



while pointing to facts that suggested that the Government of Lybia may be  
unable to move to the case forward

Original: **English**

No.: **ICC-01/11-01/17**

Date: **15 August 2017**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Joyce Aluoch, Presiding Judge  
Judge Cuno Tarfusser  
Judge Péter Kovács

**SITUATION IN LIBYA**

**IN THE CASE OF *THE PROSECUTOR* v. *MAHMOUD MUSTAFA BUSAYF***

***AL-WERFALLI***

**Public**

**Warrant of Arrest**

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor  
James Stewart, Deputy 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**

**Others**

**REGISTRY**

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**Registrar**

Herman von Hebel

**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”) issues this warrant of arrest pursuant to article 58(1) of the Rome Statute (the “Statute”) for

**Mahmoud Mustafa Busayf AL-WERFALLI**

a Libyan national, born in 1978, belonging to the al-Sahibani family of the Werfalla tribe, son of Na’imah Ibrahim Mahmoud, reported to live at Square 8, Number 40 Qundulah Road in the Bu-Hadimah area of Benghazi, commander in the Al-Saiqa Brigade, and graduate of the military college in Libya in Jamahiriya’s 41<sup>st</sup> graduation class, 1 September 2000, bearing the military service number 33568.<sup>1</sup>

**I. Procedural History**

1. On 26 February 2011, the United Nations Security Council (the “Security Council”), acting under Chapter VII of the Charter of the United Nations, unanimously adopted Resolution 1970, referring the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the Court, in accordance with article 13(b) of the Statute, and urging all States and concerned regional and other international organisations to cooperate fully with the Court and the Prosecutor.<sup>2</sup>

2. On 1 August 2017, the Prosecutor submitted under seal the “Prosecution’s urgent application under article 58 for a warrant of arrest against Mahmoud Mustafa Busayf AL-WERFALLI” (the “Application”).<sup>3</sup> The Prosecutor requested the Chamber to issue a warrant of arrest for Mahmoud Mustafa Busayf AL-WERFALLI (“Mr Al-Werfalli”) for his alleged criminal responsibility under article 25(3)(a), (b) or (d) of the Statute for the war crime of murder, alleged to have been committed in seven incidents, taking place from on or before 3 June 2016 until on or about 17 July 2017,

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<sup>1</sup> Alternative spellings of his last name include: “Al-Warfalli”, “Al-Warfilli”, “Al-Warfaly”, “Al-Warfally” and “Al-Werfali”. LBY-OTP-0053-1338, draft translation LBY-OTP-0053-1476, at 1477.

<sup>2</sup> S/RES/1970 (2011).

<sup>3</sup> ICC-01/11/58-US-Exp, including three annexes.

in Benghazi or surrounding areas, in Libya, in violation of article 8(2)(c)(i) of the Statute.

## II. Statement of Facts

3. In issuing this warrant of arrest, the Chamber bases its findings on an analysis of the evidence supporting the Application, which includes, in particular (i) recordings of witness interviews and summaries of witness interviews; (ii) video material and transcripts of video material; (iii) internal orders, and social media posts by the Media Centre of the Al-Saiqa Brigade; and (iv) reports of international organizations, non-governmental organizations, and research centres. The findings of the Chamber are made based on the statutory standard applicable at this stage of the proceedings, *i.e.* “reasonable grounds to believe”, as envisaged by article 58(1)(a) of the Statute.

4. In February 2011, violence erupted in Libya in the context of an uprising against the regime of Muammar Mohammed Abu Minyar Gaddafi (“Mr Gaddafi”).<sup>4</sup> By early March 2011, the situation had escalated into hostilities between governmental forces and rebel forces.<sup>5</sup>

5. After the fall of the Gaddafi regime, the existing rebel forces did not lay down their arms and were not integrated into a national army.<sup>6</sup> Consequently, the following years were marked by periodic fighting between various armed groups.<sup>7</sup> In particular, major clashes erupted in Tripoli and surrounding areas in 2013 and 2014 between, *inter alia*, (i) Zintan brigades, affiliated with the Ministry of Defence;

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<sup>4</sup> LBY-OTP-0022-2540, at 2545; LBY-OTP-0053-0990, at 1000, para. 32.

