

ICC-01/11-01/25

ANNEX II

to the Defence's Appeal Brief against "Decision on the
Defence's challenge to the jurisdiction of the Court pursuant to
article 19 of the Statute"

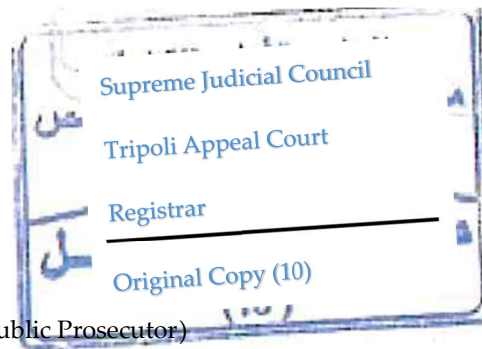
Bismillah alrahman alraheem (in the name of God the mighty the merciful)

State of Libya – Supreme Judicial Council

Tripoli Court of Appeal – First Administrative Division

Judgment in the urgent proceedings

- No. 77/226
- At a public hearing held on Wednesday, 24 June 2026
- Presided over by Judge Fathi al-Aref Khreis
- And with the following judges sitting:
 1. Fawzi Abdul-Hafiz Al-Ayuni
 2. Najia al-Mahjoub Abu al-Qasim
- In the presence of: Ayman Jumaa Al-Fitouri (Deputy Public Prosecutor)
- In the presence of: Malak Ma'touq (Court Clerk)



The Court delivered the following judgement:

In the administrative appeal registered in the General Register under No. (452/2025), brought by:

- Mu'adh Muhammad al-Hishari, a self-employed individual, residing in Tripoli, al-Jalaa district, and whose chosen address for service is the office of the lawyer Hanan Abdulmajeed al-Humaidi, located in Tripoli – Bin Ashour.

Against:

1. The Prime Minister in his official capacity.
2. The Minister of Justice in his official capacity.
3. The Attorney General in his official capacity.

(Represented by the Tripoli Branch of the Case Management Department, situated at Bab Bin Ghashir opposite the public park).

In the intervention filed by:

- Khalid Muhammad Ali al-Hishari, a Libyan national, residing in the al-Jalaa neighbourhood of Tripoli, with his chosen address being the office of the lawyer Hanan Abdulmajeed al-Humaidi, situated in the city of Tripoli – Bin Ashour.

Against:

1. The Prime Minister in his official capacity.
2. The Minister of Justice in his official capacity.
3. The Attorney General in his official capacity.
4. The Minister for Foreign Affairs in his official capacity.

(Continued: Represented by the Tripoli Branch of the Case Management Department, situated at Bab Bin Ghashir opposite the public park, in an appeal against the decision issued by the first respondent in his official capacity).

The Court

Having examined the documents, read out the summary report, heard the oral submissions, considered the opinion of the Public Prosecution Service, and deliberated in accordance with the law.

Facts

The facts of the appeal are summarised as follows: the appellant and the intervener lodged the present appeal through their solicitors by means of a notice of appeal that met all legal requirements, in which they named all the respondents as parties; She explained that, whilst the intervener was residing in Germany during a trip to seek medical treatment for his mother, he was arrested by the German authorities, who informed him that the arrest was pursuant to an arrest warrant issued by the International Criminal Court following the first respondent's acceptance of that Court's jurisdiction under the contested decision. She challenged the contested decision on the following grounds:

Upon examination of the contested decision and the personal and political motives upon which it is based, in flagrant violation of the application of the law and recognised constitutional and international principles, it undermines the State's sovereignty over its territory, showing no regard for the State's stability and territorial integrity, thereby revealing a fundamental abuse of power on the part of the authority that issued it, as it was issued in a manner inconsistent with the provisions of the law and general principles. This also proves that the contested decision is based on personal rather than objective grounds, and we therefore refute it on the following grounds:

- First ground: The contested decision is null and void, as it is vitiated by a grave lack of jurisdiction, constituting a serious breach amounting to an abuse of power and a misuse of the authority by the body that issued it; for an administrative decision to be valid, it must be issued by the body authorised to do so within the limits and powers assigned to it, otherwise the decision is flawed and lacks the essential element of jurisdiction. It is well established that the administration does not possess absolute freedom in issuing administrative decisions; rather, its discretion is constrained by the grounds justifying the decision it issues and by the public interest it seeks to achieve, in accordance with the Supreme Court's ruling that the grounds for annulment—that is, the various defects affecting a decision, rendering it unlawful and consequently leading to a ruling for its annulment—are:

[[lack of jurisdiction, procedural defect, contravention of a legal rule, and deviation from the law]], and given the numerous pieces of conclusive evidence regarding the invalidity of the contested decision before your honourable court, which we shall refute as follows:

The first defect: lack of jurisdiction through usurpation of authority:

Whereas a defect of jurisdiction may take the form of an abuse of power if the administrative decision is issued in a matter falling within the jurisdiction of the 'legislative and judicial' authorities, or constitutes an encroachment by one administrative authority upon another, and in accordance with the principle of the separation of powers—which prevents an authority from exercising powers that the constitutional framers have entrusted to another authority—the executive authority, whilst performing its administrative functions, cannot issue an administrative decision addressing matters falling within the remit of the legislature, nor may it adjudicate on disputes whose consideration falls to the judiciary.

This is because the powers of the interim executive authority, represented by the 'Government of National Unity', to govern the country during a transitional period leading towards stability and political consensus do not authorise it to interfere in matters which the Constitution has entrusted to, and reserved exclusively for, the legislative and judicial authorities; Otherwise, this would constitute an encroachment upon their functions and a breach of the principle of the separation of powers between the 'legislative and judicial' branches.

It is a condition of the conclusion of international agreements and treaties by the executive authority that they be ratified in advance by the Council of Representatives, in accordance with the provisions of paragraph (6(b)) of Article (8) under the section on the formation of the government in the Political Agreement, concerning the powers of the Council of the Prime Minister, which is composed of the Prime Minister, his deputies and three ministers.

Furthermore, Article 14 of the same Political Agreement, concerning the powers of the House of Representatives to approve draft laws ratifying international instruments, stipulates that:

[Draft laws shall be proposed on the initiative of at least ten (10) Members of Parliament, and draft laws shall be submitted by the Council of Ministers; the Prime Minister shall be responsible for submitting draft laws ratifying international treaties and draft financial laws].

It also contravened the provisions of Article 23 of the Constitutional Declaration, which stipulates that the judiciary is independent and is exercised by courts of all types and levels, which issue their judgements in accordance with the law, and that judges are independent and subject to no authority in their adjudication other than the law and their conscience, This was also contrary to the provisions of the second paragraph of the same article, which prohibits the establishment of special courts; indeed, the contested decision went even further by explicitly acknowledging and declaring its acceptance of the jurisdiction of a foreign court which has no jurisdiction or sovereignty over the national judiciary.

In this regard, the Supreme Court has ruled:

[that an administrative decision is contrary to the law in various ways if it misapplies the law, in the sense that the administration exercises powers conferred upon it by law in cases other than those in which the law expressly permits the exercise of such powers, and thus an administrative decision is contrary to the law if its motive is unlawful, in that the administration exercises its powers to achieve an aim other than that intended by the legislature; for whenever the motive for taking the decision is other than that intended by the legislature, this vitiates the administrative decision, and this is what is referred to in administrative jurisprudence as an abuse of power, and they call it....

This defect constitutes an abuse of authority due to a breach of the law; others refer to it as the defect of misuse of authority. This is because the basis for scrutinising the legality of the authority's actions lies in examining the validity of the administrative decision and the grounds upon which it was based – namely, that it is founded on the established facts set out in the documents at the time of issuance and the decision, and the extent to which these correspond to the conclusion reached.

The Supreme Court has previously affirmed that [the defect of usurpation of authority is one that cannot be excused by a state of urgency, nor may there be any agreement to contravene it; this defect renders the administrative decision invalid and, consequently, the appeal against it is not subject to any time limit].

This is because the fundamental principle governing the authorities' role during the transitional period is to adhere to and comply with the Interim Constitutional Declaration in order to resolve the constitutional and political crisis facing the state, by amending the existing constitutional system, and enacting a final constitution that sets the country on a new course, steering it away from political strife and expressing the general will of the people as the source of authority. There is no dispute that the national legislation in force, the recognised constitutional principles and the fundamental principles of international law have included provisions, some of which have their origins in successive Libyan constitutions; Among these previous provisions is the stipulation that the conclusion of treaties is a shared competence between the executive authority and the legislative authority, represented by Parliament [whatever its name may be].

Furthermore, the laws that supplement the Constitution are those relating to the fundamental rights and freedoms of citizens, or those laws which the Constitution itself considers to be supplementary to it, such that they are not open to interpretation or exegesis; this indicates that the constitutional legislator recognised their connection to the overarching principles of the Constitution. The majority of constitutions have emphasised that the powers of the state must be in a state of equilibrium amongst themselves, such that no single power encroaches upon the others, leading to its jurisdiction dominating the remaining jurisdictions. This mandatory restriction does not merely address the authority responsible for concluding treaties and international instruments, or the authority designated to give consent where matters fall within its constitutional jurisdiction, but also reaffirms the role of the judiciary during this transitional period as the fundamental safeguard for maintaining the balance between the state's powers; and granting the judiciary this role is essential for instilling confidence and legitimacy in matters relating to the constitutional process.

Given that the Constitutional Declaration, the recognised constitutional principles, and the laws supplementing them, have defined the functions and powers of the legislative, executive and judicial authorities, they have thereby set out the boundaries and restrictions governing the jurisdiction of each, so as to prevent any one of them from interfering in the affairs of another authority or encroaching upon the exercise of the powers conferred upon it by the Constitution.

However, the contested decision was based on a delegation of authority by [the first respondent in his capacity as] acting alone, disregarding the House of Representatives' competence regarding the prior ratification of legally binding documents concluded between States or international organisations, in accordance with the provisions of paragraph (6)(b) of Article (8) contained in the Political Agreement.

Accordingly, the law defining the powers of the [Government of National Unity] requires the consent of the legislative authority prior to the exchange of instruments of ratification in this regard – particularly as that instrument constitutes a restriction on national sovereign rights, involving the relinquishment of the inherent and absolute jurisdiction of the national judiciary in favour of a foreign court, which undermines the independence of the judiciary, contrary to the provisions of Article 23 of the Constitutional Declaration, in which the legislator established this as a fundamental guarantee for the protection of the rule of law - This demonstrates that a state governed by the rule of law is one which, in all aspects of its activity – whatever the nature of its powers – adheres to legal rules that take precedence over it and which, in themselves, regulate its actions and conduct in their various forms; for the exercise of authority is no longer a personal privilege of any individual, but is carried out on behalf of and for the benefit of the community.

This constitutes a violation of the principle of the separation of powers, since the unilateral measures taken by [the first respondent in his capacity as] in relation to judicial jurisdiction and the sovereignty of the State – by waiving the jurisdiction of the Libyan judiciary in favour of the International Criminal Court – render the State subject to the implementation of external orders in accordance with domestic political dictates. This has elevated this decision to the highest degree of usurpation of power, as it was issued without legislative safeguards or a national judicial review to oversee such measures, in contravention of the principle of the separation of powers. This risks drawing the judiciary into the political conflict and constitutes a breach of many established constitutional principles, including the independence of the judiciary and the separation of powers – principles which are firmly established and admit of no discretion or interpretation.

In this regard, the Supreme Court ruled that:

[The repealed Constitution adopted the theory of the separation of the three powers and stipulated that judicial power is exercised by the Supreme Court and other courts (Article 43) and, in Article 145, it enshrined the principle of judicial independence and the immunity of judges from removal from office except as provided for by law; the final clause of that article delegates to the legislature the power to regulate this principle, not to undermine it – it is therefore unlawful and unconstitutional for the executive authority to issue a decree-law that threatens the independence of the judiciary and the immunities of its members].

The second defect: a procedural defect, coupled with an abuse of the authority to issue the decree by enacting it unilaterally – and a violation of the principles of openness and transparency. The Supreme Court has defined this procedural defect as: [failure to comply with the procedural or formal rules specified for the issuance of administrative decisions in laws and regulations, whether through complete disregard of those rules or partial violation thereof; as the law may require a decision to take a specific form, or the completion of preliminary procedures prior to the issuance of a particular decision, or consultation with a specific body prior to the decision being issued; whenever such formalities are established for the benefit of the individual, they may rely upon them provided that they affect the decision in substance or undermine the guarantees afforded to individuals, and since a breach of a legal rule constitutes any denial of an abstract general rule, whatever its source, on this basis administrative decisions must be]:

- compliant with the legislation in force, namely the Constitution [and in this Court, the individual has the right to bring a constitutional appeal], as well as laws, regulations and principles of general law, such as equality, public freedoms, the right to a defence and the non-retroactivity of administrative decisions.

