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No.: **ICC-02/05**

Date: **12/03/2007**

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Claude Jorda
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR, SUDAN

Public Document

Request for the intervention and opinion of the Prosecutor in the proceedings initiated by Ad hoc Counsel for the Defence by his "*Recours à l'encontre de la décision du Greffe du 13 février 2007*"

The Office of the Prosecutor
Mr Luis Moreno-Ocampo
Ms Fatou Bensouda
Mr Andrew Cayley

Ad hoc Counsel for the Defence
Mr Hadi Shalluf

MAY IT PLEASE THE PRESIDING JUDGE AND JUDGES
OF PRE-TRIAL CHAMBER I

Considering that Ad hoc Counsel for the Defence in the situation in Darfur has, by his “*Recours à l’encontre de la décision du Greffe du 13 février 2007*”,¹ applied for review of the Registry’s decision of 13 February 2007 under article 135(2) of the Regulations of the Registry and regulation 83 of the Regulations of the Court;

Considering that, on 07/03/2007, the Registrar filed his response, entitled “*Réponse du Greffier au “Recours à l’encontre de la décision du Greffe du 13 février 2007” déposé le 27 février 2007 par Me Hadi Shalluf*”,²

Considering that, in his response of 07/03/2007, the Registrar stated that he had also decided not to make the payment for November 2006, since, from November 2006, the work of Ad hoc Counsel for the Defence was unlawful and fell outside the scope of his mandate;³

Considering that the response of the Registrar of 07/03/2007 is not a response in law, and that it contains defamatory remarks and threats against Ad hoc Counsel for the Defence;

¹ ICC-02/57.

² ICC-02/60.

³ It must be noted here that Ad hoc Counsel for the Defence has taught law at several universities as a professor of Comparative Criminal Law and Criminology, that he has a doctorate in Criminal Law and Criminology from *La Sapienza* University, Rome, Cesare Beccaria and Enrico Ferri–Lombroso schools, the famous positivist and classical schools of criminal law and criminology.

Furthermore, he holds the highest university law degree in France, a *Doctorat d’État* in International Law – International Relations. He also carried out post-doctoral studies in the “Common Study Programme on Criminal Justice and Critical Criminology”, under the aegis of the Commission of the European Community, the United Nations Social Defense Research Institute (UNSDRI), Erasmus University Rotterdam (The Netherlands), the University of Bologna (Italy) and the University of Saarland, Saarbrücken (Federal Republic of Germany).

Counsel before the Court of Paris since 1989, he holds a *certificat de spécialiste* in the Law of International Relations awarded by the Paris Bar Admission Course (EFB). President of the *Association des Juristes et Avocats Euro-Arabs* AJAEA.

Considering that article 43 of the Statute provides that the Registrar is responsible for the non-judicial aspects of the administration and servicing of the Court; it follows that he has no jurisdiction in judicial matters and cannot assess the content of the work carried out by counsel;

Ad hoc Counsel has honestly and conscientiously analysed the Defence case and has carried out his work with a view to protecting the general interests of the Defence;

Considering that Ad hoc Counsel for the Defence submits that the Registrar's response is ultra vires and must be penalised by the Court;

The response is not in fact a response to the request for review itself, but a response to one of the legal arguments of the Defence concerning the unlawfulness of the second translation of the decision regarding the appointment of Counsel, an erroneous translation which, according to criminal law principles, may amount to a criminal offence and undermine the prestige of the Court;

Considering that the Registrar's response not only calls into question the work of Counsel, but also that of the Office of the Prosecutor, as well as the decisions rendered by the Chamber up to 21 February 2007 on the work carried out by Counsel;

On page 3, paragraph 4, of his response, the Registrar stated that he had already taken his decision as early as the end of October 2006: **"From November 2006, the Registry stopped paying the Applicant the fees claimed by him, because it considered that the activities in question fell outside the scope of the mandate of ad hoc counsel"**;

Considering that this assertion by the Registrar that he had already decided as early as the end of October to stop paying Counsel's fees shows that he took an arbitrary decision, which constitutes a breach of all the rules of law.

In effect, several questions arise here:

- I-** Considering that the Registrar decided as early as the end of October 2006 to stop paying the fees of Counsel for the Defence, why did the Registrar not inform Counsel of his decision immediately at the end of October, and why did he not ask Counsel to restrict his work solely to responding to observations?

It was only on 13 February 2007 that the Registrar informed Counsel of his decision to stop payment for the months of December 2006 and January 2007, without mentioning the month of November in his decision.

Ad hoc Counsel therefore continued with his work for the months of November and December 2006, and January and February 2007, without knowing that the Registry had already arbitrarily decided since 1 November 2006 to stop paying him for his work.

Does this conduct on the part of the Registry not constitute an act of deceit in relation to Counsel?