<sup>5</sup> LBY-OTP-0053-0990, at 1000; Pre-Trial Chamber I, *Prosecutor v. Al-Tuhamy Mohamed Khaled*, “Warrant of Arrest for Al-Tuhamy Mohamed Khaled with under seal and ex parte Annex”, ICC-01/11-01-13-1, 18 April 2013, para. 6.

<sup>6</sup> LBY-OTP-0053-0990, at 1000, para. 33; at 1005, para. 52; LBY-OTP-0053-1098, at 1098, para. 2; LBY-OTP-0036-0219, at 0228; LBY-OTP-0053-1369, at 1380-1381; LBY-OTP-0053-1369, at 1390.

<sup>7</sup> LBY-OTP-0053-0990, at 1000, para. 33; LBY-OTP-0053-1134, at 1137-1139, paras. 22-31; LBY-OTP-0053-1098, at 1101, para. 16; LBY-OTP-0053-1204, at 1204, para. 2.

(ii) the Supreme Security Committee in Tripoli, affiliated with the Ministry of Interior;<sup>8</sup> and (iii) the Libya Shields units.<sup>9</sup> The hostilities involved exchanges of heavy artillery and rocket fire, with the shelling of populated residential areas in Tripoli.<sup>10</sup>

6. In Benghazi, a coalition of army units, ex-revolutionary groups and tribal militias calling themselves the “Libyan National Army” (the “LNA”),<sup>11</sup> and acting under the command of General Khalifa Haftar (“General Haftar”), launched Operation Dignity, on 16 May 2014.<sup>12</sup> The reported objective of the operation was to fight terrorist groups in Benghazi, which included Ansar al-Sharia, the February 17 Revolutionary Martyrs’ Brigade, the Rafallah Al-Sahati militia and the eastern Libya Shield brigade,<sup>13</sup> which joined forces to form the Benghazi Revolutionaries Shura Council (the “BRSC”).<sup>14</sup> The violence gradually escalated, including aerial bombings and frequent missile and/or mortar attacks.<sup>15</sup> In mid-October 2014 and on 20 February 2016, General Haftar launched renewed military operations to oust the BRSC from the city.<sup>16</sup> The fighting between the LNA and the BRSC continued in Benghazi at least until 18 March 2017.<sup>17</sup>

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<sup>8</sup> LBY-OTP-0053-1134, at 1138, para. 21.

<sup>9</sup> LBY-OTP-0053-1134, at 1138, paras 21-22; LBY-OTP-0053-0990, at 1001, paras 36-37; at 1008, paras 61-62; and at 1080; LBY-OTP-0053-1204, at 1206, para. 17; LBY-OTP-0053-1369, at 1397-1398; and at 1389-1390.

<sup>10</sup> LBY-OTP-0053-1204, at 1206, paras 18-19; LBY-OTP-0053-0990, at 1001, para. 36.

<sup>11</sup> The Libyan National Army mentioned here should be distinguished from the Libyan National Army which existed during the Gaddafi regime.

<sup>12</sup> LBY-OTP-0048-0677, Track 1, 50:00-51:20; LBY-OTP-0053-0474, at 0487, para. 32; LBY-OTP-0053-0990, at 1079.

<sup>13</sup> LBY-OTP-0053-0474, at 0487, para. 33; LBY-OTP-0053-0990, at 1001, para. 35; LBY-OTP-0053-1204, at 1205, para. 5; LBY-OTP-0053-1369, at 1395.

<sup>14</sup> LBY-OTP-0048-0677, Track 1, 57:55- 59:06; Track 2, 36:30-37:35; LBY-OTP-0053-0474, at 0487, para. 33; LBY-OTP-0053-0990, at 1007, para. 60.

<sup>15</sup> LBY-OTP-0053-0474, at 0487, para. 33, and at 0489, para. 42; LBY-OTP-0053-0990, at 1001, para. 35; LBY-OTP-0053-1204, at 1207, para. 25.

