

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 15 July 2026

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

THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI

Public

Decision on the Defence's challenge to the jurisdiction of the Court pursuant to article
19 of the Statute

Order 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 Victims**

☐ **Legal Representatives of Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants for
Participation/Reparation**

☒ **The Office of Public Counsel for
Victims**

☐ **The Office of Public Counsel for the
Defence**

☒ **States Representative**
The State of Libya

☐ **Others**

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 this ‘Decision on the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute’.

I. Procedural history

1. On 26 February 2011, the United Nations Security Council (the ‘UNSC’), acting under Chapter VII of the Charter of the UN, referred the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Court (‘Libya’ and the ‘Libya Situation’, respectively), in accordance with article 13(b) of the Rome Statute (‘Resolution 1970’ and the ‘Statute’, respectively).¹

2. On 12 May 2025, Libya conveyed to the Registrar its acceptance of the Court’s jurisdiction over its territory from 2011 to the end of 2027 (the ‘Article 12(3) Declaration’).²

3. On 10 July 2025, the Chamber issued an arrest warrant for Khaled Mohamed Ali El Hishri (‘Mr El Hishri’) for crimes against humanity and war crimes allegedly committed in Libya from around February 2015 to, at least, early 2020.³ Without prejudice to the determination of any future challenge under article 19 of the Statute, the Chamber, *inter alia*, found that Mr El Hishri’s alleged conduct falls within the temporal and territorial jurisdiction.⁴

4. On 1 December 2025, Mr El Hishri was surrendered to the Court and made his initial appearance on 3 December 2025.⁵

5. On 26 March 2026, the Prosecution filed the Document Containing the Charges (the ‘DCC’), charging Mr El Hishri with crimes against humanity and war crimes within the Court’s jurisdiction, allegedly committed in Libya between 1 May 2014 and 30 June 2020.⁶

¹ UNSC, [Resolution 1970](#), 26 February 2011, S/RES/1970 (2011). See also Presidency, [Decision Assigning the Situation in the Libyan Arab Jamahiriya to Pre-Trial Chamber I](#), 4 March 2011, ICC-01/11-01/25-1.

² See [Annex II to Corrected version of Transmission of Article 12\(3\) Declaration by the State of Libya, 20 May 2025, ICC-01/11-180-Conf-Exp-Corr](#), ICC-01/11-01/25-6-AnxII-Red. See also confidential Annex I, ICC-01/11-01/25-6-Conf-Anx1 (‘Annex I’).

³ [Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri](#), ICC-01/11-01/25-7. See also [Prosecution’s application under article 58 for a warrant of arrest against Khaled Mohamed Ali El Hishri \(“Khaled AL HISHRI”\)](#), 3 April 2025, ICC-01/11-172-US-Exp (with under seal, *ex parte* Annexes 1-11, only available to the Prosecution) (public redacted version notified on 30 July 2025, ICC-01/11-172-Red; corrected confidential redacted version notified on 31 July 2025, ICC-01/11-172-Conf-Corr) (the ‘Arrest Warrant’).

⁴ [Arrest Warrant](#), paras 4-7.

⁵ [Scheduling order for the first appearance of Mr Khaled Mohamed Ali El Hishri](#), ICC-01/11-01/25-26.

⁶ [Document Containing the Charges](#), 26 March 2026, ICC-01/11-01/25-92, paras 1, 84.

6. On 30 April 2026, the Defence filed a challenge to the jurisdiction of the Court pursuant to article 19 of the Statute (the ‘Challenge’).⁷ It requests that the Chamber find that ‘there is no legal basis for the continuation of the proceedings against Mr El Hishri and order his immediate and unconditional release, with prejudice’.⁸

7. On 18 May 2026, the Defence filed an addendum to the Challenge containing a document concerning the legal status or validity of the Article 12(3) Declaration (the ‘Addendum’ and the ‘Document’, respectively).⁹

8. On 19 May 2026, the hearing on the confirmation of charges began. During the hearing, the Prosecution, the Defence and the Office of Public Council for Victims (the ‘OPCV’) made oral submissions concerning the jurisdiction of the Court in this case.¹⁰

9. On 29 May 2026, the Registry transmitted to the Chamber an additional communication received from Libya in relation to the Article 12(3) Declaration (the ‘Additional Communication’).¹¹

10. On 5 June 2026, the Defence responded to the Additional Communication.¹²

11. On the same day, following an order by the Chamber,¹³ Libya submitted its observations on the Challenge (‘Libya’s Observations’).¹⁴

⁷ [Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute](#), ICC-01/11-01/25-108-Conf-Corr (corrected and public redacted versions filed on 6 May 2026, ICC-01/11-01/25-108-Corr-Red).

⁸ [Challenge](#), para. 102.

⁹ [Addendum to Corrected Version of “Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute” \(ICC-01/11-01/25-108-Conf-Corr\)](#), ICC-01/11-01/25-119-Conf (with confidential Annexes 1 and 2) (public redacted version notified on 2 June 2026, ICC-01/11-01/25-119-Red). The Letter, and an English translation thereof, is contained in confidential Annex 1.

¹⁰ See transcripts of hearings, 19 May 2026, ICC-01/11-01/25-T-004-ENG; 21 May 2026, ICC-01/11-01/25-T-005-ENG.

¹¹ [Transmission of Additional Communication from the State of Libya in relation to the Article 12\(3\) Declaration](#), ICC-01/11-01/25-123. The [Additional Communication](#) is contained in the Annex.

¹² Defence response to “Transmission of Additional Communication from the State of Libya in relation to the Article 12(3) Declaration” (ICC-01/11-01/25-123), ICC-01/11-01/25-128-Conf.

¹³ [Order setting time limits for observations in relation to the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute \(01/11-01/25-108-Conf\)](#), 6 May 2026, ICC-01/11-01/25-116 (the ‘Order’).

¹⁴ See English translation of confidential Annex to [Transmission of Observations from the State of Libya in relation to the Defence’s Challenge to the Jurisdiction of the Court](#), ICC-01/11-01/25-129-Conf-Anx-tENG.