- Compliance with administrative custom, which means that the administration acts in a particular manner when faced with a specific situation, such that the rule it adheres to becomes, by virtue of its adoption, equivalent to law – whilst a distinction must be made between occasional leniency shown by the administration in a specific case and the establishment and adherence to a general rule.

- Its conformity with judicial rulings having the force of res judicata issued by the ordinary or administrative courts.

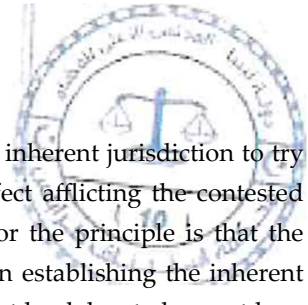
Furthermore, upon examination of the contested decision, and in light of the aforementioned grounds of nullity and invalidity, and in line with the foregoing, it is vitiated by a deviation from and an abuse of the authority on which its issuance is based; this is clearly evident in the fact that the contested decision was issued surreptitiously, unilaterally and in a personal capacity, without notifying the parties concerned or those affected by it, and without affording them the opportunity to review or object to it.

This is because the formation of the government, in accordance with the provisions of the third paragraph of Article [1] of the Political Agreement, stipulates that: [A Council of the Prime Minister's Office shall be formed, chaired by the Prime Minister and comprising five deputies and three ministers, one of whom shall be responsible for the affairs of the Prime Minister's Office and legislation, the second for the affairs of the specialised councils, and the third for civil society affairs. Any decision taken by the Council of the Prime Minister's Office in accordance with its powers set out in Article (2/8) of this Agreement, the unanimity of the Prime Minister and his deputies].

A prerequisite for the executive authority to conclude international agreements and treaties was that they be ratified in advance by the House of Representatives, in accordance with the provisions of paragraph (6(b)) of Article (8) under the section on the formation of the government. Furthermore, the outcomes of the [Geneva] held in 2021 called for the formation of a new executive authority; and given that these outcomes served as the basis for establishing a single Government of National Unity and forming a Presidential Council comprising a President and two Vice-Presidents in accordance with geographical distribution across the three regions, the Government of National Unity consisted of the Prime Minister, his two deputies and a number of ministers.

These outcomes explicitly stipulated, in accordance with paragraph (10) of Article 6, that one of the priorities of the executive authority during the preliminary phase is that: [During the preparatory phase, the executive authority shall not consider any new or previous agreements or decisions that would undermine the stability of the Libyan State's foreign relations or impose long-term obligations upon it], and this gave rise to House of Representatives Resolution No. (1) of 2021 concerning the granting of a vote of confidence to the Government of National Unity.

However, we note that this flawed resolution was issued under the authorisation of [the first respondent in his capacity] acting alone, after he had instructed the Minister for Foreign Affairs to issue the declaration containing the text of the contested resolution, without any indication, either direct or indirect, that it had been adopted by the members of the Council of Ministers collectively, not to mention the usurpation of the House of Representatives' authority...



by usurping its jurisdiction to ratify such acts and depriving the judiciary of its inherent jurisdiction to try cases occurring within the territory of the State; for this grave procedural defect afflicting the contested decision, amounts to the absence of a provision authorising the delegation; for the principle is that the provision authorising the delegation must be of the same rank as the provision establishing the inherent jurisdiction, or of a higher rank. Jurisdiction established by a decree-law may not be delegated except by a provision authorising such delegation and contained in a law or in a higher instrument such as the Constitution; and jurisdiction established by a decree-law may not be delegated except by a provision in a decree-law or in the provisions of the Constitution.

This confirms that the contested decree was issued with a procedural defect that renders it null and void, having been issued by the unilateral will of a party lacking the authority to do so. Furthermore, in view of the exceptional circumstances currently facing the Libyan State—which deviate from the normal course of affairs according to the traditional concept of the State as united under a single government, and which have resulted in the existence of multiple governments— In this context, the Security Council urges Libyan actors and institutions to refrain from taking any unilateral measures that would increase tensions, undermine trust and further entrench divisions between institutions and discord amongst Libyans, and to address these issues without delay.

Consequently, no authority may exceed the limits of its jurisdiction as set out in the Constitutional Declaration. On the one hand, the defect of deviation that marred the contested decision was evident in its issuance by unilateral will with the intention of political exclusion and the monopolisation of power; and in light of this, the Supreme Court, in its aforementioned ruling, recognised that the defect of arbitrariness—sometimes referred to as an abuse of power—occurs when an administrative official uses his discretionary power to achieve an unauthorised purpose; whilst it shares with the defect of unlawfulness the characteristic of being a substantive defect, it differs entirely from it in its characteristics and nature. An administrative decision marred by the defect of arbitrariness is otherwise sound in its other elements — it was issued by a competent authority, complied with procedural formalities, and is in accordance with the law as regards its subject matter — and hence lies the danger of the defect of deviation: because the administrative official, shielded by the appearance of legality, attempts to achieve all manner of unlawful purposes. It is a defect relating to the objectives of the decision; consequently, cases of the defect of deviation can be categorised into two types:

1. Objectives that run counter to the public interest, whether for the purpose of retaliation, personal gain or political ends.
2. A breach of the principle of the specific allocation of objectives, whereby the decision deviates from the objective intended by the law to another legitimate objective, such as deviation for the financial benefit of the administration.

Whilst we maintain that the decision is null and void because it was issued by an unauthorised body through an abuse of power, this defective decision, as outlined above, also constitutes an abuse of power.

This is because the decision was issued surreptitiously, unilaterally and personally, in a non-public or secret manner, without the knowledge or involvement of the parties concerned and without following the legal procedures applicable in such cases, thereby contravening the principle of openness and transparency—which are general principles to which all state authorities are subject—since the principle of...

...openness and transparency in administrative decisions means that such decisions must be made available to the public and clearly publicised, with the relevant information made available to the concerned authorities and the individuals to whom they are addressed, with the aim of curbing administrative corruption by exposing unlawful or unjustified decisions. The principle of openness and transparency also guarantees individuals' right to access decisions affecting their rights and interests, and enables them to defend their rights and lodge appeals and objections against such decisions.

Furthermore, paragraph (30) of the governing principles of the Skhirat Agreement—which governs its implementation and interpretation—stipulates a commitment to the principles of transparency and the fight against corruption, and adherence to international standards in the field of public procurement and in all the State's internal and external dealings. On that basis, the Official Gazette of the State has been regulated in accordance with Law No. 8 of 2011, Article 2 of which provides as follows:

'The following shall be published in the Official Gazette:

1. Laws and decisions issued by the competent legislative authority.
2. Decisions and regulatory regulations issued by the Council of Ministers.
3. Regulations implementing laws.
4. The texts of international and regional agreements and treaties ratified by the legislative authority...).

Furthermore, these principles are not set out exclusively in national laws; they were also reaffirmed by the United Nations Convention against Corruption of 2003, adopted by the United Nations General Assembly on 31 October 2004, and which stipulates in a number of its articles the need to adopt the principle of transparency; Article 7 states that: [Each State Party shall endeavour to implement and consolidate effective policies for the prevention of administrative corruption],

Furthermore, paragraph (a) of Article 13 of the same Convention stipulates: [Transparency in decision-making processes shall be promoted and public participation in such processes encouraged]

Paragraph (b) emphasised the need to: [ensuring that the public has effective access to information]

Paragraph (d) of the same article stipulates the need to: [Protecting individuals and guaranteeing their freedom to receive and disseminate information relating to corruption, and that such freedom may not be restricted except in specific cases, including the protection of citizens' private lives and the protection of public order and national security].

This is because notifying the addressees of the content of administrative decisions is a prerequisite for informing them of their substance, since the entry into force of decisions presupposes their publication and the expiry of the specified date for their commencement; publication ensures their publicity, the dissemination of their provisions and their communication to those concerned. Administrative decisions that are not published do not constitute adequate notification of their content, their implementation is not required, and their essential elements are not fulfilled.

Although the Supreme Court's ruling required that the decision be communicated to those concerned, stating: [The publication of an administrative decision, from which the period of validity commences, must disclose the substance of the decision, so that the interested party is able to become fully acquainted with it; there is no specific means of publication by which the decision must be communicated].

That being the case, and given that it has been established that the contested decision was not published either in the Official Gazette or through any other means of publication—but was issued surreptitiously, individually and privately, without notifying the parties concerned or those affected by it, and without affording them the opportunity to review or object to it—this constitutes a violation of the principles of openness and transparency.

In light of the foregoing, and having regard to the evidence derived from the manner in which the contested decision was issued and implemented, and the circumstances surrounding it—which render the contested decision tainted by an abuse of power, coupled with a deviation from and misuse of the authority upon which its issuance was based—we find that:

- **Firstly:** the contested decision was issued in a manner constituting an abuse of power, given that the subject matter of its issuance concerns the jurisdiction of both the legislative and judicial authorities; the former was competent to issue it in accordance with the legal principle requiring the approval and ratification of the House of Representatives for such acts; The second issue concerns the infringement of judicial authority, as this decision effectively deprives the judiciary of its inherent jurisdiction to try individuals and adjudicate all matters occurring within Libyan territory.

- **Secondly:** the contested decision was issued unilaterally and personally, in a non-public or secret manner, without the knowledge or participation of the parties concerned and without following the legal procedures applicable in such cases. This indicates a deviation from and abuse of the authority on which its issuance is based, as it was issued to achieve political objectives and the personal interests of its author, rather than serving the public interest by imposing a state of political exclusion, given that its underlying aim is to cling to the official authority he enjoys, and to retain the privileges associated with that office for as long as possible, at the expense of the stability of the state; all of which risks a return to a state of strife, fighting and armed conflict within the country, thereby constituting a misuse of the authority vested in him.

- **The second reason:** the invalidity of the contested decision on the grounds that it is impermissible to relinquish national jurisdiction over the trial of events that occurred within its territory,

as the principle of non-waiver of national jurisdiction means that the State may not relinquish its right to try its citizens for offences committed within its borders, even if there is an international court competent to hear such cases, and this principle reflects the preference for national courts to adjudicate criminal cases, with limited exceptions for the International Criminal Court and in specific circumstances.

This is because the exercise of state powers within the scope of its authority implies that such powers must be exercised within the limits set by law, whether these limits are binding [commands] or prohibitions [prohibitions]; in other words, the authorities must not exceed the powers granted to them by law, nor act in contravention of it, as they are bound by the limits set by what is mandatory and what is prohibited.

This is in addition to the fact that the principle of equality of sovereignty is a sacred principle in the Charter of the United Nations, as it is a general principle of international law, which implies that every state has the right to be independent and to exercise its sovereignty over its territory and internal affairs. Indeed, the Declaration on Friendly Relations, which is generally understood as an authentic interpretation of the Charter, sets out further aspects of the principle of equality of sovereignty, and formally declares [that every state enjoys the rights inherent in full sovereignty], that states are [legally equal], and that they have a duty to respect the personality of other states.

The principle of equality of sovereignty amongst States entails the affirmation of the equality of States before the law, the exercise of sovereignty in accordance with international obligations, and, finally, respect for the personality and independence of the State and its enjoyment of the rights inherent in full sovereignty over its territory. Among the most important characteristics and manifestations of that sovereignty is:

1. that the state is the holder of inherent jurisdiction over its territory;
2. It is the decision-maker in its international relations.
3. Political independence, as a manifestation of sovereignty, means the right of peoples to self-determination without the slightest interference in their affairs.

Applying this to the facts of the appeal before your honourable court, the authority that issued the contested decision was required to verify two conditions:

- **The first relates** to national law: the decision must not deviate from the true meaning of the law, nor be directed towards achieving objectives unrelated to the general purpose, and its effect must be consistent with established constitutional principles, whether explicit or implicit.

- **The second is** that the act must be in accordance with the principles of international public order and must not conflict with the sovereignty of the State, in accordance with the principle of complementarity; which constitutes the dividing line between what is internationally acceptable and what is not. Consequently, the act must be consistent with the fundamental principles of the international legal order, which requires the preservation of each state's identity and sovereignty over its territory by drawing a distinction between mechanisms of international cooperation on the one hand and the preservation of state sovereignty on the other. This is known as the principle of complementarity between international principles and national sovereignty; it is this principle that determines whether an action is acceptable on the international stage or not, within the framework of the fundamental principles of international law.

