



## Security Council

Distr.: General  
30 December 2014  
English  
Original: French

---

### Letter dated 29 December 2014 from the Secretary-General addressed to the President of the Security Council

Pursuant to article 17, paragraph 1, of the Relationship Agreement between the United Nations and the International Criminal Court, I have the honour to transmit herewith a letter from the President of the Court, dated 12 December 2014 (see annex), informing the Security Council of the decision on the non-compliance by Libya with requests for cooperation by the Court and referring the matter to the Security Council, issued by Pre-Trial Chamber I on 10 December 2014, in the case of *The Prosecutor v. Saif Al-Islam Gaddafi*. The Pre-Trial Chamber decided that the Presidency of the Court would transmit its decision to the Security Council.

The situation in Libya since 15 February 2011 was referred to the Prosecutor of the Court by the Security Council in its resolution 1970 (2011) of 26 February 2011.

I should be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

(Signed) **BAN** Ki-moon



**Annex**

**Letter dated 12 December 2014 from the President of the  
International Criminal Court addressed to the Secretary-General**

[Original: English]

Pursuant to article 17 (3) of the Relationship Agreement between the United Nations and the International Criminal Court and in accordance with article 87 (7) of the Rome Statute and regulation 109 (4) of the Regulations of the Court, and as requested by Pre-Trial Chamber I, I hereby transmit the decision on the non-compliance by Libya with requests for cooperation by the Court and referral of the matter to the Security Council by the said Chamber, issued on 10 December 2014 (see enclosure).

I should be grateful if you would convey the present letter and its enclosure to the Security Council.

*(Signed)* Sang-Hyun **Song**

Enclosure

ICC-01/11-01/11-577 10-12-2014 1/16 NM PT

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/11-01/11  
Date: 10 December 2014

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Ekaterina Trendafilova  
Judge Christine Van den Wyngaert

**SITUATION IN LIBYA**

**IN THE CASE OF *THE PROSECUTOR* v. SAIF AL-ISLAM GADDAFI**

**Public**

**Decision on the non-compliance by Libya with requests for cooperation by  
the Court and referring the matter to the United Nations Security Council**

No. ICC-01/11-01/11

10 December 2014

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

**The Office of the Prosecutor**

Fatou Bensouda

James Stewart

**Counsel for Saif Al-Islam Gaddafi**

John R.W.D. Jones

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Counsel for Libya*

Ahmed El-Ghani

Philippe Sands

Payam Akhavan

Michelle Butler

*Competent authorities of Libya*

**Others**

Presidency

Bureau of the Assembly of States Parties

**REGISTRY**

---

**Registrar**

Herman von Hebel

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

No. ICC-01/11-01/11

10 December 2014

**Pre-Trial Chamber I** (the “Chamber”) of the International Criminal Court (the “Court”), acting under article 87(7) of the Rome Statute (the “Statute”), issues this finding of non-compliance by Libya with requests for cooperation by the Court and decision referring the matter to the United Nations Security Council (the “Security Council”)

## **I. Background**

1. On 26 February 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 1970(2011), whereby it referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court and decided that “the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution”.<sup>1</sup>

2. Upon request by the Prosecutor,<sup>2</sup> the Chamber, on 27 June 2011, issued warrants of arrest against Muammar Gaddafi,<sup>3</sup> Saif Al-Islam Gaddafi<sup>4</sup> and Abdullah Al-Senussi<sup>5</sup> for their alleged criminal responsibility for the crimes of murder and persecution as crimes against humanity allegedly committed from 15 February 2011 onwards in Libya, as part of the repression of the ongoing uprising in the country.<sup>6</sup>

---

<sup>1</sup> *Ibid.*, para 5

<sup>2</sup> ICC-01/11-4-Red

<sup>3</sup> Pre-Trial Chamber I, “Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi”, 27 June 2011, ICC-01/11-01/11-2