12. On 12 June 2026, the OPCV, the Prosecution and the Defence responded to the Challenge and Libya's Observations, respectively (the 'OPCV Response' and the 'Prosecution Response').¹⁵

13. On the same day, the Prosecution requested access to any correspondence or communication in possession of the Defence, in relation to the Addendum and the Document (the 'Request to Access').¹⁶

14. On 15 June 2026, the Defence responded to the Request to Access.¹⁷

15. On 17 June 2026, the Defence requested the Chamber's leave to reply to the OPCV Response and the Prosecution Response (the 'Request for Leave to Reply').¹⁸

16. On 18 June 2026, the Prosecution responded to the Request for Leave to Reply.¹⁹

17. On the same day, the Chamber rejected the Request for Leave to Reply, with reasons to follow.²⁰

18. On 22 June 2026, the Defence requested the Chamber to assess and, if appropriate, order the Registry to lift certain redactions applied to the confidential redacted version of the Registry's filing by which it conveyed the Article 12(3) Declaration to the Chamber (the 'Request for Reclassification').²¹

¹⁵ [Observations on behalf of Victims on the Defence's Challenge to the Court's Jurisdiction \(No. ICC-01/11-01/25-108-Conf-Corr\)](#), ICC-01/11-01/25-130-Conf (public redacted version notified the same day, ICC-01/11-01/25-130-Red); [Prosecution response to Defence challenge to the Court's jurisdiction](#), ICC-01/11-01/25-132-Conf (public redacted version notified on 23 June 2026, ICC-01/11-01/25-132-Red); Defence response to "Transmission of Observations from the State of Libya in relation to the Defence's Challenge to the Jurisdiction of the Court" (ICC-01/11-01/25-129), ICC-01/11-01/25-133-Conf (the 'Defence Response').

¹⁶ Prosecution's request for correspondence in possession of the Defence, ICC-01/11-01/25-131-Conf.

¹⁷ Defence response to "Prosecution's request for correspondence in possession of the Defence" (ICC-01/11-01/25-131-Conf), ICC-01/11-01/25-135-Conf.

¹⁸ Defence consolidated request for leave to reply to "Observations on behalf of Victims on the Defence's Challenge to the Court's Jurisdiction" (ICC-01/11-01/25-130-Conf) and "Prosecution response to Defence challenge to the Court's jurisdiction" (ICC-01/11-01/25-132-Conf), ICC-01/11-01/25-136-Conf.

¹⁹ Email from the Prosecution, 18 June 2026, at 12:10. *See also* email from the Defence, 18 June 2026, at 14:20.

²⁰ Email from the Chamber, 18 June 2026, at 20:40.

²¹ Defence request for reclassification of ICC-01/11-01/25-6-Conf-Corr-Red, ICC-01/11-01/25-138-Conf. *See also* Confidential redacted version of "Corrected Version of Transmission of Article 12(3) Declaration by the State of Libya, 20 May 2025, ICC-01/11-180-Conf-Exp", 8 August 2025, ICC-01/11-01/25-6-Conf Exp-Corr, 12 June 2026, ICC-01/11-01/25-Conf-Corr-Red, para. 5.

II. Determination

A. The Request to Access

19. In addition to noting its belated submission, for the reasons stated further below (as well as in the concurring separate opinion of Judge Flores Liera), the Chamber considers that the Document is not necessary for its assessment of the Challenge. Therefore, the Request to Access is dismissed *in limine*.

B. The Request for Leave to Reply

20. While noting that the Request for Leave to Reply was filed extemporaneously and contrary to its instructions,²² the Chamber considers that good cause is shown to extend the time limit pursuant to regulation 35(2) of the Regulations of the Court. Nevertheless, the Chamber notes that the issues raised by the Defence could have been anticipated, and considers that it would otherwise not be assisted by any further submissions for its determination of the Challenge. For these reasons, the Request for Leave to Reply is rejected.

C. The Request for Reclassification

21. The Chamber notes that the Defence is already in possession of information that makes the redactions currently applied to the Registry's filing moot.²³ Therefore, the Request for Reclassification is granted.

D. The Challenge

22. Pursuant to article 19(1) of the Statute, the Chamber is unanimously satisfied that the Court has jurisdiction over the case. In particular, Judge Motoc and Judge Alapini-Gansou (the 'Majority') consider that the alleged conduct of Mr El Hishri continues to be covered by Resolution 1970, notwithstanding the fact that, as previously noted, Libya accepted the Court's jurisdiction by means of the Article 12(3) Declaration.²⁴ In their view, it is therefore unnecessary to address the Defence's submissions concerning the alleged invalidity of the Article 12(3) Declaration.²⁵ Judge Flores Liera disagrees with the reasoning of the Majority on the scope of Resolution 1970 and considers that the Article 12(3) Declaration properly confers

²² See [Order](#), para. 4.

²³ See Annex I.

²⁴ [Arrest Warrant](#), paras 4-5. See also [OPCV Response](#), paras 58-59.

²⁵ See [Challenge](#), paras 12-36.

jurisdiction to the Court over the case, and will thus address the Defence's submissions in that regard in her concurring separate opinion. For those reasons, the analysis contained in paragraphs 23 to 42 below reflect the view of the Majority only and not Judge Flores Liera's views.

23. In order to address the arguments raised by the Defence concerning the scope of application of Resolution 1970 and whether the terms of the same cover the conduct alleged by the Prosecution in the DCC, the Majority (i) will first discuss the legal nature of UNSC resolutions, including notably Resolution 1970; (ii) it will then turn to the interpretation of UNSC resolutions, focusing on Resolution 1970 and, in particular, on the role of any relevant subsequent practice as a criterion of interpretation; (iii) then, by reference to the Court's jurisprudence on the 'sufficient link' test, it will examine the nexus between the alleged facts underlying the charged crimes against Mr El Hishri and Resolution 1970; (iv) it will subsequently address the issue of obsolescence of UNSC resolutions; and (v) it will finally address the arguments concerning the principle of legality (*nullum crimen sine lege*).

