

Status Conference

(Open Session)

ICC-01/11-01/25

1 International Criminal Court
2 Pre-Trial Chamber I
3 Situation: Libya
4 In the case of The Prosecutor v Khaled Mohamed Ali El Hishri - ICC-01/11-01/25
5 Presiding Judge Iulia Antoanella Motoc, Judge Reine Adélaïde Sophie
6 Alapini-Gansou and Judge María del Socorro Flores Liera
7 Status Conference - Courtroom 3
8 Wednesday, 28 January 2026
9 (The hearing starts in open session at 2.01 p.m.)
10 THE COURT USHER: [14:01:28] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE MOTOC: [14:02:15](Interpretation) Good afternoon to
14 everybody.
15 Madam courtroom officer, could you please call the case.
16 THE COURT OFFICER: [14:02:27] Good afternoon, Madam President, your
17 Honours.
18 Situation in Libya, in the case of The Prosecutor versus Khaled Mohamed Ali El
19 Hishri, case reference ICC-01/11-01/25.
20 And for the record, we are in open session.
21 PRESIDING JUDGE MOTOC: [14:02:45](Interpretation) Thank you.
22 I would like to welcome everyone inside and outside of the courtroom. And I'm
23 now going to ask the parties to introduce themselves, starting with the Office of the
24 Prosecutor.
25 Madam Prosecutor, please.

1 MS SAMSON: [14:03:01] Good afternoon, your Honours.

2 For the Prosecution today are Mr Hesham Mourad, trial lawyer; Mr Rens van der
3 Werf, trial lawyer; Ms Jessica Lacey, case manager; and myself, Nicole Samson, senior
4 trial lawyer.

5 PRESIDING JUDGE MOTOC: [14:03:17](Interpretation) Thank you very much.

6 I would like to now call upon counsel for the Defence to introduce themselves.

7 MR HASSAN: [14:03:25] Thank you, your Honour. Today, the Defence team
8 contain of Mr Iain Edwards and myself, Yasser Hassan, lead counsel. Thank you.

9 PRESIDING JUDGE MOTOC: [14:03:35](Interpretation) Thank you, Counsel.

10 I would like to now turn to the Office of Public Counsel for the Victims to introduce
11 themselves.

12 MS PELLET: [14:03:48](Interpretation) Thank you, Madam President.

13 The office of the Public -- OPCV is represented by myself, Sarah Pellet and Tars van
14 Litsenborgh this afternoon. Thank you.

15 PRESIDING JUDGE MOTOC: [14:03:59](Interpretation) Thank you very much.

16 We'd like to thank you and we'd like to ask the representatives of the Registry to
17 introduce themselves.

18 MS SCHAUDER: [14:04:11](Interpretation) Thank you. Good afternoon,
19 Madam President, your Honour. For the Registry and the OPCV, Natacha Schauder.

20 PRESIDING JUDGE MOTOC: [14:04:20](Interpretation) Thank you.

21 Today's hearing is the first status conference in this case.

22 The main objective being to ensure that the inter partes exchange of information is
23 conducted in a fluid manner and in good conditions ahead of the confirmation of
24 hearing -- of charges hearing, and I would like to remind you that the commencement
25 of said hearing is set at 19 May 2026.

1 The agenda for our hearing today has been communicated to you via email. And
2 before handing over to the parties on the first point of today's agenda, I would like to
3 raise a brief technical point.

4 Our colleagues in the interpretation booths need for us to speak slowly, but especially
5 we need to observe pauses of at least five seconds in duration before we speak. And
6 I'm going to try to hold myself to that too.

7 So, the first point on today's agenda is the completion of the OTP disclosure process.
8 Madam Prosecutor, over to you.

9 MS SAMSON: [14:05:50] Thank you, Madam President.

10 The Prosecution, as we have indicated in our written submissions, is proposing jointly
11 with the Defence that the disclosure deadline for the materials upon which the
12 Prosecution intends to rely at the confirmation hearing be set for 19 March, bearing in
13 mind the limited scope of the confirmation hearing and the fact that we are focusing
14 on disclosing items of true relevance to the factual allegations and the legal elements
15 that we're required to prove.

16 We have to date been, in accordance with the Chamber's orders, disclosing to the
17 Defence and making required applications in relation to materials relied upon by the
18 Chamber in the arrest warrant, and that disclosure process will be completed by
19 5 February.