Whilst it may be argued that the rule of law prevents the arbitrary use of power, the establishment of a more secure and stable international order requires that the law be applied in both theory and practice without any contradictions or manipulation. This implies strict adherence to legal rules at both the domestic and international levels, and a commitment to achieving justice and equality for all.

In light of the foregoing, the extent of the fundamental flaws in the contested decision has become apparent; moreover, it contravenes the national legislation in force in the State and the recognised constitutional principles...

...and the fundamental principles of international law, thereby undermining the State's sovereignty over its territory and showing disregard for the State's stability and unity. We shall therefore address the invalidity of the decision on the following two grounds:

- First aspect: Regarding the contested decision's violation of the principle of national judicial sovereignty: As a general rule, the national judiciary possesses primary jurisdiction over international crimes committed within the country's territory, in accordance with the principle of national sovereignty. National sovereignty, in and of itself, signifies the state's independence and its ability to manage its internal and external affairs without external interference; consequently, the sovereign state has exclusive original jurisdiction over any crime committed on its territory.

This is because sovereignty in relations between states implies independence, and independence is the right to exercise all the powers and responsibilities associated with the functions of the state, without external interference. One of the most important of these rights is the exercise of jurisdiction, including criminal jurisdiction, in accordance with the principle of territoriality; and the state's right to try offences committed on its territory, which means that national criminal law alone has jurisdiction to punish offences occurring within the national territory; no other law shares or substitutes for it. Furthermore, the rules governing the territorial jurisdiction of a state's courts relate to public order and reflect its sovereignty.

This is within the framework of the primacy of international conventions ratified by the State; the Arab Charter on Human Rights stipulates in Article 2, paragraph (2), that: ['Peoples have the right to live under national sovereignty and territorial integrity'].

It also affirms in Article 12 that: [All persons are equal before the law; States Parties shall guarantee the independence of the judiciary and the protection of judges from any interference, pressure or threat; they shall also guarantee the right to a fair trial at all levels to every person subject to their jurisdiction].

In this context, the Security Council has adopted numerous resolutions reaffirming its full commitment to Libya's sovereignty, independence, territorial integrity and national unity. It has also urged Libyan actors and institutions to refrain from taking any unilateral measures that increase tensions, undermine trust and further entrench divisions between institutions and discord amongst Libyans, and to address these issues without delay.

Furthermore, all national laws affirm the absolute jurisdiction of the State, its courts and its criminal laws over punishable acts committed within its territory; it is therefore the duty of the State to ensure security amongst members of society, to safeguard their lives and property, and to prevent any violation or harm that may arise in any form whatsoever.

Whereas it is firmly established in legal consciousness that sovereignty resides with the citizenry as a whole, and no state body is the holder of sovereignty that may relinquish it at its own discretion, but rather exercises it as the agent of the people; and whereas the Constitutional Declaration affirms, in accordance with the text of its first article, that the State is a sovereign and independent entity, in which the people are the source of all authority, and that no part of its democratic system—which is founded on citizenship and the rule of law—may be compromised.

This principle was affirmed by one of the judges of the International Court of Justice in his commentary on the judgment delivered in the case of *Congo v. Belgium*—concerning the arrest of the Congolese Foreign Minister, Yarodia Ndombasie, and the attempt to try him before the Belgian courts—where he held that the state alone has the right to exercise jurisdiction over its territory, and that it also has the right to exercise such jurisdiction over offences committed outside its territory where the perpetrator, or at least the victim, is a national of that state, or over offences that threaten its external or internal security.

On this basis, the provisions of the Penal Code apply within the State's territory to the perpetrator of a crime, whether a national or a foreigner. The implication of the principle of state sovereignty over its territory is the application of its national laws within that territory and the exclusion of any other foreign law, in accordance with the provisions of the first paragraph of Article 4 of the Penal Code, which states:

[The provisions of this Act shall apply to any Libyan or foreign national who commits, on Libyan territory, any of the offences set out therein].

In this regard, the Supreme Court has affirmed in its ruling that:

[The wording of Article 4 of the Penal Code implies that the legislature has subjected anyone who commits an offence set out in the Penal Code or in laws supplementing it to the jurisdiction of the Libyan courts, whether the perpetrator is Libyan or a foreign national, provided that the act was committed within Libyan territory].

Indeed, the Supreme Court has consistently held that:

[One of the most important manifestations of state sovereignty is that its courts have jurisdiction over disputes arising within its territory that require judicial resolution; a conflict of local jurisdiction is conceivable only within a single judicial district].

In accordance with and in implementation of the foregoing, and applying it to the facts of the case, we find that the contested decision undermines the independence of the judiciary and indeed constitutes an encroachment upon its authority, for the deprivation of the national judiciary's inherent jurisdiction to try cases falling within the territory of the State constitutes a flagrant violation of the State's sovereignty and the independence of its judiciary, thereby contravening the constitutional provision set out in Article 32, which enshrines the independence of the judiciary in both its functional and organisational aspects. It thereby ensures that the judiciary is in line with contemporary standards, which guarantee every person a full and equal right to a fair and public trial before an independent and impartial court established by law, which adjudicates on their civil rights and obligations or on any criminal charges brought against them, and within which they are able to present their case, mount their defence and challenge their opponents' evidence by way of rebuttal and comment, within a framework of equal opportunities, bearing in mind that the composition of the court, the principles governing its organisation, the nature of the substantive and procedural rules applicable within its jurisdiction, and the manner of their practical application are what define the main features of that middle ground.

Thus, the relationship between the independence of the judge and the rule of law is one of complementarity, in which neither can be realised without the other; for the independence of the judiciary is a fundamental guarantee for the protection and application of the principle of the rule of law. Accordingly, the independence of the judge, in accordance with this principle, ensures that no authority—be it the executive or any other body—interferes with the judge's work, thereby enabling the judge to apply the law impartially, fairly and with integrity, and in accordance with the law; this, in turn, guarantees individuals' rights to a fair trial before their natural judge. To assert otherwise threatens the judge's independence and undermines the principle of the rule of law; This is because one of the most important manifestations of a state's sovereignty over its territory is that its courts have exclusive jurisdiction to hear disputes arising within its territorial boundaries which require recourse to the courts for resolution. This judicial jurisdiction reflects the state's sovereignty and its ability to apply the law and enforce order within its territory.

The Basic Principles on the Independence of the Judiciary adopted by the United Nations emphasise this point in the context of the text of the first principle concerning the independence of the judiciary, which states the following:

1. The State shall guarantee the independence of the judiciary, which shall be enshrined in the country's constitution or laws, and all government institutions and others shall respect and observe the independence of the judiciary.
2. The judiciary shall adjudicate matters brought before it impartially, on the basis of the facts and in accordance with the law, without any restrictions, undue influence, inducements, pressure, threats or direct or indirect interference from any quarter or for any reason.
3. The judiciary has jurisdiction over all matters of a judicial nature and has the exclusive authority to determine whether a matter brought before it for adjudication falls within its jurisdiction in accordance with the law.
4. No improper or unjustified interference shall be permitted in the judicial process, and judicial rulings issued by the courts shall not be subject to review; this principle shall not prejudice judicial review or the mitigation or replacement of rulings issued by the judiciary by the competent authorities, in accordance with the law.
5. Every individual has the right to be tried before ordinary courts or judicial bodies, in accordance with the applicable legal procedures; no judicial bodies that do not follow the applicable legal procedures may be established to replace the jurisdiction of ordinary courts or judicial bodies.
6. The principle of the independence of the judiciary empowers and requires it to ensure that judicial proceedings are conducted fairly and with respect for the rights of the parties.
7. It is the duty of every Member State to provide sufficient resources to enable the judiciary to perform its functions properly.

Applying the foregoing to the facts of the appeal before your honourable body, we find a flagrant conflict with the inherent and absolute jurisdiction of the national judiciary, given that proceedings for crimes committed within the territory of the State...

...fall exclusively within the remit of the national judiciary; they constitute matters that embody the sovereignty of the State, which may not be relinquished to any other State or entity, as this would amount to a surrender of its powers and sovereignty.

This constitutes a gross violation of the principle of national judicial sovereignty, which stipulates that the right to try such cases may not be ceded to any other state or entity, as this would amount to a relinquishment of its powers and sovereignty; indeed, to accept or concede otherwise would undermine the very essence of the state's independence and that of all its institutions, and one of the most important manifestations of state sovereignty is that its courts have jurisdiction over disputes occurring within its territory that require judicial adjudication. There is no doubt that, pursuant to the prohibition set out in the fundamental constitutional principles and principles of general law, and international conventions regarding the principle of territorial sovereignty—which stipulates that the national judiciary possesses inherent jurisdiction over all matters occurring within the territory of the State—it is imperative that all State authorities refrain from relinquishing the inherent jurisdiction of the national judiciary.

In this regard, the contested decision [as described by the party expressing it] to declare acceptance of the jurisdiction of the International Criminal Court is cloaked in the guise of an unlawful international declaration, which the State has no right to conclude, as this contravenes the provisions of Article 32 of the Constitutional Declaration, which unequivocally affirms that any alteration to the inherent jurisdiction of the national judiciary does not arise from a legitimate source. Furthermore, the House of Representatives is, by virtue of both constitutional principles and the law, bound and prohibited from discussing any treaty or agreement involving a waiver of inherent national jurisdiction; consequently, the decision issued by the executive authority is null and void.

Second aspect: regarding the contested decision's violation of the principles of international cooperation by overstepping the boundaries between inherent national jurisdiction and the complementary jurisdiction of the International Criminal Court:

The administrative authority's declaration recognising the jurisdiction of the International Criminal Court, based on procedures that are clearly flawed and contravene the fundamental principles of national legal procedure that must be followed, constitutes an usurpation of the powers vested in both the legislative and judicial authorities, is followed by a flagrant violation of international public order through a failure to adhere to the fundamental rules and principles governing relations between states and the international community. This raises profound and fundamental legal concerns that extend beyond the scope of the contested decision, thereby threatening the sovereignty, independence and unity of the state, given its violation of a set of general principles of international law, which are interrelated and complementary to one another as a single unit, as set out below:

Firstly: The contested resolution contravenes the principle of 'equality of sovereignty', thereby disregarding the interdependence between Security Council resolutions and the principles of international cooperation: The principle of 'equality of sovereignty' is a general principle of international law affirming the equal rights and obligations of all States, and this principle constitutes an important pillar...

...in international relations; this applies between states and amongst themselves, or between international organisations. The essence of this principle lies in the rule that the maintenance of international law and order can only be guaranteed through full respect for the legal equality of the participating parties. This implies respect for the sovereignty of the other parties participating in the system—that is, their right to exercise legislative, executive, administrative and judicial powers within their own territories without any interference from other states, as well as to conduct foreign policy independently and impartially; respect for sovereignty is considered a fundamental prerequisite for achieving mutual respect and cooperation between states and organisations within the international community.

Furthermore, the principle of sovereignty, as the guiding principle of international relations, takes two forms [external and internal]. The external aspect of state sovereignty is that the state enjoys supreme authority across its borders, and no higher authority may take any action or measure within the state's territorial boundaries; that is, the preservation of its independence, unity and territorial integrity.

As for the internal aspect of sovereignty, in practice this is shared between the people and the state: the individual enjoys full rights within the state, whilst the state exercises its internal sovereignty through the enactment of laws and regulations—what we refer to as 'legislative sovereignty'—and this authority is paralleled by the executive's power to enforce laws upon persons present on its territory. Next comes judicial sovereignty at the domestic level, meaning the state's judicial authority over individuals present within its territory and subject to its jurisdiction.

This is because the principles of equality of sovereignty and non-interference must be observed in any international judicial proceedings; recognised international courts must operate in accordance with this principle and remain complementary in nature, as they must be invoked solely to prevent impunity, and in cases where national courts are unable or unwilling to exercise jurisdiction, as the expansion of this practice constitutes an arbitrary and unlawful exercise of universal jurisdiction and represents 'a continuation of the strategy of tyranny through the exploitation of justice as a weapon of aggression', and this approach will continue to cause chaos and instability, erode national judicial sovereignty and jeopardise the rule of law at the international level.

