

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/11  
Date: 19 March 2025**

**PRE-TRIAL CHAMBER I**

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

**SITUATION IN LIBYA**

**Public**

Decision on the OPCV's request to participate in the proceedings under article 87(7)  
of the Statute

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## **REGISTRY**

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**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’) hereby issues its decision on the request of the Office of Public Counsel for Victims (the ‘OPCV’) to participate in the proceedings concerning the failure of the Republic of Italy (‘Italy’) to surrender a suspect to the Court.

## **I. Procedural background**

1. On 18 January 2025, it issued, by majority, a warrant of arrest for Osama Elmasry / Almasri Njeem (‘Mr Njeem’)<sup>1</sup> in the *Situation in the Libyan Arab Jamahiriya*.
2. On 19 January 2025, Mr Njeem was arrested by in Turin (Italy), but subsequently released by Italy and transported back to Libya.
3. On 17 February 2025, the Chamber invited Italy to provide submissions on its failure to surrender Mr Njeem to the Court and to comply with the request for cooperation related to the search and seizure of materials found on or with Mr Njeem.<sup>2</sup>
4. On 23 February 2025, the Prosecution submitted a request for a finding of non-compliance under article 87(7) of the Rome Statute (the ‘Statute’).<sup>3</sup>
5. On 3 March 2025, the OPCV requested the Chamber to allow it to ‘submit written observations on the general interests of [v]ictims in relation to the Prosecution’s request for a finding of non-compliance under article 87(7) of the Statute against the Republic of Italy, within a deadline to be established by the Chamber’ (the ‘Request’).<sup>4</sup>

## **II. Determination by the Chamber**

6. At the outset, the Chamber notes that the OPCV wishes to address ‘the general interests of [v]ictims in relation to the Prosecution’s request for a finding of non-compliance under article 87(7) of the Statute against the Republic of Italy’.<sup>5</sup> The Chamber recalls that the present

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<sup>1</sup> 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.

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

<sup>3</sup> Prosecution's request for a finding of non-compliance under article 87(7) against the Republic of Italy for the release of Osama Elmasry / Almasri NJEEM, 21 February 2025, ICC-01/11-163-US-Exp.

<sup>4</sup> OPCV’s Request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court, ICC-01/11-165-Red, para. 30.

<sup>5</sup> Request, para. 30.

proceedings were not triggered by the Prosecution, as the Chamber had already invited Italy to make observations on its failure to surrender Mr Njeem to the Court.

7. Pursuant to article 68(3) of the Statute, if the stage of the proceedings is determined to be appropriate by a chamber, it shall permit views and concerns to be presented when the personal interests of the victims are affected.

8. The Chamber emphasises that the matter of non-cooperation is a separate and ancillary procedure to the proceedings against Mr Njeem. As Pre-Trial Chamber II recently stated,

[u]nder article 87(7) of the Statute, if a State Party fails to comply with a request to cooperate with the Court, including requests to cooperate in the arrest and surrender of suspects, contrary to the provisions of the Statute, thereby preventing the Court from exercising its functions and powers under the Statute, the Court may make a finding to this effect and refer the matter to the Assembly of States Parties. The primary aim of these referrals is not to enforce a sanction against the non-complying State but rather to notify the relevant bodies of the breach to the Statute, which in turn prevents the Court from exercising its functions. It follows that a chamber's determination under article 87(7) [...] does not constitute a formal ruling on the merits or on a procedural matter of the case, but rather a compliance assessment concerning the duty to cooperate with the Court. In other words, this notification does not concern a procedural issue that would directly impact the rights of the parties or the outcome of the trial.<sup>6</sup>

The Chamber considers that the same applies to participants (e.g., victims) or persons who may at some point be eligible to become participants (e.g., persons who are not yet admitted to participate as victims).<sup>7</sup> The Chamber therefore does not consider the present determination under article 87(7) of the Statute to be an appropriate juncture for any victims to present views and concerns.

9. In light of the foregoing, the Chamber rejects the Request.

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<sup>6</sup> Pre-Trial Chamber II, *Situation in Ukraine*, [Decision on Mongolia's requests for leave to appeal, temporary stay of the proceedings and related matters](#), 29 November 2025, ICC-01/22-111, para. 26.

<sup>7</sup> Moreover, the remedy that the OPCV seeks and wishes to address, namely '[e]nsuring that the ASP and the UNSC take action would reaffirm the ICC's commitment to justice and demonstrate that States Parties cannot ignore their obligations without facing consequences', is outside the Chamber's competence and scope of the discrete procedure under article 87(7) of the Statute.

**FOR THESE REASONS, THE CHAMBER HEREBY,**

**REJECTS** the Request.

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



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**Judge Iulia Antoanella Motoc,  
Presiding**



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**Judge Reine Adélaïde Sophie Alapini-  
Gansou**



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**Judge María del Socorro Flores Liera**

Dated this Wednesday, 19 March 2025

At The Hague, The Netherlands