

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No. ICC-01/11-01/25*

**Date: 29 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**

***IN THE CASE OF THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI***

**PUBLIC**

**Public Redacted Version of “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)**

**Source: Defence for Mr Khaled Mohamed Ali El Hishri**

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the  
Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants  
(Participation/Reparation)

☒ The Office of Public Counsel for  
Victims

☐ The Office of Public Counsel for the  
Defence

☒ States' Representatives

☐ Amicus Curiae

## REGISTRY

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**Registrar**

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☒ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations

☐ Other

Section

## I. INTRODUCTION

1. In accordance with the *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*,<sup>1</sup> the Defence for Mr Khaled Mohamed Ali El Hishri ("Defence") responds to the *Observations from the State of Libya in relation to the Defence's Challenge to the Jurisdiction of the Court* ("Observations").<sup>2</sup>

## II. PROCEDURAL HISTORY

2. On 26 February 2011, the United Nations Security Council ("UNSC"), acting under Chapter VII of the Charter of the United Nations, referred the situation in Libya since 15 February 2011 to the Court, in accordance with Article 13(b) of the Statute.<sup>3</sup>

3. On 3 April 2025, the Prosecution, under seal and *ex parte*, applied for a warrant of arrest for Mr El Hishri for crimes against humanity and war crimes allegedly committed in Libya from around February 2015 to, at least, early 2020.<sup>4</sup>

4. On 12 May 2025, Libyan Prime Minister Abdulhamid Aldabaiba purported to convey to the Registrar of the Court his acceptance of the Court's jurisdiction over its territory from 2011 to the end of 2027 ("Purported Article 12(3) Declaration").<sup>5</sup>

5. On 10 July 2025, Pre-Trial Chamber I ("PTC I") issued the warrant of arrest against Mr El Hishri.<sup>6</sup>

6. On 16 July 2025, Mr El Hishri was arrested in the Federal Republic of Germany pursuant to the warrant of arrest.

7. On 1 December 2025, Mr El Hishri was surrendered to the Court and arrived at the Court's Detention Centre that same day.

8. On 30 April 2026, the Defence submitted the *Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute* ("Jurisdiction

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<sup>1</sup> ICC-01/11-01/25-116

<sup>2</sup> ICC-01/11-01/25-129-Conf-Anx

<sup>3</sup> United Nations Security Council, Resolution 1970, para. 4, 26 February 2011, S/RES/1970 (2011) ("Resolution 1970")

<sup>4</sup> ICC-01/11-172-US-Exp

<sup>5</sup> ICC-01/11-01/25-6-Corr-Red

<sup>6</sup> ICC-01/11-188-US-Exp, 10 July 2025; ICC-01/11-188-US-Exp-tARB

Challenge”).<sup>7</sup>

9. On 6 May 2026, PTC I issued the *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*, in which it “invite[d] Libya to submit observations, if any, to the [Jurisdiction] Challenge by 5 June 2026” and gave the Parties and participants until 12 June 2026 to file any responses to any Observations filed by Libya.<sup>8</sup>

10. On 18 May 2026, the Defence filed its *Addendum to the Corrected Version of the “Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute* (“Addendum”)<sup>9</sup> through which it placed on the record a letter that it received from the Office of the President of the Libyan Presidential Council (“Presidential Council Letter”) challenging the legal status of the Purported Article 12(3) Declaration.<sup>10</sup>

11. On 4 June 2026 at 12:55 hours, the State of Libya received the Addendum and the accompanying Presidential Council Letter.<sup>11</sup>

12. On 5 June 2026, the Registry transmitted the Observations authored by the Ambassador of Libya to The Netherlands (“the Ambassador”)<sup>12</sup>

### III. CLASSIFICATION

13. This response is classified as confidential pursuant to Regulation 23bis(2) of the Regulations of the Court because it is responsive to a document filed with the same classification. A public redacted version will be filed shortly thereafter.

### IV. SUBMISSIONS

#### *A. The Purported Article 12(3) Declaration was not signed by an appropriate authority*

14. The Defence takes this opportunity to comment on the confidential, unredacted version of the Purported Article 12(3) Declaration that was first made available to it on 10 June 2026. Unlike

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<sup>7</sup> ICC-01/11-01/25-108-Conf-Cor

<sup>8</sup> ICC-01/11-01/25-116

<sup>9</sup> ICC-01/11-01/25-119-Conf

<sup>10</sup> ICC-01/11-01/25-119-Conf-AnxI

<sup>11</sup> Email Order from the Pre-Trial Chamber, Order relating to the Defence query as to the 'Timeline for Response to Libya's Observations on the Challenge to the Jurisdiction of the Court', 11 June 2026

<sup>12</sup> ICC-01/11-01/25-129

the public redacted version to which the Defence had access until that date, this version of the Purported Article 12(3) Declaration is signed, dated, and stamped. However, it is not signed by the Prime Minister, but by the Ambassador of Libya to The Netherlands. This lack of signature by the Prime Minister raises ever more questions about the validity of the Purported Article 12(3) Declaration.

