

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 30 July 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN LIBYA

**IN THE CASE OF
THE PROSECUTOR *v.***

SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI

Public Redacted

**Decision on “Request for Review of Registrar’s Decision” by the Defence
of Saif Al-Islam Gaddafi**

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor

Counsel for Saif Al-Islam Gaddafi
John R.W.D. Jones

Counsel for Abdullah Al-Senussi
Ben Emmerson

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 Representatives

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Counsel Support Section
Esteban Peralta Losilla

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision on the “Defence’s Request for Review of Registrar’s Decision” (the “Defence Request”) submitted by the Defence of Saif Al-Islam Gaddafi (“Mr Gaddafi”).¹

I. Procedural history

1. On 17 April 2013, the Chamber authorised the Office of Public Counsel for the defence (the “OPCD”) to withdraw as counsel from the representation of Mr Gaddafi and appointed John R. W. D. Jones (“Mr Jones”), pursuant to regulation 76(1) of the Regulations of the Court (the “Regulations”), as a provisional measure, until Mr Gaddafi exercises his right to freely choose counsel under article 67(1)(d) of the Rome Statute (the “Statute”), or until the definitive disposal of proceedings related to Libya’s admissibility challenge, at which point the question of Mr Gaddafi’s legal representation will be revisited by the Chamber.²

2. On 25 April 2013, the Registrar decided to afford legal aid to the Defence of Mr Gaddafi on a provisional basis until a decision on whether he is indigent can be made following the normal procedures, and determined that, at this stage of the proceedings, payment would be confined to one counsel.³

3. In a letter dated 2 May 2013, the Defence requested the Registrar to review his decision on the grounds that the decision to remunerate the Defence in accordance with the payment scheme for duty counsel or *ad hoc* counsel failed to take into consideration the particular circumstances of Mr Gaddafi’s case,

¹ ICC-01/11-01/11-341-Conf-Exp. A public redacted version is also available (ICC-01/11-01/11-341-Red).

² Pre-Trial Chamber I, Decision on the “Request to Withdraw”, 17 March 2013, ICC-01/11-01/11-311-Conf-Exp. A public redacted version is also available (ICC-01/11-01/11-311-Red).

³ ICC-01/11-01/11-341-Conf-Exp-AnxA.

and the range of tasks considered necessary and reasonable to be performed by the Defence on behalf of Mr Gaddafi.⁴

4. On 20 May 2013, the Registrar rejected the Defence's request, finding it was not reasonably justified at this stage of the proceedings (the "Registrar's Decision").⁵

5. On 27 May 2013, the Defence filed the Request seeking the Chamber to review the Registrar's Decision and to order the Registrar to allocate funds for a case manager and a legal assistant.⁶ The Defence challenges the Registrar's Decision on the grounds that: (i) "[t]he Registrar has fettered his discretion incorrectly and unreasonably by relying upon the fact that Mr. Gaddafi has not been transferred to the seat of the Court as justification for restricting his allotment of legal aid"; (ii) "[t]he Registrar has committed an unreasonable error by reading restrictions into the appointment of Counsel, which are not supported by the decision of the Chamber appointing Counsel, or the past mandate of the Defence in this case"; and (iii) "[t]he Registrar's decision is unreasonable insofar as it fails to comply with the Registrar's obligation under [r]egulation 83(1) [of the Regulations of the Court] to allocate such funds as are necessary and reasonable to ensure an effective and efficient [d]efence".⁷

6. On 31 May 2013, the Chamber determined that the case against Mr Gaddafi is admissible before the Court.⁸ The Government of Libya appealed this

⁴ ICC-01/11-01/11-341-Conf-Exp-AnxB.

⁵ ICC-01/11-01/11-341-Conf-Exp-AnxC.

⁶ Request, para. 49.

⁷ ICC-01/11-01/11-341-Red, para. 5.

