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Court

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No. **ICC-01/11**
Date: **2 November 2026**

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

Public

Decision on Osama Almasri Njeem's challenge to the jurisdiction of the Court and admissibility of the case pursuant to articles 17 and 19 of the Statute

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☐ **Legal Representatives of Victims**

☐ **Legal Representatives of Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants for Participation/Reparation**

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

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

☒ **States Representative**
The State of Libya

☐ **Others**

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☒ **Victims Participation and Reparations Section**

☐ **Other**

PRE-TRIAL CHAMBER I ('Chamber') of the International Criminal Court ('Court'), issues this 'Decision on Osama Almasri Njeem's challenge to the jurisdiction of the Court and admissibility of the case pursuant to articles 17 and 19 of the Statute'.

I. Procedural history

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

2. On 18 January 2025, the Chamber issued an arrest warrant for Osama Almasri Njeem ('Mr Njeem') for crimes against humanity and war crimes allegedly committed in Libya from 15 February 2015 onwards ('Arrest Warrant').[2] Without prejudice to the determination of any future challenge under article 19 of the Statute, the majority of the Chamber, Judge Flores Liera dissenting, found that Mr Njeem's alleged conduct falls within the Court's jurisdiction.[3]

3. On 12 May 2025, Libya conveyed to the Registrar its acceptance of the Court's jurisdiction over its territory from 2011 to the end of 2027 ('Article 12(3) Declaration').[4]

4. On 30 April 2026,[5] the Registry transmitted to the Chamber a challenge filed by counsel for Mr Njeem ('Counsel') to the jurisdiction of the Court and admissibility of the proceedings against Mr Njeem pursuant to articles 17 and 19 of the Statute ('Challenge').[6] Counsel requests *inter alia* that the Chamber (i) find that the proceedings instituted against Mr Njeem fall outside

[1] UNSC, Resolution 1970, 26 February 2011, S/RES/1970 (2011). See also Presidency, Decision Assigning the Situation in the Libyan Arab Jamahiriya to Pre-Trial Chamber I, 4 March 2011, ICC-01/11-1.
[2] Corrected version of the 'Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem' dated 18 January 2025 (ICC-01/11-149-US-Exp), including Dissenting Opinion of Judge Socorro Flores Liera, ICC-01/11-152-Anx (corrected version notified on 24 January 2025) (Judge Flores Liera's dissenting opinion is hereinafter referred to as 'Judge Flores's Dissenting Opinion').
[3] Arrest Warrant, paras 3-13. See also Judge Flores Liera's Dissenting Opinion, at pages 36-42.
[4] See Annex II to Corrected version of Transmission of Article 12(3) Declaration by the State of Libya, 8 August 2025, ICC-01/11-180-Conf-Exp-Corr, ICC-01/11-180-AnxII-Red. See also confidential Annex I, ICC-01/11-180-Conf-Exp-Anx1.
[5] The Challenge was initially sent by email to the Registry on 15 April 2026. The Chamber instructed the Registry, *inter alia*, to clarify whether the submitter had been appointed to act in the name of Mr Njeem (see email from the Chamber, 16 April 2026, at 16:28).
[6] Registry Transmission of an "Admissibility Challenge by Mr. Osama Elmasry/Almasri Njeem Pursuant to Article 17(1)(a) and Article 19 of the Rome Statute", ICC-01/11-228 (with public Annexes I to VII, and confidential *ex parte* Annex VIII only available to the Defence). The Challenge is contained in Annex I.

of the Court's jurisdiction and that the case is inadmissible;[7] (ii) order the suspension of the proceedings pending the determination of the Challenge, pursuant to article 19(7) of the Statute ('Suspension Request'); (iii) in the alternative, afford Libya an opportunity to make submissions in accordance with article 19(3) of the Statute 'before any adverse finding is made against Mr Njeem' ('Submissions Request'); and, (iv) in the further alternative, convene a full admissibility hearing with disclosure of all relevant materials held by the Prosecution to the Defence, pursuant to article 19(6) of the Statute and rule 58 of the Rules of Procedure and Evidence ('Rules' and 'Hearing Request', respectively).[8]

5. On 29 May 2026, the Registry transmitted to the Chamber an additional communication received from Libya in relation to the Article 12(3) Declaration.[9]

6. On 3 July 2026, following an order by the Chamber,[10] the Office of Public Counsel for Victims ('OPCV') and the Prosecution responded to the Challenge ('Prosecution Response').[11] Although Libya was invited to submit observations to the Challenge, the Chamber did not receive any observations.[12]

7. On 9 July 2026, Counsel requested filed a request for leave to reply to the Prosecution Response ('Request for Leave to Reply').[13]

8. On 13 July 2026, the Prosecution and the OPCV responded to the Request for Leave to Reply.[14]

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[7] Challenge, paras 32, 132.
[8] Challenge, para. 132.
[9] Transmission of Additional Communication from the State of Libya in relation to the Article 12(3) Declaration, ICC-01/11-230. The Additional Communication is contained in the Annex.
[10] Order setting time limits for observations following Osama Elmasry/Almasri Njeem's jurisdictional and admissibility challenge pursuant to articles 17 and 19 of the Statute (ICC-01/11-228-AnxI), 13 May 2026, ICC-01/11-229 ('Order').
[11] Response on behalf of Victims to the jurisdictional and admissibility challenge brought by Mr Njeem pursuant to articles 17 and 19 of the Statute (ICC-01/11-228-AnxI), ICC-01/11-232 ('OPCV Response'); Prosecution response to the "Admissibility Challenge by Mr. Osama Elmasry/Almasri Njeem Pursuant to Article 17(1)(a) and Article 19 of the Rome Statute", ICC-01/11-233-Conf (with public annexes A and B, and confidential *ex parte* annexes C, D, E, F) (public redacted version notified on 13 July 2026).
[12] See Order, para. 3.
[13] Request for Leave to Reply to the Prosecutor's Response to the Defence challenge and other related matters pursuant to Regulations 24(5) and 34 (c) and Rule 58 of the Rules of the Court, ICC-01/11-234-Conf (public redacted version notified on 14 July 2026).
[14] Prosecution response to Mr Osama Njeem Elmasry/Almasri Njeem's "Request for Leave to Reply to the Prosecutor's Response to the Defence Challenge and other related matters Pursuant to Regulations 24(5) and 34(c) and Rule 58 of the Rules of the Court", ICC-01/11-235-Conf ('Prosecution Response to the Request for Leave to Reply'); email from the OPCV, 13 July 2026, at 18:19 ('OPCV Response to the Request for Leave to Reply'). See also email from the Chamber, 20 July 2026, at 15:24.