<sup>4</sup> Pre-Trial Chamber I, “Warrant of Arrest for Saif Al-Islam Gaddafi”, 27 June 2011, ICC-01/11-01/11-3

<sup>5</sup> Pre-Trial Chamber I, “Warrant of Arrest for Abdullah Al-Senussi”, 27 June 2011, ICC-01/11-01/11-4

<sup>6</sup> See also Pre-Trial Chamber I, “Decision on the ‘Prosecutor’s Application Pursuant to Article 58 as to Muammar Aby Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI””, 27 June 2011, ICC-01/11-01/11-1

3. The case against Muammar Gaddafi was terminated on 22 November 2011 following his death.<sup>7</sup> The proceedings against Abdullah Al-Senussi have also come to an end after the Chamber determined the inadmissibility of the case in a decision dated 11 October 2013,<sup>8</sup> which was confirmed by the Appeals Chamber on 24 July 2014.<sup>9</sup> The case against Saif Al-Islam Gaddafi remains before the Court since, as explained below, it was declared by the Chamber admissible before the Court.

4. To date, Libya has failed to comply with two requests by the Court for cooperation with respect to the case against Saif Al-Islam Gaddafi, namely: (i) the request to surrender Saif Al-Islam Gaddafi to the Court; and (ii) the request to return to the Defence of Saif Al-Islam Gaddafi the originals of the documents that were seized from the former counsel for Saif Al-Islam Gaddafi by the Libyan authorities, and destroy any copies thereof

5. The relevant background in relation to these outstanding obligations to cooperate with the Court is summarised hereunder.

*A. Libya's obligation to surrender Saif Al-Islam Gaddafi to the Court*

6. Following the issuance by the Chamber of the warrant of arrest against Saif Al-Islam Gaddafi, the Registrar, on 5 July 2011, notified the Libyan authorities of a request for cooperation, seeking their assistance in arresting Saif Al-Islam Gaddafi and surrendering him to the Court<sup>10</sup>

---

<sup>7</sup> Pre-Trial Chamber I, "Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi", 22 November 2011, ICC-01/11-01/11-28

<sup>8</sup> Pre-Trial Chamber I, "Decision on the admissibility of the case against Abdullah Al-Senussi", 11 October 2013, ICC-01/11-01/11-466-Red

<sup>9</sup> Appeals Chamber, "Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled 'Decision on the admissibility of the case against Abdullah Al-Senussi'", 24 July 2014, ICC-01/11-01/11-565

<sup>10</sup> ICC-01/11-01/11-5 and ICC-01/11-01/11-25-Conf

7. Saif Al-Islam Gaddafi was arrested in Libya on 19 November 2011<sup>11</sup> and placed under detention in the city of Zintan. On several occasions between that date and 1 May 2012, the Court reminded the Libyan authorities of Libya's duty to surrender Saif Al-Islam Gaddafi to the Court.

8. On 1 May 2012, Libya challenged the admissibility of the case against Saif Al-Islam Gaddafi before the Court on the ground that its domestic authorities were investigating the same case.<sup>12</sup> As of that moment, and pending the Chamber's determination on the challenge, the execution of the request for surrender was postponed in conformity with article 95 of the Statute.<sup>13</sup>

9. On 31 May 2013, the Chamber rejected the admissibility challenge and declared the case against Saif Al-Islam Gaddafi admissible before the Court.<sup>14</sup> This decision was confirmed by the Appeals Chamber on 21 May 2014.<sup>15</sup> Therefore, as of the date of the decision by the Chamber on 31 May 2013, Libya has been under the obligation to surrender Saif Al-Islam Gaddafi to the Court.<sup>16</sup> This surrender is, however, yet to be effected.