<sup>16</sup> LBY-OTP-0053-0990, at 1001, para. 35; LBY-OTP-0053-1170, at 1173, para. 15.

<sup>17</sup> LBY-OTP-0053-1152, at 1154, para. 15; LBY-OTP-0053-1187, at 1190, para. 18; LBY-OTP-0053-1437; LBY-OTP-0053-0643, at 0655, para. 48.

7. One of the forces taking part in Operation Dignity was the Al-Saiqa Brigade, an elite unit which, during the Gaddafi regime, had been part of the Libyan National Army.<sup>18</sup> It defected at an early stage of the 2011 uprising and joined the revolutionary forces.<sup>19</sup> The group operates under the command of Colonel Wanis Abdel Kareem Bukhmada (“Colonel Bukhmada”),<sup>20</sup> who has the power to issue orders and appoint members of the group.<sup>21</sup> Among its ranks it numbers also field officers, such as Field Commander Major Muhammad al-Ghazali, Advances Coordinator Captain Anas al-Zuway, Inquiries Commander Sargent Fadl al-Hasi (deceased on 22 May 2017)<sup>22</sup> and Mr Al-Werfalli, as Axes Commander,<sup>23</sup> as well as other axes commanders.<sup>24</sup> The group is reported to have up to 5000 soldiers,<sup>25</sup> organized into divisions<sup>26</sup> and battalions.<sup>27</sup>

8. The Al-Saiqa Brigade joined Operation Dignity in its early stages, in May 2014.<sup>28</sup> On 13 August 2016, General Haftar met with the Al-Saiqa commanders Mr Al-Werfalli, Major al-Ghazali, Captain al-Zuway, and Sargent al-Hasi to consider updates from the combat areas where the Al-Saiqa Brigade was stationed and to discuss ways to provide logistic and moral support to land forces.<sup>29</sup> On 17 August 2016, Colonel Bukhmada met with the officers and axes commanders of the Al-Saiqa Brigade, including Mr Al-Werfalli, to receive updates and plan a military operation in the west of Benghazi.<sup>30</sup> The Al-Saiqa Brigade remained active throughout

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<sup>18</sup> Not to be confused with General Haftar’s Libyan National Army mentioned above.

<sup>19</sup> LBY-OTP-0053-1369, at 1393.

<sup>20</sup> LBY-OTP-0048-0677, Track 1, 55:02-55:32; LBY-OTP-0053-1369, at 1393; LBY-OTP-0053-0942, at 0945.

<sup>21</sup> LBY-OTP-0053-1533, at 1534; LBY-OTP-0053-0317, at 0318; LBY-OTP-0053-1733, at 1734.

<sup>22</sup> LBY-OTP-0053-1533, at 1534.

<sup>23</sup> LBY-OTP-0053-1527, at 1528.

<sup>24</sup> LBY-OTP-0053-1519, at 1521. The axes refer to geographical areas of active military operations in Benghazi, LBY-OTP-0053-1533, at 1534.

<sup>25</sup> LBY-OTP-0053-0942, at 0945.

<sup>26</sup> LBY-OTP-0053-1533, at 1534.

<sup>27</sup> LBY-OTP-0053-0317, at 0318.

<sup>28</sup> LBY-OTP-0053-0990, at 1007, para. 59; and at 1079.

<sup>29</sup> LBY-OTP-0053-1527, at 1528.

<sup>30</sup> LBY-OTP-0053-1519, at 1520.

