibile interpretazione della legge di cooperazione dell'Italia con la CPI ha portato alla scarcerazione del primo ricercato arrestato sul suolo europeo nell'ambito della indagine in Libia* (Almasri case: a questionable interpretation of Italy's law on cooperation with the ICC has led to the release of the first suspect arrested on European soil in the context of investigations on Libya), in *Sistema penale*, 24 January 2025, <https://www.sistemapenale.it/it/opinioni/caianiello-meloni-una-discutibile-interpretazione-della-legge-di-cooperazione-dellitalia-con-la-cpi-commento-allordinanza-di-scarcerazione-nel-caso-almasri-davanti-alla-corte-dappello-di-roma> (last accessed on 18 June 2025) see machine-generated translations in [ICC-01/11-163-AnxI](#). See also [ICC-01/11-163-Red2](#), fn. 42.

²⁶ C. Tarfusser, *Il Caso Al-Masri, ovvero come distruggere la, già ridotta, credibilità di un paese* (Al-Masri case, or how to destroy the already reduced credibility of a country. Informal translation), in *La legislazione penale*, 13 February 2025, <https://www.lalegislationepenale.eu/wp-content/uploads/2025/02/Tarfusser.-Caso-Al-Masri.pdf> (last accessed on 18 June 2025). See original Italian and machine-generated translation in Annex I pp. 39-56.

²⁷ [ICC-01/11-163-Red2](#), paras. 34-35.

²⁸ Italy's Submissions, pp. 11-12.

²⁹ Italy's Submissions, pp. 11-12. The Prosecution notes that Italian media reported that the Chief of the Department for Justice Affairs (*Dipartimento per affari di giustizia*, "DAG") of the Ministry of Justice, who was responsible for international cooperation matters at the relevant time, allegedly testified in the context of the domestic Italian investigation (see [ICC-01/11-167-AnxI](#) p. 3) that on 20 January 2025 the DAG had already prepared and advised the MOJ to transmit the documentation requested by the General Prosecutor in order to remedy any procedural deficiency in the arrest of NJEEM. The documentation was never transmitted. See https://roma.corriere.it/notizie/cronaca/25_maggio_29/caso-almasri-ministro-nordio-decisioni-7d83a2f1-7995-4ac5-8954-7a9870092x1k.shtml; https://www.repubblica.it/politica/2025/05/30/news/ministero_giustizia_almasri_arresto_nordio-424637759/; <https://www.editorialedomani.it/fatti/birritteri-sentito-tribunale-caso-almasri-agita-nordio-he7vqjxx> (last accessed on 18 June 2025). See original Italian and machine-generated translation in Annex I pp. 57-64.

i. Italy failed to consult ICC under articles 90(1) and 97 of the Statute

18. The “particular circumstances thoroughly described” by Italy³⁰ mandated it to reach out to the Court under at least two provisions of the Statute. *First*, notwithstanding the Court’s repeated attempts to inquire on the status of the Requests and offers to resolve any potential problem,³¹ Italy did not consult the Court under article 97. *Second*, Italy should have notified the Court under article 90(1) of the existence of an allegedly competing extradition request. This provision is designed to address any potential issues in a collegial and constructive way, which Italy ignored.

19. Italy acknowledges its failure to consult the Court.³² However, its argument that the purported issues prevented this consultation (rather than demanded it) turns the logic of international cooperation under the Statute on its head, and should be rejected. Italy was under an obligation to consult the Court and its failure to do so in and of itself amounts to a grave failure to comply with a request for cooperation under article 87(7) and merits referral to the ASP and/or the UNSC.³³ In any event, as further argued below, neither of the two alleged issues actually arose and/or ought to have prevented Italy from fulfilling its duties.

ii. Italy misapplied article 90 regarding competing extradition requests

20. Italy submits that on 20 January 2025, *after* NJEEM’s arrest, Libya sent a request for extradition to the Italian authorities.³⁴ Italy failed to comply not only with the Court’s request for surrender but also with Libya’s extradition request, by releasing and transferring NJEEM to Libya in full freedom. In doing so, Italy misapplied article 90 of the Statute, overlooking that Libya is to be treated as if it were a State Party for the purpose of part 9 of the Statute, due to the effect of UNSC Resolution 1970 (2011).³⁵ This misunderstanding additionally contributed to Italy’s failure to comply with the Requests under article 87(7).