10. On 15 May 2014, after numerous reminders to Libya, the Chamber issued a decision whereby it recalled the possibility, pursuant to article 87(7) of the

---

<sup>11</sup> See ICC-01/11-01/11-34-Anx

<sup>12</sup> ICC-01/11-01/11-130-Conf and annexes attached thereto. A public redacted version is also available (ICC-01/11-01/11-130-Red)

<sup>13</sup> See Pre-Trial Chamber I, "Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute", 1 June 2012, ICC-01/11-01/11-163

<sup>14</sup> Pre-Trial Chamber I, "Decision on the admissibility of the case against Saif Al-Islam Gaddafi", ICC-01/11-01/11-344-Red

<sup>15</sup> Appeals Chamber, "Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled 'Decision on the admissibility of the case against Saif Al-Islam Gaddafi'", 21 May 2014, ICC-01/11-01/11-547-Red

<sup>16</sup> In this regard, it is to be noted that, when seized of an appeal on the part of Libya against the decision on the admissibility of the case, the Appeals Chamber rejected Libya's request to suspend the effect of this decision pending determination of the appeal and once again reiterated Libya's obligation to immediately surrender Saif Al-Islam Gaddafi to the Court (Appeals Chamber, "Decision on the request for suspensive effect and related issues", 18 July 2013, ICC-01/11-01/11-387)

Statute, of making a finding of non-compliance and referring the matter to the Security Council. It also recalled that pursuant to regulation 109(3) of the Regulations of the Court (the "Regulations"), the State is entitled to be heard prior to such a finding, and accordingly requested Libya to inform the Chamber, by 28 May 2014, on the status of implementation of its duty to surrender Saif Al-Islam Gaddafi to the Court.<sup>17</sup>

11. On 28 May 2014, Libya requested an extension of time until 20 August 2014 for the submission of the information sought by the Chamber in light of the surge in attacks against the Government of Libya, particularly in Tripoli and Benghazi, in May 2014 and the upcoming elections scheduled to take place on 25 June 2014.<sup>18</sup>

12. On 11 July 2014, the Chamber rejected the requested extension of time, on the grounds that: (i) the duty to surrender Saif Al-Islam Gaddafi had been outstanding, at that time, for more than a year; (ii) the failure to comply with this duty on the part of Libya was therefore not contingent on the emerging security situation in the country; (iii) Libya had failed to provide any information as to the steps already taken to surrender Saif Al-Islam Gaddafi to the Court despite the numerous opportunities accorded to it; and (iv) the fact that elections were upcoming did not undermine the fact that the competent Libyan authorities had to date not effected the surrender of Saif Al-Islam Gaddafi to the Court.<sup>19</sup> In its decision, the Chamber also informed Libya that, for all possible purposes, the consultation under regulation 109(3) of the Regulations had been concluded.<sup>20</sup> While rejecting the requested

---

<sup>17</sup> Pre-Trial Chamber I, "Decision requesting Libya to provide submissions on the status of implementation of its outstanding duties to cooperate with the Court", 15 May 2014, ICC-01/11-01/11-545

<sup>18</sup> ICC-01/11-01/11-548

<sup>19</sup> Pre-Trial Chamber I, "Decision on matters related to Libya's duties to cooperate with the Court", 11 July 2014, ICC-01/11-01/11-563, paras 11-13

<sup>20</sup> *Ibid.*, para 13



extension of time until 20 August 2014, the Chamber nevertheless clarified that Libya could in any case submit, at a later time, any relevant information in relation to both the implementation of the duty to surrender Saif Al-Islam Gaddafi and the political and security situation in the country.<sup>21</sup> The Chamber notes that it has not received any additional submission or information from Libya in relation to the surrender of Saif Al-Islam Gaddafi after the issuance of this decision on 11 July 2014.

***B. Libya's obligation with regard to the documents seized by the Libyan authorities from the former counsel for Saif Al-Islam Gaddafi***

13. In June 2012, as agreed between the Court and Libya, a delegation of four staff members of the Court, including former counsel for Saif Al-Islam Gaddafi, traveled to Libya in order to meet Saif Al-Islam Gaddafi in Zintan and to discuss with him issues related to the proceedings before the Court. On 7 June 2012, the day that the visit took place, the members of the delegation of the Court were placed under detention in Zintan by the Libyan authorities. They were released on 2 July 2012. During, or in the immediate aftermath of the visit to Saif Al-Islam Gaddafi, a number of documents belonging to his former counsel were seized by the Libyan authorities.