1. *Legal status and binding nature of UNSC resolutions*

24. In order to properly frame and address the arguments raised in the Challenge, it is important to recall the legal status and binding nature of UNSC resolutions. As stated by the International Court of Justice (the 'ICJ') in the Kosovo Advisory Opinion:

Security Council resolutions are issued by a single, collective body and are drafted through a very different process than that used for the conclusion of a treaty. Security Council resolutions are the product of a voting process as provided for in Article 27 of the Charter, and the final text of such resolutions represents the view of the Security Council as a body. Moreover, Security Council resolutions can be binding on all Member States [...], irrespective of whether they played any part in their formulation.²⁶

25. As noted by the Defence, because all States are equally sovereign, they can only be subjected to international legal obligations to which they have consented.²⁷ In the case of UNSC resolutions issued under Chapter VII of the UN Charter, this consent is given by the State when it ratifies the said instrument and consents to the 'specific but powerful role' of the

²⁶ ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, [Advisory Opinion](#), ICJ Reports 2010, p. 403 (the 'ICJ Kosovo Advisory Opinion'), para. 94. *See also* ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, [Advisory Opinion](#), ICJ Reports 1971, p. 16 (the 'ICJ Namibia Advisory Opinion'), para. 114.

²⁷ [Challenge](#), para. 41

UNSC in determining, under article 39 of the UN Charter, the existence of any threat to the peace, breach of the peace, or act of aggression and deciding what measures shall be taken to maintain and restore international peace and security.²⁸ Under this provision, the UNSC is mandated to pass resolutions with binding force that compel UN member States to take certain actions, and can override a State's sovereign capacity to decide whether to take these actions.²⁹

26. In this regard, the Majority recalls that, under article 25 of the UN Charter, '[t]he Members of the [UN] agree to accept and carry out the decisions of the [UNSC] in accordance with the present [UN Charter]'. It further notes the jurisprudence of the ICJ in the Lockerbie case that the binding nature of UNSC resolutions is reinforced by the relationship between articles 25 and 103 of the UN Charter, which stresses the primacy of UN Member States' obligations under the Charter over any other international agreement.³⁰ The Majority also recalls that article 25 of the UN Charter is not confined to decisions regarding the enforcement actions under Chapter VII of the UN Charter, but applies to 'the decisions of the [UNSC]' adopted in accordance with the UN Charter.³¹ Thus, when the UNSC adopts a decision under article 25 of the UN Charter, it is for Member States to comply with that decision, including those members of the UNSC which voted against it and those members of the UN who are not members of the UNSC.³²

27. Turning to Resolution 1970, the Majority notes that it was issued in clear binding terms. In this regard, it observes that said resolution, *inter alia*,

1. *Demands* an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;
2. *Urges* the Libyan authorities to:
 - (a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;
 - (b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country;

²⁸ [Challenge](#), para. 42

²⁹ See [Challenge](#), para. 42, referring to ICTY, Appeals Chamber, *The Prosecutor v. Dusko Tadic a/k/a "Dule"*, [Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction](#), 2 October 1995, IT-94-1, para. 44.

³⁰ See ICJ, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Provisional Measures, [Order of 14 April 1992](#), ICJ Reports 1992, p. 3, para. 39.

³¹ See [ICJ Namibia Advisory Opinion](#), para. 113.

³² [ICJ Namibia Advisory Opinion](#), para. 116.

(c) Ensure the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers, into the country; and

(d) Immediately lift all restrictions on all forms of media;

[...]

4. *Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;

5. *Decides* that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;³³

28. While the binding nature of Resolution 1970 has not been specifically called into question by the Defence, the Majority notes that the Defence appears to question the validity of Resolution 1970 on the basis of State consent, by claiming that ‘a Resolution must be within the power of the UNSC as delineated in the Charter, and not be *ultra vires*’.³⁴ The Majority notes that the UNSC, acting under Chapter VII of the UN Charter, and in the exercise of its discretionary powers, identified the Situation in Libya and decided to refer it to the Court, setting objective jurisdictional parameters.³⁵ The Majority fails to identify any issues with the validity of Resolution 1970. It further notes that Libya has been engaging with the Court since Resolution 1970 in relation to the various arrest warrants issued to date in the Situation in Libya, and that it is actively participating in these proceedings by submitting its Observations to the Challenge.

2. *Interpretation of UNSC resolutions*

29. The principle judicial authority on the interpretation of UNSC resolutions can be found in an advisory opinion from the ICJ. Indeed, in the Namibia Advisory Opinion, the ICJ stated as follows:

The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under article 25 of the UN Charter, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general,

³³ [Resolution 1970](#).

³⁴ [Challenge](#), paras 43-45, 53.

³⁵ See also [OPCV Response](#), paras 42, 44-46; [Prosecution Response](#), paras 14-15.

all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.³⁶

30. As noted by both the Defence and the Prosecution, while rules on treaty interpretation under the Vienna Convention on the Law of Treaties (the ‘VCLT’) ‘may provide guidance’ in interpreting UNSC resolutions, the ICJ has stressed in the Kosovo Advisory Opinion that the ‘differences between [UNSC] resolutions and treaties mean that the interpretation of [the former] also require that other factors be taken into account’.³⁷ This is due to the ‘very different process’ leading to the drafting of a UNSC resolution, and in particular may require a broader assessment not only of the resolution itself but also relevant statements made by UNSC members at the time of adoption, other resolutions on the same issue, and the subsequent practice of relevant UN organs and affected States.³⁸

31. Turning to the interpretation of Resolution 1970, the Majority recalls the factual basis underlying the UNSC’s decision to refer the Situation in Libya to the Court:

Expressing grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians,

Deploing the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Expressing concern at the plight of refugees forced to flee the violence in the Libyan Arab Jamahiriya,

Expressing concern also at the reports of shortages of medical supplies to treat the wounded,

32. The Majority further recalls that Mr El Hishri has been charged for the alleged commission of war crimes and crimes against humanity against detainees at the ‘Mitiga Prison’ and persons otherwise in the custody or control of the ‘Mitiga Perpetrators’, between 1 May

³⁶ [ICJ Namibia Advisory Opinion](#), para. 114.