⁸ Pre-Trial Chamber I, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 30 May 2013, ICC-01/11-01/11-344-Red.

decision and, on 24 June 2013, submitted its document in support of the appeal.⁹

7. On 18 June 2013, the Registrar submitted the “Observations of the Registrar pursuant to Regulation 24 *bis* of the Regulations of the Court on the ‘Request for Review of Registrar’s Decision’ dated 27 May 2013” (the “Registrar’s Observations”), seeking a rejection of the Request in its entirety.¹⁰

8. On 21 June 2013, the Defence requested leave to reply to the Registrar’s Observations, and included its reply in the same filing (the “Defence Reply to the Registrar’s Submission”).¹¹

9. On 18 July 2013, the Appeals Chamber rejected Libya’s request for suspensive effect to the appeal against the decision on the admissibility of the case.¹²

II. Background and submissions

A. *The Registrar’s Decision*

10. The Registrar rejected the Defence request to be granted legal aid resources to cover the cost of recruiting additional team members as “not reasonably justified”.¹³

11. The Registrar’s Decision is grounded on the following considerations: (i) “no legal team can be established, or more specifically paid, [...] prior to the time the Chamber has convened the first appearance and sets a date for the Confirmation of Charges hearing [...] [and] [t]his legal aid modality is based

⁹ ICC-01/11-01/11-370-Conf-Exp. A public redacted version is also available (ICC-01/11-01/11-370-Red2).

¹⁰ ICC-01/11-01/11-360 with two public annexes.

¹¹ ICC-01/11-01/11-366.

¹² Appeals Chamber, Decision on the request for suspensive effect and related issues, 18 July 2013, ICC-01/11-01/11-387.

¹³ Registrar’s Decision, p. 4.

on the actual demands (of legal representation) as necessitated by the different phases of proceedings before the Court”; (ii) “the limited scope of [counsel’s] mandate as clearly defined by the Chamber in its Decision [appointing Mr Jones as counsel for Mr Gaddafi] and the issues currently *sub judice* in the case before the relevant Chamber”; (iii) “substantial amount of work has already been conducted in the case by the OPCD, and [...] [counsel’s] appointment does not imply a case *ex novo*”; (iv) “the OPCD can continue and is mandated by Reg[ulation] 77.5 of the [Regulations] to provide support and assistance to [counsel]”; (v) “the Registry has facilitated the appointment of a *pro bono* member to assist [counsel] in [his] mandate, and is amenable to favourably consider similar requests in accordance with existing internship policies and mechanisms in place”; (vi) “the reason invoked in the Request [for additional funds] do not establish an overly onerous burden which cannot be reasonably assumed by diligent legal representation based on the resources already placed at [counsel’s] disposal”; and (vii) “pursuant to Reg[ulation] 83.1 of the [Regulations], only ‘cost reasonable necessary as determined by the Registrar for an effective and efficient defence’ can be covered by the Court for legal assistance”.¹⁴

B. The Defence Request

12. As recalled above, the Defence requests the Chamber to review the Registrar’s Decision on three different grounds.

13. First, the Defence maintains that the Registrar “has fettered his discretion incorrectly and unreasonably by relying upon the fact that Mr. Gaddafi has not been transferred to the seat of the Court as justification for restricting his allotment of legal aid”. In essence, the Defence alleges that “it is not the location of the [suspect] or the phase of the proceedings” but the “actual

¹⁴ Registrar’s Decision, pp. 3-4.

workload that the Defence must undertake” which is determinative.¹⁵ In this context, the Defence adds that the initial appearance of Mr Gaddafi was frustrated by Libya’s failure to execute the warrant of arrest.¹⁶ The Defence makes the argument that had the Libyan government complied with its obligations, Mr Gaddafi would have had his initial appearance before the Court which would have “triggered his right to the pre-confirmation legal aid allotment”.¹⁷ The Defence adds that “Mr. Gaddafi has been held in detention (in isolation, and incommunicado) for the last 17 months”¹⁸ with “no domestic legal representation as concerns the ICC related allegations”¹⁹.

14. In addition, the Defence purports that the Registrar “has failed to take into consideration either the complexity of the present admissibility challenge, or other key procedural development”²⁰, and that “[i]n the present case, if Mr. Gaddafi had been transferred to the seat of the Court, the workload of the Defence would not have been greater”.²¹ The Defence further lists a series of tasks for which, in its view, it would be necessary to appoint an additional member of the team,²² also considering that counsel [REDACTED]

[REDACTED].²³ In this regard, the Defence asserts that it is its understanding that the Court translation section would not perform the identified necessary tasks for the Defence, as its assistance would only be provided for official Defence missions.²⁴ In particular, according to the Defence:

¹⁵ *Ibid.*, para. 10.