14. On 1 March 2013, the Chamber, recognizing the inviolability of the documents seized in Zintan by the Libyan authorities, requested that Libya return to the Defence of Saif Al-Islam Gaddafi the originals of these documents, and destroy any copies thereof.<sup>22</sup> On 4 March 2013, the Registrar transmitted the relevant request for cooperation to the Libyan authorities.<sup>23</sup>

---

<sup>21</sup> *Ibid*

<sup>22</sup> Pre-Trial Chamber I, "Decision on the 'Urgent Defence Request'", 1 March 2013, ICC-01/11-01/11-291

<sup>23</sup> See ICC-01/11-01/11-346 and annexes attached thereto

15. Notwithstanding a series of subsequent reminders transmitted by the Registrar to the Libyan authorities, the originals of the privileged documents seized from the Defence in Zintan are still in possession of the Libyan authorities and have not been returned to the Defence. Equally, no information about the destruction of all copies of the concerned material has been received from Libya so far.

16. As it did with the outstanding obligation to surrender Saif Al-Islam Gaddafi to the Court, the Chamber, on 15 May 2014, noted the possibility of making a finding of non-compliance and referring the matter to the Security Council, as well as the need to hear from the requested State prior to such a step, pursuant to regulation 109(3) of the Regulations of the Court.<sup>24</sup> Accordingly, it requested Libya to inform the Chamber by 28 May 2014 on the status of implementation of its obligation.

17. On 28 May 2014, Libya requested an extension of time.<sup>25</sup> The Chamber considered that steps towards the implementation of the duty concerning the return of Defence privileged documents were apparently being taken by the Libyan authorities.<sup>26</sup> Indeed, Libya indicated that Libya's Minister of Justice and the Prosecutor-General, recognising the privileges and immunities of the Court, had decided to terminate the national proceedings held in Zintan that were, at least in part, predicated on the Defence's privileged documents, and had informed the Chief Prosecutor of Zintan accordingly.<sup>27</sup> Confirmation of this termination was due to arrive shortly.<sup>28</sup> The Chamber therefore granted

---

<sup>24</sup> Pre-Trial Chamber I, "Decision requesting Libya to provide submissions on the status of implementation of its outstanding duties to cooperate with the Court", 15 May 2014, ICC-01/11-01/11-545, para 7

<sup>25</sup> ICC-01/11-01/11-548

<sup>26</sup> Pre-Trial Chamber I, "Decision on matters related to Libya's duties to cooperate with the Court", 11 July 2014, ICC-01/11-01/11-563

<sup>27</sup> ICC-01/11-01/11-557-Red, para 34, and its annex 2

<sup>28</sup> *Ibid*

the requested extension of time and set the new time limit for 20 August 2014, as proposed by Libya.<sup>29</sup>

18. On 20 August 2014, Libya requested a further extension of time.<sup>30</sup> In this request, it no longer referred to the termination of the national proceedings in Zintan, neither did it mention any step taken in the meantime in order to comply with its obligation with respect to the Defence privileged documents. It focused instead on the unstable situation in the country as warranting that the time limit to inform the Chamber on the status of implementation of its obligation be further extended and set at 29 October 2014.

19. While the Chamber did not respond to this request, time elapsed and the new date proposed by Libya went by without compliance with the cooperation request and without any update by Libya on the status of implementation of its outstanding obligation. Therefore, the Chamber considers that consultations required under regulation 109(3) of the Regulations have also been concluded in relation to this matter.

## **II. Applicable law**

20. In case of non-compliance with obligations to cooperate with the Court with respect to situations that have been referred to the Prosecutor by the Security Council, one of the measures available to the Court is to make a finding of non-compliance by the State with cooperation requests by the Court and refer the matter to the Security Council, pursuant to article 87(7) of the Statute.