20 We have gone beyond the strict set of materials relied upon by the Chamber in the
21 disclosures to date and we have included not only the items relied upon by the
22 Chamber, but also related items, and some items that have been included in the arrest
23 warrant application but not relied upon by the Chamber in the warrant.

24 To date, we have disclosed 1,296 items of evidence which are classified as materials
25 that we intend to rely upon for the confirmation hearing, materials that fall under

1 Article 67(2) and materials that fall under Rule 77, and we will continue to disclose
2 items up until the proposed date of March 19.

3 We have been addressing four categories of information as we assess our collection.

4 As I've already mentioned, we've been reviewing the arrest warrant materials relied
5 on by the Chamber, the arrest warrant application submitted and relied upon by the

6 Prosecution. We've looked as well at documents, or we are looking as well at

7 documents that are responsive to keyword search terms in both Arabic and English.

8 And, finally, we have as well some supplementary investigation that has been

9 ongoing since the arrest warrant application, and we are assessing the items of

10 evidence that have been collected in accordance with those investigations for

11 immediate disclosure to the Defence team. We do not anticipate that that focused

12 additional investigation would in any way hamper the start of the confirmation

13 hearing.

14 I wish to note as well that to date we have had excellent communication with the

15 Defence team in inter partes disclosure. If there are issues, the Defence has come to

16 the Prosecution and we have sought to resolve them ourselves.

17 Subject to any questions you may have, and bearing in mind, of course, that we have

18 a precarious security situation that we're attempting to monitor and fulfil our

19 obligations under the Statute for the protection and wellbeing of witnesses, we do

20 anticipate that we will be applying to the Chamber for the non-disclosure of

21 information that is relevant for the Chamber's approval in advance of the

22 confirmation hearing. And we will abide of course by the deadlines that your

23 Honours set for the final requests to be made, bearing in mind that we will

24 simultaneously disclose any items for which we request non-standard redactions to

25 the Defence. And it is our proposal that the final disclosure deadline for such

1 application be set for 19 March, in relation to the items for which we wish to rely
2 upon for the confirmation hearing.

3 So, from our perspective, your Honours, the disclosure is in hand and we are set to
4 review materials and handle disclosure for the confirmation hearing date. Thank
5 you.

6 PRESIDING JUDGE MOTOC: [14:10:17](Interpretation) Thank you very much.

7 We have a little bit of a situation with the lighting, but I'm sure it's going to be solved
8 immediately.

9 I'd like to say that the Chamber thanks you.

10 And now, if possible, we'd like to hand the floor to the Defence.

11 Counsel, if you can speak under such conditions, it would be a good thing, otherwise
12 we will wait for the light to return.

13 MR HASSAN: [14:10:51](Interpretation) Thank you very much, Madam President.

14 Thank you very much, Madam President.

15 At the outset, I would like to give a small introduction regarding this case, and if the
16 Chamber accepts and approves, there are some requests, or maybe some clarifications,
17 that my client would like to convey to you.

18 So, please, if you allow me, I would like to respond first, but then I can start with the
19 requests. Can I start?

20 PRESIDING JUDGE MOTOC: [14:11:47](Interpretation) Yes, you can start, Counsel.

21 You can start, Counsel, in the order that you have just mentioned. Yes, thank you
22 very much.

23 MR HASSAN: [14:12:02](Interpretation) Thank you very much, Madam President.

24 To start with, I would like to thank the Court for allowing us to speak Arabic, and I'm
25 aware that this is the first time -- thank you very much, Madam President.

1 I would like to thank the Court for allowing us to speak in Arabic, and I am aware
2 that this is the first time ever that the ICC is allowing Arabic to be used.

3 This is not only important, but it is also necessary, extremely necessary, for many
4 reasons.

5 First, Arabic is the only language spoken and understood by the suspect.

6 Arabic is also the language of the entire Libyan people, and the people have the right
7 to understand the facts and to understand what is being discussed here.

8 Third, this is the first case before the International Criminal Court regarding the
9 situation in Libya where the suspect is present in the courtroom. It is very essential
10 that each person expresses themselves in their own language, because this is better for
11 the speaker and also gives better possibilities to communicate the meaning to be
12 expressed, and it is -- it is to achieve justice.