Operation Dignity as the BRSC was being driven out of Benghazi,<sup>31</sup> and continued to remain engaged, making military advancements throughout the relevant period for the purpose of this warrant of arrest.<sup>32</sup>

9. Mr Al-Werfalli joined the Al-Saiqa Brigade after the fall of the Gaddafi regime.<sup>33</sup> He has been in a commanding role since at least December 2015.<sup>34</sup> Currently he holds the position of Axes Commander.<sup>35</sup> He is reported to have many men under his command.<sup>36</sup> For example, on 9 April 2017, following instructions from Colonel Bukhmada, he issued an order to the al-Burkan Battalion, under the command of officer Ali Sa'd al-Tawurghi, to take up positions on the al-Sabiri axis.<sup>37</sup> Mr Al-Werfalli also has authority over at least one detention centre.<sup>38</sup>

10. Mr Al-Werfalli appears to be directly responsible for the killing of, in total, 33 persons in Benghazi or surrounding areas, between on or before 3 June 2016 and on or around 17 July 2017, either by personally killing them or by ordering their execution. The persons killed appear to have been detained and to have been either civilians or persons *hors de combat*. There is no information in the evidence to show that they have been afforded a trial by a legitimate court, whether military or otherwise, that would comport with any recognised standard of due process. The executions took place in the course of seven incidents, as described below, and were exceptionally cruel, dehumanising and degrading.

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<sup>31</sup> LBY-OTP-0048-0296 and LBY-OTP-0053-1656.

<sup>32</sup> LBY-OTP-0053-1733, at 1734; LBY-OTP-0053-1735, at 1736; LBY-OTP-0053-1737, at 1738.

<sup>33</sup> LBY-OTP-0048-0686, Track 1, 50:34-50:43; LBY-OTP-0053-1476, at 1477.

<sup>34</sup> LBY-OTP-0053-1535, at 1536.

<sup>35</sup> LBY-OTP-0053-1533, at 1534.

<sup>36</sup> LBY-OTP-0048-0686, Track 1, 01:05:46-01:05:56.

<sup>37</sup> LBY-OTP-0053-0317, at 0318.

<sup>38</sup> LBY-OTP-0053-0643, at 0661, para. 90; LBY-OTP-0048-0678, Track 1, 48:48-48:55.

### 1. *Incident One*

11. Mr Al-Werfalli, wearing camouflage trousers and carrying a weapon, is seen in a video footage to stand near a hooded, unidentified person, who is moving around an open dirt area with his arms in the air.<sup>39</sup> Mr Al-Werfalli is heard saying “Put your hands up! Put your hands up! Put your hands up!”. After that, he shoots the hooded person with his left hand a number of times and the person falls on the ground. Mr Al-Werfalli approaches the body, shoots again the body on the ground for a number of times and states “You have been misled by he who did you harm. You have been misled by Satan”. The video depicting this incident was posted on Facebook on 3 June 2016.<sup>40</sup>

### 2. *Incident Two*

12. Mr Al-Werfalli, wearing camouflage trousers and a black t-shirt with the logo of the Al-Saiqa Brigade, and carrying a weapon, is seen in a video footage shooting with his left hand three male figures in the head.<sup>41</sup> The three persons are kneeling in front of a wall with their arms tied behind their backs. After the bodies of the three men fall, Mr Al-Werfalli shoots at the bodies a few more times. Two of the victims are alleged to have been revolutionaries in Benghazi.<sup>42</sup> The video depicting this incident was posted on social media on 20 March 2017.<sup>43</sup>

### 3. *Incident Three*

13. Mr Al-Werfalli, wearing camouflage trousers and a black t-shirt with the logo of the Al-Saiqa Brigade, and carrying a weapon, is seen in a video footage in a room, with others being present as well.<sup>44</sup> He is standing next to an unidentified man in a

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<sup>39</sup> LBY-OTP-0049-0040, draft translation LBY-OTP-0049-0330.

<sup>40</sup> LBY-OTP-0049-0314, at 0314.

<sup>41</sup> LBY-OTP-0048-0582.

<sup>42</sup> LBY-OTP-0053-1502, at 1505-1506.

<sup>43</sup> LBY-OTP-0049-0314, at 0314.