15. Before delving into the issues with the Ambassador's authority to sign the Purported Article 12(3) Declaration, the Defence underscores that, even if the Purported Article 12(3) Declaration were signed by the Prime Minister, it would still be an *ultra vires* act by an official without the authority to conclude such a treaty or international agreement conferring treaty-like obligations upon the State of Libya. As detailed in paragraphs 17-24 of the Jurisdiction Challenge and reiterated further in paragraph 22 below, the Prime Minister does not have the power under Libyan law to conclude treaties or international agreements that confer treaty-like obligations.

16. In terms of the Ambassador's role in concluding treaties and agreements, under the Vienna Convention on the Law of Treaties ("VCLT"), international treaties and agreements that create treaty-like obligations for a State may only be entered into by officials possessing full powers to conclude such treaties.<sup>13</sup> "Heads of diplomatic missions" such as ambassadors are only assumed to have full powers when it comes to treaties concluded with the "State to which they are accredited".<sup>14</sup> In the case of the Libyan Ambassador to The Netherlands, he is only assumed to have full powers for treaties with the State of The Netherlands, not the International Criminal Court. For the Ambassador to be able to validly conclude, even on a *prima facie* basis, an agreement with the ICC that creates international obligations for Libya, such as an Article 12(3) Declaration, he would need to "produce full powers", that is, "a document emanating from the competent authority of a State designating a person or persons to represent the State."<sup>15</sup>

17. The [REDACTED] from the Prime Minister<sup>16</sup> to [REDACTED] is not such a Full Powers document. [REDACTED] In any event, the Prime Minister is not the competent authority to designate such a person to represent the State as he himself did not have the power to conclude such a treaty/declaration. The Prime Minister cannot delegate a power that he never had himself.

18. Additionally, [REDACTED]. Therefore, it is unclear whether it was even drafted before the

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<sup>13</sup> VCLT, art. 7

<sup>14</sup> *Ibid.*, art. 7(2)(b)

<sup>15</sup> *Ibid.*, art. 2(1)(c)

<sup>16</sup> [REDACTED]

Purported Article 12(3) Declaration was transmitted or if it is an attempt to retroactively give authorisation for an act that was not previously authorised. Additionally, it cannot even be established that Mr Aldabaiba was Prime Minister or Acting Foreign Minister at the time the Letter of Authorisation was drafted. The lack of a stamp creates further doubt on Mr Aldabaiba's official capacity at the time of the drafting of the Letter of Authorisation. The lack of these prerequisite legal elements is particularly highlighted by the fact that the Letter transmitted on 21 May 2026 is dated, stamped, and contains a reference number.<sup>17</sup>

19. It may be argued that the Ambassador's signature was added on the Prime Minister's behalf and not in the Ambassador's capacity as Libya's Ambassador to The Netherlands. This argument can be rebutted by two points: 1) the Prime Minister did not have the authority in the first place to make the Article 12(3) Declaration; and 2) under Libyan law, the Ambassador must have clearly stated below his signature that he was signing "on behalf of" the Prime Minister.

20. Libyan law establishes that an official document derives its legal force from the signature affixed to it. A signature issued by a public official must be accompanied by the representative capacity in which it is given, as well as the date on which it was issued. This is necessary in order to determine whether the signed official document has any legal impact.

21. In the present case, the official document issued by the Libyan Embassy in the Netherlands, on its official letterhead, bears the signature of the Libyan Ambassador to the Netherlands, Mr Zeiad Saleh Daghim, issued solely in his capacity as Ambassador — without the Ambassador's signature being given in the capacity of a person duly authorised by the Prime Minister and Acting Foreign Minister. Accordingly, the signature on the Purported Article 12(3) Declaration is attributed to the Ambassador in his capacity as Libya's Ambassador to the Netherlands only, and not in his capacity as a commissioned and authorised signatory acting on behalf of the Libyan Prime Minister and Acting Foreign Minister. As per Article 700 of the Libyan Civil Code, the Ambassador therefore lacks the status of an authorised delegate.<sup>18</sup>

22. The general principle of Libyan law is that a declaration of acceptance document must be signed by the person who holds the original and primary right to sign. However, by way of exception to this general rule, where a document is signed by a person who does not hold the

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<sup>17</sup> ICC-01/11-01/25-123-Anx

<sup>18</sup> In Libyan law, the civil code applies equally to government documents as there is no separate code for government documents.

requisite authority to sign, that person must sign on behalf of the competent principal authority — and not by way of a personal signature.<sup>19</sup> What is of legal significance is the capacity in which the signature was given, and not the content of the opening paragraph of the letter.

23. The recently-received confidential version of the Purported Article 12(3) Declaration also raises the question of why the Ambassador’s signature and the date and stamp were redacted from the public redacted version and not shown to the Defence until 10 June 2026. The Defence submits that, if these redactions were made at the request of the Ambassador or the Prime Minister, they would tend to indicate a recognition on the part of these officials of the invalidity of the Ambassador’s signature, and an attempt to maintain the opacity of the matter.