13 But there is another reason for giving my thanks to the distinguished Chamber, that I
14 am the first person who can litigate in Arabic before the International Criminal Court.

15 Well, actually, I was the first one to litigate in front of an international court or
16 tribunal, and I mean here the Special Tribunal of Lebanon, and that is why I would
17 like to thank your distinguished panel and the Registrar for allowing me to do so.

18 In fact, since Mr El Hishri was transferred to this Court, he has been wondering why I
19 am here, why I am a suspect, what are the -- what is the evidence against me? And
20 until this point, the Office of the Prosecutor has disclosed 36 testimonies or statements
21 in this case. Twelve of them only were translated into Arabic, which means that the
22 suspect is unable to read these statements because, at the end of the day we, the
23 Defence team, have to work according to what our client is saying, so he can say, "Yes,
24 I know this person" or "I don't know this person". So the fact that we don't have
25 these statements in Arabic is actually a real obstacle in the face of the Defence team.

1 But, also, the fact that many of these documents are heavily redacted. Not just that
2 some basic information are redacted, but in fact most of the information or the
3 important information is redacted, and that's why it is very difficult for us to work
4 and that's why we have requested before that these redactions are removed so that we
5 can actually do our job and defend our client.

6 So, this disclosure -- or the disclosure procedure that the OTP is actually talking about,
7 yes, it did happen, but it didn't happen in a sufficient way that gives us enough
8 information for us and for our suspect to understand what is happening in this case,
9 because at the end of the day he cannot understand English and he does not
10 understand the technical evidence.

11 And we were presented also with a technical evidence that needs an expert to explain
12 to us, because we really need to understand how such evidence was analysed at the
13 end of the day. To that point, we were not presented -- we were not given all the
14 scientific evidence and reports that the OTP relied upon in order to analyse their
15 evidence. But because we have already drafted a joint document with the OTP to
16 organise the procedure of disclosure, we are not going to repeat what we said in such
17 document again, but we would like to just reiterate that all the disclosed documents
18 must be translated into Arabic so the suspect can understand what is written in such
19 documents and understand their -- understand their position.

20 Mr Khaled El Hishri, from now until the confirmation of charges hearing, is intending
21 to challenge the jurisdiction of the Court in trying him. He believes that he is not a
22 subject to the Security Council Resolution of 1971, and accordingly we are going to
23 submit a written document with that. And based on the judgment of this Court, the
24 Appeal -- Appeal Chamber in the case of Al-Senussi, and the number is -- the
25 reference number is ICC-01/11-01/11 OA6 established by the judgment. So we are

1 going to rely on the judgment of the Appeal -- Appeal Chamber which drafted the
2 ICC's jurisdiction over Libya after the events of 2011.

3 We are going to rely on this judgment, limiting it to a specific period of time and acts
4 of a special nature. This is despite our knowledge of the issuance of Mr al-Dbeibeh's
5 decision on 12 May 2025, Mr Dbeibeh, who was prime minister of the situation in
6 Libya, and that's why we have already submitted an appeal before the Libyan courts,
7 given the fact that it is against the constitution in Libya. The parliament in Libya has
8 to approve any international approval. And Mr Dbeibeh signed himself and {ICR :
9 (Redacted)} However,

10 there is no ratification from the parliament.

11 Second, this agreement violates Article 30 of the Libyan constitution of 2011, as well
12 as all its amendments.

13 Third, this ratification did not come from the Presidential Council of Libya, which is
14 entitled to ratify international agreements, and we will be supporting our right to
15 challenge this and we will also communicate with the Libyan authorities to make sure
16 that they did ratify or authenticate this about the extension of the jurisdiction of the
17 International Criminal Court until 2027.

18 Moreover, we will be waiting for the independent professional Libyan judiciary
19 decision in case number 452 of the year 2025 before the administrative department of
20 the Court of Appeal of Tripoli, and it was instigated by the brother of the suspect.

21 And Mr Khaled El Hishri in person will participate in this case and it will be about
22 that this agreement is null and void.