II. Determination

A. The Request for Leave to Reply

9. Counsel submits that the Prosecution Response 'fails to address the foundational premise of the [Challenge], namely the proper interpretation of [Resolution 1970]'. Therefore, Counsel clarifies that it 'does not seek leave to reply on the question of jurisdiction, and relies on the arguments developed in the [Challenge], which the Prosecution has left unanswered'.[15] With regard to the admissibility of the case, Counsel seeks leave to reply the following issues raised by the Prosecution: (i) the speed and efficacy of the alleged domestic proceedings against Mr Njeem and whether this 'speaks to the capacity and willingness of [Libya] to prosecute Mr. Njeem'; (ii) the degree of specificity, probative value and sufficiency of the evidence provided by Counsel in light of 'the available material forming part of the public record of proceedings in [Libya]'; (iii) the materiality and similarity of the domestic proceedings and whether these mirror the case before the Court; and (iv) the current state of the Libyan proceedings, the status of Mr Njeem and the applicable legal framework for the anticipated proceedings in Libya.[16] In addition, should the Request for Leave to Reply be granted, Counsel reiterates its Hearing Request, inviting the Chamber to consider exercising its discretion 'given the particular importance, sensitivity and symbolic dimension of the present case for the affected population of [Libya]'.[17]

10. The Prosecution argues that Counsel has not identified any new issues or arguments that could not have reasonably been foreseen. In particular, the Prosecution submits that the challenger bears the burden to provide probative and concrete evidence of the existence of a sufficiently similar case under investigation or prosecution in Libya, in accordance with article 17(1)(a) of the Statute, and that he should have anticipated that the Prosecution would address the sufficiency of the material provided by the challenger and 'the very legal test applied to determine whether any ICC case is admissible'. It also contends that Counsel mischaracterises the Prosecution Response, that it is not in the interest of justice to grant the Request for Leave to Reply and that an oral hearing is not necessary.[18]

[15] Request for Leave to Reply, para. 9.
[16] Request for Leave to Reply, paras 13-25.
[17] Request for Leave to Reply, paras 29-33.
[18] Prosecution Response to the Request for Leave to Reply, paras 4-16.

11. The OPCV also argues that Counsel has failed to demonstrate that the Request for Leave to Reply is warranted. In particular, it submits that the latter 'appears to be prompted primarily by the Prosecution's reference to publicly available information regarding a reported domestic conviction of [Mr Njeem] in Libya', the mere reference to which however does not justify, without more, the granting of the Request for Leave to Reply.[19]

12. As per regulation 24(5) of the Regulations of the Court ('Regulations'), unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated. The Chamber notes that the issues the Defence wishes to reply concerning the speed, efficacy and materiality of the domestic proceedings in Libya, as well as the degree of specificity, probative value and sufficiency of the evidence, could have been anticipated. Furthermore, as explained further below, the Chamber considers it appropriate to seek further information from Counsel, including on the current stage of the proceedings, and to renew its invitation to Libya to submit any observations it wishes to convey on the matter. For these reasons, the Chamber is of the view that a reply at this stage is neither warranted nor necessary. The Request for Leave to Reply is thus rejected.

B. The Suspension, Submission and Hearing requests

13. Taking into account Counsel's submissions concerning the Hearing Request, the Chamber, under its broad discretionary powers,[20] does not consider it necessary in order to adjudicate the Challenge. As to the Submissions Request, the Chamber, as explained above, considers it moot. Lastly, noting that article 19(7) of the Statute states that the Prosecution shall suspend the investigation, until such time as the Court makes a determination in accordance with article 17 of the Statute, only '[i]f a challenge is made by a State', and noting that Counsel does not appear to further develop in his submissions the reasons why the Suspension Request should be granted, the Chamber finds no basis to order any such suspension. Therefore, the Suspension and Hearing Requests are rejected.

[19] OPCV Response to the Request for Leave to Reply, paras 3-5.
[20] See Order, para. 3.

C. The Challenges

14. Although Counsel framed the Challenge as only regarding admissibility, it is, in fact, challenging both the Court's jurisdiction ('Ground a') and the admissibility of the case ('Ground b'). The Chamber will therefore deal which each of the two challenges in turn. Pursuant to rule 58(4) of the Rules, it will first address the Defence's submissions pertaining to the jurisdiction of the Court, and then the admissibility of the case.

1. Jurisdiction

15. Pursuant to article 19(1) of the Statute, the Chamber is unanimously satisfied that the Court has jurisdiction over the case. However, the members of the Chamber arrive at this conclusion in two different ways. Judges Motoc and Alapini-Gansou consider that the alleged conduct of Mr Njeem continues to be covered by Resolution 1970, notwithstanding the fact that, as previously noted, Libya accepted the Court's jurisdiction by means of the Article 12(3) Declaration. Judge Flores Liera disagrees with her colleagues concerning the scope and interpretation of Resolution 1970. In addition to the dissenting opinion appended to the Arrest Warrant, she refers to her separate concurring opinion ('Judge Flores' Separate Concurrent Opinion' or 'Concurring Opinion') to the Chamber's decision pursuant to article 19 of the Statute in the case of *The Prosecutor vs. Khaled Mohamed El Hishri*[21] ('*El Hishri* Jurisdictional Decision'), wherein she reiterates her position on the scope of the said Resolution 1970 and states that the Court's jurisdiction is properly conferred through the Article 12(3) Declaration.[22]

(i) Legal status and binding nature of UNSC resolutions

16. In order to properly frame and address the arguments raised in the Challenge,[23] Judges Motoc and Alapini-Gansou recall the legal status and binding nature of UNSC resolutions. As stated by the International Court of Justice ('ICJ') in the *Kosovo* Advisory Opinion:

> Security Council resolutions are issued by a single, collective body and are drafted through a very different process than that used for the conclusion of a treaty. Security Council resolutions are the product of a voting process as provided for in Article 27 of the Charter, and the final text of such resolutions represents the view of the Security

[21] Decision on the Defence's challenge to the jurisdiction of the Court pursuant to article 19 of the Statute, 15 July 2026, ICC-01/11-01/25-142.
[22] Concurring Separate Opinion of Judge María del Socorro Flores Liera, 15 July 2026, ICC-01/11-01/25-142-OPI.
[23] See in this regard the *El Hishri* Jurisdictional Decision, paras 24-28.