<sup>44</sup> LBY-OTP-0048-0593; LBY-OTP-0048-0602.



white t-shirt, who is kneeling bare feet, with his hands behind his head. Mr Al-Werfalli shoots the person with his left hand in the head and continues to do so after the man falls down. The men around Mr Al-Werfalli cheer in approval and another unidentified man from the group comes forward and shoots the victim two more times. The videos depicting this incident were posted on social media on 7 and 8 May 2017.<sup>45</sup>

#### *4. Incident Four*

14. Mr Al-Werfalli is seen in a video footage in an outdoor setting together with two other men who carry weapons and whose heads are covered.<sup>46</sup> The three men stand behind two other men, who are dressed in camouflage and are kneeling bare feet on the ground. The two men are claimed to be, the first, a member of the BRSC,<sup>47</sup> and the second, possibly a member of Ansar al-Sharia.<sup>48</sup> The two men can be seen earlier in the video footage being detained in a cage.<sup>49</sup> Mr Al-Werfalli is seen walking away from the kneeling men, while the other two men with firearms walk towards them. Mr Al-Werfalli has his left hand in the air and sweeps it down towards the ground in a manner that suggests that he is ordering them to proceed with the execution. The two men shoot the kneeling persons who fall on the ground. The video depicting this incident was posted on social media on or about 22 May 2017.<sup>50</sup>

#### *5. Incident Five*

15. Mr Al-Werfalli, wearing a full camouflage uniform, is seen in a video footage in an outdoor setting together with five men wearing hoods and camouflage trousers and holding firearms.<sup>51</sup> Those five hooded, armed men stand behind four other

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<sup>45</sup> LBY-OTP-0049-0314, at 0315-0316.

<sup>46</sup> LBY-OTP-0048-0609, 02:37.

<sup>47</sup> LBY-OTP-0053-1669, at 1673; LBY-OTP-0048-0609, draft translation LBY-OTP-0053-1637, at 1639.

<sup>48</sup> LBY-OTP-0053-1669, at 1673; LBY-OTP-0048-0609, draft translation LBY-OTP-0053-1637, at 1639.

<sup>49</sup> LBY-OTP-0048-0609, 01:21-01:45.

<sup>50</sup> LBY-OTP-0049-0314, at 0316.

<sup>51</sup> LBY-OTP-0048-0554, 04:30.

hooded men, who are kneeling barefoot on the ground with their hands behind their backs. They point their firearms at each kneeling person's head. Mr Al-Werfalli raises his left hand in the air and sweeps it down towards the ground in a manner that suggests that he is ordering them to proceed with the execution. The five men shoot the four kneeling persons, who fall on the ground. The video depicting this incident was posted on social media on 9 June 2017.<sup>52</sup>

#### *6. Incident Six*

16. Mr Al-Werfalli is seen in a video footage in an area of desert together with two other men who are holding firearms.<sup>53</sup> They stand behind two other persons, who are kneeling on the ground with their hands behind their back. Mr Al-Werfalli is seen speaking into the camera and then raising his left hand in the air and sweeping it down towards the ground in a manner that suggests that he is ordering the two men to proceed with the execution. The men shoot the persons kneeling, who fall on the ground. The video depicting this incident was posted on social media on 19 June 2017.<sup>54</sup>

#### *7. Incident Seven*

17. Mr Al-Werfalli, wearing a black cap, camouflage trousers and a black t-shirt bearing the logo of the Al-Saiqa Brigade, is seen in a video footage, together with two other persons wearing camouflage trousers, black t-shirts, and holding firearms.<sup>55</sup> Mr Al-Werfalli is holding a white document from which he reads. He refers to the document as a "Decree decision" which "shall be executed today 17/07/2017".<sup>56</sup> The video also depicts 18 persons wearing orange jumpsuits and black hoods, with their hands tied behind their backs, kneeling bare feet on the ground, in

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<sup>52</sup> LBY-OTP-0049-0314, at 0316.

<sup>53</sup> LBY-OTP-0048-0556.

<sup>54</sup> LBY-OTP-0049-0314, at 0317

<sup>55</sup> LBY-OTP-0049-0027, 01:12.