Legal basis: The Charter of the United Nations of 1945 affirmed this principle, as Article 1(2) of the Charter stipulates that: [The Organisation is based on the principle of the sovereign equality of all its Members]. In connection with this principle, Article 7(2) of the Charter of the United Nations provides that: [Nothing in this Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State], which means that, pursuant to the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right, freely and without external interference, to determine their political status, and that every State has a duty to respect this right in accordance with the provisions of the Charter of the United Nations.

It should be noted that this principle was presented by the Rapporteur of the First Sub-Committee of the 'San Francisco' Conference as comprising the following elements:...

1. Legal equality of all States without exception.
2. Every State enjoys full sovereignty.
3. The right of all States to political and territorial independence.
4. All States enjoy the same rights and bear the same obligations.



Accordingly, we find this principle applied in accordance with Security Council Resolution 1970/2011 concerning the situation in Libya, as United Nations Security Council Resolution No. 1970/ 2011, which referred the situation in Libya as it stood on 15 February 2011 to the Prosecutor of the International Criminal Court, who affirmed in paragraph [14] of the preamble to the resolution: [his strong commitment to the sovereignty of the Libyan State, the integrity of its territory and its national unity], in accordance with the principle of the equal sovereignty of States as set out in Article 1(2) of the Charter of the United Nations of 1945.

He also reaffirmed the principle set out in paragraph (2) of Article (7) of the Charter of the United Nations, namely that there shall be no interference in matters which are essentially within the domestic jurisdiction of States. The aforementioned Security Council resolution, in accordance with the text of its [fifth and sixth] paragraphs, stated as follows:

5. Decided that the Libyan authorities shall cooperate fully with the Court and the Prosecutor, and to provide them with the necessary assistance in accordance with the provisions of this resolution; recognising that States not party to the Rome Statute of the International Criminal Court are under no obligation under that Statute, it urges all States and regional organisations concerned to cooperate fully with the Court and the Prosecutor.
6. Resolved that nationals, current or former officials, or individuals coming from a State other than Libya which is not a Party to the Rome Statute of the International Criminal Court, shall be subject to the exclusive jurisdiction of that State in respect of all alleged acts or omissions arising from, or in connection with, operations established or authorised by the Security Council in Libya, unless the State expressly waives that exclusive jurisdiction.

In this context, the Security Council has adopted numerous resolutions reaffirming the principle of 'equality of sovereignty', including Resolution No. 2570 of 2021, which reaffirms its commitment to the political process led and owned by Libyans and facilitated by the United Nations, and to Libya's sovereignty, independence, territorial integrity and national unity.

Accordingly, the relationship between the national judiciary and the International Criminal Court is based on the Security Council resolution and the Principles of International Cooperation, as the text of the second paragraph of the Principles of International Cooperation, adopted pursuant to United Nations General Assembly Resolution No. 3074 (d 28): [Every State has the right to try its nationals for war crimes or crimes against humanity].

This reaffirms the principle of 'equality of sovereignty'. Accordingly, cooperation must give priority to the right to national jurisdiction, in accordance with the principles of international cooperation adopted by the aforementioned United Nations General Assembly resolution, the subsequent paragraphs of which (3, 4, 5, 6, 8, 9 and 10) stipulate that:

(3) States shall cooperate with one another, on a bilateral and multilateral basis, with a view to suppressing and preventing war crimes and crimes against humanity, and shall take the necessary measures for this purpose at both the domestic and international levels.

(4) States shall assist one another in the prosecution, arrest and trial of those suspected of having committed such crimes and in their punishment if found guilty.

(5) Persons against whom there is evidence that they have committed war crimes or crimes against humanity shall be brought to trial and, if found guilty, punished; as a general rule, this shall take place in the countries where these crimes were committed; in this regard, States shall cooperate in all matters relating to the extradition of such persons.

(6) States shall cooperate with one another in gathering information and evidence that may assist in bringing the persons referred to in paragraph (5) above to trial, and shall exchange such information.

(8) States shall not take any measures, whether legislative or otherwise, which might prejudice their international obligations regarding the tracking down, arrest, extradition and punishment of persons convicted of war crimes and crimes against humanity.

(9) When cooperating with a view to tracking down, arresting and extraditing persons against whom there is evidence that they have committed war crimes or crimes against humanity, and punishing them if found guilty, States shall act in accordance with the provisions of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

This is because the obligations regarding cooperation between national judicial authorities and the International Criminal Court stem from the principle of complementarity, which establishes the International Criminal Court as a court of last resort and gives priority to national jurisdiction in investigating core international crimes and prosecuting their perpetrators; the responsibility for prosecution lies primarily with States, and the International Criminal Court intervenes only when national authorities are 'unable or unwilling' to do so, creating a dynamic in which national courts often act first; The International Criminal Court intervenes only when necessary; this requires a system of cooperation and partnership to close the 'impunity gap', which the International Criminal Court must address whilst respecting state sovereignty.

The principle of complementarity has served to strike a balance between the need for international justice and the principle of state sovereignty, allowing states to retain control over their judicial systems, as the International Criminal Court aims...

...in accordance with this principle, to complement national criminal justice systems rather than replace them; it only prosecutes cases when states are genuinely unwilling or unable to do so.

By analogy: if the absolute and the restricted are combined in the ruling and the reasoning, the absolute must be interpreted in light of the restricted, since the obligations of cooperation, in accordance with the provisions of Articles 1/98 and 1/99 of the Rome Statute, are based on the execution of requests for assistance in accordance with the rule of national law; indeed, the wording of Article 1/98 was more explicit in stating that a request for cooperation must not conflict with obligations established under international law, stipulating that: [The Court may not issue a request for assistance that would require the State to which the request is addressed to act in a manner inconsistent with its obligations under international law regarding State immunities or the diplomatic immunities of a person or property belonging to a third State, unless the Court is first able to obtain the cooperation of that third State in waiving such immunity].

If the provision of Article 1/99 concerning the execution of requests made under Articles (93 and 96), requests for assistance shall be executed in accordance with the relevant procedure under the law of the State to which the request is addressed and in the manner specified in the request, unless this is prohibited under that law; this includes following any procedure set out in the request or allowing the persons specified in the request to be present at or assist in the execution process.

This confirms that the contested decision contravenes the principle of equality of sovereignty and territorial integrity set out in Security Council Resolution 1970/2011, in accordance with the text of its [4, 5 and 6] as mentioned above, in particular its deviation from the limits set for international cooperation, which stipulate that cooperation must be based on giving priority to the right to national jurisdiction in accordance with the principles of international cooperation adopted under United Nations General Assembly Resolution No. 3074 (D-28).

It acted through unlawful procedures whereby it relinquished the inherent jurisdiction of the national judiciary, despite the fact that there is nothing in national law permitting such acts, thereby leading to legislative chaos, instability and the fragmentation of national judicial sovereignty, and jeopardising the rule of law.

- **Secondly:** the contested decision contravenes the principle of the primacy of jurisdiction enjoyed by the national judiciary, thereby disregarding the balance between the principle of the primacy of the national judiciary and the principle of complementarity:

The principle of the primacy of national judicial jurisdiction is based on the fundamental concept of state sovereignty, which grants the state the inherent authority and right to govern its territory and its nationals wherever they may be, This principle, which is often referred to in the context of the principles of public international law, allows the state to extend its legal authority to cover its citizens in order to ensure accountability and maintain order, particularly when one of its nationals commits a crime abroad.

As regards the legal basis: since the International Criminal Court was established in accordance with the principle of complementarity, the preamble to the Rome Statute of the International Criminal Court (paragraphs 6 and 10) and the text of Article 1 concerning the establishment of the Court emphasise that priority in jurisdiction lies with national criminal courts; If such a court refrains from exercising its criminal jurisdiction for any reason or is unwilling to exercise its jurisdiction, jurisdiction then passes to the International Criminal Court in its capacity as a court complementing national jurisdiction.

The principle of the primacy of jurisdiction and the exclusivity of national courts is also enshrined in the third paragraph of the principle of the independence of the judiciary, which stipulates that: (The judiciary shall have jurisdiction over all matters of a judicial nature and shall have the exclusive authority to determine whether any matter brought before it falls within its jurisdiction as defined by law).

Furthermore, the International Criminal Court has no jurisdiction over non-member states, as the preconditions for the exercise of the Court's jurisdiction have been established, a general rule that jurisdiction may only be exercised over parties to the Statute; non-parties are not automatically bound by its provisions unless they voluntarily accept the Court's jurisdiction, in accordance with the provisions of Article 12 of the Statute of the Court, which reads as follows:

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 5.
2. In the cases referred to in paragraph (a) or (c) of Article 13, the Court may exercise its jurisdiction if one or more of the following States is a Party to this Statute or has accepted the jurisdiction of the Court in accordance with paragraph (3):
 - (a) the State in whose territory the conduct in question took place, or the State of registration of the ship or aircraft if the crime was committed on board a ship or aircraft;
 - (b) the State of which the person accused of the crime is a national.
3. Where the acceptance of a State not party to this Statute is required under paragraph (2), that State may, by a declaration deposited with the Registrar of the Court, accept the exercise of the Court's jurisdiction in respect of the crime in question; the accepting State shall cooperate with the Court without delay or exception in accordance with Part (9).

As an exception to the rule that non-States Parties are not bound, the Security Council is authorised, under Chapter VII of the Charter of the United Nations, to refer to the International Criminal Court cases involving States that are not Parties to the Rome Statute, Article 13 of the Statute of the International Criminal Court, concerning the exercise of jurisdiction by the International Criminal Court, provides that the Court may exercise its jurisdiction in respect of a crime referred to in Article 5, in accordance with the provisions of this Statute, in the following circumstances:

(a) Where a State Party refers to the Prosecutor, in accordance with Article 14, a situation in which it appears that one or more of these crimes has been committed.

(b) Where the Security Council, acting under Chapter VII of the Charter of the United Nations, refers a situation to the Prosecutor in which it appears that one or more of these crimes has been committed.

(c) Where the Prosecutor has initiated an investigation in respect of one of these crimes in accordance with Article 15.

Furthermore, decisions on referral by the Security Council may not be considered in isolation from the principle of sovereign equality and the primacy of national jurisdiction; in confirmation of this, Principle VII of Article 2 of the Charter of the United Nations of 1945 states that: 'Nothing in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, nor shall it require the Members to submit such matters to settlement under the present Charter; provided, however, that this principle shall not prejudice the application of the enforcement measures provided for in Chapter VII.'

In this context, the Security Council has adopted numerous resolutions reaffirming its full commitment to Libya's sovereignty, independence, territorial integrity and national unity. It has also urged Libyan actors and institutions to refrain from taking any unilateral actions that would increase tensions, undermine trust and further entrench divisions between institutions and discord amongst Libyans, and to address such issues without delay.

Accordingly, the Security Council's referral of the situation in Libya to the International Criminal Court (ICC) is not to be regarded in isolation from the principles of international cooperation, since a State's demonstration of its capacity to conduct effective trials thereby precludes the ICC from exercising its positive complementary jurisdiction, as the Rome Statute of the International Criminal Court is founded on the principle that national courts should, first and foremost, hear cases involving serious violations; the International Criminal Court, in accordance with the Rome Statute, complements national courts. Hence the principle of complementarity arose, and it has been recognised that universal jurisdiction is a last resort; in accordance with the principles of international public order, it must respect the primacy of states that have fundamental jurisdictional links to cases falling within their national jurisdiction.

This was in application of the priority of jurisdiction enjoyed by national courts; the Rome Statute therefore contains provisions relating to the admissibility of cases before the Court, stipulating that a case is admissible before the International Criminal Court only when national systems are unable or unwilling to exercise their jurisdiction, as set out in Article 17(1)(a) and (b) of the Statute. The Rome Statute also requires the Prosecutor, prior to commencing an investigation, to notify all States Parties and those States which, in the light of the available information, he considers to have a customary practice of exercising jurisdiction over the crimes under investigation, provided that the Prosecutor waives

to the State regarding the investigation – should it so request – and, if it has conducted or is conducting an investigation into those crimes, it has authorised the accused and the State that has initiated or is initiating the investigation or prosecution in the case to challenge the admissibility of the case before the International Criminal Court.

Applying the foregoing, we find that the Libyan State is not a party to the Rome Statute, and acceptance of the Court's jurisdiction requires a clear constitutional authorisation from the elected legislative authority, which has not occurred, particularly as the Libyan judiciary is capable and willing to investigate and prosecute such violations, which renders the principle of complementarity—on which the International Court relies to assume jurisdiction over cases—inapplicable; consequently, the contested decision is null and void as it is vitiated by a defect (a grave lack of jurisdiction), reflecting an abuse of power by the authority that issued it, thereby rendering it null and void.