*B. The Observations do not answer the Jurisdiction Challenge*

24. At the outset, the Defence reiterates the entirety of its submissions in its Jurisdiction Challenge.<sup>20</sup> In particular, the Defence reiterates that under the Libyan Constitution, the Prime Minister and the Council of Ministers (or Cabinet) have no role in the making of international agreements.<sup>21</sup> Instead, Article 22 of the Libyan Constitution grants the President of the Presidential Council the exclusive “authority to conclude treaties and agreements”.<sup>22</sup> Additionally, Article 16 of the Constitution provides that such international treaties and agreements must be ratified by the National Assembly – of which the only currently-existing body is the House of Representatives.

25. The Observations do not answer the Jurisdiction Challenge adequately, or at all. In the Observations, the Ambassador makes a bare, unsupported assertion that: “Under the laws and legislations in force in the State of Libya, the Cabinet has the authority to make a declaration pursuant to article 12 (3) of the Rome Statute”.<sup>23</sup> However, he does not identify the provisions of any “laws and legislations” that might support his position, or indeed to any “laws and legislation” at all. He offers no legal basis or any developed argument for his statement. This was the Prime Minister’s opportunity to address the Defence’s fully articulated submissions about the relevant provisions of Libyan constitutional law and the *ultra vires* nature of the Purported Article 12(3) Declaration. The Observations’ relative silence and wholly inadequate response

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<sup>19</sup> Libyan Civil Code, art. 700.

<sup>20</sup> ICC-01/11-01/25-108-Conf-Cor

<sup>21</sup> ICC-01/11-01/25-108-Conf-Corr, paras. 17-24

<sup>22</sup> LBY-D37-0000-0003 (unofficial English translation LBY-D37-0000-0026)

<sup>23</sup> *Ibid.*

speaks volumes. No adequate answer or explanation is provided because there is, in reality, no answer or explanation to give.

26. Contrary to the statement made in the Observations, both Libyan government bodies with constitutional roles in the conclusion of international agreements have formally expressed their objection to the attempt to accept the jurisdiction of the Court under Article 12(3). Six days after the transmission of the Purported Article 12(3) Declaration, the full House of Representatives wrote a letter to the ICC's Office of the Prosecutor stating that the Prime Minister did not have the power to make the Declaration.<sup>24</sup> The day before that, the Judicial and National Reconciliation Committee of the House of Representatives wrote an open letter that also contested the Prime Minister's authority.<sup>25</sup>

27. Additionally, the Defence submits that the Presidential Council Letter clearly constitutes a formal objection to the Prime Minister's misuse of his powers to produce and cause to be transmitted the Purported Article 12(3) Declaration. The authors of the Observations were in possession of this Letter at the time of the submission of their Observations, as noted by the Pre-Trial Chamber in their email to the Parties and OPCV of 11 June 2026.<sup>26</sup> The authors had the opportunity to refer to the Letter in their Observations and advance reasoned submissions about the particulars in which the Presidential Council is wrong, and why. They did not. The Letter was sent by the Director of the Office of the President of the Presidential Council in his official capacity to Defence Counsel for Mr El Hishri in *his* official capacity. The letter plainly states that: [REDACTED]<sup>27</sup>

28. While the document fails to address the Addendum, the majority of the letter does address at length the Ambassador's delegated powers and the procedural history that seeks to establish that the Libyan Embassy has an inherent mandate to transmit correspondence and official documents on behalf of the competent authorities in Libya. The Defence has never, and would never, dispute the competence of the Ambassador in such matters. The Defence argues that this matter is in no way relevant to the points made in the Jurisdiction Challenge regarding the Prime Minister's authority to issue the Purported Article 12(3) Declaration to begin with. The Defence submits

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<sup>24</sup> LBY-D37-0000-0001 (unofficial English translation LBY-D37-0000-0024). See ICC-01/11-01/25-108-Conf-Corr, para. 21.

<sup>25</sup> LBY-D37-0000-0021 (unofficial English translation LBY-D37-0000-0044). See ICC-01/11-01/25-108-Conf-Corr, para. 22.

<sup>26</sup> Email Order from the Pre-Trial Chamber, Order relating to the Defence query as to the 'Timeline for Response to Libya's Observations on the Challenge to the Jurisdiction of the Court', 11 June 2026 at 12:42 time

<sup>27</sup> *Ibid.*

that this point inapposite and does not provide any legal basis for the Prime Minister's authority nor the validity of the Purported Article 12(3) Declaration.

## V. CONCLUSION

29. Accordingly, the Defence respectfully submits that the Chamber should find that the Purported Article 12(3) Declaration does not constitute a valid declaration under Article 12(3) of the Rome Statute, given its manifest violation of rules of domestic Libyan law of fundamental importance. Additionally, the Defence reiterates its submissions in its Jurisdiction Challenge that the case against Mr El Hishri does not fall within the UNSC's referral of the Situation in Libya to the Court in Resolution 1970 (2011). Therefore, there is no valid basis for the exercise of the Court's jurisdiction over the crimes alleged against Mr El Hishri and no legal basis for the continuation of the proceedings against him.

30. The Defence, therefore, respectfully reiterates its request to the Pre-Trial Chamber to order his immediate and unconditional release, with prejudice.

Respectfully submitted,



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Yasser Hassan  
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 29 July 2026  
at The Hague, The Netherlands