

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/05-01/09

Date: 26 April 2017

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Chang-ho Chung

SITUATION IN DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR*

Public

Decision inviting the Hashemite Kingdom of Jordan to provide any further submissions on its failure to arrest and surrender Omar Al-Bashir to the Court

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 the Defence

Legal Representatives of the Victims

Legal Representatives of the 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

Competent authorities of the Hashemite
Kingdom of Jordan

Other

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber II (“Chamber”) of the International Criminal Court (“Court”) issues this decision inviting the Hashemite Kingdom of Jordan (“Jordan”) to provide any further submissions on its failure to arrest and surrender Omar Hassan Ahmad Al Bashir (“Omar Al Bashir”) to the Court.

1. On 31 March 2005, the Security Council, acting under Chapter VII of the Charter of the United Nations adopted Resolution 1593(2005), whereby it referred the situation in Darfur, Sudan, since 1 July 2002 to the Prosecutor of the Court.¹
2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I issued two warrants of arrest against Omar Al Bashir for war crimes, crimes against humanity and genocide allegedly committed in Darfur, Sudan, from March 2003 to, at least, 14 July 2008.² These warrants of arrest remain to be executed. As a State Party to the Rome Statute, Jordan was notified of the requests for arrest and surrender of Omar Al-Bashir to the Court pursuant to the two warrants on 5 March 2009 and 16 August 2010 respectively.³
3. On 21 February 2017, acting on the basis of media reports of Omar Al-Bashir’s expected travel to Jordan in order to participate in the 28th Arab League Summit in Amman on 29 March 2017, the Registry transmitted to Jordan a note verbale inviting it to provide information regarding the visit and renewing the request to cooperate with the Court in the arrest and surrender of Omar Al-Bashir, in the event that he enters Jordanian territory.⁴
4. On 24 March 2017, the Registry received a note verbale from Jordan, wherein Jordan confirmed that its invitation had been delivered to Omar Al-Bashir for

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/05-01/09-1; “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 12 July 2010, ICC-02/05-01/09-95.

³ See reference at ICC-02/05-01/09-291-Conf-Anx1.

⁴ ICC-02/05-01/09-291-Conf-Anx1.

participation in the Arab League summit, that the Sudanese government had registered its delegation for the summit as including Omar Al-Bashir, but that no official confirmation of the latter's attendance had yet been received.⁵ The note verbale also stated that "Jordan adheres to its international obligations, including [the] applicable rules of customary international law, while taking into account all rights thereunder".

5. On 28 March 2017, the Registry received a second note verbale from Jordan, which stated that the Jordanian authorities had received confirmation that Omar Al-Bashir would attend the Arab League summit on 29 March 2017 and that "Jordan is hereby consulting with the ICC under article 97 of the Rome Statute".⁶ The note verbale further stated that Jordan considers that "President Omar Al Bashir enjoys sovereign immunity as a sitting Head of State under the rules of customary international law" and that that immunity had not been waived by Sudan nor by the Security Council of the United Nations in its resolution 1593(2005). Making reference to articles 98(1) and 27(2) of the Statute, Jordan concluded that "[n]othing in the two articles mandates the State Party to the Rome Statute to waive the immunity of a third State and act inconsistently with its obligations under the rules of general international law on the immunity of a third State".
6. Omar Al Bashir eventually travelled to Jordan and attended the 28th Arab League Summit in Amman on 29 March 2017. While he was on Jordanian territory, Jordan did not arrest and surrender him to the Court.
7. Pursuant to article 87(7) of the Statute, in case of non-compliance with obligations to cooperate the Court, one of the tools available to the Court is to make a finding of non-cooperation by the State and refer the matter to the

⁵ ICC-02/05-01/09-291-Conf-Anx2.

⁶ ICC-02/05-01/09-293-Conf-Anx1-Corr.

Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council. Omar Al-Bashir's visit to Jordan warrants a determination on the part of the Chamber of whether it is appropriate to make a formal finding of non-compliance by Jordan with the Court's request for arrest and surrender of Omar Al-Bashir to the Court and refer the matter to the Assembly of States Parties and/or the Security Council of the United Nations, under article 87(7) of the Statute.

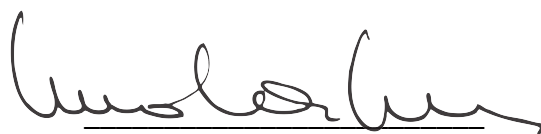
8. The Chamber recalls that, prior to any such step being taken, regulation 109(3) of the Regulations of the Court mandates that "the Chamber shall hear from the requested State". As recalled above, Jordan already provided certain submissions as to the reasons for its (at that time only intended) non-compliance with the Court's request for arrest and surrender of Omar Al-Bashir. Nonetheless, the Chamber is of the view that before making a determination on whether Jordan's failure to arrest Omar Al-Bashir while on its territory warrants resort to the measures under article 87(7) of the Statute, it is appropriate to give Jordan the opportunity to provide additional submissions if it wishes to do so.

FOR THESE REASONS, THE CHAMBER HEREBY

INVITES the Hashemite Kingdom of Jordan, if it wishes to provide further submissions concerning its failure to arrest and surrender Omar Al-Bashir while present on the territory of the Hashemite Kingdom of Jordan, to file any such submissions by Friday, 26 May 2017; and

ORDERS the Registrar to transmit this decision to the competent authorities of the Hashemite Kingdom of Jordan.

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



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated 26 April 2017

At The Hague, The Netherlands