> Council as a body. Moreover, Security Council resolutions can be binding on all Member States […], irrespective of whether they played any part in their formulation.[24]

17. As also recalled by Judges Motoc and Alapini-Gansou in a recent decision on essentially the same matter: because all States are equally sovereign, they can only be subjected to international legal obligations to which they have consented. In relation to UNSC resolutions issued under Chapter VII of the UN Charter, this consent is given by the State when it ratifies the said instrument and consents to the 'specific but powerful role' of the UNSC in determining, under article 39 of the UN Charter, the existence of any threat to the peace, breach of the peace, or act of aggression and deciding what measures shall be taken to maintain and restore international peace and security.[25] Under this provision, the UNSC is mandated to pass resolutions with binding force that compel UN member States to take certain actions, and can override a State's sovereign capacity to decide whether to take these actions.[26]

18. In this regard, Judges Motoc and Alapini-Gansou recall that article 25 of the UN Charter establishes that '[t]he Members of the [UN] agree to accept and carry out the decisions of the [UNSC] in accordance with the present [UN Charter]'. They further note that, according to the ICJ's jurisprudence in the *Lockerbie* case, the binding nature of UNSC resolutions is reinforced by the relationship between articles 25 and 103 of the UN Charter, and that article 103 stresses the primacy of UN Member States' obligations under the UN Charter over any other international agreement.[27] Judges Motoc and Alapini-Gansou also recall that article 25 of the UN Charter is not confined to decisions regarding the enforcement actions under Chapter VII of the UN Charter, but applies to 'the decisions of the [UNSC]' adopted in accordance with the UN Charter.[28] Thus, when the UNSC adopts a decision under article 25 of the UN Charter, it is for Member States to comply with that decision, including those members of the UNSC which voted against it and those members of the UN who are not members of the UNSC.[29]

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[24] ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, p. 403 ('ICJ *Kosovo* Advisory Opinion'), para. 94. See also ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 ('ICJ *Namibia* Advisory Opinion'), para. 114.
[25] See Decision on the Defence's challenge to the jurisdiction of the Court pursuant to article 19 of the Statute, 15 July 2026, ICC-01/11-01/25-142, para. 25.
[26] See ICTY, Appeals Chamber, *The Prosecutor v. Dusko Tadic a/k/a "Dule"*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, IT-94-1, para. 44.
[27] See ICJ, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, p. 3, para. 39.
[28] See ICJ *Namibia* Advisory Opinion, para. 113.
[29] See ICJ *Namibia* Advisory Opinion, para. 116.

19. In regard to Resolution 1970, Judges Motoc and Alapini-Gansou note that it was issued in clear binding terms. In particular, it observes that said resolution, *inter alia*,

> 1. *Demands* an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;
>
> 2. *Urges* the Libyan authorities to:
>
> (a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;
>
> (b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country;
>
> (c) Ensure the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers, into the country; and
>
> (d) Immediately lift all restrictions on all forms of media;
>
> […]
>
> 4. *Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;
>
> 5. *Decides* that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;[30]

20. Although the binding nature of Resolution 1970 has not been called into question by Counsel, Judges Motoc and Alapini-Gansou note that the UNSC, acting under Chapter VII of the UN Charter, and in the exercise of its discretionary powers, identified the Situation in Libya and decided to refer it to the Court, setting objective jurisdictional parameters. Judges Motoc and Alapini-Gansou do not identify any issues with the validity of Resolution 1970. Judge Flores reiterates that the issue at stake (and her disagreement with Judges Motoc and Alapini-Gansou) is not about the validity or legal status of Resolution 1970, but rather the interpretation of the scope of the UNSC referral, as contained in the Resolution.

[30] Resolution 1970.

(ii) Interpretation of UNSC resolutions

21. The principal judicial authority on the interpretation of UNSC resolutions can be found in an advisory opinion from the ICJ. In the *Namibia* Advisory Opinion, the ICJ stated as follows:

> The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under article 25 of the UN Charter, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.[31]

22. While rules on treaty interpretation under the Vienna Convention on the Law of Treaties 'may provide guidance' in interpreting UNSC resolutions, the ICJ has stressed in the Kosovo Advisory Opinion that the 'differences between [UNSC] resolutions and treaties mean that the interpretation of [the former] also require that other factors be taken into account'.[32] This is due to the 'very different process' leading to the drafting of a UNSC resolution, and in particular may require a broader assessment not only of the resolution itself but also relevant statements made by UNSC members at the time of adoption, other resolutions on the same issue, and the subsequent practice of relevant UN organs and affected States.[33]

23. Turning to the interpretation of Resolution 1970, Judges Motoc and Alapini-Gansou recall the factual basis underlying the UNSC's decision to refer the Situation in Libya to the Court:

> *Expressing* grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians,
>
> *Deploring* the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,

[31] ICJ *Namibia* Advisory Opinion, para. 114.
[32] ICJ *Kosovo* Advisory Opinion, para. 94.
[33] ICJ *Kosovo* Advisory Opinion, para. 94. See also L. van den Herik et. al., 'The Design and Interpretation of UN Security Council Sanction Resolutions', in ILA Study Group, Report December 2019; M. C. Wood, 'The Interpretation of Security Council Resolutions', in Max Planck Yearbook of United Nations Law, 1998.

> *Considering* that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,
>
> *Expressing* concern at the plight of refugees forced to flee the violence in the Libyan Arab Jamahiriya,
>
> *Expressing* concern also at the reports of shortages of medical supplies to treat the wounded[.]

24. In relation to the above, Judges Motoc and Alapini-Gansou note what they expressed in the *El Hishri* Jurisdictional Decision, namely that the practice of the UNSC and other organs of the UN subsequent to the adoption of the Resolution 1970 demonstrate that the situation of crisis that triggered the resolution has been ongoing ever since.[34] Over the years, the UNSC issued several resolutions which contain references to Resolution 1970 and address, *inter alia*, the alleged mistreatment of detainees, the continuous threat to peace, stability and security; and the need to disarm armed groups. Similarly, reports of the UN Secretary-General on the UN Support Mission in Libya ('UNSMIL'), statements by members of the UNSC, as well as reports and resolutions from the UN Human Rights Council, contain numerous references to the treatment of persons detained, *inter alia*, at the Mitiga prison, clashes between the SDF/RADA and other actors, and SDF/RADA activities impacting on civilians.