¹⁶ *Ibid.*, paras 12 and 13.

¹⁷ *Ibid.*, para. 12.

¹⁸ *Ibid.*, para. 16.

¹⁹ *Ibid.*, para. 15.

²⁰ *Ibid.*, para. 20.

²¹ *Ibid.*, para. 11.

²² *Ibid.*, para. 21.

²³ *Ibid.*, para. 23.

²⁴ *Ibid.*, para. 25.

(i) [REDACTED]

[REDACTED]

[REDACTED];²⁵ (ii) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];²⁶ (iii) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].²⁷ Therefore, according to the Defence, “it is necessary for an Arabic speaker to be available on a continuous basis to liaise with these persons on the behalf of the Defence”.²⁸

15. Second, the Defence puts forth that the Registrar committed an “unreasonable error by reading restrictions into the appointment of Counsel, which are not supported by the decision of the Chamber appointing Counsel, or the past mandate of the Defence in this case”. On this point, the Defence asserts that “[t]here is [...] nothing in either the 17 April 2013 Decision of the Chamber or the particular circumstances of the case which would warrant imposing such an artificial restriction on the mandate and tasks of Counsel”.²⁹ It further alleges that “the ‘provisional’ appointment of Counsel *via* [r]egulation 76 [of the Regulations] is directly linked to the particular

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*, para. 28.

circumstances of Mr. Gaddafi's incommunicado detention, rather than any particular restriction concerning the mandate of Counsel".³⁰

16. Third, the Defence challenges the Registrar's Decision on the basis that it "is unreasonable insofar as it fails to comply with the Registrar's obligation under [r]egulation 83(1) [of the Regulations] to allocate such funds as are necessary and reasonable to ensure an effective and efficient [d]efence". The Defence argues, in essence, that it is "neither reasonable nor efficient to require a Counsel – who is paid on an hourly basis – to perform case management and legal assistance tasks".³¹ According to the Defence, "these objectives [are not] met by outsourcing translation and interpretation requirements to external professional translators, who are remunerated at a much higher level than Defence support staff".³² It further makes reference to its obligation to "maintain proper order" of its case file, correspondence and material.³³ The Defence recalled that the admissibility decision of the Chamber would be appealed by either the Libyan Government or the Defence³⁴ which involves "numerous filings and admissibility exhibits".³⁵ It acknowledges that "a significant amount of work has been performed thus far by the OPCD" but refers to its increased workload due the review of filings and preparation of redacted versions of filings.³⁶

17. The Defence further argues that the hourly invoice system of remuneration ensures that the Defence is only reimbursed for work which is

³⁰ *Ibid.*, para. 29.

³¹ *Ibid.*, para. 34.

³² *Ibid.*, para. 34.

³³ *Ibid.*, paras 35-37.

³⁴ At the time of the filing of the Defence Request, the Chamber had not yet issued its decision on the admissibility challenge lodged by Libya. As the Chamber recapitulated in the Procedural History, the Chamber rejected the challenge to the admissibility of the case and the Libyan government appealed the Chamber's decision in the meantime.

³⁵ Defence Request, paras 39 and. 40.

³⁶ *Ibid.*, paras 41 and 42.

reasonable and necessary. Indeed, according to the Defence, “[i]f the work performed by the case manager or legal assistant is directly relevant to necessary defence preparation, then it follows that there was no rational basis for imposing a blanket refusal on the appointment of such person in the first place. Alternatively, if the specific tasks, which have been performed, are superfluous or irrelevant, then it follows that CSS would not approve the work plan in advance or remunerate the hours”.³⁷

18. Finally, the Defence argues that the use of *pro bono* assistants or interns in lieu of legal assistants is no adequate alternative but, instead, “constitutes an abdication of the Registrar’s obligation to cover necessary and reasonable costs required for an effective and efficient defence”.³⁸ In the Defence’s submission, “[i]f the tasks are necessary and reasonable, then the Registrar must assign legal aid funds to the Defence – the possibility to recruit interns or *pro bono* assistants is an irrelevant consideration for the purposes of Regulation 83(1)”.³⁹

C. The Registrar’s Observations

19. In his observations pursuant to regulation 24 *bis* of the Regulations, the Registrar “requests [the Chamber] to reject the Request for Review in its entirety”.⁴⁰

20. In relation to the first ground raised by the Defence, the Registrar maintains that in the period “from the start of the investigation phase of the proceedings until the first appearance before the Pre-Trial Chamber”, “counsel is required to act alone”.⁴¹ According to the Registrar, should the necessary conditions be met, “the resources granted in terms of team composition will be

³⁷ *Ibid.*, para. 43.