<sup>56</sup> LBY-OTP-0049-0326, at 0328, lines 6, 10-11.

four lines. After reading the document, Mr Al-Werfalli says “Attention! The first group!” and then “Ready! Aim! Fire!”<sup>57</sup> As he does so, five men in camouflage uniform, hooded, and carrying firearms, walk from behind the group of kneeling persons to the front and position themselves behind the first line of five kneeling persons. They raise their firearms at them and shoot. The persons fall on the ground. One person in the second line also falls. The shooters then return behind the group of the other kneeling persons.

18. Then Mr Al-Werfalli is recorded saying “The second group! Ready! Aim! Fire!”<sup>58</sup> As he does so, five men walk again from behind the group and position themselves behind the second line of five kneeling persons. The person who has collapsed during the first shooting is pulled back to his knees by one of the men. The five men then raise their firearms and shoot the five kneeling persons, who fall on the ground. The shooters then return behind the group of the other kneeling persons.

19. When Mr Al-Werfalli says “Attention! Attention, the third group!” and “Ready! Aim! Fire!”<sup>59</sup> five men walk again from behind the group, position themselves behind the third line of five kneeling persons, raise their weapons and shoot them. The persons fall on the ground and the shooters return behind the group of the remaining kneeling persons.

20. Mr Al-Werfalli and the two other persons wearing camouflage trousers, black t-shirts, and holding firearms then walk behind the final line of three remaining kneeling persons. Mr Al-Werfalli is seen to still hold the white document from which he has read earlier. Mr Al-Werfalli and the other two men raise their firearms and shoot the three kneeling persons, who fall on the ground. He and one of the other

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<sup>57</sup> LBY-OTP-0049-0326, at 0328, lines 11 and 14.

<sup>58</sup> LBY-OTP-0049-0326, at 0328, line 21.

<sup>59</sup> LBY-OTP-0049-0326, at 0328, lines 29 and 32.

men fire some additional shots towards the persons on the ground before walking away.

21. In the same video, in a new segment, Mr Al-Werfalli, wearing a black cap, camouflage trousers and a black t-shirt bearing the Al-Saiqa Brigade logo, is seen together with two men wearing orange jumpsuits and black hoods kneeling on the ground.<sup>60</sup> One of the two kneeling men has his hands in front of him while the other has his hands on the back of his head. Mr Al-Werfalli is holding a white document folded in his hand. He is recorded saying "Ready! Aim! Fire!"<sup>61</sup> As he does so, two hooded men in camouflage, carrying firearms, walk forward, raise their weapons and shoot at the two kneeling persons, who fall on the ground. The men fire some additional shots at the victims before walking away.

22. The video depicting this incident, involving in total 20 executed persons, was posted on social media on 23 July 2017.<sup>62</sup> The data indicates that the video may have been uploaded in the Benghazi area, in Libya.<sup>63</sup>

### **III. Jurisdiction of the Court and Admissibility**

23. The Chamber finds, pursuant to article 19(1) of the Statute, on the basis of the material submitted and without prejudice to its future determinations on the matter, that the case against Mr Al-Werfalli falls within the jurisdiction of the Court. In particular, the seven incidents occurring in Benghazi or surrounding areas between on or before 3 June 2016 until on or about 17 July 2017 are associated with the ongoing armed conflict underlying the referral by the Security Council pursuant to article 13(b) of the Statute concerning the situation on the territory of Libya since

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<sup>60</sup> LBY-OTP-0049-0027, 04:19.

<sup>61</sup> LBY-OTP-0049-0326, at 0329, line 45.

<sup>62</sup> LBY-OTP-0049-0314, at 0318.

<sup>63</sup> LBY-OTP-0049-0304, at 0306.