25. Furthermore, Judges Motoc and Alapini-Gansou recall the findings of the Majority in the Arrest Warrant that, on the basis of the information contained in the reports of the UNSMIL and the Independent Fact-Finding Mission on Libya submitted by the Prosecution, it is sufficiently shown that a situation of turmoil has been ongoing since Resolution 1970.[35] They also noted that it is a fact of common knowledge that the Prosecution submits periodical reports to the UNSC on actions taken pursuant to Resolution 1970, and that the fact that the Prosecution continues reporting before the UNSC, including on contemporary matters, with no objection to these reports being raised, is another indication of the ongoing jurisdiction of the Court over alleged crimes committed in the context of the ongoing crisis in Libya.[36] In this regard, Judges Motoc and Alapini-Gansou observe that in its latest report to the UNSC, the Prosecution again

[34] *El Hishri* Jurisdictional Decision, para. 33.
[35] Arrest Warrant, para. 6.
[36] Arrest Warrant, para. 10.

informed on its progress in its investigation in the Situation in Libya, including in the present case against Mr Njeem.[37]

26. Counsel submits that a proper construction of Resolution 1970 demonstrates that the referral was directed and confined to a specific and identifiable situation: 'the crisis as it subsisted in Libya beginning in February 2011, carried out by the State apparatus under the Gaddafi regime' of Muammar Mohammed Abu Minyar Gaddafi ('Mr Gaddafi'), which is 'evident in the text of the Resolution itself', including its temporal parameters.[38] Furthermore, Counsel argues that the temporal specificity of the situation is also ascertainable from the subsequent issuance of arrest warrants by the Court against Mr Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi in June 2011,[39] the wording of which 'and the etymology deployed speak to the specificity of the Situation in Libya', and that these form the proper basis for contextualising what 'Situation in Libya' was referred to the Court by the UNSC through Resolution 1970.[40]

27. As set out above, Judges Motoc and Alapini-Gansou do not consider that the scope of Resolution 1970 is to be interpreted in such a narrow way. Rather, they are of the view that the subsequent practice of the different UN organs, as reflected in these numerous statements, reports and resolutions, constitute yet another indication supporting the finding that the alleged crimes committed by Mr Njeem, whilst other than those specifically committed in the context of the fall of the regime of Mr Gaddafi, are sufficiently linked to the existence of the situation of crisis that triggered Resolution 1970.[41] Judge Flores recalls her disagreement with this conclusion, for the reasons set forth in her Concurring Opinion[42] and reiterated in this decision.[43]

[37] See Thirty-First Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 (2011), 22 May 2026, paras 26-48.
[38] Challenge, paras 38-40, 45-47, 61-64
[39] See Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi, 27 June 2011, ICC-01/11-13; Warrant of Arrest for Saif Al-Islam Gaddafi, 27 June 2011, ICC-01/11-14; Warrant of Arrest for Abdullah Al-Senussi, 27 June 2011, ICC-01/11-15.
[40] Challenge, paras 56-63.
[41] See also *El Hishri* Jurisdictional Decision, para. 35.
[42] See Concurring Opinion, paras 10-13.
[43] See below paras 39-43.

(iii) The sufficient link between the case against Mr Njeem and Resolution 1970

28. Counsel submits that the nexus between the proceedings instituted against Mr Njeem and the 'Situation in Libya', as referred to the Court by the UNSC in its Resolution 1970, is not sufficient. He asserts that in the absence of such a nexus, the proceedings fall outside the scope of the referral under article 13(b) of the Statute and are therefore beyond the jurisdictional mandate conferred upon the Court.[44] More specifically, Counsel argues that (i) Resolution 1970 was confined to a specific situation, namely, the alleged crimes committed in the context of the fall of the Gaddafi regime; (ii) the alleged conduct of Mr Njeem occurred several years after Resolution 1970 was issued and there is no factual connection with the context of the situation of crisis that triggered the Court's jurisdiction; (iii) at the time Resolution 1970 was adopted, Mr Njeem neither held a position of authority within the Libyan state 'nor is he alleged to have played any instrumental role in the events that formed the basis of the referral'; (iv) the only connection, 'at best, is a broad geographic and national argument that falls well short' of the nexus required by article 13(b) of the Statute and the test set in the jurisprudence of the Court.[45]

29. Judges Motoc and Alapini-Gansou recall that the Chamber, in a previous composition, has found that 'for the case at hand not to exceed the parameters defining the […] situation under investigation, the crimes referred to in the Prosecutor's Application must have occurred in the context of the ongoing situation of crisis that triggered the jurisdiction of the Court through the […] referral'.[46] It has also been noted that a situation 'can include not only crimes that had already been or were being committed at the time of the referral, but also crimes committed after that time, in so far as they are sufficiently linked to the situation of crisis referred to the Court as ongoing at the time of the referral'.[47]

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[44] Challenge, paras 32, 67-68.
[45] Challenge, paras 37-40, 49-51, 54-55, 65-66.
[46] *The Prosecutor v. Callixte Mbarushimana*, Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana, 28 September 2010, ICC-01/04-01/10-1 ('*Mbarushimana* Arrest Warrant'), para. 6.
[47] *Mbarushimana* Arrest Warrant, para. 6. *See also* Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Decision on the 'Defence Challenge to the Jurisdiction of the Court', 26 October 2011, ICC 01/04-01/10-451, para. 41; Pre-Trial Chamber II, *The Prosecutor v. Sylvestre Mudacumura*, Decision on the Prosecutor's Application under Article 58, 13 July 2012, ICC-01/04-01/12-1-Red, para. 14; Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302), 17 May 2021, ICC-02/05-01/20-391, para. 25. See also OPCV Response, paras 16-25; Prosecution Response, paras 15-21.

30. Judges Motoc and Alapini-Gansou further recall the Majority's findings in the Arrest Warrant that there has been an ongoing situation of crisis in Libya since 2011, that it is a fact of common knowledge that violence erupted in Libya in February 2011 in the context of an uprising against the Gaddafi regime and that, after its fall, the fighting and civil unrest continued in Libya.[48] They also noted that the violence between the organisation referred to by the Prosecution as the 'Libyan National Army' – an armed group previously referred to as Khalifa Haftar's Libyan national – and the 'Government of National Accord' ('GNA') – previously known as the General National Congress ('GNC') – 'amplified the existing proxy conflict that took shape after 2011'.[49]

31. Judges Motoc and Alapini-Gansou further note their findings that the SDF/RADA emerged as a result of the 2011 crisis that triggered Resolution 1970, and the aftermath of the crisis. They noted *inter alia* that the group originated as a revolutionary military group from the Tripoli district of Souk al Juma that was fighting Gaddafi forces, that it was affiliated to the GNA, that in 2016 the GNA recognised the SDF/RADA, that in October 2017 the GNA recognised the Mitiga Prison as the Tripoli Main Correction and Rehabilitation Institution, and that in May 2018 it was formally renamed the Deterrence Apparatus for Combating Organised Crime and Terrorism, under the Ministry of Interior.[50] They also found that at least some of the persons held at the Mitiga Prison were detained for reasons related to the fighting or tensions between different groups involved in the ongoing situation of crisis in Libya, which 'further illustrates a link between the crimes alleged by the Prosecution and the situation that triggered the jurisdiction of the Court'.[51]