This is because the international judiciary cannot be a substitute for the national judiciary nor can it take its place, as the national judiciary enjoys priority jurisdiction in the prosecution of international crimes falling within the subject-matter jurisdiction of the national court; indeed, the complementary jurisdiction of the Court has been emphasised in the preamble to the Rome Statute and in its Article 1.

To accept otherwise would constitute a flagrant conflict with the inherent jurisdiction of the national judiciary, since proceedings relating to crimes committed on the territory of a State fall exclusively within the remit of the national judiciary; this is a matter reflecting the sovereignty of the State, which may not be relinquished to any other State or entity, as this would amount to a surrender of its powers and sovereignty.

This principle was affirmed by the International Court of Justice in its commentary on the judgment in the case of the Congo v. Belgium (concerning the arrest of the Congolese Foreign Minister, Yaredia Nzombasi, and the attempt to try him before the Belgian courts), in which it held that a State alone has the right to exercise jurisdiction over its territory, and that it also possesses such jurisdiction over crimes committed outside its territory where the perpetrator, or at least the victim, is a national of that State, or over crimes that threaten its external or internal security.

It goes without saying that the Libyan state has never relinquished its sovereignty throughout the ages, and the clearest evidence of this was the ruling of the International Court of Justice affirming this in the case known as 'Lucrèce', which formed the basis of the dispute at that time between the Libyan State and the United Kingdom concerning the implementation of Security Council Resolutions 1992/748 and 1993/883. On that occasion, the International Court of Justice affirmed that these resolutions, when interpreted in accordance with the Charter which establishes its jurisdiction, prohibited the Security Council to require Libya to extradite its nationals to the United States or the United Kingdom. The International Court of Justice concluded by delivering its judgment by a majority of thirteen votes on 27 February 1998, in which it recognised the jurisdiction of the Libyan courts to investigate and try the case in question.

That being the case, and given that the national judiciary has not relinquished its inherent jurisdiction to try crimes committed within the territory of the State—as evidenced by the numerous pieces of conclusive evidence set out below—

1. The Libyan Supreme Judicial Council issued a letter addressed to the President of the Presidential Council of the Government of National Unity on 14 July 2021, in which it affirmed the inherent jurisdiction of the Libyan judiciary to try all incidents occurring within Libyan territory, and concluded by calling on him to address the International Criminal Court to affirm the inherent jurisdiction of the Libyan judiciary to hear all disputes and try crimes committed on Libyan territory, which we uphold as part of Libya's national sovereignty.
2. Furthermore, the International Criminal Court itself affirmed the ability of the national judiciary to exercise its inherent jurisdiction when it issued its judgement in the case concerning the accused, Abdullah al-Senussi, who was wanted by the Court and whose case is pending before the national judiciary. This is because the principles of equality of sovereignty and the primacy of jurisdiction enjoyed by the national judiciary must be observed in any international judicial proceedings; recognised international courts must operate in accordance with this principle and remain complementary in nature, as they must be applied solely to prevent impunity, and in cases where national courts are unable or unwilling to exercise jurisdiction; for the extension of such practice constitutes an arbitrary and unlawful exercise of universal jurisdiction and jeopardises the rule of law at the international level. This is because any assertion or acceptance to the contrary would result in the entire state losing its legitimacy due to its relinquishment of sovereignty and the supremacy of national laws; it would make the International Criminal Court a supreme authority above the state's judiciary, which conflicts with state sovereignty, constitutes an infringement thereof, and amounts to unjustified interference in the state's internal judicial affairs; Conversely, the state leaves a negative impression regarding its ability to deliver justice and even its relinquishment of sovereignty, having been criticised for lacking independence and impartiality, and for its inability to administer justice within its own territory, due to blatant external interference in the trials taking place before its courts, which have turned them into trials aimed at taking revenge on political opponents. Consequently... the complementary jurisdiction of the International Criminal Court is precluded, as the original jurisdiction of the national judiciary had already been exercised through the Public Prosecutor's Office's handling of the offences committed during the year 2011, and the Libyan State, through all its national institutions, was keen and willing to conduct the trial when it undertook the investigation and prosecution.

Third reason: the invalidity of the deposit of the document that is the subject of the contested decision, as this procedure contravenes the principles of international cooperation and violates the principle of good faith in international relations, coupled with a defect of consent, given that it constitutes a null and void unilateral declaration; for the principles of international cooperation governing the conclusion of international instruments are based on the achievement of common objectives and sovereignty

the rule of law, equality between states, transparency, mutual benefit and a clear definition of responsibilities; at the same time, these principles seek to build trust, promote stability, address global challenges and effectively strengthen relations between states and international organisations within the legal framework. In view of the aforementioned defects which marred the contested decision—constituting the most serious forms of nullity, invalidity and contravention of laws at both national and international levels—and in conjunction with this, its issuance has come to constitute a violation of the principle of good faith in international relations, coupled with a lack of consent, given that it is a null and void unilateral act. The principles of good faith and consent are fundamental to the conclusion of international treaties. Good faith in the conclusion of international treaties means a commitment to sincerity and cooperation at all stages of the negotiation and implementation of treaties, whilst the principle of consent means that a commitment to a treaty is only binding if the State, of its own free will and choice, expresses its explicit consent to these obligations, which constitutes the essence of the validity of the treaty and its entry into force. Consequently, states can only be bound by their express will in accordance with the principle of national sovereignty; and since the charters of international organisations impose obligations on member states, as well as conferring rights upon them, the consent of these States must be equally present. This consent is expressed through the States' agreement to establish the international organisation, and regarding its objectives, principles and competences; without such consent, no obligation is imposed on the States, and indeed, without it, the international organisation cannot be established nor can it continue to carry out its work internationally. Given that the contested decision contravenes the legal requirements for the conclusion of such acts—a matter which raises profound and fundamental legal concerns that go beyond the mere fact of its issuance by a unilateral act, thereby threatening the sovereignty, independence and unity of the State— and in light of its violation of a set of general principles of international and national law which form a single, unified whole, the deposit of the document that is the subject of the contested decision is null and void, as it violates the principle of good faith in international relations, coupled with a defect of consent. Accordingly, we shall address the nullity of this decision from the following two perspectives: **First aspect:** With regard to the violation of the principle of good faith in international relations, the principle of international good faith requires that States and contracting parties act with sincerity, good faith and integrity in their dealings and treaties, to ensure respect for legal obligations and the achievement of their intended objectives; this includes avoiding any acts that would impede the implementation of treaties. This principle is an integral part of any legal system, including international law, and aims to preserve mutual trust and cooperation. This is because the good-faith fulfilment of international obligations requires preventing the abuse of rights under conventions and treaties in a manner that causes harm to the parties thereto; in other words, refraining from any act that could deprive the treaty of its subject matter or objectives. **Legal basis:** In terms of , the principle of good faith forms the basis of international conduct, as the preamble to Article 20 of the Vienna Convention on the Law of Treaties was drafted in the context of the acceptance of and objections to reservations.

In fact, it is merely one expression of the principle of good faith; it sets out how reservations submitted by a State are to be accepted or objected to, and emphasises the need for States to exercise these rights in accordance with the spirit of good faith and the law – and good conduct in international relations – which requires them to deal with such reservations fairly and responsibly. Article 2 of the Charter of the United Nations is the most comprehensive provision, being binding not only on Member States of the United Nations but also on its organs. The second paragraph of this Article reaffirms the principle of good faith in international conduct by stipulating that: [‘In order that the Members of the Organisation may secure for themselves all the rights and benefits arising from membership, they shall fulfil in good faith the obligations they have assumed under this Charter.’] This principle has been reaffirmed in numerous international documents and declarations, the most significant of which is perhaps that set out in the Charter of the United Nations. After the Preamble to the Charter had clarified the necessity of achieving justice and respecting obligations arising from treaties and other sources of international law, as also referred to in the Draft Declaration on the Rights and Duties of States prepared by the United Nations International Law Commission in 1949, it is stated that among the duties incumbent upon States is [the fulfilment by a State, in good faith, of its obligations arising from treaties and other sources of international law]. The principle of good faith was also addressed in the Declaration adopted by the United Nations General Assembly on 24 October 1970 concerning the principles of international law relating to friendly relations between States, in accordance with the Charter of the United Nations, which states:

1. Every State is obliged to fulfil in good faith its obligations arising from the Charter of the United Nations.
2. Every State is obliged to fulfil in good faith its obligations arising from the general principles and rules of international law.
3. Every State is obliged to fulfil in good faith its obligations arising from international treaties in force, in a manner consistent with the general principles and rules of international law; and where obligations under treaties conflict with the obligations of Members of the United Nations under the Charter, the obligations under the Charter shall prevail. This is because the principle of complementarity in the International Criminal Court is based on drawing a distinction between what is internationally acceptable and what is not; and to prevent the International Criminal Court from seeking to dictate its judicial strategy to national authorities and impose it upon them – thereby avoiding a crisis that would call into question their legitimacy – and a state refuses to cooperate with the Court on this basis, when the practices of the International Criminal Court and its Prosecutor issue indictments on behalf of the state and assume the discretionary powers of the national judiciary in the field of prosecution, the principle of complementarity is effectively nullified, and the principle of judicial competition arises in its place.

The admissibility criterion was based on the principle of complementarity, such that the International Criminal Court may only exercise its jurisdiction to prosecute a matter which the national authorities have failed to address; this ensures that the Court continues to operate in accordance with the intentions of the drafters of the Rome Statute, namely that the International Criminal Court should be a court of last resort.

Accordingly... the concept of the International Criminal Court's jurisdiction as a court of last resort is realised through the substantive criteria set out in the admissibility test, which ensure that the International Criminal Court is compelled to respect the fundamental right and responsibility of States to investigate international crimes and prosecute their perpetrators.

This is because the principle of complementarity was established to strike a balance between the right and responsibility of every sovereign State to exercise jurisdiction, and the recognition that the international community, in order to effectively prevent such crimes and impunity, must intervene; this principle ensures that these objectives are achieved and that the Court maintains its credibility in pursuing them, and the jurisdiction of the International Criminal Court is invoked only when a State is unwilling or unable to do so.

The fight against impunity must always be conducted in good faith, and in accordance with other principles, foremost among which is the principle of sovereign equality, which must be observed in any international judicial proceedings; this is complemented by the principle of the primacy of national jurisdiction; and both are followed by the principle of complementarity, which serves to strike a balance between the right of every sovereign State and its responsibility to exercise jurisdiction.

He thus emphasised that, in accordance with the principle of good faith, the jurisdiction of the International Criminal Court should only be applied in cases where a State is unable or unwilling to administer justice, and affirmed that his Government is working to ensure that the International Criminal Court applies this principle impartially.

Accordingly... the principle of good faith is a general principle of international law governing the exercise of rights by States; one application of this general principle, widely known as the [principle of abuse of rights], prohibits the arbitrary exercise of State rights and stipulates that: [Whenever the exercise of a right falls within the scope of a treaty obligation, it must be exercised in good faith, that is to say, reasonably].

By application of the foregoing, the complementary jurisdiction of the International Criminal Court is precluded, as the original jurisdiction of the national courts has been realised through the Public Prosecution Service's handling of the offences committed since 2011, and the Libyan State, through all its national institutions, has been keen and willing to hold the trial, having undertaken the investigation and prosecution of all the offences, culminating in their referral for trial in accordance with national rules and laws.

Indeed, the International Criminal Court itself affirmed the capacity of the national judiciary to exercise its jurisdiction when it issued its decision declaring the case concerning Abdullah al-Senussi inadmissible, and the national judiciary has conducted numerous trials in accordance with the principle of the primacy of its judicial jurisdiction.

Consequently, there are no grounds or justifications for issuing the contested decision to demonstrate the national judiciary's ability and willingness to exercise its inherent jurisdiction; rather, we find clear arbitrariness and an abuse of power on the part of the authority that issued the contested decision, aimed at achieving political objectives and the self-interest of its author, rather than serving the public interest by imposing a state of political exclusion, and by exhausting domestic remedies, in a clear attempt to strip the national judiciary of its authority by terminating its inherent jurisdiction to try persons for all offences committed within Libyan territory. Although the Libyan State is not a party to the Rome Statute, international rules and norms prohibit interference with the independence of the judiciary.

