

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/13**

Date: **31 July 2015**

THE APPEALS CHAMBER

Before: Judge Christine Van Den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Silvia Fernández de Gurmendi
Judge Howard Morrison
Judge Piotr Hofmański

**SITUATION ON REGISTERED VESSELS OF THE UNION OF THE
COMOROS, THE HELLENIC REPUBLIC OF GREECE AND THE KINGDOM
OF CAMBODIA**

Public Document

**Response to “Prosecution’s request to instruct Parties and participants to
refrain from commenting on the merits of this case in the media and comply
with the Code of Professional Conduct for counsel”**

Source: Sir Geoffrey Nice QC and Rodney Dixon QC

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Ms. Fatou Bensouda, Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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

States Representatives
Sir Geoffrey Nice QC
Rodney Dixon QC

Amicus Curiae

REGISTRY

Registrar
Mr. Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. RESPONSE TO PROSECUTION'S REQUEST

1. This submission is filed in response to the "Prosecution's request to instruct Parties and participants to refrain from commenting on the merits of this case in the media and comply with the Code of Professional Conduct for counsel" filed on 30 July 2015.¹
2. In response to the Prosecution's submissions concerning Sir Geoffrey Nice QC's comments to the media, it is accepted that the words quoted should not have been published. Sir Geoffrey regrets that they were so published and apologies in full for the publication happening.
3. It is noted that the words published arise from one interview which resulted in publication on various public forums.² Sir Geoffrey was approached twice by a journalist whom he did not know and who sought some clarification of what the position in the case was in light of the Prosecutor's appeal. Initially it was understood that the inquiry was for background only, but Sir Geoffrey later realised that the journalist was likely to quote him as he recalls specifically requiring passages not to be quoted in any publication. It was not appreciated until after publication was drawn to Sir Geoffrey's attention yesterday that he realised he had been quoted despite making it clear at the time to the journalist that comments were not to be published.
4. It is accepted that it would have been better to require sight of the proposed piece before publication as invariably happens with all team members in this case and would have happened on this occasion but for time being so very limited for consideration after Sir Geoffrey had assisted the journalist in great detail during the interview with understanding the appeal and the procedure involved. Requiring sight of any piece before publication will be done in the future, as almost invariably in the past.

¹ Prosecution's request to instruct Parties and participants to refrain from commenting on the merits of this case in the media and comply with the Code of Professional Conduct for counsel, ICC-01/13-36, 30 July 2015.

² Although the Prosecution cites two articles in footnote one of its Request, it should be noted that both articles are published by the same author and resulted from the one interview with Sir Geoffrey Nice QC.

5. As noted by the Prosecution, the Code of Professional Conduct and the case law of the Court recognises that public statements can be made by Counsel but within proper ethical limits³. The parties may thus make public statements in respect of the present proceedings within these parameters, as is also permitted in many national jurisdictions.⁴



Sir Geoffrey Nice QC

Rodney Dixon QC

Counsel on behalf of the Government of the Union of the Comoros

Dated 31 July 2015

London

³ See for example, Prosecutor v. Lubanga, Decision on the press interview with Ms Le Fraper du Hellen, ICC-01/04-01/06-2433, 12 May 2010, paras. 34-40. See also, Prosecution v. Muthaura, et al., Decision on the Defence ‘Application for Order to the Prosecutor Regarding Extrajudicial Comments to the Press’, ICC-01/09-02/11-83, 5 May 2011, paras. 6-9.

⁴ The Article 53 proceedings in Situation ICC-01/13 are the subject of a wide public debate to which many persons have contributed including a former member of the Office of the Prosecutor, Alex Whitting (See, “The ICC Prosecutor should Reject Judges’ Decision in Mavi Marmara”, Alex Whitting, <https://www.justsecurity.org/24778/icc-prosecutor-reject-judges-decision-mavi-marmara/>). Responses and statements on the topic, as the Prosecutor herself has done, are thus permitted and appropriate within proper limits.