³⁸ *Ibid.*, para. 47.

³⁹ *Ibid.*

⁴⁰ Registrar’s Observations, para. 45.

⁴¹ *Ibid.*, para. 14.

– as it is in all cases – in accordance with the Court’s legal aid system as the case progresses throughout the proceedings”.⁴²

21. With reference to the second ground presented by the Defence, the Registrar makes reference to the Chamber’s decision of 17 April 2013 appointing Mr Jones as counsel for Mr Gaddafi. According to the Registrar, the Chamber was “primarily concerned with the suspect’s legal representation within the limited scope of the admissibility challenge” and, therefore, that “Counsel in his Request for Review is in effect attempting to expand the limited scope of his provisional mandate beyond the boundaries set by the Chamber”.⁴³

22. Finally, in relation to the third ground raised by the Defence, the Registrar contests the allegation that he failed to comply with his obligation under regulation 83(1) of the Regulations. In particular, the Registrar submits that the Defence of Mr Gaddafi: (i) in addition to legal fees for Counsel, it “benefits from a monthly expenses budget of €3000 to cover the costs of reasonable and necessary expenses incurred in the course of the execution of the Court-granted mandate”;⁴⁴ (ii) may be receiving assistance from the OPCD within the framework of regulation 77 of the Regulations, also “in view of the Principal Counsel’s intimate familiarity with the case and the fact that the OPCD employs a native Arabic speaker”;⁴⁵ and (iii) can benefit from the assistance of *pro bono* members who are “simply added value to the defence above and beyond the resources deemed ‘reasonably necessary as determined by the Registrar for an effective and efficient defence’”.⁴⁶

⁴² *Ibid.*, para. 15.

⁴³ *Ibid.*, para. 39.

⁴⁴ *Ibid.*, para. 26.

⁴⁵ *Ibid.*, para. 31.

⁴⁶ *Ibid.*, para. 34.

D. The Defence Reply to the Registrar's Observations

23. The Defence requests leave to reply to the Registrar's Observations.⁴⁷ The Chamber considers beneficial in order to arrive to an informed decision on the matter *sub judice*, which impacts upon Mr Gaddafi's right to an effective and efficient legal representation, that leave to reply be granted to the Defence on the three discrete issues identified by the Defence. The following submissions are therefore taken into consideration for the purposes of the present decision.

24. First, the Defence asserts that the Registrar's Observations indicate that that the Registrar failed to exercise his discretion to take into consideration the particular circumstances of the case given that he "postulates that the Defence should not be given any more resources than any other ad hoc counsel or duty counsel [...] even though the particular circumstances in this case are radically different from those cases".⁴⁸ In this regard, the Defence further argues that if the Registrar's position that the mandate of the Defence is mainly confined to the admissibility proceedings were to be accepted, this "would create a vacuum as concerns Mr. Gaddafi's right to effective representation as concerns all aspects of this case before the ICC" in particular "now that the Chamber has found that the case is admissible before the ICC".⁴⁹ Nevertheless, according to the Defence, "even as concerns the admissibility proceedings themselves, the workload and complexity in this case far exceeds which was entrusted to ad hoc counsel in previous cases".⁵⁰

25. Second, the Defence takes issue with the reference in the Registrar's Observations on the availability of assistance from the OPCD. In particular, the Defence asserts that it "requires an Arabic speaking assistant in order to assist it to contact and liaise with Defence sources and potential witnesses, and to

⁴⁷ ICC-01/11-01/11-366.

⁴⁸ Defence Reply to the Registrar's Observations, para. 14.

⁴⁹ *Ibid.*, para. 15.