23 And here I have to point out that the Libyan judiciary is the owner of the jurisdiction
24 and it has proven its desire and its ability to try Libyan citizens that are present on the
25 Libyan territory on the same criminal articles attributed to my client, Mr Khaled

1 El Hishri, and that is by arresting and prosecuting Mr Osama Njeem upon his
2 extradition from the Italian authorities and he is now under arrest and pending trial
3 in Libya.

4 The same situation, the same accusation, the same legal situation applies. There is a
5 difference here, a differentiation. Khaled El Hishri is being tried here in the
6 International Criminal Court and Osama Njeem is being tried in Libya at a time when
7 Mr Dbeibeh himself, the prime minister of Libya, is supervising all this. So this is
8 discrimination by the law.

9 And here we ask Madam Abdel Rahman, who is the minister of justice, whether her
10 ministry is capable and willing to try Libyan citizens. We have to ask her also
11 whether the government of Libya differentiates between Libyan citizens based on
12 their legal situation or not.

13 We will also refer to the Presidential Council, especially Mr Mohamed al-Menfi, who
14 is the head of this council, in order to get his testimony on whether he had ratified the
15 agreement of -- the said agreement or not, because he is the only one who is entitled
16 by law to sign on behalf of Libya. Therefore, this agreement signed by Mr Dbeibeh
17 is void and null.

18 Madam President, Madam Judges, I can say confidently that the ICC law allows every
19 Libyan citizen to appeal * Mr al-Dbeibeh's decision of 12 May 2025 in order to extend
20 the jurisdiction of the ICC up until the year 2027.

21 Only one person cannot appeal this. Who is this person? It is Mr Dbeibeh in
22 person. Mr Dbeibeh, personally, if he comes and sits here instead of Mr Khaled
23 El Hishri to face the accusations that are given to him on war crimes and crimes
24 against humanity that were perpetrated in Libya on the same day of the signature,
25 and that is 12 May 2025, when hundreds of people were killed and injured. So this

1 happened in Tripoli and, again, this resulted in the death and injury of hundreds. So
2 Mr Dbeibeh's signature on this agreement can only be understood that him personally
3 is acknowledging and accepting the jurisdiction of the Court on himself and, like,
4 based on these facts.

5 Madam President, despite the cut in the electricity, I can continue.

6 Mr Khaled El Hishri has also asked us to submit a temporary release to the Chamber.

7 And in fact, we have submitted this application and I will not -- it's not adequate to
8 talk about the details right now, but this application has gone through the appropriate
9 legal and judicial channels.

10 Mr El Hishri has also asked me to convey his message to the Court, and he says that
11 he is -- he adheres to his legal rights of the presumption of innocence and upholds his
12 innocence, and he objects to everything that's claimed by the Prosecutor's Office. He
13 said, "I did not kill anyone, I did not rape anyone, I did not torture anyone, and I was
14 not accomplice or a conspirator in any criminal acts that happened in Libya. I was a
15 diplomatic employee in the Libyan government and I was arrested while I was
16 carrying a diplomatic passport." Mr El Hishri in his defence will face all the evidence
17 presented against him in this courtroom.

18 Madam President, I have reached the end of my pleadings for now in this session, but
19 I would like to confirm that the current -- the current procedures are ongoing and we
20 will be continuing our work. We did not request to postpone the confirmation of
21 charges session and we did not request any additional time for this, under the
22 condition that the Office of the Prosecutor would abide by the deadlines based on the
23 conditions that would allow also the Defence counsel to do their work on behalf of
24 Mr El Hishri. Thank you.

25 PRESIDING JUDGE MOTOC: [14:28:33](Interpretation) Thank you very much,

1 Counsel, for your submissions. And I would like to say, first and foremost, that on
2 behalf of the Chamber to Mr Khaled El Hishri, who is with us here today, I do have a
3 question to put to the Prosecutor, first and foremost, as to whether you think that you
4 will be translating the documents into Arabic that have not yet been translated and, if
5 so, up to what date, how long would it take?

6 MS SAMSON: [14:29:06] Thank you, Madam President.

7 Yes, of course, the Prosecution has an obligation to translate under Rule 76(3)
8 statements upon which we intend to rely for the confirmation hearing. And as the
9 Chamber is aware from a communication made by the Prosecution to the Chamber
10 last week, those translations are ready, but in transposing redactions which have been
11 extensive in the last series of 17 witnesses, a number of the redactions into the Arabic
12 translations needed a bit more time, but they will be completed within the time frame
13 set by the Chamber for disclosure to the Defence.