- II-** The Registrar has stated that Counsel's activities in September and October 2006 fell within the scope of his mandate. On 09/10/2006, Ad hoc Counsel filed "*Conclusions aux fins d'exception d'incompétence et d'irrecevabilité*", and on 25/10/2006 "*Conclusions aux fins d'in limine litis sursis à statuer*".⁴ The Office of the Prosecutor intervened on 27/10/2006, requesting leave to respond to Counsel by his "Prosecutor's Expedited Application for Leave to reply to Ad Hoc Counsel's "*Submissions challenging jurisdiction and admissibility*""⁵ and on 07/11/2006, through his "Prosecutor's response to "*Requête sollicitant l'autorisation d'interjeter appel à l'encontre de la décision rendue le 02/11/2006 sur*

⁴ICC-02/05-20.

⁵ICC-02/05-24.

les conclusions in limine litis sursis à statuer”.⁶ It was only on 10/11/2006 that the Office of the Prosecutor filed its response to the submissions in the form of the “Prosecutor's Reply to Ad Hoc Counsel's *Submissions challenging jurisdiction and admissibility*”.⁷

Throughout these proceedings, from November 2006 to February 2007, Ad hoc Counsel *reviewed* all the submissions by the Office of the Prosecutor and requested leave from the Chamber to reply.

All of the work carried out by Counsel represents the extension, the continuation and the direct consequence of his submissions on the challenge to jurisdiction and admissibility, submissions accepted by the Registrar as “falling within the scope of the mandate” of Counsel.

Considering that the Chamber considered all of the work done by Counsel for the Defence and never called into question the proceedings undertaken by Counsel;

Considering that the Office of the Prosecutor intervened in all of the matters undertaken by Counsel, and never called into question the skill of Counsel or the proceedings initiated by him;

In asserting that the work carried out by Counsel for the Defence from 1 November was unlawful, and conducted on Counsel's own personal responsibility, is the Registrar calling into question the interventions of the Office of the Prosecutor and the decisions rendered by the judges?

And why did the Registrar wait until 07/03/2007 to inform the Chamber, the Prosecutor and Counsel of his decision, dating from the end of October 2006, to stop paying Counsel's fees?

⁶ICC-02/05-22.

⁷ICC-02/05-27.

- III-** The Chamber rendered a number of decisions in November concerning the work of the Defence: on 02/11/2006: the “*Décision relative aux « Conclusions aux fins d’in limine litis sursis déposées par le conseil ad hoc de la Défense*”⁸, on 22/11/2006: the “*Décision relative à la requête sollicitant l’autorisation d’interjeter appel du conseil ad hoc pour la Défense*”⁹, on **22/11/2006**: the “*Décision relative aux conclusions aux fins d’exception d’incompétence et d’irrecevabilité*”¹⁰. In accordance with his professional obligations and undertakings, Ad hoc Counsel for the Defence reviewed these decisions and sought leave to appeal.¹¹
- IV-** The Registrar has demonstrated by his response that his stance is blatantly self-contradictory.

Thus:

- 1-** In his decision of 13 February 2007, he stated that his decision not to pay Counsel’s fees for the months of December 2006 and January 2007 was based on the Chamber’s decision of 02/02/2007. However, in his response of 07/03/2007, he stated that he had already decided at the end of October 2006 arbitrarily to stop paying Counsel’s fees as of November 2006: “the Registry stopped paying the Applicant the fees claimed by him, because it considered that the activities in question fell outside the scope of the mandate of ad hoc counsel”. **What is the legal basis for this decision to stop payment as of**

⁸ ICC-02/05-25.

⁹ ICC-02/05-33.

¹⁰ ICC-02/05-34.

¹¹ 27.11.2006: “*Requête sollicitant l’autorisation d’interjeter appel à l’encontre de la décision rendue le 22/11/2006 sur les conclusions aux fins de l’exception d’incompétence et d’irrecevabilité*”, ICC-02/05-35; 13.11.2006: “*Demande pour répliquer à la réponse de M. le Procureur en date du 10/11/2006 relative aux “Conclusions Aux Fins d’Exception d’Incompétence et d’Irrecevabilité soulevées par la Défense en date du 13/10/2006”*”, ICC-02/05-30; 08.11.2006: “*Demande pour répliquer à la réponse du Bureau du Procureur concernant la requête déposée par la défense sollicitant l’autorisation d’interjeter Appel à l’encontre de la décision du 02/11/2006 sur les conclusions “in limine Litis Sursis à Statuer”*”, ICC-02/05-28; 06.11.2006: “*Requête sollicitant l’autorisation d’interjeter appel à l’encontre de la décision rendue le 02/11/2006 sur les conclusions in limine litis sursis à statuer*”, ICC-02/05-26.

November 2006? This decision is arbitrary and must be judicially penalised by the Court.

- 2.- In his decision of 13/02/2007, the Registrar stated that he was refusing to make payments for the months of December 2006 and January 2007: “[W]e would remind you that your mandate... It follows that your statements of hours worked relating to the periods 1 to 31 December and 1 to 31 January fall outside the scope of your mandate as defined by Pre-Trial Chamber I in its decision of 2 February 2007”.¹²

However, in his response of 07/03/2007, the Registrar stated that he had already taken the decision to stop payment of fees as early as November 2006 and did so without informing Counsel, who was only made aware of this through the Registrar’s response of 07/03/2007.