⁵⁰ *Ibid.*, para. 15.

translate potential items of evidence” and that these matters “concern directly Defence strategy and other sensitive issues, and for that reason, should be conducted by an in-house Defence assistant in order to avoid conflicts of interests arising between the OPCD’s assistance to the Gaddafi and the Al-Senussi team”.⁵¹ On this point, the Defence further argues that, contrary to the Registrar’s assertion in his Observations, the capacity of the OPCD has recently significantly diminished,⁵² and that, in particular, the consultancy contract of the Arabic speaker employed by the OPCD will expire in July 2013 and will not be renewed, precluding, from that date onwards, any Arabic language assistance to the Defence.⁵³ Finally, the Defence asserts that if it were to dedicate its 3000 euros expense budget to appoint someone to perform the necessary Defence tasks which requires knowledge of the Arabic language, “it would not have any funds for travelling to the ICC, or meeting with witnesses or person who may have information which is relevant to the admissibility proceedings”.⁵⁴

26. Third, the Defence argues that the Registrar’s Observations contain arguments which are irrelevant to the Registrar’s duty “to issue a decision as to the level of resources, which are necessary and reasonable in the particular circumstances of this case”.⁵⁵ In particular, the Defence takes an issue with the Registrar’s citation of the fact that Mr Gaddafi has not submitted an indigence form. According to the Defence, this fact is only relevant to the threshold question as to whether Mr Gaddafi is entitled to legal aid and “has absolutely

⁵¹ *Ibid.*, para. 19.

⁵² *Ibid.*, para. 21.

⁵³ *Ibid.*, para. 20.

⁵⁴ *Ibid.*, para. 20.

⁵⁵ *Ibid.*, para. 23.

no bearing on the level of resources required to provide Mr. Gaddafi with effective legal representation".⁵⁶

III. The applicable law

27. The Chamber notes articles 21 and 67 of the Statute, rules 20 and 21 of the Rules of Procedure and Evidence (the "Rules"), and regulations 24(5), 77 and 83 to 85 of the Regulations.

28. According to rule 20(2) of the Rules and regulations 83(1), 84(1) and 85(1) of the Regulations, the Registrar is responsible for reaching a determination as to a suspect's entitlement to legal aid and the scope of such assistance, in conformity with the provisions of the Statute, the Rules and the framework of the legal aid scheme, as endorsed by the Assembly of States Parties and established by the legal and policy texts of the Court.⁵⁷

29. In particular, according to regulation 83(1) of the Regulations, "[l]egal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence". Regulation 83(3) of the Regulations states "[a] person receiving legal assistance by the Court may apply to the Registrar for additional means which may be granted depending on the nature of the case".

30. Pursuant to regulation 83(4) of the Regulations, the Chamber has the authority to "review" decisions of the Registrar on the "scope of legal assistance paid by the Court". However, the applicable standard of review is not specified. In the opinion of the Chamber, the appropriate standard of review shall take into account that it is the Registrar's responsibility to administer the available legal aid budget. The Registry is the organ of the

⁵⁶ *Ibid.*, para. 24.

⁵⁷ Pre-Trial Chamber I, Decision on the "Request to Withdraw", 17 April 2013, ICC-01/11-01/11-311-Red, para. 21.

Court best positioned to overview the available financial means and the needs involved in all cases before the Court. The Registrar therefore enjoys a degree of discretion in the determination of the costs which are “reasonably necessary” for an “effective and efficient defence” as set out in regulation 83(1) of the Regulations. The Chamber should only interfere with this discretion when there are compelling reasons for doing so, taking into consideration the right to legal assistance as enshrined in the Statute.

31. In reviewing the Registrar’s determinations, the Chamber must not consider whether it would have made the same decision as the Registrar. Instead, the Chamber must assess whether the decision of the Registrar was materially affected by an error of law or fact or whether the decision is so unfair and unreasonable as to constitute an abuse of discretion.⁵⁸

IV. Analysis of the Chamber

32. As recalled above, the first ground on the basis of which the Defence seeks review of the Registrar’s Decision is that “[t]he Registrar has fettered his discretion incorrectly and unreasonably by relying upon the fact the fact that Mr Gaddafi has not been transferred to the seat of the Court as justification for restricting his allotment of legal aid”.⁵⁹

33. The Chamber notes that the question of necessity and reasonableness of the legal aid funds to be provided by the Court must be assessed *in concreto* in light of the current stage of the proceedings and the related workload.⁶⁰ The Chamber is not persuaded that, as a matter of principle, the fact that the initial

⁵⁸ See Trial Chamber II, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Urgent Requests by the Legal Representative of Victims for Review of Registrar's Decision of 3 April 2012 regarding Legal Aid, 23 April 2012, ICC-01/04-01/07-3277, para. 9.