21. *First*, as discussed above, Italy failed to apply article 90(1), which imposed an unequivocal obligation to “notify the Court” of its receipt of a relevant request “from any other State” for NJEEM’s extradition. Its failure to make such a notification compounded the effect of its substantive misapplication of article 90.

³⁰ Italy’s Submissions, p. 12.

³¹ [ICC-01/11-163-Red2](#), paras. 37-38.

³² Italy’s Submissions, p. 12.

³³ [ICC-01/11-163-Red2](#), paras. 37-40.

³⁴ Italy’s Submissions, pp. 5-8.

³⁵ See S/RES/1970 (2011), p. 2, para. 5.

22. *Second*, Italy erroneously considered article 90(4), and (5) (competing requests from a non-State Party) instead of articles 90(2) and (3) (competing requests from a State Party).³⁶ Although Libya is a non-State Party, its obligations under UNSC Resolution 1970 (2011)³⁷ mean that it should have been considered as a State Party for the purpose of article 90. As the ICC Appeals Chamber established, “the cooperation regime for State Parties to the Rome Statute is applicable” to non-State Parties if required by the terms of a UNSC referral.³⁸ In these circumstances, the cooperation regime for non-State Parties is inappropriate, and the Statute does not provide for any sort of ‘third regime’.³⁹

23. In this case, specifically, and in the absence of a prior determination by the Court that the case against NJEEM was *admissible*, Italy seems to have considered that it could exercise discretion in determining whether it could prioritise Libya’s request for extradition over the Court’s request for surrender (under article 90(5)(6)). However, since Italy should have treated Libya’s request as a request from a *State Party*, it had no such discretion under articles 90(2) and (3). Rather, while Italy was entitled to progress consideration of the request for extradition under articles 90(2)(b) and 90(3), it was not permitted to extradite—let alone release—NJEEM “until the Court [...] determined that the case is inadmissible.”

24. As such, consistent with Italy’s obligation to notify the Court under article 90(1), articles 90(2) and (3) make clear that the admissibility of the case against NJEEM—and any implications of this with regard to the forum to which he was to be transferred from Italy—was a matter for the Court to decide, and not for Italy.

25. *Third*, even if arguendo article 90(4) and (5) (competing requests from a non-State Party) applied instead, and even if for the purpose of assessing which request to prioritise under article 90(6) Italy could have considered whether any complementarity issue appeared to exist, Italy’s conclusion is legally and factually untenable. In particular, Italy concluded that “the order of priority to be given to the requests for cooperation” was “inevitably affected”⁴⁰ by its conclusion that “the request for extradition *de facto* posed circumstances likely to affect the admissibility of the case as per Article 17”.⁴¹ This conclusion is premised on multiple legal and factual errors.

³⁶ Italy’s Submissions, p. 5.

³⁷ See S/RES/1970 (2011), p. 2, para. 5.

³⁸ [ICC-02/05-01/09-397-Corr](#) paras. 141-142; [ICC-02/05-01/09-227](#) para. 13; [ICC-01/11-01/11-420](#), para. 12.

³⁹ [ICC-02/05-01/09-397-Corr](#) para. 142.

⁴⁰ Italy’s Submissions, p. 8.

⁴¹ Italy’s Submissions, p. 7.

26. To begin with, contrary to Italy's submission,⁴² the Court's arrest warrant does not violate the principle of complementarity. As the Appeals Chamber established, "[a]n initial determination by the Pre-Trial Chamber that the case is admissible is not a prerequisite for the issuance of a warrant of arrest pursuant to article 58(1) of the Statute."⁴³ The Chamber rightly declined to make a determination on the admissibility of the case against NJEEM, and recalled that any admissibility challenge can be brought at a later stage under article 19.⁴⁴ There is simply no legal or factual basis to suggest, as Italy does, that the arrest warrant violated the principle of complementarity on the basis that no interaction or communications took place between the Court and the Libyan Authorities, since no complementarity determination is required at this stage.⁴⁵

27. Factually, neither Italy nor Libya was in a position to assess whether any 'complementarity issue' appeared to exist. Italy endorsed Libya's submission and concluded that the Libyan Authorities were investigating NJEEM "for 'the same charges brought against him by the International Criminal Court'".⁴⁶ However, at the time of its alleged extradition request on 20 January 2025, Libya was not aware of the substance of the charges in the ICC arrest warrant, which remained under seal until 24 January 2025.⁴⁷ Libya only accessed the diffusion issued by Interpol,⁴⁸ which succinctly lists the legal qualification under the Statute of the crimes alleged, but provides no information as to the facts, circumstances and conduct alleged in the proceeding before the ICC.