32. Judges Motoc and Alapini-Gansou further note the Chamber's similar findings when confirming the charges against Mr El Hishri.[52] In particular, the Chamber found substantial grounds to believe, *inter alia*, that the SDF/RADA had sufficiently efficient structures or

[48] This finding has also been consistently held by a majority of the Chamber under another composition. *See* Warrant of Arrest for Abdurahem Khalefa Abdurahem Elshgagi ('Abdulrahem Al Kani'), 6 April 2023, ICC-01/11-141-Anx1, para. 7; Warrant of Arrest for Makhlouf Makhlouf Arhoumah Doumah ('Makhlouf Douma'), 6 April 2023, ICC-01/11-141-Anx2, para. 7; Warrant of Arrest for Nasser Muhammad Muftah Daou ('Nasser Al Lahsa'), 6 April 2023, ICC-01/11-141-Anx3, para. 7; Warrant of Arrest for Mohamed Mohamed Al Salheen Salmi ('Mohamed Salheen'), 6 April 2023, ICC-01/11-141-Anx4, para. 7; Warrant of Arrest for Abdelbari Ayyad Ramadan Al Shaqaqi ('Al Shaqaqi'), 18 July 2023, ICC-01/11-141-Anx5, para. 7; Warrant of Arrest for Fathi Faraj Mohamed Salim Al Zinkal ('Al Zinkal'), 18 July 2023, ICC-01/11-141-Anx6, para. 7.
[49] Arrest Warrant, para. 5.
[50] Arrest Warrant, paras 7-9.
[51] Arrest Warrant, para. 9.
[52] Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri, 16 July 2026, ICC-01/11-01/25-143, paras 66-68, 73-75.

mechanisms to carry out an attack for the purposes of article 7 of the Statute, and that decrees, laws and other official documents issued by the GNC/GNA reveal that the latter nominally integrated the SDF/RADA into State structures and assigned it law enforcement tasks.[53]

33. In light of the above, Judges Motoc and Alapini-Gansou continue to be of the view that although the alleged conduct of Mr Njeem occurred several years after Resolution 1970 was issued, it is sufficiently linked to the context of situation of crisis that triggered the UNSC's referral of the *Situation in Libya* to the Court.[54] As stated in her Concurring Opinion, Judge Flores remains instead of the view that the events underlying the allegations relevant to this case are not related to those that triggered the referral by the Security Council, in light of the distance in time and difference in nature between the historical events underlying Resolution 1970, on the one hand, and those underlying the Arrest Warrant, on the other.[55]

(iv) Obsolescence or lapsing of a UNSC resolution

34. Counsel submits that a referral under article 13(b) of the Statute 'does not confer upon the Prosecutor an open-ended invitation to pursue and investigate any and all proceedings against Libyan nationals in perpetuity'; that the situational limits of a UNSC referral are a matter of both principle and necessity; otherwise, 'a single referral resolution could serve as a permanent and indefinite grant of jurisdiction over an entire country, unconstrained by the events, context, or concerns that gave rise to it'.[56]

35. Counsel also argues that the 'apparent flexibility' in the temporal language of Resolution 1970 was not intended to create an open-ended jurisdiction for the Court, but to support and ensure the existence of a mechanism capable of addressing any gross human rights violations that would be uncovered in the course of the contemplated investigations by the UN Human Rights Council's commission of inquiry.[57] He further contends that although Resolution 1970 itself contains no sunset clause, given that the UNSC invited the Prosecution to address it within two months of its adoption and every six months thereafter, this is an indication that the

[53] Challenge, para. 57.
[54] See also OPCV Response, paras 26-36; Prosecution Response, paras 22-37.
[55] Concurring Opinion, paras 1, 5.
[56] Challenge, paras 35-36.
[57] Challenge, paras 41-44.

UNSC concerned contemporaneous events, rather than 'an open-ended jurisdictional grant extending indefinitely into the future'.[58]

36. In order to address the arguments raised by Counsel, Judges Motoc and Alapini-Gansou consider it appropriate to recall their findings in the *El Hishri* Jurisdictional Decision concerning the temporal validity of Resolution 1970 and the absence of any concern regarding any risk to the Court having 'perpetual' jurisdiction over Libya as a result of Resolution 1970.[59]

37. First, they note the jurisprudence of the ICJ that certain UNSC resolutions may have a temporary effect, and that in principle a UNSC resolution remains in force unless repelled or amended by the UNSC or by virtue of a clause providing for its termination in the resolution itself.[60] In Judges Motoc and Alapini-Gansou's view, the practice of the UNSC subsequent to the adoption of Resolution 1970, as recalled above, confirms that the resolution remains in full force. Indeed, as early as April 2026, the UNSC passed Resolution 2819, *inter alia* '[d]etermining that the situation in Libya continues to constitute a threat to international peace and security', and specifically referring to Resolution 1970.[61]

38. Second, Judges Motoc and Alapini-Gansou recall that the scope of a situation is defined by objective parameters which are discerned from the referral.[62] As such, there is simply no risk of 'perpetual jurisdiction'. The Chamber seized must determine whether the *present case* falls within the scope of Resolution 1970. The question of whether the Court would continue to have jurisdiction over other potential cases in Libya on the basis of Resolution 1970 will depend on the specific facts and circumstances of each case.[63]

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[58] Challenge, para. 48.
[59] See *El Hishri* Jurisdictional Decision, para. 42.
[60] See ICJ *Kosovo* Advisory Opinion, paras 91, 99-100.
[61] Resolution 2819.
[62] See e.g. Appeals Chamber, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Judgment on the appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302)", 1 November 2021, ICC-02/05-01/20-503 (OA8), para. 26; Pre-Trial Chamber I (different composition), *Situation in the Democratic Republic of Congo*, Decision on the Applications for Participation in the Proceedings of VRPS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 17 January 2006, ICC-01/04-101-tEN-Corr, para. 65; Pre-Trial Chamber I (different composition), *Situation in Georgia*, Decision on the Prosecutor's request for authorization of an investigation, 27 January 2026, ICC-01/15-12, para. 64; Appeals Chamber, *Situation in the Republic of The Philippines*, Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 18 July 2023, ICC-01/21-77 (OA), para. 107; Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute", 1 March 2024, ICC-02/18-89 (OA), para. 228.
[63] See also *El Hishri* Jurisdictional Decision, para. 42.

