



SOCIETÀ ITALIANA DI DIRITTO INTERNAZIONALE E DI DIRITTO DELL'UNIONE EUROPEA

Italian Society of International and European Union Law

On the release and repatriation of Osama Elmasry

The ISIL Board feels bound to highlight that the release and repatriation of Osama Elmasry (also known as Almasri Njeem), a Libyan national held in custody by the Italian authorities and against whom the International Criminal Court issued an [arrest warrant](#) on January 18th, 2025, is a serious and unjustified violation of the obligations of cooperation enshrined in the Rome Statute – notably in its Article 86.

The Statute is an international treaty that Italy signed and ratified. Moreover, Italy offered a critical contribution to its conclusion, as it promoted and hosted the diplomatic conference that established the Court in July 1998.

Furthermore, the matter concerning Osama Elmasry touches upon the obligation to execute an arrest warrant for war crimes and crimes against humanity – including torture, inhuman and degrading treatment, rape and sexual violence – allegedly committed in Libyan territory and in some cases in migrant detention centres. It bears emphasizing that the Court's enquiry follows the referral of the situation in Libya by the United Nations Security Council under Article 13 (b) of the Statute (Resolution 1970 of 26 February 2011).

That the competent Italian authorities have offered no convincing justification for this violation only adds to its gravity.

The lack of coordination among the prosecuting authorities, the judiciary, and the Ministry of Justice regarding the expulsion of an individual who was expressly qualified as dangerous (while a different kind of measure could have ensured his surrender or his trial), coupled with reckless declarations on the nature of the Court's pronouncements,

risk causing – if not caused already – an extremely serious and irreparable prejudice to the reputation of a Country that, as recalled above, significantly contributed to the establishment of the main international criminal justice institution active today.

All this, moreover, at a crucial time for the Court's work, marked by the issuance of arrest warrants in the investigation of crimes committed on Ukrainian territory and in the conflict between Israel and Hamas.

The ISIL Board points out that the conduct of the Italian authorities in this matter - while questionable from the standpoint of domestic law - is likely to give rise to Italy's international responsibility towards the other States party to the Rome Statute, the United Nations (to which, as mentioned, is owed the referral to the Court) and - as it failed to exercise criminal jurisdiction over an individual accused, among other international crimes, of torture - the international community as a whole.

Roma, 26 January 2025

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