³⁷ See [Challenge](#), para. 62 and [Prosecution Response](#), referring to [ICJ Kosovo Advisory Opinion](#), para. 94.

³⁸ [ICJ Kosovo Advisory Opinion](#), para. 94. See also L. van den Herik *et. al.*, ‘[The Design and Interpretation of UN Security Council Sanction Resolutions](#)’, in ILA Study Group, Report December 2019; M. C. Wood, ‘[The Interpretation of Security Council Resolutions](#)’, in Max Planck Yearbook of United Nations Law, 1998.

2014 and 30 June 2020.³⁹ According to the Prosecution, Mr Hishri was allegedly a senior member of, or was otherwise closely associated with, a group which became commonly known as the ‘Special Deterrence Force’ or ‘Rada’ (‘SDF/RADA’).⁴⁰

33. In relation to the above, the Majority notes that the practice of the UNSC and other organs of the UN subsequent to the adoption of the Resolution 1970 demonstrate that the situation of crisis that triggered the resolution has been ongoing ever since. In this regard, several UNSC resolutions have been issued which contain references to Resolution 1970 and address, *inter alia*, the alleged mistreatment of detainees, the continuous threat to peace, stability and security; and the need to disarm armed groups.⁴¹ Similarly, reports of the UN Secretary-General on the United Nations Support Mission in Libya (‘UNSMIL’),⁴² statements by members of the

³⁹ [DCC](#), paras 1, 6.b., 84.

⁴⁰ [DCC](#), para. 2.

⁴¹ See e.g. [Resolution 2238](#), 10 September 2015, S/RES/2238 (2015): ‘*Recalling* its decision in resolution 1970 (2011) to refer the situation in Libya to the Prosecutor of the International Criminal Court (ICC) [...]; *Condemns* cases of torture and mistreatment, and deaths by torture, in detention centres in Libya, calls upon the Libyan government to take all steps necessary to accelerate the judicial process, transfer detainees to State authority and prevent and investigate violations and abuses of human rights, calls for all Libyan parties to cooperate with Libyan government efforts in this regard, calls for the immediate release of all individuals arbitrarily arrested or detained in Libya’; [Resolution 2434](#), 13 September 2018, S/RES/2434 (2018): ‘[...] and further calling on the Libyan authorities to take all steps necessary to investigate violations and abuses, including torture, sexual and gender-based violence, and mistreatment in prisons and detention centres, and to hold those responsible to account’; [Resolution 2486](#), 12 September 2019, S/RES/2486 (2019): ‘*Calling* on the Libyan authorities to take all steps necessary to investigate violations of international human rights law and reports of abuses of human rights, including torture, sexual and gender-based violence, and mistreatment in prisons and detention centres, and to hold those responsible to account’; [Resolution 2701](#), 19 October 2023, S/RES/2701 (2023): ‘*Expressing* serious concern about violent clashes in Tripoli on 14 August 2023 and the overall fragility of the security situation in Libya, and underlining the need for progress on the political and security tracks, including by continuing the efforts of the 5+5 Joint Military Commission towards reunification of the Libyan military and security institutions’; [Resolution 2796](#), 31 October 2025, S/RES/2796 (2025): ‘*Recalling* its resolution 1970 (2011) [...], *Recognising* that the prolonged transitional period in Libya has contributed to political and institutional instability [...], *Underlining* the need to plan for the disarmament, demobilisation and reintegration of armed groups and all relevant non-state armed actors, as part of an integrated, comprehensive and coherent approach to peacebuilding [...], *Recognising* the need to plan for security sector reform as a whole, in line with the strengthening of rule of law in Libya, and the establishment of an inclusive, unified, accountable, civilian-led security architecture for Libya as a whole, and calling on the Libyan authorities to engage and achieve progress on this issue’; [Resolution 2819](#), 14 April 2026, S/RES/2819 (2026) (the ‘Resolution 2819’): ‘*Recalling* the arms embargo, travel ban, assets freeze and measures concerning illicit oil exports which were imposed and modified by resolution 1970 (2011) [...], *Reaffirming* that all parties must comply with their obligations under international humanitarian law and international human rights law, as applicable, and emphasising the importance of holding accountable those responsible for violations or abuses of human rights or violations of international humanitarian law, including those involved in attacks targeting civilians [...], *Determining* that the situation in Libya continues to constitute a threat to international peace and security’.

⁴² See e.g. [Report of the Secretary-General on the United Nations Support Mission in Libya](#) (hereinafter: ‘UNSG Report’), 1 March 2012, S/2012-129, para. 24; [Special report of the Secretary-General on the strategic assessment of the United Nations presence in Libya](#), 13 February 2015, S/2015/113; [UNSG Report](#), 26 February 2015, S/2015/144, para. 58; [UNSG Report](#), 25 February 2016, S/2016/182, paras 27, 43; [UNSG Report](#), 16 May 2016, S/2016/452, para. 40; [UNSG Report](#), 22 August 2017, S/2017/726, para. 32; [UNSG Report](#), 12 February 2018, S/2018/140, paras 15, 17, 42, 46, 53; [UNSG Report](#), 7 May 2018, S/2018/429, paras 11, 18, 39-41; [UNSG Report](#),

UNSC,⁴³ as well as reports and resolutions from the UN Human Rights Council,⁴⁴ contain numerous references to the treatment of persons detained, *inter alia*, at the Mitiga prison, clashes between the SDF/RADA and other actors, and SDF/RADA activities impacting on civilians.