28. Based on the limited information in its possession, Libya submits that the facts investigated domestically "may correspond" to those represented by the Court in its request to Interpol.⁴⁹ However, suggesting in the abstract that certain facts under domestic investigation may correspond to those investigated by the Court is not sufficient for the purpose of any complementary assessment. As the Appeals Chamber recalled, for a complementarity assessment "an analysis of all the circumstances of a case, including the context of the crimes

⁴² *Contra* Italy's Submissions, p. 6.

⁴³ "The Pre-Trial Chamber has the discretion pursuant to article 19(1), second sentence, of the Statute to address the admissibility of a case on an application for the issuance of a warrant of arrest that is made *ex parte*, Prosecutor only, but should exercise such discretion only when it is appropriate in the circumstances of the case, bearing in mind the interests of the suspect." (See [ICC-01/04-169](#), paras. 1-2). To preserve the interests of a suspect that cannot participate in an *ex parte* proceeding a Pre-Trial Chamber should rather refrain from making admissibility findings unless for instance "uncontested facts [...] render a case clearly inadmissible or an ostensible cause impelling the exercise of proprio motu review." (See [ICC-01/04-169](#), para. 52).

⁴⁴ [ICC-01/11-152-Anx](#), para. 12.

⁴⁵ *Contra* Italy's Submissions, p. 6.

⁴⁶ Italy's Submissions, p. 6.

⁴⁷ [ICC-01/11-153](#).

⁴⁸ [ICC-01/11-177-AnxIII-tENG](#), p. 3.

⁴⁹ [ICC-01/11-177-AnxIII-tENG](#), p. 4.

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and the overall allegations against the suspect”⁵⁰ is required to determine whether the national investigation covers “substantially the same conduct as alleged in the proceedings before the Court”.⁵¹ Libya was not in a position to genuinely submit that “the same charges” were under domestic investigations, and Italy should not have passively accepted Libya’s contention.

29. Further, based on the documents provided by Italy,⁵² it appears that Italy was not in a position to assess whether the case was meaningfully investigated domestically for the purpose of admissibility⁵³ since Libya’s alleged extradition request does not show any concrete step taken in its domestic investigation.⁵⁴

30. In conclusion, Italy failed to comply with its obligation under the Statute when it misapplied article 90: it failed to notify the Court under article 90(1); it erroneously exercised discretion as it treated Libya’s alleged request as a non-State Party’s request; it made an ‘admissibility assessment’ which is a matter that only the Court can decide; and in any event it reached its ‘admissibility’ conclusion on legally and factually erroneous premises. Ultimately, based on the misapplication of article 90, Italy appears to have favoured Libya’s request and failed to execute the Court’s Requests.

iii. There was no inconsistency in the arrest warrant

31. Italy’s claims that inconsistencies in the arrest warrant issued on 18 January 2025 were such that they were “likely to affect the ICC jurisdiction limitations”⁵⁵ are also unfounded. *First*, the arrest warrant unambiguously states that “[t]he majority of the Chamber, Judge Flores Liera dissenting, is satisfied that Mr Njeem’s conduct, as alleged by the Prosecution, *falls within the jurisdiction of the Court*”⁵⁶ and that “the alleged crimes described in the Application *are sufficiently linked with the situation that triggered the jurisdiction of the Court through the Security Council referral*”.⁵⁷ Whether Italy disagrees with the Majority’s conclusion on jurisdiction is inconsequential to its statutory obligation to cooperate with the Court.

⁵⁰ [ICC-01/11-01/11-547-Red OA4](#), paras. 62, 71-73; [ICC-01/11-01/11-565 OA6](#), para. 99.

⁵¹ [ICC-01/09-01/11-307 OA](#), para. 40; [ICC-01/09-02/11-274 OA](#), para. 39.