39. As indicated above, Judge Flores disagrees with her colleagues concerning the scope and interpretation of Resolution 1970.[64] Consistently with the dissenting opinions she appended to several warrants issued in the Situation in Libya between April 2023 and January 2025, it is her view that the crimes alleged and described in the Application and retained in the Arrest Warrant are not sufficiently linked to the situation of crisis that triggered the jurisdiction of the Court through Resolution 1970. As previously pointed out when dissenting in the Arrest Warrant ('*Njeem* Dissenting Opinion'),[65] the fact that Resolution 1970 does not explicitly indicate a future point in time when the Court's jurisdiction would cease, cannot be read as tantamount to making that jurisdiction unlimited in time; this, *inter alia*, because referrals by the UNSC 'are subject to the entire legal framework of the Statute and cannot be interpreted in a vacuum'.[66] Based on the applicable legal framework, the wording of Resolution 1970 and the context in which it was issued, she would have determined, and still believes this to be the case in relation to the present challenge, that the events underlying the allegations are 'not related to those that triggered the referral by the Security Council'.[67] The fact that the UNSC continues to recall the resolution neither affects the scope of the jurisdiction of the Court under Resolution 1970, nor does it imply a modification of its terms.

40. Judge Flores also considers it important to distinguish between the action of the UNSC in cases of threats to peace and security, one the one hand, and the specific referral of Libya to the Court, on the other. The former is typically broad; as the practice shows, it may extend over years, given the nature of the issues the Council is seized with. The latter, however, is limited in scope, precisely because of its function to define the boundaries of the situation for which the jurisdiction of the Court was triggered.[68] While the crisis in Libya has evolved and the Council continues to be seized with it, the terms of the referral to the ICC have never been changed; absent any change, the referral continues to have the same meaning as in 2011. In its ordinary meaning, a crisis is defined *inter alia* as 'an extremely difficult or dangerous point in a situation'.[69] In the context of the referral, the use of the word does not justify the expansion of the Court's jurisdiction to encompass acts that took place several years after the referral and beyond the specific reasoning underlying UNSC resolution. The fact that the UNSC continues

[64] See also Concurring Separate Opinion of Judge María del Socorro Flores Liera, 15 July 2026, ICC-01/11-01/25-142-OPI.
[65] Dissenting Opinion of Judge Socorro Flores Liera, 24 January 2025, ICC-01/11-152-Anx.
[66] *Njeem* Dissenting Opinion, para. 5.
[67] *Njeem* Dissenting Opinion, para. 6.
[68] Concurring Opinion, para. 6.
[69] Cambridge University Press, 'Cambridge English Dictionary'.

to be seized with the situation in Libya in the context of its responsibilities in matters of peace and security is distinct and separate from the jurisdiction of the Court.

41. In her recent separate concurring opinion, Judge Flores further recalled that she 'had expressly envisaged some developments which, should they materialise, would have required [her] to reach a different determination. In particular, [she] had pointed out that "Libya could voluntarily ratify the Statute and become a State Party or *could accept the jurisdiction of the Court under Article 12(3) of the Statute* (emphasis added), allowing in this way the Prosecution to broaden the scope of its investigations beyond the terms and scope of the 2011 Resolution"'.[70]

42. Judge Flores notes Libya Article 12(3) Declaration declaring 'its recognition of the jurisdiction of the International Criminal Court to prosecute those responsible for international crimes under the Rome Statute, committed in Libya from 2011 to the end of 2027' and requesting 'to extend the duration of investigations undertaken by the Court, which currently cover the period from 2011 to the end of 2025 […] with two additional years until the end of 2027, to ensure that the perpetrators of those crimes continue to be prosecuted'.[71] As a result of these developments, Judge Flores considers that there is no longer a risk that the Chamber's affirming its jurisdiction over the case of Mr Njeem results in, or might be read as, allowing the Court to 'continue exercising its jurisdiction indefinitely over a non-State party'.[72]

43. Her view was that prior to, and in the absence of, the Article 12(3) Declaration, Libya's position as a non-state party required caution and restraint in identifying and drawing the scope of the Court's jurisdiction, in order not to overstep the boundaries within which the drafters of the Statute had provided for a referral by the UNSC as an exception to the principle that only States Parties to a treaty are bound by it. However, by virtue of the Article 12(3) Declaration, Judge Flores now joins Judges Motoc and Alapini-Gansou in finding that Libya accepts the Court's jurisdiction over crimes committed on the Libyan territories from the year '2011 until the end of 2027', and the extension of the scope of investigations, particularly into 'the escalating and persisting crimes against humanity and war crimes, in addition to crimes related

[70] Concurring separate opinion of Judge María del Socorro Flores Liera, 15 July 2026, ICC-01/11-01/25-142-OPI. Para. 3. See also *Njeem* Dissenting Opinion, para. 15.
[71] Article 12(3) Declaration, para. 1.
[72] *Njeem* Dissenting Opinion, para. 10.

to prisons, detention facilities, enforced disappearances, murder, torture, kidnapping, human trafficking, and persecution'.[73]

44. In light of the above, the Chamber finds that the Court has jurisdiction over the case and rejects the jurisdictional Challenge.

2. Admissibility

45. Having considered the parts of the Challenge that relate to the Court's jurisdiction, the Chamber now turns to the part of the Challenge that concerns the admissibility of the case (i.e. 'Ground b'). As a challenge to the admissibility of a case pursuant to article 19(2) of the Statute is 'on the grounds referred to in article 17', the Chamber must consider the factors set out in article 17 of the Statute.[74] These factors are the instances in which a case would be inadmissible at the Court, namely:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

46. When considering these 'factors', for the purposes of article 17(1)(a) and (b) of the Statute, 'the initial questions to ask are (1) whether there are ongoing investigations or prosecutions, or (2) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned'.[75] Only when both questions

[73] Article 12(3) Declaration, para. 2.
[74] Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute", 1 March 2024, ICC-02/18-89 (OA) ('*Venezuela* Article 18 Appeals Judgment'), para. 364, referring to Appeals Chamber, *Situation in the Philippines*, Judgment on the appeal of the republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 18 July 2023, ICC-01/21-77 (OA) ('*Philippines* Article 18 Appeals Judgment'), para. 105, and the references cited therein.
[75] *Venezuela* Article 18 Appeals Judgment, para. 364, referring to Appeals Chamber, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, ICC-01/04-01/07-1497 ('*Katanga* Admissibility Appeals Judgment'), para. 78.

are answered in the affirmative, should a chamber consider whether a State is unwilling and unable to genuinely carry out any such investigation or prosecution pursuant to article 17(2) and 17(3) of the Statute. Inaction by the State having jurisdiction means that a case would be admissible before the Court.[76]