34. Furthermore, the Majority recalls its previous findings in the Libya Situation – and more recently, in the warrant of arrest for Mr Osama Elmasry / Almasri Njeem (‘Mr Njeem’) – that on the basis of the information contained in the reports of the UNSMIL and the Independent Fact-Finding Mission on Libya, submitted by the Prosecution, it is sufficiently shown that a situation of turmoil has been ongoing since Resolution 1970.⁴⁵ It also noted that it is a fact of common knowledge that the Prosecution submits periodical reports to the UNSC on actions taken pursuant to Resolution 1970, and the fact that the Prosecution continues reporting before the UNSC, including on contemporary matters, and no objection to these reports have been

24 August 2018, S/2018/780, paras 32-33, 40, 87; [UNSG Report](#), 7 January 2019, S/2019/19, paras 34-35, 39, 78 (‘I also encourage Libyan authorities to cooperate fully with the International Criminal Court, in accordance with Security Council resolution 1970 (2011), to help bring about justice and accountability for crimes in Libya under international law’); [UNSG Report](#), 15 January 2020, S/2020/41, paras 47, 53, 100; [UNSG Report](#), 19 January 2021, S/2021/62, para. 63; [UNSG Report](#), 8 August 2025, S/2025/509, paras 2, 23, 26, 32, 34; [UNSG Report](#), 5 December 2025, S/2025/792, paras 20, 45, 56.

⁴³ See the [statements](#) made by members of the UNSC at its 9624th meeting, 14 May 2024, S/PV.9624, pp 5, 8-9, 11-12 (Japan: ‘It has been 13 years since the Council referred this case to the International Criminal Court (ICC). The Court has engaged in investigations not only with regard to the 2011 violence, but also on issues with detention facilities, crimes related to the 2014–2020 operations and crimes against migrants, under the mandate pursuant to resolution 1970 (2011)’; Slovenia: ‘We welcome the progress made in the investigations in the latest reporting period, especially in relation to crimes committed in detention facilities and crimes related to the 2014–2020 operations’; France: ‘The most serious crimes committed in Libya since 2011 must all be investigated and prosecuted, including crimes committed by Da’esh and crimes against migrants and refugees. We are concerned about the arbitrary detentions and cases of inhumane detention conditions, including of migrants and refugees. The authorities in charge of the detention centres concerned must allow access to international observers and investigators without delay. [...] There must be no doubt that anyone inciting or committing such crimes today is liable to prosecution’; Republic of Korea: ‘When the Council referred the situation in Libya to the Court in 2011, nobody could have imagined that the Council would continue to receive disturbing reports of evidence pointing to widespread crimes against humanity in the country, even after a decade. [...] more than 3,000 people are currently held in harsh detention centres, with documented grave human rights violations. Reflecting these harsh realities, half of the Prosecutor’s key lines of inquiry into the Libyan situation are devoted to ongoing crimes against humanity, including crimes against migrants and violations in detention facilities. That underscores the continuing relevance of the work of the Office of the Prosecutor in restoring justice in Libya and promoting regional security’).

⁴⁴ See e.g. [Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya](#), Report of the United Nations High Commissioner for Human Rights (hereinafter: ‘HRC Report’), 23 January 2020, A/HRC/43/75, paras 31, 43; Resolution adopted by the Human Rights Council on 23 March 2018, [Technical assistance and capacity-building to improve human rights in Libya](#) (hereinafter: ‘HRC Resolution’), 13 April 2018, A/HRC/RES/37/41, para. 21; [HRC Report](#), 21 February 2018, A/HRC/37/46, paras 8, 34, 38, 62, 65; [HRC Report](#), 13 January 2017, A/HRC/34/42, para. 68; [HRC Resolution](#), 7 April 2015, A/HRC/RES/28/30, para. 9; [HRC Report](#), 12 January 2015, A/HRC/28/51, paras 7, 43.

⁴⁵ [Corrected version of the ‘Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem’ dated 18 January 2025 \(ICC-01/11-149-US-Exp\), including Dissenting Opinion of Judge Socorro Flores Liera](#), ICC-01/11-152-Anx (corrected version notified on 24 January 2025) (the ‘Njeem Arrest Warrant’), para. 6.

raised, is another indication of the ongoing jurisdiction of the Court over alleged crimes committed in the context of the ongoing crisis in Libya.⁴⁶ In this regard, the Majority observes that in its latest report to the UNSC, the Prosecution informed on its progress in its investigation in the Situation in Libya, including in the present case against Mr El Hishri.⁴⁷

35. On this point, the Majority does not consider, contrary to the Defence, that the practice of other organs of the UN and the UN Secretary-General in investigating and reporting on alleged crimes committed in Libya ‘has no relevance’ to the question of the Court’s jurisdiction.⁴⁸ It is also not persuaded by the Defence’s submissions concerning the subsequent practice of the UNSC and whether it can be relied upon to assess the scope of Resolution 1970.⁴⁹ Rather, the Majority is of the view that these numerous statements, reports and resolutions constitute yet another indication supporting the finding that the alleged crimes, whilst other than those specifically committed in the context of the fall of the regime of Muammar Mohammed Abu Minyar Gaddafi (‘the Gaddafi regime’), are sufficiently linked to the existence of the situation of crisis that triggered Resolution 1970.⁵⁰

3. The sufficient link between the case against Mr El Hishri and Resolution 1970

36. By reference to the jurisprudence of this Court, the Defence submits that the crimes for which Mr El Hishri is allegedly responsible are not sufficiently linked to the ‘situation of crisis’ that triggered the jurisdiction of the Court through Resolution 1970, which in its view ‘relates solely to the oppression of the Libyan people by the Gaddafi regime and the armed violence between the Gaddafi regime and Libyan revolutionaries that this oppression sparked’. The Defence further argues that the crimes alleged against Mr El Hishri relate to a group that was established after the fall of the Gaddafi regime and whose goals had no connection to the struggle against the Gaddafi regime, which were rather related to domestic criminal enforcement, particularly of drug and terrorism crimes, and personal enrichment and power.⁵¹

37. The Majority recalls that the Chamber, in a previous composition, has found that ‘for the case at hand not to exceed the parameters defining the [...] situation under investigation, the

⁴⁶ [Njeem Arrest Warrant](#), para. 10.

⁴⁷ See [Thirty-First Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 \(2011\)](#), 22 May 2026, paras 26-48.

⁴⁸ [Challenge](#), para. 69.

⁴⁹ [Challenge](#), paras 67-68.

⁵⁰ See also [Prosecution Response](#), paras 33-35.