---

<sup>29</sup> Pre-Trial Chamber I, "Decision on matters related to Libya's duties to cooperate with the Court", 11 July 2014, ICC-01/11-01/11-563

<sup>30</sup> ICC-01/11-01/11-568-Corr

21. As held on previous occasions,<sup>31</sup> the Chamber considers that Libya, while not being a State Party to the Statute, is under a duty to cooperate with the Court in accordance with resolution 1970(2011), whereby the Security Council, acting under Chapter VII of the Charter of the United Nations, explicitly decided, "that Libya shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor". The Appeals Chamber also confirmed that Libya has an obligation to cooperate with the Court that originates from the Security Council resolution referring the situation to the Prosecutor of the Court.<sup>32</sup> Libya itself has consistently acknowledged its duty to cooperate with the Court and has fully participated, through its appointed counsel, in the proceedings before the Court, exercising procedural rights accorded to States Parties by the Statute.

22. Accordingly, given Libya's duty *vis-à-vis* the Court and considering that the situation in Libya has been referred by the Security Council, the Chamber is of the view that in case of non-compliance on the part of Libya with requests for cooperation by the Court, the Chamber may make a finding to that effect and refer the matter to the Security Council pursuant to article 87(7) of the Statute.

23. The Chamber notes that several requests have been made to this end by the Defence, most recently on 19 November 2014.<sup>33</sup> However, the Chamber considers that a determination on whether to make a finding of non-compliance and decide to refer the matter to the Security Council is

---

<sup>31</sup> See e.g. Pre-Trial Chamber I, "Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi", 7 March 2012, ICC-01/11-01/11-72, paras 12 and 13, *id.*, "Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute", 1 June 2012, ICC-01/11-01/11-163, paras 27 to 30, *id.*, "Decision requesting Libya to provide submissions on the status of implementation of its outstanding duties to cooperate with the Court", 15 May 2014, ICC-01/11-01/11-545, para 2

<sup>32</sup> See e.g. Appeals Chamber, "Decision on the request for suspensive effect and the request to file a consolidated reply", 22 November 2013, ICC-01/11-01/11-480, para 18

<sup>33</sup> ICC-01/11-01/11-575

discretionary in nature and is part of the broader consideration of the most effective modality to ensure that the Court's cooperation requests are implemented. As this Chamber previously held, resort to the measure under article 87(7) of the Statute is not a mandatory course of action that the Chamber is obliged to pursue in case of a State's failure to cooperate with the Court, but one of the tools available to the Court "to use at a certain point in time as a last resort measure or as part of a comprehensive strategy to promote cooperation".<sup>34</sup>

24. While a determination of the appropriateness and usefulness of this measure remains in the hands of the Chamber, it is necessary that prior to such determination two conditions are met. There must be an objective failure on the part of the State to comply with a cooperation request and, pursuant to regulation 109(3) of the Regulations, the requested State must be given the opportunity to be heard

### III. Analysis

25. In light of the relevant procedural background as summarised above, the Chamber considers that both conditions for recourse of the measure under article 87(7) of the Statute are met in the present case. Indeed, the Chamber notes that the obligations to surrender Saif Al-Islam Gaddafi and to return the privileged Defence documents and destroy all copies thereof are still outstanding. In this context, it considers that the necessary consultations with Libya in respect of these obligations have now been concluded. The Chamber recalls in this regard that Libya was given numerous occasions to provide its observations on the status of implementation of its duties *vis-à-vis* the Court and filed submissions in this regard several times, both upon the Chamber's

---

<sup>34</sup> Pre-Trial Chamber I, "Decision on the 'Request for Leave to Appeal the Pre-Trial Chamber's Failure to Issue a Decision' filed by the Defence of Saif Al-Islam Gaddafi", 10 June 2014, ICC-01/11-01/11-556, para 24

request or in response to the Defence of Saif Al-Islam Gaddafi. Also, Libya was explicitly informed of the Chamber's intention to consider resorting to the measure under article 87(7) of the Statute and was requested to provide submissions to this effect as required by regulation 109(3) of the Regulations. Therefore, the Chamber may resort to the measure under article 87(7) of the Statute, which, at this point, is indeed, in the Chamber's view, the appropriate course of action.