The Libyan Supreme Judicial Council has also affirmed the inherent jurisdiction of the Libyan judiciary to try all offences committed within Libyan territory, calling on the Government of National Unity to address the International Criminal Court to affirm the jurisdiction of the Libyan judiciary to hear all disputes and try crimes committed on Libyan territory, which it upholds as part of Libya's national sovereignty.

However, the interim executive authority displayed behaviour in the process of issuing the contested decision that can only be described as a complete disregard for the judiciary, thereby infringing upon its independence. It was clear that these measures were taken with an ulterior motive, not only to undermine the capacity of the national judiciary, but also as a result of interference by the state's political authorities, in an attempt to politically marginalise certain individuals, whilst seeking to cling to the functional authority they enjoy and retain the privileges associated with that office for as long as possible; Furthermore, they were issued unilaterally to obstruct a proper examination of the legality of the contested decision by the competent authorities—namely the House of Representatives, representing the will of the people, and the judiciary—as the contested decision was intended to usurp their inherent jurisdiction to try all cases occurring within the national territory.

Furthermore, although the national judiciary exercises its inherent jurisdiction to try all cases occurring within the State's territory, the International Criminal Court's continued exercise of complementary jurisdiction, based on the contested decision, constitutes a violation of the principles of equality of sovereignty, which must be observed in any international judicial proceedings, and is inconsistent with the principles of international cooperation and the principle of good faith in international relations.

Although Security Council Resolution 1970/2011, concerning the situation in Libya, was adopted within the framework of international cooperation with the International Criminal Court, and not in a manner that undermines the inherent jurisdiction of the national judiciary, the obligations of international cooperation and the principle of good faith in international conduct are closely linked to the triumph of the constitutional government over the authoritarian government; in other words, the triumph of democracy over authoritarianism. An authoritarian government, being unaccountable to the will of the people it rules over, tends to shape the state's foreign policy in exactly the same way as it does its domestic policy, by pursuing policies of conspiracy and political exclusion,

whereas a constitutional government can only ultimately base its foreign and domestic policies on the consent of the 'will of the people'.

Consequently... this proves the bad faith of the authority that issued the decision by its invalid unilateral act, determined to obstruct national justice rather than to uphold national trials within the framework of legality; however, the authority that issued the decision acted contrary to the will of the judiciary, which holds the original jurisdiction. From the foregoing, and given the circumstances, it conclusively demonstrates a breach of the principle of good faith on the part of the authority that issued the contested decision, as it was issued without any legal basis to justify it, through invalid procedures and by unilateral action that thereby exceeded the limits of the authority vested in it, which amounts to a defect of nullity and voidness due to the usurpation of jurisdiction affecting both the legislative and judicial authorities.

Furthermore, the International Criminal Court's continued exercise of positive complementary jurisdiction on this basis constitutes a violation of the principles of equality of sovereignty—which must be observed in any international judicial proceeding—and a disregard for the principles of international cooperation and good faith in international conduct.

Second aspect: the unilateral declaration of lack of jurisdiction is null and void because its basis is 'tainted by a defect of consent', thereby contravening the provisions of applicable national legislation, recognised constitutional principles, and the fundamental principles of international law.

This is based on the contested decision and the unilateral declaration it contains waiving the jurisdiction of the national courts in favour of the International Criminal Court, which constitutes a null and void unilateral decision issued by a body that lacks legal competence and the necessary legal capacity to adopt it, as it is marred by the defect of usurpation of authority, coupled with the defect of deviation from and abuse of the authority on which its issuance was based; these defects inevitably lead to the nullity and invalidity of the contested decision and the loss of its legal validity.

Unilateral acts are not considered lawful for States in isolation from their domestic laws, international public order and the principles of international cooperation.

Legal basis... The exception set out in the final paragraph of Article 46 of the 1969 Vienna Convention, which stipulates that the ground for nullifying consent must be based on a manifest violation and relate to a rule of domestic law of fundamental importance.

The term 'manifest violation' in the second paragraph of this article is intended to mean that 'a violation is manifest if it is objectively clear that any State's conduct in this matter is in accordance with customary practice and in good faith'.

It is therefore necessary to consider whether it is permissible to invoke as a ground for the invalidity of a unilateral act on the grounds that the latter was adopted in clear violation of a rule of domestic law of fundamental importance relating to the competence to enter into an international obligation, Article 46 of the 1969 Vienna Convention stipulates that to invoke nullity...

1. Where the rule in domestic law is of fundamental importance, such as the Constitution and laws falling within the so-called 'constitutional bloc in force', [it is understood that, for this condition to apply to unilateral acts, the rule must have been in force at the time the unilateral act in question was issued and at the time the invocation of the conflicting provision was made].
2. Furthermore, the provision must relate to the competence to conclude treaties, in the narrow sense implied by this phrase, and this may be extended to unilateral acts.
3. The violation of domestic law must be manifest, in the sense that it must be objectively clear to any State acting in this field in a normal manner and in good faith.

Furthermore, Article [7] concerning declarations on unilateral acts, contained in the Ninth Report on Unilateral Acts of States, provides that: 'A State may invoke a declaration on a unilateral act if the State's expression of its consent to be bound by a unilateral act would require it to violate a rule of fundamental importance in its domestic law'.

This is confirmed by the International Court of Justice, which holds that declarations of acceptance of the compulsory jurisdiction of the International Court of Justice are of a special nature in that they are, in fact, part of a treaty relationship; although they are unilateral declarations from a formal perspective, they are subject to the regime of the Vienna Convention on the Law of Treaties.

It is true that these declarations are unilateral in form, but according to the majority of legal opinions and international judicial precedents, they fall within the category of treaty relations and are therefore subject to the Vienna Convention.

However, they are at the same time of a special, optional declaratory nature with regard to the effect of their acceptance, which is distinct from a treaty-based character; consequently, certain rules—such as those relating to interpretation—should apply to them in a more flexible manner. It is worth noting in this regard that, in the Military and Paramilitary Activities case, the United States argued that such declarations are of a special nature, that they do not constitute treaties and are not subject to the law of treaties, that States have a sovereign right to enter reservations regarding the Court's jurisdiction, and that the Optional Protocol is particularly binding in accordance with established State practice.

The Court, without giving effect to the special nature of these declarations—as it had done in previous cases such as the Iranian Electric Power Company case—therefore pointed out that declarations of acceptance of the Court's jurisdiction are not merely declarations arising from negotiations between two or more States, adding, however, that they are [the result of unilateral acts]. This argument confirms that such declarations must be registered and deposited with the Secretary-General of the United Nations. It can be inferred from the Court's 1984 judgment that, although these declarations are subject to a treaty-based regime, their unilateral nature must be taken into account when interpreting them.

If the International Court of Justice, in its judgment of 1974, recognised that good faith is a fundamental principle that must be taken into account, given that [one of the fundamental principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith], and consequently, the intention of the State issuing a unilateral act also constitutes, in practical terms, a factor that must be given due consideration when determining the basis for the binding nature of unilateral acts.

The International Court of Justice also emphasised this on 3 February 2006, when the Court reaffirmed the need to interpret the true content of the declaration as well as the circumstances prevailing at the time of its issuance.

Consequently, the intention of the State issuing a unilateral act also constitutes, in practice, a factor that must be given due consideration when determining the basis of the binding nature of unilateral acts. Accordingly, Guideline No. 10 concerning the basis of the binding nature of unilateral acts was drawn up, the text of which is as follows: [Basis of the binding nature of unilateral acts: The binding nature of unilateral acts of States is based on the principle of good faith and the trust placed in the commitment of the State issuing the act].

In view of the foregoing, we shall now address similar declarations that contravene the fundamental legal principles set out at both the national and international levels, as set out below:

(1) The unilateral act's contravention of the principles of domestic public order set out in the national legislation in force and the recognised constitutional principles:

The unilateral declaration, which forms the subject of the contested decision and entails the waiver of national judicial jurisdiction in favour of the International Criminal Court, contravenes the jurisdiction of its source and is vitiated by a defect of consent amounting to an usurpation of authority, coupled with a deviation from and abuse of the authority on which its issuance is based, as previously established in detail in the first ground of this appeal, which we summarise as follows:

1. The contested decision was issued in a manner constituting an abuse of power, given that the subject matter of its issuance affects the jurisdiction of both the legislative and judicial authorities...

Since the national legislation in force requires the approval and ratification by the House of Representatives of such acts as those set out below:

The ratification of international agreements and treaties by the executive authority must be approved in advance by the House of Representatives, in accordance with the provisions of paragraph (6/a) of Article 8 under the heading 'Formation of the Government'.

Furthermore, Article 14 of the same Political Agreement, concerning the House of Representatives' competence to approve draft laws ratifying international instruments, stipulates that: [Draft laws may be introduced on the initiative of at least ten Members of Parliament; draft laws shall be submitted by the Cabinet; and the Prime Minister shall be responsible for submitting draft laws ratifying international treaties and the list of draft financial laws].

This infringes upon the jurisdiction of the judiciary, as this decision would deprive the judiciary of its inherent jurisdiction to try all offences committed within Libyan territory.

It contravenes the provisions of the Constitution as set out in Article 32 of the Constitutional Declaration, which states that the judiciary is independent, that justice is administered by courts of various types and levels, that judgements are handed down in accordance with the law, and that judges are independent and subject to no authority in their adjudication other than the law and their conscience. This was also contrary to the provisions of paragraph 9 of the same article, which prohibits the establishment of special courts; the contested decision, by directing its effect and paving the way for further actions, explicitly recognised and declared the acceptance of the jurisdiction of a foreign court that has no sovereign authority over the jurisdiction of the national judiciary.

It also contravened the text of the Arab Charter on Human Rights, in Article 2, paragraph (2), to which the State is a party, which stipulates that: [Peoples have the right to live under national sovereignty and territorial integrity].

Furthermore, Article 12 of the Charter affirms that: [All persons are equal before the law; States Parties shall guarantee the independence of the judiciary and protect it from any interference, pressure or threat; they shall also guarantee the right of every person outside their jurisdiction to a fair trial through all levels of the judicial system].

It also contravened the fundamental principles established by the Supreme Court's rulings regarding the independence and sovereignty of the national judiciary, in that it ruled: [The principle of state sovereignty holds that jurisdiction lies with a state's courts over disputes arising within its territory that require judicial adjudication; a conflict of local jurisdiction is conceivable only within a single judicial district].

It also contravened the fundamental principles of judicial independence adopted by the United Nations, which reaffirmed this in accordance with the context of the same first principle concerning judicial independence.

2. The contested decision was issued, in the course of its proceedings, to achieve political objectives and the self-interest of its author, which constitutes a breach and an abuse of the authority vested in its issuance, carried out unilaterally and personally in a non-public or secret manner, without the knowledge or participation of the parties concerned, and without following the legal procedures applicable in such cases; It also contravened the prohibitions imposed by the transitional period, the implications of which constitute a breach of the following:

The Geneva Outcome Document, adopted in 2021, explicitly provided for the formation of a new executive authority in accordance with paragraph (10) of Article 6, stipulating that one of the executive authority's priorities during the preliminary phase is that: ['During the preliminary phase, the Executive Authority shall not enter into any new or previous agreements or resolutions that would undermine the stability of the Libyan State's foreign relations or impose long-term obligations upon it'], and this gave rise to House of Representatives Resolution No. (1) of 2021 concerning the vote of confidence in the Government of National Unity.

Furthermore, pursuant to the third paragraph of Article 1 of the Geneva Conference outcomes, any decision taken in accordance with the powers set out in Article 8(2) of this Agreement requires the unanimous approval of the Council of Ministers, comprising 'the Prime Minister and his deputies', particularly as the condition for its issuance is prior ratification by the House of Representatives, in accordance with the provisions of paragraph (6/b) of Article 8, contained under the heading 'Formation of the Government of the Political Agreement'.

The contested decision contravenes the principle of openness and transparency, which are general principles to which all state authorities are subject, as it was issued surreptitiously, without notifying the parties concerned or those affected by it, and without affording them the opportunity to review or object to it, thereby constituting a violation of the principle of openness and transparency, and thus contravening:

1. It contravened the provisions of Article 30 of the governing principles of the Political Agreement—which govern its implementation and interpretation—regarding the commitment to the principles of transparency and the fight against corruption, and adherence to international standards in the field of public procurement and in all the State's internal and external dealings.
2. It also contravenes the provisions of the fourth paragraph of Article 2 of Law No. 8 of 2011 concerning the establishment of the State's Official Gazette, which requires the publication of the texts of international and regional agreements and treaties ratified by the legislative authority.
3. It contravened the United Nations Convention against Corruption of 2003, adopted by the United Nations General Assembly on 31 October 2004, which stipulates in several of its articles the need to uphold the principle of transparency; Article 7 states that each State Party shall endeavour to implement and consolidate effective policies for the prevention of administrative corruption.
4. Furthermore, paragraph (a) of Article 13 of the same Convention stipulates: [promoting transparency in decision-making processes and encouraging public participation therein], Paragraph (b) emphasised the need to ensure that the public has effective access to information, whilst paragraph (d) of the same article stipulated the need to protect individuals and guarantee their freedom to receive and disseminate information relating to corruption, and that such freedom must not be restricted except in specific cases, including the protection of citizens' private lives and the protection of public order and national security.