- 3- The Registrar is wrong in claiming that Counsel seized Pre-Trial Chamber I, pursuant to article 135(2) of the Regulations of the Registry and regulation 83 of the Regulations of the Court, without having sought a decision from the Registrar on the dispute, since it was he himself who communicated his decision of 13/02/2007 to the Chamber (**Cc: Pre-Trial Chamber I**). The Registrar cannot claim to be unaware of this decision, or of the fact that it had been communicated to the Chamber by his office.
- 4- The Registrar is likewise wrong in claiming that Counsel seized Pre-Trial Chamber I, pursuant to article 135(2) of the Regulations of the Registry and 83 of the Regulations of the Court, without having sought a decision from the Registrar on the dispute, since he was aware of the 15-day time-limit for lodging an appeal, that there is no direct communication between Counsel

¹²“DSS/2007/34/AM”: letter addressed to Ad hoc Counsel for the Defence by Court Services, Division of Victims and Counsel, dated 13/02/2007 and copied to Pre-Trial Chamber I.

and the Registrar, and that all communications pass through the office of the Head of the Victims and Counsel Division.

- 5- In any event, the Registrar stated in his response of 07/03/2007 that he had already arbitrarily taken his decision as early as the end of October to stop payments with effect from 1 November 2006.
- V- The Registrar decided to stop paying the fees of Counsel for the Defence as of November 2006 without informing either Counsel, the Office of the Prosecutor or the Chamber of his decision.

Counsel has shown here that he was totally unaware of the intention of the Registrar and of his decision dating from the end of October 2006.

The Court is bound to note that Ad hoc Counsel has exercised his professional duties rigorously and in good faith and has complied with the requirements of articles 5 and 6 of the Code of Professional Conduct for Counsel.

The Court is bound to note the dysfunctional conduct to which Counsel has fallen victim.

Ad hoc Counsel for the Defence considers that the Registrar's response compromises the operation of the Court and of the legal assistance scheme and undermines the Court's prestige.

Considering that the creation of the International Criminal Court represents a major victory for humanity and that this Court belongs only to humanity and to no one else: **"Preamble to the Rome Statute"**;

Considering that all jurists the world over, as well as public opinion, follow the activities of this Court both closely and from a distance, and take great interest in the operation of the International Criminal Court;

Considering that, in any event, jurists the world over, as well as public opinion, are now in a position to judge not only the work undertaken by Counsel but also the response of the Registrar, threatening Counsel with disciplinary action and criminal prosecution “cf. Dreyfus case” ;¹³

Considering that it should be made clear here that there has already been a dispute between the Registry and Mr Jean Flamme, Counsel for the Defence in case ICC-01/04/-01/06 “*The Prosecutor v. Thomas Lubanga Dyilo*”, concerning the non-payment of Counsel’s fees. That dispute was brought before the same Pre-Trial Chamber I, but the Registrar made no submissions, and neither intimidated nor made personal threats against Counsel.¹⁴

Why has the Registrar regarded the bringing of the matter before Pre-Trial Chamber I by Counsel for the Defence in the Darfur case as a personal attack?

Considering that the credibility of the Court is currently being called into question by the defamatory and discriminatory response of the Registrar containing threats of disciplinary and criminal proceedings;¹⁵

Consequently, in order that justice may be respected and that the Court does not become an international arena for personal, racial and religious conflicts, Ad hoc Counsel for the Defence considers that the intervention and opinion of the Prosecutor are necessary in this appeal.

¹³ Alfred Dreyfus, born in 1859, a Jewish officer from Alsace, was accused of spying, convicted in 1894 and deported (the *Bordereau affair*); his trial was vacated in 1899 and he was reconvicted and then pardoned the same year. Justice was finally done to Dreyfus when the judgment was quashed in 1906 and he was appointed *Chevalier de la Légion d'honneur*! Zola’s famous article of 1898 had much to do with this.

¹⁴ ICC-01/04-01/06-551 *Requête conformément à la norme 83.4 du règlement de la Cour*.

¹⁵ Counsel is an activist for international criminal justice and on 16/01/2007 gave a lecture in Germany on international criminal justice. He was also invited by the ALJAZEERA television station to Doha, Qatar, on 06/03/2007 to take part in a broadcast concerning international criminal justice and the ICC. Counsel defended the Court and international criminal justice.

Consequently, and prior to any reply by Ad hoc Counsel for the Defence to the response of the Registrar, Counsel respectfully requests the Presiding Judge and Judges who make up Pre-Trial Chamber I to:

- Invite the Prosecutor of the Court to give his opinion and to present his observations on this dispute;
- To set a schedule for the parties to respond and reply.

[signed]

Hadi Shalluf

Ad hoc Counsel for the Defence

Dated this 12/03/2006

At Paris, France