15 February 2011.<sup>64</sup> Importantly, the Chamber recalls that the Al-Saiqa Brigade has been involved in this non-international armed conflict ever since the days of the revolution against the Gaddafi regime. Therefore the Chamber concludes that the alleged crimes described in the Application are sufficiently linked with the situation that triggered the jurisdiction of the Court through the Security Council referral.<sup>65</sup>

24. The Chamber declines, at this stage, to use its discretionary *proprio motu* power to determine the admissibility of the case against Mr Al-Werfalli as there is no ostensible cause or self-evident factor which impels it to exercise its discretion pursuant to article 19(1), second sentence, of the Statute.<sup>66</sup>

#### IV. Requirements of Article 58(1) of the Statute

1. *Whether Mr Al-Werfalli has committed a crime under the jurisdiction of the Court (Article 58(1)(a) of the Statute)*

25. The Chamber finds that there are reasonable grounds to believe that an armed conflict not of an international character has been ongoing on the territory of Libya, from at least early March 2011, between governmental forces and different organized armed groups, or among various such armed groups, which include the Al-Saiqa Brigade. The Al-Saiqa Brigade has been involved in the armed conflict ever since the days of the revolution against the Gaddafi regime and since May 2014, against the forces opposing Operation Dignity, in particular the BRSC.

26. The Chamber finds that there are reasonable grounds to believe that (i) the Al-Saiqa Brigade was organized in a hierarchical structure, with field commanders,

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<sup>64</sup> S/RES/1970 (2011). Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, "Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana", ICC-01/04-01/10-1, 28 September 2010, paras 5-7.

<sup>65</sup> Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, "Decision on the 'Defence Challenge to the Jurisdiction of the Court'", ICC-01/04-01/10-451, 26 October 2011, para. 16.

<sup>66</sup> Appeals Chamber, *Situation in the Democratic Republic of the Congo*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58'", ICC-01/04-169, 13 July 2006, paras 1-2, 52.

acting under the overall command of Colonel Bukhmada; (ii) orders circulated down the chain of command and were obeyed; and (iii) the brigade had the ability to plan military operations and put them into effect.<sup>67</sup> Further, the evidence shows that the violence among the above mentioned armed groups has been protracted, rising above the level of isolated and sporadic acts of violence,<sup>68</sup> with the parties to the conflict employing airstrikes, and missile and/or mortar attacks over long periods of time. Notably, the conflict has also attracted the attention of the Security Council.<sup>69</sup>

27. The Chamber finds reasonable grounds to believe that the acts described in Section II (Incidents 1 to 7) constitute the war crime of murder and were committed in the context of and were associated with an armed conflict not of an international character, pursuant to article 8(2)(c)(i) of the Statute. This finding does not prejudice the Prosecutor to amend the legal characterisation of the acts described in the incidents as set out in this warrant of arrest.<sup>70</sup>

28. Further, the Chamber finds that Mr Al-Werfalli personally committed the murders described in Incidents 1, 2, 3 and one of the murders described in Incident 7, and that he ordered, as a superior to others in the Al-Saiqa Brigade, the commission of the murders described in Incidents 4, 5, 6, and 19 of the murders described in Incident 7. The Chamber is further satisfied that he acted with intent and knowledge, and that he was aware of the status of the victims and of the factual circumstances that established the existence of the non-international armed conflict.<sup>71</sup> The Chamber therefore finds reasonable grounds to believe that Mr Al-Werfalli bears individual criminal responsibility as a direct perpetrator under article 25(3)(a)

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<sup>67</sup> Trial Chamber I, *Prosecutor v. Thomas Lubanga Lyilo*, "Judgment pursuant to Article 74 of the Statute", ICC-01/04-01/06-2842, 14 March 2012, paras 534-538.

<sup>68</sup> Article 8(2)(d) of the Statute.

<sup>69</sup> S/RES/1970 (2011); S/RES/1973 (2011).

<sup>70</sup> In particular, "the staging of these executions in front of the camera and the posting of the videos to social media", the Application, para. 156.

<sup>71</sup> Article 30 of the Statute; Article 8(2)(c)(i)-1, Elements of Crimes.

of the Statute,<sup>72</sup> and under article 25(3)(b) of the Statute<sup>73</sup> for ordering the commission of crimes. This does not prejudice the Prosecutor to amend the legal characterisation of Mr Al-Werfalli's criminal responsibility in light of the evidence presented at a later stage.