47. To enable it to conduct this assessment, the Chamber requires sufficient information. For the purpose of admissibility challenges, the onus is on the suspect or State challenging admissibility to show that investigations or prosecutions are taking place or have taken place. More specifically, in order to demonstrate activity, merely asserting that investigations are ongoing is not sufficient.[77] The challenging party must 'provide the Court with evidence of a sufficient degree of specificity and probative value that demonstrates that [the relevant State] is indeed investigating the case'.[78] Documentation relied upon to substantiate a challenge should therefore include 'material capable of proving that an investigation or prosecution is ongoing' such as 'directions, orders and decisions issued by authorities in charge […] as well as internal reports, updates, notifications or submissions contained in the file [related to the domestic proceedings]'.[79] What matters is that the challenging party can demonstrate the taking of steps directed at ascertaining whether the relevant individual is responsible for a specific conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence or carrying out forensic analysis.[80]

48. To support his claims, Counsel has provided three documents: (i) a 'statement' dated 12 June 2025, bearing '6-6-10794' as reference number, 'signed and sealed' by Mr Nouri Othman el-Ghali, Deputy Prosecutor, Attorney General Office ('First Document');[81] (ii) a letter dated 10 February 2026, addressed to Counsel in response to his 'inquiry concerning the legal status' of Mr Njeem, stamped and signed by Mr Al-Ajeli Salem Teitish, Solicitor General and Director of the Attorney's General Office, referencing the Libyan Attorney General office in the footer and with copies addressed to the Attorney General and a 'documentation unit' ('Second

[76] *Venezuela* Article 18 Appeals Judgment, para. 364, referring to *Katanga* Admissibility Appeals Judgment, para. 78.
[77] *Philippines* Article 18 Appeals Judgment, para. 72, and the references cited therein; *Situation in the Republic of the Philippines*, Authorisation pursuant to article 18(2) of the Statute to resume the investigation, 26 January 2023, ICC-01/21-56-Red ('*Philippines* Admissibility Decision'), para. 14.
[78] *Venezuela* Article 18 Appeals Judgment, para. 181; *Philippines* Admissibility Decision, para. 14.
[79] *Venezuela* Article 18 Appeals Judgment, paras 183, 366; *Philippines* Admissibility Decision, para. 15. See also Prosecution Response, para. 43 and the case-law referred to therein.
[80] *Philippines* Article 18 Appeals Judgment, para. 102, referring to *Venezuela* Article 18 Appeals Judgment, para. 364. See also OPCV Response, para. 39 and the case-law referred to therein.
[81] Annex V to the Challenge, ICC-01/11-228-AnxV, ('Annex V').

Document');[82] and (iii) a 'statement' dated 14 July 2025, bearing '104' as reference, also 'signed and sealed by Mr Nouri el-Ghali – Deputy Prosecutor, Attorney General Office' ('Third Document';[83] collectively, 'Documents').[84]

49. Although the Documents were provided directly by Counsel and not received by the Court through official channels, the Chamber in this instance and in light of the available information has no reasons to doubt as to their authenticity.

50. As to the substance of the Documents, the Chamber observes that the First Document[85] states as follows:

> The Public Prosecution Authority hereby declares that it has initiated Public Criminal Proceedings against [Mr Njeem], following the lifting of procedural immunity related to his status as a Police Officer. Preliminary investigations have examined the elements of the crimes mentioned in the Arrest Warrant issued by [the Chamber].
>
> The aforementioned individual appeared for the initial interrogation session on the 28th of April 2025, during which he was apprised of the allegations against him and his defense regarding these matters was heard.
>
> Investigations are ongoing, pursuant to the rules of National Criminal Jurisdiction against the aforementioned individual.

51. The Second Document[86] states as follows:

> The Public Prosecution acknowledges receipt of your enquiry concerning the legal status of [Mr Njeem]. We hereby inform you of the following:
>
> • The Public Prosecution Authority has reviewed and tracked all reports filed against [Mr Njeem] covering the period from 2013 through 2025.
>
> • Criminal proceedings have been formally initiated against [Mr Njeem] for acts classified as offenses under the Libyan Penal Code and the provisions of Law No. (10) of 2013 regarding the Criminalization of Torture, Forced Disappearance, and Discrimination.
>
> • The specific acts under prosecution involve systematic violations of the rights of inmates at the Tripoli Main reform and Rehabilitation Institution. These charges are based on reports received by the Public Prosecution alleging torture, and cruel/degrading treatment. The indictment specifically addresses the violation of the rights of ten inmates and the death of one inmate resulting from torture.
>
> • The Public Prosecution has officially referred [Mr Njeem], who is currently held in pretrial detention, to the trial court. The Prosecution seeks a conviction for these

[82] Annex VI to the Challenge, ICC-01/11-228-AnxVI ('Annex VI').
[83] Annex VII to the Challenge, 30 April 2026, ICC-01/11-228-AnxVII ('Annex VII').
[84] Annexes V, VI, VII of the Challenge. The Chamber's description and discussion of each of the Documents is based on the English translation provided by Counsel and included in the same annex as the original document.
[85] Annex V.
[86] Annex VI.

> violations as punishable under the Libyan Penal Code and Law No. (10) of 2013 regarding the Criminalization of Torture, Forced Disappearance, and Discrimination.

52. The Third Document states as follows:

> As part of the ongoing investigations by the Attorney General Office concerning the alleged acts committed by [Mr Njeem], as detailed in the [Arrest Warrant], the Attorney General Office corresponded with both the Head of the Judicial Police Department and the Head of Al Radaa for Countering Terrorism and Organized Crime on the 23rd of June 2025. The purpose was to ascertain [Mr Njeem]'s affiliation, if an, with either entity.

53. The Chamber notes that both the First and the Second Document[87] broadly refer to criminal proceedings having been initiated against Mr Njeem, with the First Document clarifying that these proceedings are public; the Second Document lists the alleged offenses, the domestic provisions being allegedly violated, whereas the First Document simply refers to 'elements of the crimes mentioned' in the Arrest Warrant. The information provided in the Third Document,[88] other than referring in passing to the 'ongoing investigations' for 'alleged acts […] as detailed' in the Arrest Warrant, is limited to the nature and timeframe of Mr Njeem's affiliation with two units tasked with police and anti-terrorism functions; as such, it is irrelevant to the Chamber's determination as to the existence, nature and features of national proceedings against Mr Njeem.

54. The Chamber considers that the information provided is insufficient to assess whether there are ongoing proceedings capable of triggering the possible inadmissibility of the case before the Court; in the affirmative, whether their scope overlaps with the subject matter of the Arrest Warrant and, if so, to what extent.

