

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/11
Date: 17 February 2025**

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

Public

Invitation to the Italian Republic to provide submissions concerning its failure to surrender
Osama Elmasry / Almasri Njeem to the Court following his arrest

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

☒ The Office of the Prosecutor

☐ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☒ States' Representatives
Italian Republic

☐ Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’ or ‘ICC’) hereby issues this invitation to the Italian Republic (‘Italy’) to make submissions to explain its failure to surrender Osama Elmasry / Almasri Njeem to the Court after he was arrested on Italian territory.

I. Procedural background

1. On 26 February 2011, the United Nations Security Council (the ‘Security Council’), acting under Chapter VII of the Charter of the United Nations, referred the situation in the Libyan Arab Jamahiriya (‘Libya’) since 15 February 2011 to the Court, in accordance with article 13(b) of the Statute, deciding, *inter alia*, urging ‘all States [...] to cooperate fully with the Court and the Prosecutor’.¹

2. On 2 October 2024, the Prosecution applied, under seal, for a warrant of arrest for Osama Elmasry / Almasri Njeem (‘Mr Njeem’).²

3. On 17 January 2025, the Court was informed that Mr Njeem was present within the Schengen zone, in a country other than Italy. The Chamber therefore expedited its ongoing assessment of the application pursuant to article 58 of the Rome Statute (the ‘Statute’) and on 18 January 2025, it issued, by majority, a warrant of arrest for Mr Njeem (the ‘Warrant of Arrest’).³

4. Also on 18 January 2025, the Chamber issued an order pursuant to article 57(3)(a) of the Statute instructing the Registrar to send requests for cooperation in accordance with articles 93(1)(h) and 99(1) of the Statute to any State where Mr Njeem was present or has recently been located, *inter alia*, to seize any evidence or devices that carried by the suspect that may contain evidence and to transmit such evidence to the Court.⁴

¹ United Nations, Security Council, Resolution 1970 (2011), 26 February 2011, S/RES/1970 (2011).

² Prosecutor’s application pursuant to article 58 for a warrant of arrest for Osama Elmasry / Almasri NJEEM (‘Osama NJEEM’), ICC-01/11-140-US-Exp, paras 1, 9.

³ Warrant of arrest for Osama Elmasry / Almasri Njeem, ICC-01/11-149-US-Exp. Unsealed on 24 January 2025, together with the Dissenting Opinion of Judge Socorro Flores Liera, as filing ICC-01/11-152-Anx.

⁴ Order to the Registrar regarding the search and seizure in relation to Osama Elmasry / Almasri Njeem, ICC-01/11-150-US-Exp.

5. On 18 January 2025, the Registrar sent urgent requests for provisional arrest of Mr Njeem, pursuant to article 92 of the Statute, to the six European States where it was believed the suspect could be present. One of these States was Italy.
6. On 19 January 2025, Mr Njeem was arrested by Italy in Turin.
7. On 21 January 2025, Mr Njeem was released and flown back to Libya.⁵ Italy did not seek to enter into consultations with the Court pursuant to article 97 of the Statute in the period between the issuance of the Warrant for Arrest and Mr Njeem's return to Libya.
8. On 27 January 2025, in response to a *note verbale* sent by the Registry to Italy on 24 January 2025 requesting information about, *inter alia*, Mr Njeem's release and return to Libya, the Italian Ministry of Justice communicated to the Registry, via a *note verbale* sent by the Italian embassy in The Hague, that it these matters do not fall within the competence of the Ministry of Justice and that Mr Njeem's return fell under the exclusive competence of the Minister of the Interior.⁶
9. On 10 February 2025, the Italian embassy in The Hague sent the a second *note verbale* to the Registry, annexing a letter from the Italian Ministry of Justice.⁷

II. Invitation to provide submissions

10. The Chamber recalls article 87(7) of the Statute. It considers that Mr Njeem's arrest and subsequent release by Italy, as well as Italy's transfer of Mr Njeem to Libya, warrants a determination on the part of the Chamber of whether it is appropriate to make a formal finding of non-compliance by Italy with the Court's request for arrest and surrender of Mr Njeem to the Court; and whether the matter ought to be referred to the Assembly of States Parties and/or the Security Council.
11. The Chamber notes that Italy has already provided certain information to the Registry of the Court, by way of the 27 January and 10 February memoranda from the Ministry of Justice, which has subsequently been made available to the Chamber. However, the Chamber recalls that, prior to any finding on non-cooperation being made, regulation 109 of the Regulations of

⁵ See the Report of the Registry on the Status of the Execution of Requests for Provisional Arrest of Mr Osama Elmasry / Almasri Njeem, 24 January 2025, ICC-01/11-151-US-Exp.

⁶ Addendum to the "Report of the Registry on the Status of the Execution of Requests for Provisional Arrest of Mr Osama Elmasry / Almasri Njeem", 28 January 2025, ICC-01/11-154-US-Exp.

⁷ Second Addendum to the "Report of the Registry on the Status of the Execution of Requests for Provisional Arrest of Mr Osama Elmasry / Almasri Njeem", 13 February 2025, ICC-01/11-157-US-Exp.

the Court mandates that ‘the Chamber shall hear from the requested State’. At this stage, the Chamber still needs to hear from Italy.

12. The Chamber therefore invites Italy to provide submissions on its failure to surrender Mr Njeem to the Court. Italy is further invited to make submissions on its failure to comply with the request for cooperation related to the search and seizure of materials found on or with Mr Njeem. These submissions should be filed in one of the working languages of the Court.

FOR THESE REASONS, THE CHAMBER HEREBY,

INVITES the Italian Republic to provide, by 17 March 2025, submissions concerning its failure to surrender Mr Njeem to the Court; and

INSTRUCTS the Registrar to transmit this invitation to the competent authorities of the Italian Republic.

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Iulia Antoanella Motoc,
Presiding**



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Monday, 17 February 2025

At The Hague, The Netherlands