26. The Chamber considers that both outstanding obligations are of paramount importance for the Court's exercise of its functions and powers in the present case, and the non-compliance by Libya effectively prevents the Court from fulfilling its mandate.

27. Indeed, the initial appearance of Saif Al-Islam Gaddafi before the Chamber upon his surrender to the Court is a necessary precondition under the Statute for the proceedings in the present case to unfold and move forward to the stage of the Chamber's consideration on whether the available evidence is sufficient to commit Saif Al-Islam Gaddafi to trial. The Court has determined that the case against him is admissible before the Court and there exists no legal basis for Libya not to proceed to his surrender without delay, thereby preventing the Court from exercising its jurisdiction over the case.

28. Libya's failure to surrender Saif Al Islam Gaddafi to the Court also causes significant prejudice to his rights under the Statute.<sup>35</sup> Clearly, Saif Al-Islam

---

<sup>35</sup> As stated on numerous occasions, the Chamber considers that, in the present circumstances in which Saif Al-Islam Gaddafi's initial appearance before the Court has not taken place only because of Libya's failure to surrender him to the Court and not because he is at large or trying to evade justice before the Court, Saif Al-Islam Gaddafi must, in principle, be accorded all the rights of a suspect under the Statute, given that the existence of these defence rights cannot be made contingent upon Libya's failure to comply with its duty to cooperate with the Court (See e.g. Pre-Trial Chamber I, "Corrigendum to Decision on the 'Defence request for an order of disclosure'", 1 August 2013, ICC-01/11-01/11-392-Red-Corr, para 32, *id.*, "Decision on 'Request for Review of Registrar's Decision' by the Defence of Saif Al-Islam Gaddafi", 30 July

Gaddafi's continued detention in Libya and his non-surrender to the Court precludes him from being able to participate in his defence before the Court and prejudices his ability to mount an effective defence, as relevant evidence may be lost or its value significantly impaired pending his initial appearance before the Chamber. He is also effectively deprived of his rights under article 60 of the Statute to apply for interim release and to have the Chamber regularly review the continued necessity and justification for his detention as he is not placed under the Court's custody.

29. Also the rights of the victims of the crimes attributed to Saif Al-Islam Gaddafi are affected by Libya's failure to surrender him to the Court. In the absence of any proceeding aimed at determining whether he is criminally responsible for the crimes that resulted in the harm claimed by the victims, they are deprived of their right to have justice delivered, notwithstanding the Court's jurisdiction over the case. As recently underlined by the legal representative of victims who have communicated with the Court and participated in the admissibility proceedings in the present case, "the victims have been waiting for justice for more than two years now"<sup>36</sup> and "[t]he refusal of Libyan authorities to surrender and/or delay in the transfer of the suspect to the Court can only prejudice the interests of the victims in the proceedings".<sup>37</sup>

30 The obligation to return to the Defence the originals of the privileged documents seized from his former counsel in Zintan by the Libyan authorities and destroy any copies thereof is also important. The fact that these documents are still in the possession of the Libyan authorities perpetuates the infringement of the Court's privileges and immunities that are necessary for

---

2013, ICC-01/11-01/11-390, para 33, *id.*, "Decision on OPCD Requests", 27 April 2012, ICC-01/11-01/11-129, para 11)

<sup>36</sup> ICC-01/11-01/11-569, para 9

<sup>37</sup> ICC-01/11-01/11-541, para 9

the fulfilment of its purpose – of which the inviolability of Defence documents is an essential component – within the meaning of article 48(1) and (4) of the Statute, as well as the violation of Saif Al-Islam Gaddafi's own right under the Statute to communicate freely and in confidence with his counsel, as enshrined in article 67(1) of the Statute and further elaborated in rule 73 of the Rules of Procedure and Evidence.