⁵⁹ Defence Request, para. 5(i).

⁶⁰ See also similarly, Appeals Chamber, *Prosecutor v William Samoei Ruto and Joshua Arap Sang*, Decision on the “Application of the Victims’ Representative pursuant to Article 83 of the Regulations”, ICC-01/09-01/11-409 (OA3 OA4), para. 23.

appearance is yet to take place constitutes, *per se*, a ground for refusing to the Defence team additional resources which would otherwise be necessary and reasonable. This is particularly the case in circumstances in which the initial appearance has not taken place because of the failure to surrender the suspect on the part of Libya, rather than because the suspect remains at large. In this regard, the Chamber has already observed that that Mr Gaddafi's exercise of his rights under the Statute "cannot be made contingent on Libya's compliance with the request for arrest and surrender issued by the Court".⁶¹ This is the more so following the Appeals Chamber's rejection of the request to suspend the effect of the Chamber's decision whereby the case against Mr Gaddafi was determined to be admissible before the Court.⁶²

34. Nevertheless, the Chamber considers that the fact that Mr Gaddafi's initial appearance before the Court is yet to take place, *de facto*, entails that the proceedings leading to the confirmation of charges hearing pursuant to article 61(7) of the Statute have not commenced. In this sense, it is not erroneous or abusive on the part of the Registrar to take into account this fact in the determination of the amount of funds which are necessary and reasonable to provide the Defence with in the concrete circumstances of the case.

35. The second ground raised by the Defence is that "[t]he Registrar committed an unreasonable error by reading restrictions into the appointment of Counsel, which are not supported by the decision of the Chamber appointing Counsel, or the past mandate of the Defence in this case".⁶³ The Chamber recalls that it appointed Mr Jones as counsel for Mr Gaddafi "pursuant to regulation 76(1) of the Regulations, as a provisional measure,

⁶¹ Pre-Trial Chamber I, Decision on OPCD Requests, 27 April 2012, ICC-01/11-01/11-129, para. 11.

⁶² Appeals Chamber, Decision on the request for suspensive effect and related issues, 18 July 2013, ICC-01/11-01/11-387.

⁶³ Defence Request, para. 5(ii).

until Mr Gaddafi exercises his right to freely choose counsel under article 67(1)(d) of the Statute, or until the definitive disposal of proceedings related to the Admissibility Challenge, at which point the question of Mr Gaddafi's legal representation will be revisited by the Chamber".⁶⁴ As correctly asserted by the Defence, no limit in relation to the scope of counsel's mandate has been set out by the Chamber, which rather stressed the provisional nature of the appointment under regulation 76(1) of the Regulations. In this sense, the Chamber is not persuaded by the Registrar's determination, as contained in his Decision, in relation to the alleged "limited scope of [counsel's] mandate as clearly defined by the Chamber".⁶⁵

36. Nevertheless, the Chamber is of the view that reading restrictions into counsel's mandate on the part of the Registrar was not *per se* conclusive for the rejection of the request for additional legal aid funds. Indeed, as recalled above, the proceedings leading to the confirmation of charges hearing have not yet commenced. In this context, the procedural activity has been mainly related to proceedings with respect to the determination of the admissibility of the case. This continues to be the case since the Chamber's determination that the case against Mr Gaddafi is admissible before the Court is currently under review by the Appeals Chamber. In this context, the Chamber is of the view that, despite the fact that the counsel's mandate cannot be restricted to proceedings related to the admissibility of the case, the Registrar's interpretation of the decision appointing counsel pursuant to regulation 76(1) of the Regulations does not affect in a material way the Registrar's Decision given that, in rejecting the request for additional resources, the Registrar has taken into account *in concreto* the workload actually implied in the representation of Mr Gaddafi at this stage of the proceedings.

⁶⁴ ICC-01/11-01/11-311-Red, para. 20.

⁶⁵ Registrar's Decision, p. 2.