2. *Whether the arrest of Mr Al-Werfalli appears necessary (Article 58(1)(b) of the Statute)*

29. Finally, the Chamber is satisfied, in conformity with article 58(1)(b) of the Statute, that the arrest of Mr Al-Werfalli appears necessary to ensure that (i) he is prevented from continuing with the commission of these crimes or related crimes arising out of the same circumstances, as described in Section II; and (ii) he appears at trial. Considering the pattern of executions committed over the past months, since March 2017, and the recent escalation of Mr Al-Werfalli's conduct, the Chamber is of the view that Mr Al-Werfalli, unless prevented, is likely to continue to carry out crimes of similar gravity in the near future. The posting on social media of the videos depicting the executions, and the frequency and particular cruelty with which they are carried out satisfy the Chamber that Mr Al-Werfalli is unlikely to cooperate with a summons to appear, within the meaning of article 58(7) of the Statute. Thus, the issuance of a warrant of arrest is necessary.

## V. Classification

30. Pursuant to regulation 23bis(3) of the Regulations of the Court, and considering the reasons provided by the Prosecutor in her Application, the Chamber is of the view that it may issue the warrant of arrest publicly. At the same time, the Prosecutor is ordered to prepare a public redacted version of the Application as soon as possible.

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<sup>72</sup> Pre-Trial Chamber II, *Prosecutor v. Bosco Ntaganda*, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda", ICC-01/04-02/06-309, 9 June 2014, para. 136.

<sup>73</sup> Pre-Trial Chamber II, *Prosecutor v. Sylvestre Mudacumura*, "Decision on the Prosecutor's Application under Article 58", ICC-01/04-01/12-1-Red, 13 July 2012, para. 63.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**ISSUES** a warrant of arrest for **Mahmoud Mustafa Busayf AL-WERFALLI**, a Libyan national, born in 1978, reported to live at Square 8, Number 40 Qundulah Road in the Bu-Hadimah area of Benghazi, commander in the Al-Saiqa Brigade, for his alleged criminal responsibility pursuant to articles 25(3)(a) and (b) of the Statute, for the war crime of murder under article 8(2)(c)(i) of the Statute, in seven incidents against 33 persons as described in Section II, which took place from on or before 3 June 2016 until on or about 17 July 2017 in Benghazi or surrounding areas, in Libya;

**DECIDES** that the warrant of arrest is issued publicly and may be communicated to any State or international organisation for the purpose of its execution;

**DECIDES** that, as soon as practicable, the Registrar shall: (i) prepare a request for cooperation seeking the arrest and surrender of Mr Al-Werfalli and containing the information and documents required by articles 89(1) and 91 of the Statute and rule 187 of the Rules of Procedure and Evidence; and (ii) transmit, in consultation and coordination with the Prosecutor, the request to the competent authorities of Libya or any other relevant State, or to any other competent authority, in accordance with article 87 of the Statute and Resolution 1970 of the United Nations Security Council to cooperate with the Court for the purpose of executing the request for arrest and surrender of Mr Al-Werfalli;

**DIRECTS** the Registrar to prepare and transmit to any relevant State, in consultation and coordination with the Prosecutor, any request for transit pursuant to article 89(3) of the Statute or any request for provisional arrest pursuant to article 92 of the Statute which may be necessary for the surrender of Mr Al-Werfalli;

**ORDERS** the Prosecutor to transmit to the Registry and to the Chamber all information available to her that may be of assistance in the execution of the request for arrest and surrender as well as any information of relevance to assessing any




risks to victims and witnesses associated with the transmission of the request for arrest and surrender;

**ORDERS** the Registrar to prepare, as soon as practicable, an Arabic translation of the present warrant of arrest for the purpose of transmitting it to the Libyan authorities;

**ORDERS** the Registrar to open a case record and to transfer first the Prosecutor's Application from the situation record into the case record; and

**ORDERS** the Prosecutor to prepare a public redacted version of the Application as soon as possible.

Done in both English and French, the English version being authoritative.



**Judge Joyce Aluoch**  
**Presiding Judge**



**Judge Cuno Tarfusser**



**Judge Péter Kovács**

Dated this Tuesday, 15 August 2017

At The Hague, The Netherlands