14 And the Defence is in possession of the English materials at the moment which allows
15 counsel, who understand and speak English, to review the material, prepare as
16 needed and consult with their client. But we do not intend to hold back on the
17 disclosure of the translations for any considerable period of time. They are nearly
18 ready.

19 If I may also address a few of the other matters raised by Defence counsel. Some of
20 the issues have not been anticipated because, of course, despite consultation and a
21 joint submission on the agenda items, they were not included.

22 However, on jurisdiction, I will only say that we will wait, of course, and respond
23 once we receive the submissions. We are grateful for all the advance arguments that
24 we can start to prepare already.

25 The Al-Senussi Appeal Chamber decision, as the Court is aware, related to

1 admissibility, and not jurisdiction. However, perhaps the Defence also intends to
2 raise an admissibility challenge, but I have not to date heard that.

3 In relation to redactions, the Chamber is seized now of applications for non-standard
4 redactions, which are appropriate and permitted under the Statute, in relation to the
5 Court's obligation to protect the well-being and dignity of witnesses under its care.

6 In relation to the forensic item, it's an item that belongs to Mr El Hishri. We assess
7 he's quite familiar with its content. It was obtained in a collection for which the
8 Chamber and the Defence are aware. We do not intend to bring expert forensic
9 evidence in relation to that item, but of course the Defence is welcome to do so should
10 they so wish. Thank you.

11 PRESIDING JUDGE MOTOC: [14:31:46](Interpretation) Thank you very much,
12 Madam Prosecutor.

13 Regarding the applications or request made by the Defence, the Chamber takes notes
14 of your submission regarding your possible application challenging the jurisdiction
15 and admissibility of the case.

16 The Chamber recalls that pursuant to provisions 2, 3 and 4 of Rule 58 of the Rules of
17 Procedure and Evidence, the Chamber shall decide on the procedure to be followed
18 and may take any appropriate measures for the proper conduct of the proceedings in
19 the event that such an application is filed.

20 So I will go back to you, Defence counsel. Are you able, regarding the next status
21 conference, to propose to us a provisional date for the submission of such an
22 application?

23 MR HASSAN: [14:32:57](Interpretation) In the upcoming conference, I can give you
24 a provisional date about this submission.

25 PRESIDING JUDGE MOTOC: [14:33:12](Interpretation) Thank you very much,

1 counsel. We were trying to crosscheck whether we have received your application
2 for the interim release of Mr El Hishri, but it is not yet in the system.

3 MR HASSAN: [14:33:50](Interpretation) (No interpretation).

4 THE COURT OFFICER: [14:33:56] Excuse me, message for the Arabic booth, the
5 microphone was off.

6 MR HASSAN: [14:34:07](Interpretation) Thank you, Madam President.

7 Concerning the interim release application, we have started drafting it. However,
8 we have to receive some documents before submitting the written application to the
9 Chamber because there are some matters and some details that we cannot disclose
10 here in the session, and if the Court orders us to do so, we can move to a closed
11 session in order to disclose these details. However, the written application will be
12 submitted anyway.

13 PRESIDING JUDGE MOTOC: [14:34:46](Interpretation) I understand that we want
14 to -- you want to go to a closed session; is that correct, Counsel?

15 MR HASSAN: [14:34:57](Interpretation) No, Madam President, unless you request
16 to have some specific details that we cannot disclose.

17 PRESIDING JUDGE MOTOC: [14:35:05](Interpretation) Thank you very much,
18 Counsel. We do not need to do that. We will be waiting for your written
19 application.

20 The Chamber is satisfied by the efforts made by the parties in order to bring joint
21 proposals on these issues and the Chamber sets the date of 19 March 2026 for the
22 completion of disclosures by the OTP.

23 The Chamber also confirms that it would be necessary to follow the approach and the
24 format for the disclosure proposed in paragraphs 4 and 10 of submission number 53
25 in the case file.

1 I will now move to the next point, that is the second point of our agenda, the
2 proposed deadline for filing before the confirmation of charges.