⁵¹ [Challenge](#), paras 61, 83.

crimes referred to in the Prosecutor's Application must have occurred in the context of the ongoing situation of crisis that triggered the jurisdiction of the Court through the [...] referral'.⁵² It has also been noted that a situation 'can include not only crimes that had already been or were being committed at the time of the referral, but also crimes committed after that time, in so far as they are sufficiently linked to the situation of crisis referred to the Court as ongoing at the time of the referral'.⁵³

38. The Majority further recalls that this Chamber has already had the opportunity to discuss the jurisdictional parameters in the Libya Situation. In particular, it found that there has been an ongoing situation of crisis in Libya since 2011, that it is a fact of common knowledge that violence erupted in Libya in February 2011 in the context of an uprising against the Gaddafi regime and that, after its fall, the fighting and civil unrest continued in Libya.⁵⁴ The Majority also noted that the violence between the organisation referred to by the Prosecution as the 'Libyan National Army' – an armed group previously referred to as Khalifa Haftar's Libyan national – and the 'Government of National Accord' (the 'GNA') – previously known as the General National Congress – 'amplified the existing proxy conflict that took shape after 2011'.⁵⁵

39. The Majority further recalls its previous findings that the SDF/RADA emerged as a result of the 2011 crisis that triggered Resolution 1970, and the aftermath of the crisis. It noted *inter alia* that the group originated as a revolutionary military group from the Tripoli district of Souk al Juma that was fighting Gaddafi forces, that it was affiliated to the GNA, that in 2016 the GNA recognised SDF/RADA, that in October 2017 the GNA recognised the Mitiga Prison as

⁵² Pre-Trial Chamber I (different composition), *The Prosecutor v. Callixte Mbarushimana*, [Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana](#), 28 September 2010, ICC-01/04-01/10-1 (the 'Mbarushimana Arrest Warrant'), para. 6.

⁵³ [Mbarushimana Arrest Warrant](#), para. 6. See also Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, [Decision on the 'Defence Challenge to the Jurisdiction of the Court'](#), 26 October 2011, ICC 01/04-01/10-451, para. 41; Pre-Trial Chamber II, *The Prosecutor v. Sylvestre Mudacumura*, [Decision on the Prosecutor's Application under Article 58](#), 13 July 2012, ICC-01/04-01/12-1-Red, para. 14; Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Decision on the Defence 'Exception d'incompétence' \(ICC-02/05-01/20-302\)](#), 17 May 2021, ICC-02/05-01/20-391, para. 25.

⁵⁴ This finding has also been consistently held by a majority of the Chamber under another composition. See [Warrant of Arrest for Abdurahem Khalefa Abdurahem Elshgagi \('Abdurahem Al Kani'\)](#), 6 April 2023, ICC-01/11-141-Anx1, para. 7; [Warrant of Arrest for Makhlof Makhlof Arhoumah Doumah \('Makhlof Douma'\)](#), 6 April 2023, ICC-01/11-141-Anx2, para. 7; [Warrant of Arrest for Nasser Muhammad Muftah Daou \('Nasser Al Lahsa'\)](#), 6 April 2023, ICC-01/11-141-Anx3, para. 7; [Warrant of Arrest for Mohamed Mohamed Al Salheen Salmi \('Mohamed Salheen'\)](#), 6 April 2023, ICC-01/11-141-Anx4, para. 7; [Warrant of Arrest for Abdelbari Ayyad Ramadan Al Shagaqi \('Al Shagaqi'\)](#), 18 July 2023, ICC-01/11-141-Anx5, para. 7; [Warrant of Arrest for Fathi Faraj Mohamed Salim Al Zinkal \('Al Zinkal'\)](#), 18 July 2023, ICC-01/11-141-Anx6, para. 7.

⁵⁵ [Njeem Arrest Warrant](#), para. 5. See also [DCC](#), paras 19-22.

the Tripoli Main Correction and Rehabilitation Institution, and that in May 2018 it was formally renamed the Deterrence Apparatus for Combating Organised Crime and Terrorism, under the Ministry of Interior.⁵⁶ The Majority also found that at least some of the persons held at the Mitiga Prison were detained for reasons related to the fighting or tensions between different groups involved in the ongoing situation of crisis in Libya, which ‘further illustrates a link between the crimes alleged by the Prosecution and the situation that triggered the jurisdiction of the Court’.⁵⁷

40. The Majority considers that its previous findings equally apply in the present instance, given that Mr El Hishri is alleged to have acted with, *inter alia*, Mr Njeem and other members of the leadership of SDF/RADA in the commission of the alleged crimes at the Mitiga Prison.⁵⁸ In addition, the Majority takes note of the Defence’s submissions on the apparently inconsistent nature of the evidence cited by the Prosecution concerning the potential connections between groups that existed and were active during the 2011 revolution against the Gaddafi regime and the group that Mr El Hishri is allegedly tied to between 2014 and 2020.⁵⁹ However, the Majority considers that any issue pertaining to the probative value of the Prosecution’s evidence underpinning the charges ought to be addressed, if necessary, in the context of the Chamber’s decision on the confirmation of charges. Indeed, whether the allegations underpinning the charges as presented by the Prosecution are established to the required threshold is not, and cannot be, the subject of this decision. For present purposes, as reasoned in this decision, the Majority is satisfied that the crimes allegedly committed by Mr El Hishri as per the case put forward by the Prosecution fall within the scope of Resolution 1970.

4. *Obsolescence or lapsing of a UNSC resolution*

41. The Majority also notes the Defence’s submissions, *inter alia*, that a broad, open-ended referral with no detailed factual specification on the situation referred essentially places any affected State that is a non-State Party to the Court in the same jurisdictional position as a State Party with none of the powers of a State Party. It argues that without the ability to terminate its acceptance of the Court’s jurisdiction by withdrawing from the Court, the targeted State is in

⁵⁶ [Njeem Arrest Warrant](#), paras 7-9.

⁵⁷ [Njeem Arrest Warrant](#), para. 9.

⁵⁸ See [DCC](#), paras 3-5. See also [OPCV Response](#), paras 49-50.