In light of the foregoing, and given the circumstances, this demonstrates the bad faith of the authority that issued the declaration through a unilateral and invalid act, thereby violating the national legislation in force and recognised constitutional principles, marred by the defect of consent 'consisting in the usurpation of power', coupled with the deviation and abuse of power by those responsible for its issuance, and designed to obstruct national justice in order to achieve the political objectives and self-interest of its author, rather than to strengthen national trials within the framework of the project.

(2) The unilateral declaration contravenes international public order, the obligations of international cooperation and the principle of good faith in international conduct, particularly in times when such cooperation is indispensable.

For an unconditional international obligation arising from a unilateral declaration is founded on good faith.

This is because the administrative authority's declaration of its recognition of the jurisdiction of the International Criminal Court, based on judicial proceedings, is followed by constitutes a clear violation of public international law by failing to comply with the fundamental rules and principles governing relations between states and the international community, thereby raising profound and fundamental legal concerns that extend beyond the scope of the contested decision, thereby threatening the state's sovereignty, independence and unity.

This conclusively demonstrates a breach of the principle of good faith on the part of the authority that issued the contested decision, as the International Criminal Court's continued exercise of positive complementary jurisdiction on this basis constitutes a violation of the principles of equality of sovereignty—which must be observed in any international judicial proceeding—and a disregard for the principles of international cooperation and good faith in international conduct.

Furthermore, it contravenes a set of general principles of international law which are interdependent and complementary to one another as a single unit, as previously demonstrated in detail in the second ground of this appeal, which we summarise as follows:

1. Breach of Security Council Resolution No. 2769/2025, dated 16 January 2025, in which it urged Libyan actors and institutions to refrain from taking any unilateral measures that would increase tensions, undermine trust, and further entrench divisions between institutions and discord amongst Libyans, and to address these matters without delay.
2. The contested resolution contravenes the principle of equality of sovereignty and the limits set out in Security Council Resolution 1970, as stipulated in its fifth and sixth paragraphs, and also contravenes Security Council resolutions affirming the principle of 'equality of sovereignty'. It reaffirms its commitment to the political process led and owned by Libyans and facilitated by the United Nations, and to Libya's sovereignty, independence, territorial integrity and national unity.
3. A breach of the provisions of the second paragraph of the Principles of International Cooperation adopted pursuant to United Nations General Assembly Resolution No. 3074 (D-28), which states: [Every State has the right to prosecute its nationals for war crimes or crimes against humanity].

4. The obligation of cooperation between national judicial authorities and the International Criminal Court stems from the principle of complementarity, as set out in the Rome Statute of the International Criminal Court, paragraphs 6 and 10 and Article 1, since the establishment of the Court affirmed that priority of jurisdiction lies with the national criminal justice system. If these national courts refrain from exercising their criminal jurisdiction for any international reason, the International Criminal Court is described as a complementary jurisdiction to national courts, acting as a court of last resort, and gives priority to national jurisdiction in investigating core international crimes and prosecuting their perpetrators; the International Criminal Court intervenes only when necessary.

This requires a system of cooperation and partnership to close the 'impunity gap', which the International Criminal Court must address whilst respecting state sovereignty.

5. Violation of the principle of the primacy of national jurisdiction. The Rome Statute contains provisions relating to the admissibility of cases before the Court; it stipulates that a case is admissible before the International Criminal Court only where national systems are unable or unwilling to exercise their jurisdiction, in accordance with Article 17(1)(a) and (b) of the Statute.

The Rome Statute also requires the Prosecutor, prior to commencing an investigation, to notify all States Parties and those States which, in the light of the available information, he considers to have a customary practice of exercising jurisdiction over the crimes under investigation, provided that the Prosecutor shall relinquish the investigation to the State should it so request, and if that State has conducted or is conducting an investigation into those crimes, it permits the accused and the State that has initiated or is initiating the investigation or prosecution in the case to challenge the admissibility of the case before the International Criminal Court.

6. It has been established that the authority issuing the contested decision acted in bad faith and of its own accord, thereby negating the International Criminal Court's positive complementary jurisdiction, given that the original jurisdiction of the national judiciary to adjudicate crimes committed within the State's territory had been realised through the Public Prosecution Service's initiation of proceedings regarding the offences committed during the year 2011, The Libyan State, through all its national institutions, was keen to hold the trial and had both the capacity and the willingness to do so when it undertook the investigation and prosecution; indeed, this was confirmed by the following:

a. A letter was issued by the Libyan Supreme Judicial Council addressed to the President of the Presidential Council of the Government of National Unity on 14 July 2021, in which it affirmed the inherent jurisdiction of the Libyan judiciary to try all offences committed within Libyan territory, and concluded by requesting that he address the International Criminal Court to affirm the jurisdiction of the Libyan judiciary to hear all disputes and try crimes committed on Libyan territory, which it regards as part of Libya's national sovereignty.

... and to exercise its jurisdiction, notwithstanding the ruling declaring the case concerning Abdullah al-Senussi inadmissible; the national judiciary has applied national criminal law to all unlawful acts committed and enforced its provisions in accordance with the principle of the primacy of its judicial jurisdiction.

1. From the foregoing and by extension, it is clear and evident that the unilateral declaration of lack of jurisdiction is null and void, "lacking consent", given that it contravenes a number of general principles enshrined in the national legislation in force, recognised constitutional principles, and the fundamental principles of international law, in a manner that runs counter to the principles of international cooperation.

Since this act overstepped the sovereignty of the State's domestic laws, which are of fundamental importance, and the fact is that it has no legal basis, particularly as its issuance occurred in the context of an abuse of power exceeding the limits of his official jurisdiction, thereby infringing upon the principle of the separation of powers, which renders it null and void.

For it is the legislation in force in the State and the recognised constitutional principles that specify the procedures, conditions and mechanisms for ratification, and it is the competent authority for ratification that carries out this procedure to ensure that the legal act is valid and binding upon it; however, the deposit of the document in question, in contravention of established constitutional rules, renders this deposit an unlawful ratification—in other words, a ratification contrary to the will of the State.

This is because the International Criminal Court must operate in accordance with the principle of complementarity, as a court of last resort; this means that its jurisdiction is secondary, and the Court intervenes only if national states are unwilling or unable to prosecute the crimes committed. If national states demonstrate their ability and effectiveness in dealing with the crime, the Court will not open a preliminary investigation, as set out by the principle of complementarity.

It has long been accepted that no international court may exercise its jurisdiction over a sovereign state without its consent. State consent to the Court's jurisdiction is usually found in the 'consent clause' of a treaty, which reflects the agreement of the States Parties to that treaty to refer disputes concerning its interpretation or application to the international court. In this case, the consent clause...

The Libyan State has undertaken to take all judicial measures to ensure that there is no impunity and to prosecute all crimes constituting human rights violations in accordance with international standards.

This was in accordance with the principle of national sovereignty and the principle of the territorial jurisdiction of criminal courts, which stipulates that...

The International Criminal Court may only initiate investigations, in accordance with the legal standards set out in the Rome Statute, where national authorities have failed to fulfil this fundamental responsibility and in the absence of genuine national proceedings.

This requires the Office of the Prosecutor of the International Criminal Court to conduct a preliminary examination to determine whether there is a reasonable basis to open an investigation, which in this regard entails assessing and verifying a number of legal criteria.

These criteria include, amongst other things: whether the crimes were committed on the territory of a State Party or by one of its nationals; whether they amount to war crimes, crimes against humanity or genocide; the gravity of these crimes; whether there have been no genuine investigations or prosecutions concerning the same crimes at the national level; and whether the opening of an investigation would not serve the interests of justice and the victims.

On the one hand, the invalidity of the deposit of the declaration at the subject of the contested decision has been demonstrated, as the source of that declaration lacked jurisdiction and was 'marred by a defect of consent', coupled with a breach of the obligations of international cooperation and the principle of good faith in international relations.

This is because the acceptance by regional states or states of nationality, as non-parties, on a special basis, of the exercise of jurisdiction by the International Criminal Court, in accordance with the provisions of Article 12(3) of its Statute, is conditional upon the declaration confirming the state's consent to jurisdiction being 'explicit, clear and precise' in relation to the offence(s) or situation to which it applies, and that consent is given of their own free will.

This optional obligation to cooperate is consistent with Article 34 of the Vienna Convention on the Law of Treaties, which provides that [a treaty does not create obligations or rights for a third State without its consent].

This provision must also be interpreted as ensuring that States make such declarations of their own free will, and that such declarations reflect the legality of their issuance in accordance with the national laws governing the adoption of such acts.

In this regard, the decision of the Prosecutor of the International Criminal Court issued on 23 April 2014 concerning the declaration under Article 12(3) and the complaint [dated 23 April 2013] rejecting a preliminary examination into the alleged crimes committed in the Arab Republic of Egypt on the basis of the declaration under Article 12(3), on the grounds that the democratically elected President and his government [lacked the legal capacity required to initiate a declaration of the Court's jurisdiction].

The Prosecutor clarified that the declaration under Article 12(3) [was filed with the Registry on 13 ... and was not subsequently filed by any person possessing the necessary authority or acting under a mandate...]

... for the purpose of enabling those States to submit matters to the Court's jurisdiction.

On this day, the Court's Registry recorded a decision concerning the declaration and the complaint, stating that: [the communication cannot be regarded as a declaration under Article 12(3) of the Rome Statute].

The decision of the Court's Registry stated that [when ... internal authorities to ascertain its admissibility, the Registrar of the Court consulted with the Egyptian authorities as to whether this communication had been sent on behalf of the State of Egypt. Consequently, we did not receive a positive confirmation].

Consequently, determining the validity or applicability of the declaration under Article 12(3) is a judicial matter; the Prosecutor of the International Criminal Court must therefore consider and rule on it in the first instance during his preliminary examination.

As set out in the Prosecutor's Policies on Preliminary Examinations, the applicability of a declaration is determined during the preliminary examination when the Prosecutor is required to consider whether the jurisdiction necessary to commence an investigation exists.

Accordingly, as in the case of the Article 12(3) declaration submitted by the Palestinian National Authority, the Prosecutor stated that his Office would examine whether the declaration met the legal requirements.

The Prosecutor explained that [the standard process requires that the Palestinian National Authority, as well as other interested parties, be afforded the opportunity to be heard in order to ensure due process for all interested parties]. In that instance, the Prosecutor heard representatives of the Palestinian National Authority present...

However, we find that the acceptance of the declaration by the Prosecutor of the International Criminal Court contravenes the usual procedures in such cases, as it fails to ascertain whether or not this declaration meets the legal requirements. Consequently, the filing of the declaration in lieu of the contested decision is invalid; as the legal requirements to be observed within the International Criminal Court necessitate the refusal to recognise this declaration if it was issued by an unauthorised person or a body lacking the authority to issue such declarations, and it is also deemed defective if the purpose of the declaration is to refer a case to the Court with the aim of obstructing the course of domestic justice or for political reasons.

Fourthly: Regarding the determination of urgency to suspend the implementation of the contested decision:

Whilst the case-law of the Supreme Court has held that the administrative courts may suspend the enforcement of an administrative decision if the element of seriousness is satisfied—meaning that the appellant's claim is based on serious grounds—and the element of urgency is satisfied—meaning that the consequences of enforcing the administrative decision would be irreversible should it be annulled.

Accordingly, the appellant's application for a temporary stay of execution of the contested decision pending a ruling on the merits of the appeal before your honourable bench is well-founded, and we submit as follows:

Firstly: The application to suspend the implementation of the contested decision is well-founded in light of the grounds on which this appeal is based, and the defects afflicting this decision inevitably render it null and void in its entirety under the law...

“On the one hand, it was issued by an authority which, whilst legally competent, lacked the necessary legal capacity to adopt it; on the other hand, it is marred by the defect of usurpation of authority, coupled with the defect of deviation from and abuse of the authority upon which its issuance was based.”