⁵² [ICC-01/11-177-AnxIII-tENG](#).

⁵³ For the purpose of assessing whether a State is undertaking meaningful investigation, the State must show “the taking of steps directed at ascertaining whether [the suspect is] responsible for that conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analysis” (See [ICC-01/09-01/11-307 OA](#), para. 41; [ICC-02/11-01/12-75-Red](#), para. 28).

⁵⁴ See [ICC-01/11-177-AnxIII-tENG](#).

⁵⁵ Italy’s Submissions, p. 8.

⁵⁶ [ICC-01/11-152-Anx](#), para. 3. See also [ICC-01/11-152](#) para. 2.

⁵⁷ [ICC-01/11-152-Anx](#), para. 4. See also [ICC-01/11-152](#) para. 2. *Contra* Italy’s Submissions, p 8.

32. *Second*, while in the concluding three paragraphs summarising its prior findings the Chamber erroneously referred to a temporal scope running from 2011 onwards,⁵⁸ both the summary of the Prosecution's allegations⁵⁹ and the Chamber's assessment thereof⁶⁰ referred to the more specific temporal scope of February 2015 to October 2024. The substantial part of the arrest warrant in which the Chamber discussed the alleged crimes and reached its findings on the evidence, unequivocally indicates that the events described took place from February 2015 to October 2024.⁶¹ There is no suggestion in the 17 pages of this section that any crime discussed there could have taken place from 2011,⁶² a time when Mitiga Prison did not even exist as such.

33. It was therefore apparent "*ictu oculi*" from the arrest warrant that the indication of the year 2011 in the three closing paragraphs was only a minor typographical error the correction of which was a simple formality. The Chamber issued a corrected version of the warrant within days of its publication.⁶³ Contrary to Italy's submission,⁶⁴ there was no uncertainty regarding the *tempus commissi delicti*.

34. Moreover, in any event, in the face of any perceived problem that could impede or prevent the execution of the Court's request for surrender, the correct course of action for Italy was not to release the suspect, effectively sheltering him—potentially indefinitely—from criminal prosecution, but to consult the Court pursuant to article 97 of the Statute with a view to resolving any issues it may have had. Had Italy sought to consult the Court or simply respond to its attempts to reach out with a view to genuinely assisting in the surrender process, any purported ambiguities would have been promptly clarified.

iv. Conclusion

35. The alleged competing requests and the alleged inconsistencies in the arrest warrant should not have refrained the MOJ from promptly transmitting the relevant documentation to (and requested by) the General Prosecutor. Further, the described alleged issues should have immediately triggered the consultation with the Court under articles 90(1) and 97. As a result, the MOJ could have 'remedied' the alleged procedural error identified by the Court of Appeal.

⁵⁸ [ICC-01/11-152-Anx](#), paras. 99-101 and p. 34. See also [ICC-01/11-152](#) para. 2.

⁵⁹ [ICC-01/11-152-Anx](#), paras. 2, 7, 30. See also [ICC-01/11-152](#) para. 2.

⁶⁰ [ICC-01/11-152-Anx](#), paras. 23, 26. See also [ICC-01/11-152](#) para. 2.

⁶¹ [ICC-01/11-152-Anx](#), para. 30. See also [ICC-01/11-152](#) para. 2.

⁶² [ICC-01/11-152-Anx](#), paras. 30-90. See also [ICC-01/11-152](#) para. 2.

⁶³ [ICC-01/11-152-Anx](#), paras. 99-101 and p. 34.

⁶⁴ Italy's Submission, p. 9.

Ultimately, Italy failed to comply with the Court's Requests and its failure prevented the Court from exercising its functions and powers under the Statute.

III. The transfer of NJEEM to Libya violated Italy's statutory obligations

36. The Prosecution maintains that the transfer of NJEEM to Libya without any consultation with the Court as required under article 97 of the Statute amounts in itself to a failure to comply with a request for cooperation under article 87(7).⁶⁵

37. In its Submissions, Italy discusses the reasons allegedly justifying the MOI's Decree of Expulsion of NJEEM from the Italian territory issued on 21 January 2025 under article 13(1) of the Immigration Law (D. Lgs. 286/1998).⁶⁶ However, Italy does not explain why NJEEM was expelled from the Italian territory instead of extradited to Libya in execution of the Libyan request.