3 Madam Prosecutor, I will give you the floor first.

4 MS SAMSON: [14:36:43] Thank you, Madam President.

5 In relation to the relevant deadlines for the document containing the charges, the
6 pre-confirmation brief and the list of evidence, and any Rule 78 disclosure, the
7 Prosecution has proposed 26 March, which still allows more than 50 days to the
8 Defence team to prepare for the confirmation hearing.

9 We do not anticipate currently filing any pre-trial motions. We will respond to any,
10 of course, that we receive. And we are requesting the 120 pages for the
11 pre-confirmation brief that is set out in regulation 38(1)(a) of the Regulations of the
12 Court. Those are our submissions on that agenda point. Thank you.

13 PRESIDING JUDGE MOTOC: [14:37:33](Interpretation) Thank you very much.

14 We will now hear the observations of the Defence on these points.

15 Counsel, you have the floor.

16 MR HASSAN: [14:37:48](Interpretation) Thank you, Madam President. We are
17 committed to the deadlines that we had set in our joint application and we are
18 waiting for the Office of the Prosecutor to submit all that they are bound by the law to
19 submit within the identified deadlines.

20 PRESIDING JUDGE MOTOC: [14:38:11](Interpretation) Thank you very much.

21 The Chamber approves the joint proposal of the parties regarding the DCC list of
22 evidence and the pre-confirmation brief. The deadline for this is 26 March 2026.

23 Having taken into consideration the current schedule and the respective obligations
24 of the parties, the Chamber will set the deadline for disclosure of the possible
25 witnesses to appear viva voce in the confirmation of charges hearing. That deadline

1 is 19 March 2026.

2 Regarding the disclosure by the Defence of any evidentiary items pursuant to Rule 78
3 of the Rules of Procedure and Evidence, the Chamber sets the deadline of 9 April 2026.
4 That is three weeks after the completion of the disclosure of the Prosecution evidence.
5 The Chamber would like to receive all written notes and observations from the
6 Defence relating to factual and legal elements, including grounds for excluding
7 criminal responsibility and/or raising the existence of an alibi, by 16 April 2026 at the
8 very latest, and that is three weeks after the filing by the Prosecutor of the DCC and
9 the pre-confirmation brief.

10 The Chamber takes note of the other submissions of the parties, both written and oral.
11 We will follow closely the evidence disclosure process by the Prosecutor and we shall
12 set further details as appropriate for the purpose of ensuring the proper conduct of
13 the proceedings in due course, before and after that hearing.

14 The third point in our agenda, at the request of the parties, is the protocol addressing
15 the dual status witnesses -- that is, individuals who are both witnesses and victims.

16 Once again, I would like to give the floor to Madam Prosecutor.

17 MS SAMSON: [14:41:51] Your Honour, the Prosecution has proposed that the
18 Chamber adopt the dual status protocol at the confirmation hearing phase, potentially
19 the same dual status protocol that was adopted in the Abd-Al-Rahman trial, and we
20 ask for it because the Chamber has already approved the procedure for admitting
21 victims into the proceedings. We know that it is likely that victim applications will
22 be processed in accordance with the ABC procedure before the confirmation hearing.
23 We also know that the profile of many of the Prosecution witnesses are crime-based
24 and, therefore, there is likelihood that some of the applicants may be dual status.
25 In our view, because the dual status protocol regulates communication and notice

1 between the parties and the legal representative of victims, in order to permit the
2 fullest of the exercise of the rights that the victims have to participate in the
3 proceedings, then the protocol, if it were in place, could ensure that, from the earliest
4 stage possible, we are all informed of who may have a special status as a dual status
5 witness, and that the legal representative of victims in this case, and at least for this
6 part of the case, the Office of Public Counsel for Victims, can meaningfully represent
7 and the victims can also fully participate and present their views and concerns within
8 this confirmation hearing. Thank you.

9 PRESIDING JUDGE MOTOC: [14:43:44](Interpretation) Thank you very much.

10 Now I turn to the Defence counsel. You have the floor, Counsel.

11 MR HASSAN: [14:43:57](Interpretation) Thank you very much. No, we don't have
12 any legal position right now.

13 PRESIDING JUDGE MOTOC: [14:44:01](Interpretation) Thank you very much.

14 Now, we would like to hear from the representative of the Office of the Public
15 Counsel for Victims.

16 MS PELLET: [14:44:11](Interpretation) Thank you, Madam President. To add to
17 what has been said regarding point one, pursuant to the decision of December 2025,
18 we filed -- we received the disclosure of the 1,296 documents.