Secondly: Regarding the seriousness of the request for an urgent stay of execution of the contested decision: Given that the continued enforcement of the contested decision will inevitably lead to consequences that cannot be remedied at a later stage, as the appellant's brother is currently in pre-trial detention in the city of Benghazi, Libya, as a result of and in connection with the issuance of the contested decision, and given that a foreign international court has ruled that he be referred to the International Criminal Court on the basis of this decision, and the final practical procedures for his surrender to the International Criminal Court are still ongoing; this gives rise to the fear that the jurisdiction of the International Criminal Court will be directly established without the national judiciary having fulfilled its role in this matter, particularly as every citizen has the right to be tried before their natural judge.

In view of the foregoing, the appellant's applications and the grounds and reasons on which they are based are characterised by seriousness and urgency; this necessitates that the honourable Court grant the appellant a temporary stay of execution of the contested judgment pending a ruling on the substance of the present appeal.

Fourthly[sic]: Regarding the request for authorisation to serve a certified translation of the second appeal on the President of the International Criminal Court, in accordance with the requirements of international cooperation, The purpose of this authorisation was to enable the International Criminal Court to be informed of the appeal against the contested decision, which was issued on 12 May 2025, having considered the requirements of international cooperation, , namely judicial assistance, given that the domestic court to which the International Criminal Court's summonses refer has not complied...

The International Criminal Court is conducting general investigations into events that took place within Libyan territory without referring the matter to the competent Libyan judicial authorities, a situation which raises concerns regarding a departure from the principle of complementarity set out in the Rome Statute, whereby priority in jurisdiction lies with national courts, Under this principle, the International Criminal Court acts as a court of last resort and seeks to strengthen national trials, not to replace them.

This is because the requirements of international cooperation demand transparency in the exchange of information in order to coordinate common objectives, ensure fair trials, facilitate the tracing of material evidence, and provide the information necessary for the work of international criminal courts, whilst also taking into account the need to safeguard the rights of individuals, the sovereignty of states and the independence of the national judiciary.

The judgement concluded as follows:

Firstly: the appeal is admissible in form.

Secondly: With regard to the urgent request, the implementation of the contested decision is suspended pending a ruling on the merits of the case; the decision on costs is reserved; and the Court ordered that the appeal be referred to the Court Registry to prepare the appeal on the merits.

Thirdly: On the merits, the contested decision and its consequent effects are set aside, and the respondents are ordered to pay the costs.

The appeal document contained a request to suspend the enforcement of the contested decision on the basis that two conditions were met:

First: that the grounds for the appeal are such that its annulment is likely.

Second: that the implementation of its consequences would result in irreparable harm.

A set of documents was attached to the notice of appeal, comprising:

- A copy of the contested decision: [the declaration on the jurisdiction of the International Criminal Court in English, and the Arabic translation].
- A copy of the decision referring the case to the First Pre-Trial Chamber.
- A photocopy of the Souq al-Jum'ah police report concerning the failure to publish the contested decision.
- A photocopy of Security Council Resolution No. [1970 of 2011].
- A photocopy of the Political Agreement.
- A copy of the Constitutional Declaration.
- A copy of the letter from the Supreme Judicial Council addressed to the President of the Presidential Council, up to and including the last of the documents enclosed in the file.

Furthermore, during the hearing of the appeal, a certain Khalid Muhammad al-Bashiri intervened in support of the appellant against the respondents by means of a statement of intervention in which he joined the appellant in the same claims referred to above, and a hearing has been scheduled to consider the appeal on the urgent aspect.

Proceedings

The appeal was heard as detailed in the minutes of the hearings, with Ms Fatima Al-Kari attending on behalf of the appellants, pursuant to a power of attorney issued by the original counsel, Ms Hanan Al-Amidi, whilst Ms Nadia Al-Issawi, a member of the Cases Department, appeared on behalf of all the respondents.

The first intervener: submitted a statement of intervention in support of the appellant, and notified the respondents that it had been attached to the case file; she also submitted a defence brief, comprising one original and two copies, of which the original was attached, and handed one copy to the second intervener and the other to the representative of the Public Prosecution. She upheld the contents thereof and requested that the appeal be reserved in respect of the urgent part; the brief contained a response to all the defences raised concerning lack of standing...

... the guarantee, or the scope of its administrative authority, or a statement that the court lacks jurisdiction over the matter; and finally, after the claimants have established their case on the basis of the law.

The second respondent: submitted a file containing a letter from the Attorney General regarding the respondents, as well as a letter from the Director of Legal Affairs at the Ministry of Justice, and argued that the Ministry of Justice had no standing in the appeal; she also submitted a defence brief comprising one original and two copies, attached the original, and handed a copy to the first and second respondents and to the representative of the Public Prosecution Service.

It contained several defences, the most important of which were that the appeal should be dismissed on procedural grounds due to the absence of an administrative decision — as there was no written administrative decision — and on the grounds that the court lacked territorial jurisdiction to hear the appeal, as the conduct of a State's foreign affairs is an act of sovereignty falling outside the purview of administrative justice; and on the grounds that the appeal was not based on law. It concluded that the appeal should be reserved for a ruling on the urgent aspect, and the court so decided.

Reasons

The Court, in responding to the procedural defence raised by the defence referred to above, and prior to the respondents' response to the second defence concerning the judicial position on the subject matter of the appeal — where the defence relates to the Court's lack of territorial jurisdiction on the grounds that the State's management of its foreign affairs constitutes an act of sovereignty — states as follows:

Whilst it is the prevailing view in legal doctrine and case law that acts relating to foreign policy constitute acts of sovereignty, the decision under appeal falls outside the scope of acts of sovereignty; this is because the State's judicial jurisdiction over crimes committed on its Libyan territory falls within its natural jurisdiction, as the rules of judicial jurisdiction stipulate that offences committed within Libyan territory constitute rules of public order; these are mandatory rules which may not be contravened or agreed to be deviated from, and every Libyan citizen is entitled to legal standing in matters relating to them, given that they form part of the general legal and judicial system.

In accordance with the provisions of Article 9 of the Constitutional Declaration and the Code of Criminal Procedure, the exclusion or curtailment of the judiciary's functions in favour of the executive authority must not affect all citizens, particularly as the defendant/respondent has, in the present appeal, acted directly in accordance with this law...

... since the respondent addressed a court outside the Libyan state, which is a party to the Statute of the International Criminal Court, and subsequently submitted to its jurisdiction; consequently, this plea is unfounded and should be disregarded.

As for the plea that the appeal should be dismissed on the grounds that there is no written administrative decision, this is also unfounded, since the contested decision is not required to meet any formal or procedural requirements, as it is merely a declaration by the administration—which is the first subject of the appeal—accepting the jurisdiction of the International Criminal Court and signing an acknowledgement of that jurisdiction; and consequently, an acknowledgement of the International Criminal Court’s jurisdiction to prosecute those responsible for the crimes set out in the Statute, committed in Libya from 2011 to the end of 2027, and signed by the Prime Minister on 12 May 2025 with Mr Oswaldo Gailler, Registrar of the International Criminal Court, constitutes an administrative decision; as stated in Administrative Appeal No. 57 of Year 50 Q, which reads: “It is settled case law of the Court that an administrative decision is an expression by the administrative authority of its binding will, exercising the powers conferred upon it by laws and regulations, with the aim of creating a legal status in the public interest, and the subject matter of the decision lies in the direct legal effect it produces within the existing legal system by creating, amending or repealing a legal status, which distinguishes an administrative decision from material or preparatory acts.”

Since the first respondent expressed his intention to accept the jurisdiction of the International Criminal Court to hear cases concerning crimes committed in Libya, this constitutes a purely administrative decision marred by several defects. As for the argument that the Ministry of Justice lacks standing in the appeal—given that it is the general supervisor of the judiciary—this is unfounded, as the Ministry of Justice exercises administrative and financial oversight of the judiciary and general supervision of prisons in Libya; this renders the second respondent, as well as the third—who is the public prosecutor in Libya—irrelevant, and the plea is therefore unfounded.

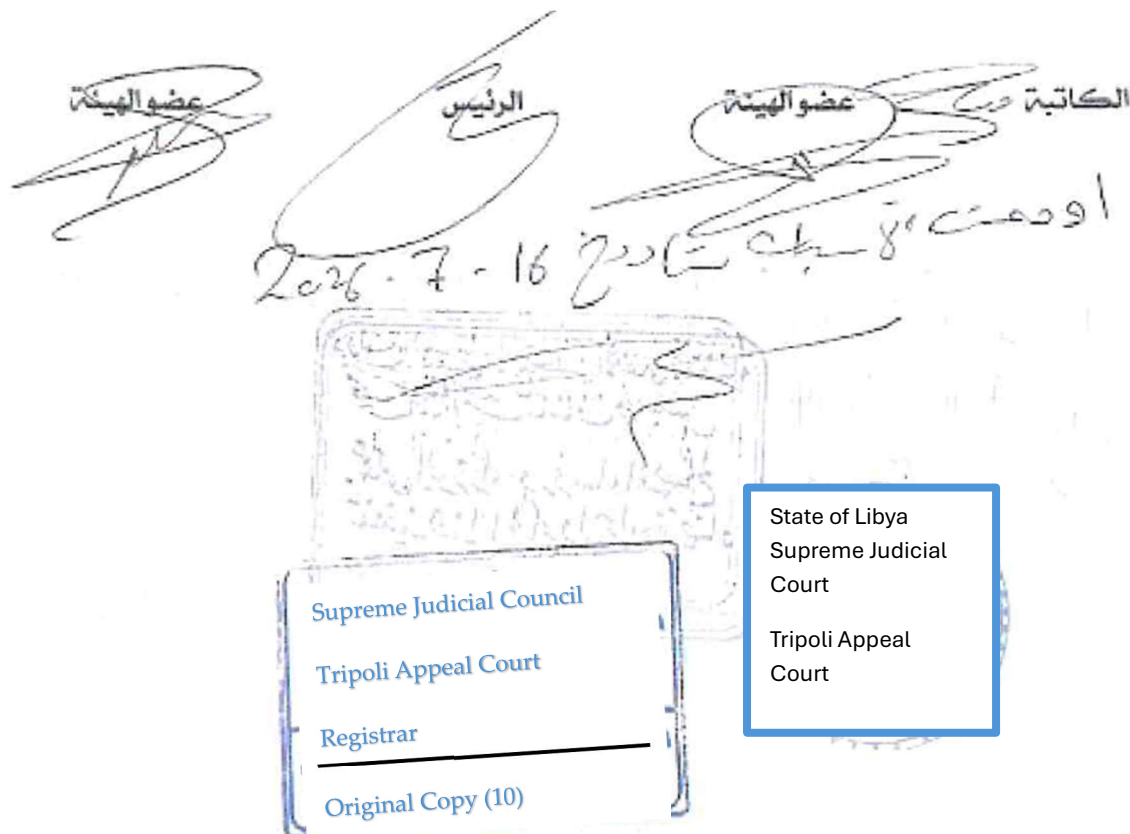
Furthermore, the form of the appeal petition has fulfilled all the conditions stipulated by law regarding standing, interest and the essential details contained therein, and a copy of the contested decision—namely, the signing of the International Criminal Court’s jurisdiction—has been attached; it was submitted by a lawyer admitted to practise before this Court. As for the decision itself, it is a purely administrative decision, however, this contested decision is marred by such serious defects that it does not comply with the time limits for appeal; furthermore, there is no evidence that it was announced or published through official channels; consequently, the appeal is admissible in form.

As for the request to suspend the enforcement of the contested decision, the grounds for appeal set out in the notice of appeal suggest a serious breach and that the decision should be deemed null and void due to its contravention of the Constitutional Declaration and the Code of Criminal Procedure, particularly as the intervention in the appeal has resulted in several consequences that cannot be remedied, In view of the circumstances, this Court hereby orders the suspension of the execution of the contested decision pending a ruling on the merits, whilst reserving its decision on costs, as set out in the operative part.

The Court ruled

Firstly: To accept the appeal and the intervention as to form.

Secondly: In the urgent part of the appeal, the Court orders a stay of execution of the contested decision pending a ruling on the merits of the case; it reserves its decision on costs; and it orders that the appeal be filed with the Court Registry for the preparation of the appeal on the merits.



Handwritten note: The enforcement order relating to the urgent application (for a stay of execution of the decision) was served on the appellant's representative in Administrative Appeal Case No. 425 of 2025