⁵⁹ See [Challenge](#), paras 73-80. See also [Prosecution Response](#), paras 26-31.

effect subject to the permanent jurisdiction of the Court, leaving them in a position of inequality vis-à-vis States Parties.⁶⁰

42. The Majority considers the Defence's contention that Libya would be placed under the 'perpetual' jurisdiction of the Court to be misplaced. First, the Majority notes the jurisprudence of the ICJ that certain UNSC resolutions may have a temporary effect, and that in principle a UNSC resolution remains in force unless repelled or amended by the UNSC or by virtue of a clause providing for its termination in the resolution itself.⁶¹ In the Majority's view, the practice of the UNSC subsequent to the adoption of Resolution 1970, as recalled above, confirms that the resolution remains in full force. Indeed, as early as April 2026, the UNSC passed resolution 2819, *inter alia* '[d]etermining that the situation in Libya continues to constitute a threat to international peace and security', and specifically referring to Resolution 1970.⁶² Second, the Majority recalls that the scope of a situation is defined by objective parameters which are discerned from the referral.⁶³ As such, there is simply no risk of 'perpetual jurisdiction'.⁶⁴ The Chamber must determine whether *the present case* falls within the scope of Resolution 1970. As indicated above, the Majority is satisfied that there is a sufficient link between the alleged crimes committed by Mr El Hishri and the situation of crisis that triggered Resolution 1970. The question of whether the Court would continue to have jurisdiction over other potential cases in Libya on the basis of Resolution 1970 will depend on the specific facts and circumstances of each case.⁶⁵

⁶⁰ [Challenge](#), paras 43, 46, 52-53.

⁶¹ See [ICJ Kosovo Advisory Opinion](#), paras 91, 99-100.

⁶² [Resolution 2819](#).

⁶³ See e.g. Appeals Chamber, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Judgment on the appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' \(ICC-02/05-01/20-302\)"](#), 1 November 2021, ICC-02/05-01/20-503 (OA8) (the '*Abd-Al-Rahman Appeals Judgment*'), para. 26; Pre-Trial Chamber I (different composition), *Situation in the Democratic Republic of Congo*, [Decision on the Applications for Participation in the Proceedings of VRPS 1, VRPS 2, VRPS 3, VRPS 4, VRPS 5 and VRPS 6](#), 17 January 2006, ICC-01/04-101-tEN-Corr, para. 65; Pre-Trial Chamber I (different composition), *Situation in Georgia*, [Decision on the Prosecutor's request for authorization of an investigation](#), 27 January 2026, ICC-01/15-12, para. 64; Appeals Chamber, *Situation in the Republic of The Philippines*, [Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation"](#), 18 July 2023, ICC-01/21-77 (OA), para. 107; Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, [Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute"](#), 1 March 2024, ICC-02/18-89 (OA), para. 228.

⁶⁴ See [Prosecution Response](#), para. 15.

⁶⁵ See also [OPCV Response](#), para. 28; [Prosecution Response](#), paras 19-20.

5. *The principle of legality*

43. The Chamber⁶⁶ notes the Defence's submission that only by interpreting Resolution 1970 in a narrow and non-expansive way can the Chamber determine whether it was reasonably foreseeable for Mr El Hishri that his conduct could come within the Court's jurisdiction.⁶⁷ The Chamber also observes that the Defence relies on the principle of legality as a standalone basis, 'regardless of the interpretation of Resolution 1970', to show that 'in the absence of foreseeability and accessibility of the criminal law instrumentalised by the Prosecution' against Mr El Hishri, the Court has no jurisdiction.⁶⁸ In particular, the Defence argues that Mr El Hishri could not have reasonably foreseen his prosecution (i) for the alleged commission of the crimes against humanity and war crimes of other inhumane acts and other forms of sexual violence;⁶⁹ and (ii) as a (indirect) co-perpetrator.⁷⁰

44. For the reasons that follow, the Chamber does not consider that the terms of Resolution 1970 or its application in the present case raise any issue with regard with to the principle of legality. Further to the Appeals Chamber's jurisprudence on this point, the Court may exercise its jurisdiction only over an individual who could have reasonably expected to face prosecution under national or international law.⁷¹ With regard to conduct that takes place on the territory of a State that is not a Party to the Statute, the Appeals Chamber determined that it is not enough that the crimes charged can be found in the text of the Statute; a chamber must look beyond the Statute to the criminal laws applicable to the suspect or accused at the time the conduct took place and satisfy itself that a reasonable person could have expected, at that moment in time, to find him or herself faced with the crimes charged.⁷²

45. Turning to the arguments raised by the Defence, the Chamber notes that the Defence appears to conflate the foreseeability of criminal liability with the foreseeability of prosecution

⁶⁶ Without prejudice to her views expressed in her concurring opinion regarding Resolution 1970 and the basis of the Court's jurisdiction in this case, Judge Flores Liera joins the Majority in this section concerning the application of the principle of legality.

⁶⁷ [Challenge](#), para. 60.

⁶⁸ [Challenge](#), paras 40, 85.

⁶⁹ [Challenge](#), paras 86-87.

⁷⁰ [Challenge](#), paras 90-97.

⁷¹ [Abd-Al-Rahman Appeals Judgment](#), para. 85. The Appeals Chamber noted that courts place particular emphasis on the concepts of 'foreseeability' and 'accessibility', namely that (i) a standard of 'reasonableness' is used in assessing the foreseeability of prosecution, taking into account factors such as the 'flagrantly unlawful nature' of the crimes charged and the circumstances of the accused; and (ii) the relevant laws must have been ascertainable, in the sense that the laws were sufficiently clear and accessible to the accused.