37. The third ground on the basis of which the Defence requests the Chamber to review the Registrar's Decision is that said decision "is unreasonable insofar as it fails to comply with the Registrar's obligation under Regulation 83(1) to allocate such funds as are necessary and reasonable to ensure an effective and efficient Defence, which in turn, will impact on the overall efficiency and expeditiousness of the proceeding".⁶⁶

38. The Chamber recalls that the decision on the admissibility of the case against Mr Gaddafi has been issued and is now under review by the Appeals Chamber.⁶⁷ As acknowledged by the Defence,⁶⁸ a substantial amount of work involved in the current stage of the proceedings has already been carried out in the case by the counsel from the OPCD as Mr Gaddafi's previous legal representative. According to the Chamber, this fact significantly reduces the anticipated work to be carried out by the Defence.

39. Furthermore, the Chamber remains unconvinced that the list of tasks set out in the Request represents, in principle, a burden of work which warrants an increase in legal aid on the grounds that it cannot be undertaken by counsel acting alone. The Chamber notes in this regard that, as stated by the Registrar, the OPCD is in a position to continue providing its assistance to the Defence, including in terms of case-managerial support and legal advice, where necessary.

40. The Chamber observes the Defence arguments that several of the tasks to be performed in the context of Mr Gaddafi's legal representation further require the assistance of an Arabic speaking person within the Defence team.

⁶⁶ Defence Request, para. 5(iii).

⁶⁷ ICC-01/11-01/11-350; ICC-01/11-01/11-370-Red2.

⁶⁸ Defence Request, para. 41.

41. The Chamber acknowledges the Defence arguments that the solution of the identified problem cannot be either reliance on the Court Translation and Interpretation Section – which would be unavailable to offer its assistance on a continuous basis as necessary to the Defence⁶⁹ – or recourse to the 3000 euros expense budget which is necessary to travel to the Court or meet with witnesses and other person who may have relevant information,⁷⁰ also taking into account that external professional translators are allegedly remunerated at a much higher level than Defence support staff.⁷¹ By the same token, the Chamber is not persuaded that the viable alternative, with no impact on the available financial resources at the Defence disposal, is that the assistance required by the Defence be provided by individuals working on a *pro bono* basis.

42. The Chamber is however of the view that the language assistance and the carrying out of the tasks which require knowledge of the Arabic language may be performed by the OPCD. In this regard, the Chamber considers that the fact that the Defence tasks “concern directly Defence strategy and other sensitive issues” does not *per se* create a conflict of interests between the OPCD’s assistance to the Gaddafi and Al-Senussi team which would require that the identified tasks be performed by an “in-house Defence assistant”.

43. The Chamber takes note of the Defence assertion that the OPCD will not be in a position to provide any Arabic language assistance to the Defence, due to the expiration, at the end of July 2013, of the consultancy contract of the native Arabic speaker employed by the OPCD.⁷² In this regard, the Chamber has been informed by the Registrar that should additional funds be available to

⁶⁹ See above para. 14, with reference to the arguments contained in the Defence Request at para. 25.

⁷⁰ Defence Reply to the Registrar’s Observations, para. 20.

⁷¹ Defence Request, para. 34.

⁷² Defence Reply to the Registrar’s Observations, para. 20.


the OPCD, the contract of the Arabic speaking member of the OPCD will be renewed. In the present circumstances, the assistance provided by the OPCD also in terms of language assistance may therefore suffice to manage the present workload of the Defence. Should these circumstances change, and should the OPCD be unable to provide the necessary language assistance, the Defence may raise this issue anew before the Registrar. Accordingly, the Chamber is not persuaded that the Registrar, with this Decision, failed to comply with his obligations under regulation 83(1) of the Regulations to allocate such funds as are necessary and reasonable to ensure an effective and efficient defence.

44. The Chamber recalls its interpretation of the appropriate standard of review for the purposes of regulation 83(4) of the Regulations, and in particular that it will not interfere with the Registrar's decision on the scope of legal assistance paid by the Court only on the basis that it would have taken a different decision from the one made by the Registrar. For the reasons provided above, the Chamber is of the view that the decision of the Registrar was not materially affected by any error of law or fact or that it was so unfair and unreasonable as to constitute an abuse of discretion, such that it would warrant interference by the Chamber. The Request must therefore be rejected.

FOR THESE REASONS, THE CHAMBER

REJECTS the Defence Request.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 30 July 2013

At The Hague, The Netherlands