31. The Chamber acknowledges that, throughout the proceedings, Libya has demonstrated in several respects its commitment to the Court. Libya challenged the admissibility of the case against Saif Al-Islam Gaddafi (as well as the case against Abdullah Al-Senussi), as it was its prerogative under the Statute and, through its appointed counsel, participated fully in the ensuing proceedings, demonstrating its acceptance of the Court's role and activities. Libya also entered into an agreement with the Court with respect to the privileges and immunities enjoyed by the Court on Libyan territory, explicitly acknowledging its obligation to cooperate with the Court. More generally, the Chamber recognises that, in many respects, Libya did not attempt to refuse the Court's jurisdiction by failing to duly engage in the proceedings before the Court. This engagement does not however cure the objective failure on the part of Libya to comply with the Court's two requests for cooperation that are still pending and which concern obligations of extreme importance.

32. The Chamber is aware of the volatile political and security situation in Libya and is sensitive to the serious difficulties that its authorities are currently facing as well as the need on their part to focus efforts and resources on restoring stability and order, as submitted by Libya.<sup>38</sup> Nonetheless, the Chamber cannot ignore its own responsibilities in the proceedings and its

---

<sup>38</sup> ICC-01/11-01/11-548, para 6, ICC-01/11-01/11-568-Corr, para 5



duty to deploy all efforts to protect the rights of the parties and the interests of victims.

33. The Chamber is of the view that a finding of non-compliance under article 87(7) of the Statute only requires an objective failure to comply, regardless of the State's underlying motives. As noted above, the Chamber recognises the genuine efforts made by Libya to maintain a constructive dialogue with the Court and is sensitive to the difficulties in its territory. However, the Chamber shares the view of the Defence that article 87(7) of the Statute is value-neutral,<sup>39</sup> and not designed to sanction or criticise the requested State. The Chamber concurs that this provision makes available to the Court an additional tool so that it may seek assistance to eliminate impediments to cooperation.<sup>40</sup>

34. In the current circumstances, the Chamber is of the view that it is appropriate to make a finding of non-compliance by Libya with the Court's requests for cooperation at issue and refer the matter to the Security Council under article 87(7) of the Statute for it to consider any possible measure aimed at achieving Libya's compliance with its outstanding obligations *vis-à-vis* the Court.

35. Regulation 109(4) of the Regulations stipulates that, in case a finding has been made under article 87(7) of the Statute, it is the Presidency of the Court that refers the matter to the Security Council. The present decision is therefore notified to the Presidency in order for it to be transmitted, through the Secretary-General of the United Nations, to the Security Council. The competent Libyan authorities, the parties and participants in the proceedings before the Court in relation to the present case, as well as the Assembly of

---

<sup>39</sup> ICC-01/11-01/11-553, paras 88-92

<sup>40</sup> *Ibid.*, paras 90-92

States Parties to the Rome Statute, are also notified of this decision for their information.

**FOR THESE REASONS, THE CHAMBER**

**FINDS** that Libya has failed to comply with the request to surrender Saif Al-Islam Gaddafi to the Court;

**FINDS** that Libya has failed to comply with the request by the Court to return to the Defence of Saif Al-Islam Gaddafi the originals of the documents that were seized in Zintan by the Libyan authorities from the former Defence counsel for Saif Al-Islam Gaddafi and destroy any copies thereof; and

**DECIDES** that the matter of Libya's non-compliance with these requests for cooperation by the Court be referred, through the Presidency in accordance with regulation 109(4) of the Regulations, to the United Nations Security Council.

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



Judge Silvia Fernández de Gurmendi  
Presiding Judge



Judge Ekaterina Trendafilova



Judge Christine Van den Wyngaert

Dated this 10 December 2014  
At The Hague, The Netherlands