

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/11
Date: 18 July 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

Public

Decision on Italy's request for leave to provide observations

Decision 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’), issues the present decision in the situation in the Libyan Arab Jamahiriya since 15 February 2011 (the ‘Libya Situation’).

I. Procedural history

1. On 18 January 2025, the Chamber, by majority, Judge Socorro Flores Liera dissenting, issued a warrant of arrest for Osama Elmasry / Almasri Njeem (‘Mr Njeem’ and the ‘Arrest Warrant’) for alleged crimes against humanity and war crimes in the Libya Situation.¹
2. On 17 February 2025, the Chamber invited the Italian Republic (‘Italy’) to provide submissions on its failure to surrender Mr Njeem to the Court following his arrest.²
3. On 25 February 2025, the Prosecution requested the Chamber to make a finding of non-compliance by Italy pursuant to article 87(7) of the Rome Statute (the ‘Statute’).³
4. On 6 May 2025, following two requests for an extension of time limit which were granted by the Chamber,⁴ Italy provided the Registry with its submissions in hard copy and on 7 May 2025, the Registry transmitted Italy’s submissions (‘Italy’s submissions’).⁵
5. On 12 May 2025, the Prosecution requested leave to submit observations on Italy’s submissions (the ‘Prosecution’s Request’).⁶
6. On 12 June 2025, the Chamber granted the Prosecution’s Request.⁷
7. On 25 June 2025, the Prosecution submitted its observations (‘Prosecution’s Observations’),⁸ requesting the Chamber to make a finding of non-compliance against Italy

¹ Warrant of arrest for Osama Elmasry / Almasri Njeem, ICC-01/11-152-Anx, pp 1-35; and Dissenting Opinion of Judge Socorro Flores Liera: ICC-01/11-152-Anx, pp 36-42.

² Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest, 17 February 2025, ICC-01/11-162.

³ Public redacted version of the “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”, 25 February 2024, ICC-01/11-163- US-Exp, ICC-01/11-163-Red2.

⁴ Decision on the extension of time limit to present submissions, ICC-01/11-171; and Second decision on the extension of time limit to present submissions, ICC-01/11-176.

⁵ Third Registry Transmission of “Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry/Almasri Njeem to the Court following his arrest. Submissions by the Italian Republic pursuant to regulation 109 of the Regulations of the Court”, ICC-01/11-177.

⁶ Prosecution’s Request for Leave to Submit Observations on the “Submissions by the Italian Republic pursuant to regulation 109 of the Regulations of the Court”, ICC-01/11-177-Conf-Exp-AnxII, ICC-01/11-178.

⁷ Decision on the Prosecution’s request to submit observations, ICC-01/11-181.

⁸ Prosecution’s Observations on the Italian Republic’s Submissions under Regulation 109, ICC-01/11-184-Conf.

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 Statute’.⁹

8. On 9 July 2025, Italy requested leave to provide observations on the Prosecution’s Observations (the ‘Request’).¹⁰

9. On 10 July 2025, the Prosecution responded to the Request submitting that the Prosecution’s Observations ‘do not raise any new issues which could not reasonably have been anticipated [...] [but] the Prosecution does not object to the Request for leave to reply in the particular circumstances of these proceedings’.¹¹

10. The Chamber notes regulation 24(5) of the Regulations of the Court which establishes that ‘[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated’.

11. The Chamber notes that, in its Request, Italy on the one hand ‘requests leave to provide its own comments regarding key new issues arising from the Prosecution’s observations’,¹² but on the other hand includes a list of paragraphs it wishes to respond to which concern all the Prosecution’s observations. Italy has not explained which ‘key new issues’ are contained in the Prosecution’s Observations or provided another justification for a reply. Nevertheless, the Chamber notes that the Prosecution makes observations about Italy’s national law. Insofar as they pertain to Italy’s national law, the Chamber considers that Italy ought to be given an opportunity to comment on the Prosecution’s reading of its own domestic legal framework. Therefore, the Chamber finds it appropriate to authorise Italy to reply solely to the arguments presented in paragraphs 11 to 15 of the Prosecution’s Observations. Consequently, the Chamber grants the Request in part.

⁹ Prosecution’s Observations, para. 43.

¹⁰ Italy’s Request for Leave to Submit Observations on the “Prosecution’s Observations on the Italian Republic’s Submissions under regulation 109” ICC-01-11-184-Conf, ICC-01/11-187-AnxI.

¹¹ Prosecution’s Response to “Italy’s Request for Leave to Submit Observations on the ‘Prosecution’s Observations on the Italian Republic’s Submission under regulation 109’ ICC-01/11-184-Conf” ICC-01/11-187-AnxI, ICC-01/11-190, paras 3-4.

¹² Italy’s Request for Leave to Submit Observations on the “Prosecution’s Observations on the Italian Republic’s Submissions under regulation 109” ICC-01-11-184-Conf, 9 July 2025, ICC-01/11-187-AnxI.

12. Noting the two requests for an extension of time submitted by Italy in relation to its initial submissions,¹³ the Chamber already clarifies now that it will not grant any extension for the filing of the reply.

13. The Chamber further notes that the Registry has requested Italy to indicate its position about the classification of the Prosecution's Observations and annexes thereto, but that Italy has not yet done so. The Chamber instructs Italy to inform the Registry of its position by Monday, 28 July 2025.

14. Should Italy wish to file its reply with a confidential classification, it must at the same time provide a public-redacted version.

¹³ See Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry/Almasri Njeem to the Court following his arrest. Submissions by the Italian Republic pursuant to regulation 109 of the Regulations of the Court, 13 March 2025, ICC-01/11-167-AnxI; Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry/Almasri Njeem to the Court following his arrest. Submissions by the Italian Republic pursuant to regulation 109 of the Regulations of the Court, 17 April 2025, ICC-01/11-175-AnxI.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request in part;

AUTHORISES Italy to present its reply as set forth in paragraphs 10 and 14 by no later than Monday, 28 July 2025; and

INSTRUCTS the Registrar to transmit this decision to the competent authorities of Italy.

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 Friday, 18 July 2025

At The Hague, The Netherlands