19 Now, I will come back to this dual status issue, because it directly concerns the
20 interest of victims and potential victims. We also wish to state that its adoption
21 immediately is not only appropriate at this stage, but is necessary to preserve the
22 integrity and fairness of the proceedings. My colleague of the Prosecution referred
23 to the example that was adopted in annex 2 of document ICC-01/14-01/18-677.
24 So, this model is of interest to us because it relates to contacts and communication
25 with witnesses of dual status individuals. It is important, because it does not govern

1 anything more or less than this communication.

2 Madam President, your Honours, the adoption of such a protocol at the pre-trial stage
3 is part of the obligations of the Court, the judges, the parties and participants, to
4 protect the security and welfare of victims and witnesses, Article 68(1) of the
5 Rome Statute.

6 These obligations cannot be deferred to the possible trial stage, but if they are
7 applicable at the pre-trial stage, as stated by the Prosecution, they are particularly
8 important for the security, given the security situation.

9 There is also the report of the Registrar submitted last week, paragraph 6, number
10 1101-2556. So, it contributes to the global fairness of the proceedings by staging or,
11 rather, establishing a clear protective and predictable framework at the pre-trial level.

12 On the other hand, Madam President, your Honours, the coherence of the
13 proceedings requires that comparable guarantees should be applicable as from the
14 pre-trial phase, and not only possibly to the trial phase. The judicial security and the
15 predictability of the proceedings requires clear rules that are applicable, and that is
16 more so because the pre-trial is characterised by great fluidity of the roles and
17 interactions between parties and participants.

18 In the absence of a clear framework, there is a risk of uncertainties and divergent
19 practices which are prejudicial not only to the integrity of the proceedings, but also
20 the protection of victims and witnesses.

21 Madam President, going on to my third point, the reasons justifying the adoption of
22 the protocol *mutatis mutandis* during the pre-trial phase is actually more important,
23 considering that the constitution of the case file involves the initial contacts with
24 victims and witnesses. And, therefore, there should be a clear separation of roles to
25 the benefit of the concerned persons -- that is, the people that may benefit from dual

1 status.

2 * I would also point out, Madam President, that the fact that such protocols were adopted
3 later in other cases before the Court stems from procedural practice, and not from any
4 legal constraint that would prevent the adoption of the protocol at this stage.

5 As the Prosecution has said, the people that might benefit from dual status have not
6 yet been identified, cannot justify a delay in its adoption. The dual status of a victim
7 and a witness is a situation that is predictable and which is frequent before the Court.
8 The issue is not whether it will arise in this case, but when.

9 The process of recognition of status of a victim shall take place at the pre-trial phase
10 and, therefore, we would insist that witnesses may be granted the status of victims,
11 and also - and that will be my last point - the pre-trial phase is not limited to the
12 activities of the Prosecutor and the Defence; the legal representatives of victims also
13 play an active role involving early interactions with individuals that might have dual
14 status. And, in the absence of clear guidelines, these interactions are exposed to
15 preventable uncertainties.

16 The adoption of such a protocol immediately would make it possible not only to
17 harmonise practices, but also to ensure the judicial security of participants as well as
18 their protection. And for all those reasons, we respectfully request that the protocol
19 addressing dual status witnesses should be adopted immediately. Thank you,
20 Madam President.

21 PRESIDING JUDGE MOTOC: [14:51:54](Interpretation) Thank you very much,
22 Madam Pellet. Now I will give the floor to the representative of the victims
23 protection unit, if you have something to add.

24 MS SCHAUDER: [14:52:18](Interpretation) Thank you, Madam President. We
25 have no specific observations. The protocol clarifies the actions of the parties in

1 relation to protected -- including when they have to deal with protected victims.

2 And considering that it is beneficial, because it allows for a coordinated action,

3 particularly with regard to security, the unit is available to the parties and

4 representatives of the victims relating to issues with witnesses and victims.