55. In particular, the general reference to acts involving 'systematic violations of the rights of inmates' at Tripoli's Main Reform and Rehabilitation Institution is overly broad and fails to provide any indication of other parameters that would enable the Chamber to carry out an admissibility assessment. For instance, there is no identification of the authority in charge of the alleged proceedings, the number of the case, the specific acts and conduct which would entail Mr Njeem's alleged criminal responsibility, the applicable time frame, the approximate number or some identifying information of alleged victims, the past and prospective schedule of the proceedings, among others. The absence of precise information as to any of these core identifying parameters makes it impossible for the Chamber to identify and establish the

[87] See Annex V and Annex VI.
[88] See Annex VII.

specific nature and scope of the proceedings allegedly pending against Mr Njeem, and thus to compare them to the case brought by the Prosecution.

56. In addition, the general nature of the Documents does not allow the Chamber to determine which procedural steps, if any, were taken in the interval between the issuance of the First and Second Document: the First Document only refers to investigations being 'ongoing' as of 12 June 2025, while the Second Document refers to Mr Njeem having been 'officially referred' to the 'trial court' and being held in pre-trial detention without any specification as to either respective timing of those steps and stages, or the identification of the judicial and penitentiary authorities involved.

57. Moreover, the Chamber observes that, in the Challenge, Counsel refers to certain factual information that appears to go beyond the information contained in the Documents. In particular, he avers that, as part of the investigations, Mr Njeem invoked immunity over the intended prosecution as at the material time he was a member of the Judicial Police, and that as a result the Attorney General wrote to 'various state officers' seeking to ascertain Mr Njeem's level of affiliation with the Judicial Police Department. The Chamber notes that this statement appears to be excessively vague and irrelevant. Counsel also states that an initial interrogation session for Mr Njeem by the Public Prosecution Authority was held on 28 April 2025, merely three months after the Court unsealed the Arrest Warrant, and that all subsequent actions by the Attorney General and the Public Prosecution Authority are taken based on the complaints received against Mr Njeem. Counsel further avers that the allegations contained in these complaints are substantially similar and mirror those contained in the Arrest Warrant.[89] However, the Chamber notes that those factual assertions contain no footnotes and that Counsel has not provided any material supporting them.

58. In sum, the Chamber notes that at this stage Counsel has not submitted sufficiently specific information and material allowing the Chamber to establish that Mr Njeem is being investigated and prosecuted in Libya for the same conduct for which the Chamber issued the Arrest Warrant. This is all the more significant given that, as stated in the First Document, the alleged proceedings against Mr Njeem in Libya are public. Although Counsel has not clarified whether he has access to the relevant public documents, the Chamber notes that the fact that the alleged proceedings are public in nature should mean that retrievable, official and pre-existing documents independently created in the context of the alleged proceedings must exist.

[89] Challenge, paras 113-115.

Indeed, all of the Documents were issued *ad hoc* for the purposes of the Challenge. In the Chamber's view and consistently with the Appeals Chamber's jurisprudence, without additional evidence it is not sufficient for Counsel to merely state that Mr Njeem has been arrested and is in pre-trial detention since the issuing of the Arrest Warrant.[90]

59. In these circumstances, the information or evidence before the Chamber is insufficient for it to determine whether the case against Mr Njeem is inadmissible before the Court. The Chamber recalls that it is incumbent on the party claiming inadmissibility to enable the Chamber to analyse the alleged domestic process. The fact that Libya has not made observations in relation to the Challenge, or submitted material in relation to Mr Njeem before the Chamber, does not change the fact that it is Mr Njeem represented by Counsel, as the challenging party, who must prove his claim.

60. That being said, the Chamber recalls that '[a]ssessing the state of domestic proceedings is an ongoing process and requires continued dialogue between the State and the Court, to ensure that the principle of complementarity is upheld with respect to the Court's authorised investigations and prosecution'.[91] This principle also applies in the context of these proceedings, where – contrary to most previous instances of similar proceedings before the Court – the admissibility challenge has been brought by the suspect and not by the relevant State. Complementarity, as the cornerstone principle of the Statute governing the relationship between the Court and the States parties, requires that any and all information allowing to assess whether domestic investigative or prosecutorial activities are ongoing or have taken place is made available to the chamber.

61. Whilst the Documents are *per se* insufficient for the Chamber to properly make the assessment required by the admissibility test, they do seem to point to some degree of activity at the domestic level; this activity, if properly demonstrated and substantiated, could be of relevance for the purposes of that assessment. In these circumstances, it is appropriate to try and facilitate the bringing of those documents before the Chamber, since challenges under article 19(2) of the Statute may, in principle, only be made once and also in light of the situation in Libya, which may make it difficult to obtain relevant documents.

62. For the reasons above, the Chamber considers it appropriate to grant Counsel the possibility to submit any additional information and material that is relevant to the Challenge

[90] See Challenge, para. 112.
[91] *Philippines* Admissibility Decision, para. 99.

to the admissibility of the case, as well as any update on the alleged proceedings against Mr Njeem in Libya. At the same time, the Chamber takes the opportunity to renew its invitation to Libya to respond, if it so wishes, to the Challenge. The Prosecution and OPCV only may respond to any further submissions from Counsel and Libya within the regular time limit as per regulation 34(b) of the Regulations, without the possibility for any further requests for leave to reply. The Chamber further recalls that, as set forth in regulation 39 of the Regulations, all documents and materials filed with the Registry shall be in English or French, unless otherwise provided in the Statute, Rules, these Regulations or authorised by the Chamber or the Presidency, and that if the original document or material is not in one of these languages, the participant shall attach a translation thereof.[92]

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Reply;

REJECTS the Suspension and Hearing Requests;

DECLARES the Submissions Request moot;

REJECTS the challenge to the Court's jurisdiction;

DEFERS its ruling on the admissibility challenge;

INSTRUCTS Counsel to submit any additional information and material that is relevant to the Challenge to the admissibility of the case, as well as any update on the alleged proceedings against Mr Njeem in Libya, by 29 January 2027;

RENEWS its invitation to Libya to respond to the Challenge if it so wishes, by 29 January 2027; and

INSTRUCTS the Prosecution to file a public redacted version of its response to the Request for Leave to Reply within one week of notification of the present decision.

[92] See also *Venezuela* Article 18 Appeals Judgment, paras 153-154, 158; Pre-Trial Chamber I, *Situation in the Bolivarian Republic of Venezuela*, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, 27 June 2023, ICC-02/18-45, para. 86.

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, 2 November 2026

At The Hague, The Netherlands