⁷² [Abd-Al-Rahman Appeals Judgment](#), para. 86.

before a specific forum. In this regard, the Chamber considers that the issue at stake is not whether Resolution 1970 is sufficiently ‘precise’ or must be read narrowly enough so as to allow Mr El Hishri to reasonably foresee that the Court would exercise a proper jurisdictional basis for the prosecution of his alleged conduct, but rather whether Mr El Hishri could reasonably foresee that his alleged conduct was criminal.⁷³

46. The Chamber recalls that Mr El Hishri is charged under article 25(3)(a) and/or (b), (c) and/or (d) of the Statute for the alleged commission of the following war crimes and crimes against humanity: imprisonment or other severe deprivation of physical liberty, outrages upon personal dignity, cruel treatment, torture, other inhumane acts, rape, sexual violence, murder and attempted murder, enslavement, and persecution.⁷⁴

47. First, as the Appeals Chamber noted, in principle, the crimes under the Statute were intended to be generally representative of the state of customary international law when the Statute was drafted, which heavily weighs in favour of the foreseeability of facing prosecution for crimes within the jurisdiction of the Court, even in relation to conduct occurring in a State not party to the Statute.⁷⁵ Furthermore, even though Libya is not a State Party, the Chamber considers that the Statute, as a public document that is generally reflective of customary international law, makes the law sufficiently clear and accessible to Mr El Hishri. It further notes, as stated by the Prosecution, that it is well established in international law that a person could be held responsible for the commission of crimes as a perpetrator individually or jointly with others.⁷⁶

48. Second, the Chamber observes that, by 2014 and as noted by the Prosecution, Libya was a party to several international instruments defining the prohibited conduct under international humanitarian law as well as other severe violations under international human rights law, including the four Geneva Conventions, the International Covenant on Civil and Political

⁷³ See also [OPCV Response](#), paras 33-34, 52; [Prosecution Response](#), paras 37-39.

⁷⁴ [DCC](#), para. 84.

⁷⁵ [Abd-Al-Rahman Appeals Judgment](#), para. 89. See also [Resolution 1970](#): ‘Deplores the gross and systematic violation of human rights [...], Welcoming the condemnation [...] of the serious violations of human rights and international humanitarian law that are being committed in [Libya], [...] Considering that the widespread and systematic attacks currently taking place in [Libya] against the civilian population may amount to crimes against humanity’); [Prosecution Response](#), paras 45, 48-49.

⁷⁶ See [Prosecution Response](#), para. 54, referring to ICTY, Appeals Chamber, *The Prosecutor v. Dusko Tadic*, Judgement, 15 July 1999, IT-94-1-A, paras 190 *et seq.*

Rights; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷⁷

49. Third, the Chamber recalls (i) the Prosecution's allegations concerning the nature and extent of the alleged crimes committed against detainees in Mitiga Prison;⁷⁸ (ii) that the crime against humanity of other inhumane acts is defined under article 7(1)(k) of the Statute as acts of a *similar character* intentionally causing *great suffering, or serious injury to body or to mental or physical health*; and (iii) that under article 7(1)(g) of the Statute, 'any other form of sexual violence' is 'of comparable gravity' to '[r]ape, sexual slavery, enforced prostitution, forced pregnancy [and] enforced sterilization'. In the Chamber's view, even absent 'expert knowledge',⁷⁹ the flagrantly unlawful nature of the alleged material conduct or acts themselves constitutes yet another factor that weighs in favour of the reasonableness of the foreseeability of criminal prosecution.⁸⁰ As indicated above, the crimes of other inhumane acts and other forms of sexual violence were ascertainable at the relevant time under the applicable law. For the same reasons, the Chamber considers that the Defence's allegation that Mr El Hishri had no formal military service or training in international humanitarian law⁸¹ is not a determinative factor to take into account in this instance.⁸²

50. Fourth, while cognisant of the Appeals Chamber's holding that it is not enough that the crimes charged can be found in the text of the Statute to satisfy the foreseeability test, the Chamber notes the Defence's own acceptance that 'UNSC referrals are public documents that can put all nationals of the affected State on notice that the [Statute] now applies to any Article 5 crimes committed within the context of the referred situation'.⁸³ In this regard, it observes that the alleged conduct of Mr El Hishri occurred years after Resolution 1970 was issued.

51. Lastly, the Chamber notes that both the Defence and the Prosecution refer to provisions of domestic Libyan law to argue either in favour or against the proposition that the charged

⁷⁷ See [Prosecution Response](#), para. 47, n. 108.

⁷⁸ [Arrest Warrant](#), paras 29-30, 35, 37, 43-44, 48, 59-60. See also [DCC](#), paras 26-38.

⁷⁹ See [Challenge](#), para. 87.

⁸⁰ See [Abd-Al-Rahman Appeals Judgment](#), para. 85. See also [Prosecution Response](#), para. 49; [OPCV Response](#), para. 35.

⁸¹ The Chamber further notes that, in the document containing the charges, the Prosecution alleges that '[a]t all material times, [Mr El Hishri] was a senior member of or was otherwise closely associated with a group which became commonly known as the 'Special Deterrence Force' or 'RADA''. See [DCC](#), para. 2.

⁸² See [Challenge](#), paras 88-89.

⁸³ See [Challenge](#), para. 58. See also [Prosecution Response](#), paras 42-43; [OPCV Response](#), paras 37-39.

crimes and modes of liability attributed to Mr El Hishri are also covered therein.⁸⁴ However, the Chamber does not find itself in a position to rule on the interpretation and application of Libyan law.

52. In light of the above, the Chamber considers that it was reasonable for Mr El Hishri to foresee the criminality of his alleged conduct and prosecution.

FOR THESE REASONS, THE CHAMBER HEREBY

DISMISSES *in limine* the Request to Access;

REJECTS the Request for Leave to Reply;

GRANTS the Request for Reclassification;

REJECTS the Challenge;

INSTRUCTS the Registry to reclassify filing ICC-01/11-01/25-128-Conf to public;

INSTRUCTS the Registry to reclassify filing ICC-01/11-01/25-6-Conf-Exp-Corr to confidential;

INSTRUCTS the Registry to reclassify to public or file a public redacted version of Libya's Observations, upon consultation with the relevant Libyan authorities; and

INSTRUCTS the Prosecution and the Defence to file public redacted versions of all respective filings that are currently classified as confidential, or to indicate that they can be reclassified as public, within one week of notification of this decision.

⁸⁴ See [Challenge](#), paras 86, 90-91, 93, *in particular*, nn. 173, 176; [Prosecution Response](#), paras 47, 50, 54, *in particular*, nn. 108, 110.

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 15 July 2026

At The Hague, The Netherlands