5 PRESIDING JUDGE MOTOC: [14:53:08](Interpretation) Thank you very much.

6 The Chamber is satisfied that the arguments of the parties and the OPCV are valid.

7 The Chamber is of the view that the adoption of such a protocol shall facilitate and

8 clarify the procedure to be followed for the exchange of information concerning, as

9 well as contacts with dual status individuals -- that is, who are both victims and

10 witnesses. This is a well-settled practice in the jurisprudence of the Court.

11 On this point, as you are aware, the provisions of the protocol have now been

12 standardised.

13 The Chamber instructs the Registry to tender a copy - that is, before the end of the

14 week - a copy of the said protocol for reference.

15 The fourth and last point of the agenda relates to the joint designation of experts.

16 The Chamber is of the opinion that inter partes consultations for the purpose of the

17 joint designation and instruction of experts will make it possible to facilitate the work

18 of the Court in anticipation of a possible trial.

19 I would therefore like to know, on the one hand, if the Prosecutor is considering

20 preparing expert testimonies in case of a trial, and, on the other hand, your position in

21 relation to an inter partes exchange upstream. That means before their possible

22 designation and instruction.

23 Madam Prosecutor, you have the floor.

24 MS SAMSON: [14:55:42] At this time, the Prosecution does not anticipate calling

25 expert evidence for the confirmation hearing, but if the charges are confirmed we will

1 seek to call expert evidence for trial.

2 However, we are also very much open to consultations with the Defence with a view
3 to joint designation and instruction of experts, in particular should the Defence have
4 any that they wish to call at the confirmation hearing, and potentially very early
5 discussions in relation to trial-related experts.

6 Thank you.

7 PRESIDING JUDGE MOTOC: [14:56:15](Interpretation) Thank you very much,
8 Madam Prosecutor. Counsel, on this issue, we would like to have your opinion.
9 You have the floor, Counsel.

10 MR HASSAN: [14:56:37](Interpretation) Thank you very much, Madam President.
11 When the time comes to appoint experts and when the Prosecution presents the
12 matter to us, we of course will be open to discuss the situation. We will have
13 consultations with Mr El Hishri and follow his instructions and see if we can accept to
14 work together on appointing experts or not.

15 PRESIDING JUDGE MOTOC: [14:57:04](Interpretation) Thank you very much,
16 Counsel.

17 At this point the Chamber would like to encourage the parties to consult themselves
18 on this issue with as objective -- that is, if the OTP is considering producing expert
19 reports, to reach an understanding on the instructions that they should give those
20 experts. The parties should report to the Chamber on this point, on the
21 advancement in their submissions, during their submissions prior to the next status
22 conference.

23 We have dealt with all the points on our agenda. Before we close, the Chamber
24 would like to set a date for the next status conference. It will take place on 3 or
25 4 March 2026.

1 Once again, the parties need to consult and file joint submissions, to the extent
2 possible, on 23 February 2026 at the very latest. These submissions would make it
3 possible to report to the Chamber on the disclosure process and, more generally, on
4 their preparations in anticipation of the confirmation of charges hearings.

5 We also ask the Chamber or, rather, the parties, to identify any issues or items that
6 they would like to have included on the agenda of the second status conference.

7 Unless there is anyone who wants to take the floor right now, we have now come to
8 the end of our session. I would like to thank all the participants, the AV team, the
9 interpreters and court reporters, the security officers, all of you.

10 Court is adjourned.

11 THE COURT USHER: [14:59:47] All rise.

12 (The hearing ends in open session at 3.00 p.m.)

13 CORRECTIONS REPORT

14 The following interpretation correction, marked with an asterisk *, is brought into
15 the transcript.

16 Page 18 lines 2-4

17 "I would like to also point out, Madam President, that the fact that such protocols
18 have actually been adopted late in other previous cases in the Court, was a
19 procedural matter and not any judicial constraint, and it could be an obstacle."

20 Is corrected to

21 "I would also point out, Madam President, that the fact that such protocols were
22 adopted later in other cases before the Court stems from procedural practice, and not
23 from any legal constraint that would prevent the adoption of the protocol at this
24 stage."

25 SECOND CORRECTIONS REPORT

- 1 The following interpretation correction, marked with an asterisk *, is brought into
- 2 the transcript.
- 3 Page 9 line 19
- 4 “Mr al-Dbeibeh's decision of 12 May 2005”
- 5 Is corrected to
- 6 “Mr al-Dbeibeh's decision of 12 May 2025”