38. Further, Italy also failed to address the circumstances and the legal basis for NJEEM's transfer to Libya with a Falcon 900 airplane of the Italian Government. The airplane left Rome at 11:14 and landed in Turin—where NJEEM was detained—at 12:15.⁶⁷ This is four hours before the Court of Appeal delivered its Decision no later than 16:22, and even longer before the MOI then issued its Decree of Expulsion, notified to NJEEM at 18:52.⁶⁸ In fact neither the MOI's Decree of Expulsion, nor the subsequent Order of the Turin Chief of Police (*Questore di Torino*) giving effect to the MOI's Decree of Expulsion, required NJEEM's transfer to Libya, but only his expulsion from the Italian territory.⁶⁹

39. Moreover, the Order of the Turin Chief of Police states that NJEEM could not be forcibly transferred to the border: “[h]aving ascertained that it was not possible to proceed with the escort to the border by means of the police force pursuant to art. 13 (4) of the Immigration Law, due to the current immediate unavailability of a carrier suitable for carrying out the repatriation; in light of article 14 (5bis) of the Immigration Law, [the Questore] orders [NJEEM] to leave the territory of the State within seven days from the date of notification of this decree.”⁷⁰

⁶⁵ See [ICC-01/11-163-Red2](#), paras. 41-43.

⁶⁶ Italy's Submissions, pp. 10-11. See also Annex II pp. 5-6, 12-13.

⁶⁷ See <https://x.com/scandura/status/1881836176010821747> (last accessed on 18 June 2025).

⁶⁸ See Annex II pp. 21, 24, 25-28, 30, 33 indicating that the Decision of the Court of Appeal was notified the relevant parties and the Police in Turin on 21 January 2025 at 16:22. The Decree of Expulsion of the Minister of Interior must have been issued between around 16:22 (as it acknowledges the Decision of the Court of Appeal) and 18:52 when it was notified to NJEEM (see Annex II pp. 5, 12).

⁶⁹ This is consistent with article 13(1) of the Italian Immigration Law (D. Lgs. 286/1998) referring to *expulsion* from the Italian territory, and not to *repatriation* in the country of origin.

⁷⁰ See Annex II pp. 10, 17.

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40. Based on the documentation provided by Italy, NJEEM was ordered to leave the Italian territory, while his transfer to Libya was not carried out on the basis of the Decree of Expulsion. The modalities and the legal basis for NJEEM's transfer to Libya are not addressed in the Submissions and remain unknown to date.⁷¹

41. The Prosecution maintains that Italy failed to cooperate, including by "swiftly" transferring NJEEM to his own country.⁷²

D. CONCLUSION/RELIEF SOUGHT

42. Regrettably, Italy's Submissions do not provide any viable explanation, let alone justification, for its failure to cooperate, execute the Court's Requests for cooperation and fulfil its obligations under the Statute. Rather, the three months delayed communication of an allegedly competing extradition request from Libya and the misapplication of article 90 amount to additional failures to fulfil Italy's obligations under the Statute.

43. The Prosecution maintains that Italy failed to comply with the Court's Requests for cooperation, thus preventing the Court from exercising its functions and powers under the Statute.⁷³ The Prosecution requests the Chamber to make a formal finding of non-compliance against Italy and to refer the matter to the Assembly of State Parties and/or the United Nations Security Council pursuant to article 87(7) of the Rome Statute.⁷⁴



Nazhat Shameem Khan
Deputy Prosecutor

Dated this 25th day of June 2025

At The Hague, The Netherlands

⁷¹ As mentioned above, in an interview on 18 May 2025 to Al Ahrar TV, the Libya Prime Minister Abdul Hamid Dbeibeh appears to confirm the circumstance that NJEEM was *released* and not *extradited* by Italy (see <https://x.com/LibyaAlAhrarAR/status/1923866356195135768>, last accessed on 18 June 2025).

⁷² [ICC-01/11-163-Red2](#), paras. 41-43.

⁷³ [ICC-01/11-163-Red2](#), paras. 43-44.

⁷⁴ [ICC-01/11-163-Red2](#), paras. 46-49.