

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

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

*Date: 27 April 2018*

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN DARFUR, SUDAN**

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

**Public Document**

**Request pursuant to rule 103(1) of the Rules of Procedure and Evidence  
for leave to submit observations as *amici curiae* in judicial proceedings**

**Source:**

**The Government of the  
United Mexican States**

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

Mr James Stewart

**States' Representatives**

Competent authorities of the Hashemite

Kingdom of Jordan

**REGISTRY**

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**Registrar**

Mr Peter Lewis

1. Pursuant to rule 103 of the Rules of Procedure and Evidence, and in response to the Appeals Chamber's order ICC-02/05-01/09 OA2 inviting expressions of interest, the Government of the United Mexican States ("Mexico") hereby applies for leave to submit written observations as *amicus curiae* in the appeal of the Hashemite Kingdom of Jordan -of 12 December 2017 (ICC-02/05-01/09-326)- against the decision of the Pre-Trial Chamber II entitled 'Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir' of 11 December 2017 (ICC-02/05-01/09-309).

2. If leave to submit written observations is granted, Mexico will file its *amicus curiae* brief within the time-limit to be fixed by the Appeals Chamber, and would submit any further comments as requested.

#### **Mexico's interest in this proceeding**

3. Mexico is a State Party to the Rome Statute of the International Criminal Court since 1 January 2006.

4. Mexico has ratified several international instruments whereby it recognizes the privileges and immunities of Heads of State *ratione personae*. Furthermore, Mexico has a long standing bilateral tradition of demanding and recognizing the immunity of Heads of States for alleged acts performed within their official capacity.

5. Mexico has been and continues to be a supporter of the strengthening of the international criminal justice system, and acknowledges the importance of States' cooperation in order to prevent the commission of atrocities and to end impunity.

6. Mexico believes that the issues raised within this proceeding are to the Court's effectiveness, and that the decision to be reached by the Chamber will have a significant impact on the cooperation between States Parties and the Court.

7. Mexico is interested in participating in this judicial proceeding to ensure that the points of view of all legal systems and regions are taken into consideration.

8. The Government of Mexico welcomes order ICC-02/05-01/09 OA2 inviting expressions of interest and believes its submission as *amicus curiae* will assist the Appeals Chamber in its endeavour.

**Issues on which Mexico requests to submit observations as *amicus curiae***

9. If leave to submit written observations as *amicus curiae* is granted, Mexico proposes to deal with the following subject matters:

**A. The Rome Statute *vis-à-vis* customary international law**

- I. *Whether* the application of article 98(1) excludes the application of article 27(2) of the Rome Statute.
- II. *Whether* the Rome Statute may create obligations or deprive rights of States not Parties to it.
- III. *Whether* treaty obligations (obligations to cooperate) prevail over customary obligations (sovereign immunities).
- IV. *Whether* articles 89(1) and 98 of the Rome Statute establish a special consultation procedure with State Parties.

**B. The Rome Statute *vis-à-vis* other treaties**

- I. *Whether* the obligations contained in the Rome Statute prevail *vis-à-vis* other international law treaties.

**C. Legal consequences of the referrals of the UN Security Council**

- I. *Whether* the United Nations Security Council –through a referral of a situation to the ICC- may bind a State not Party to the Rome Statute.
- II. *Whether* the United Nations Security Council can overturn an international customary norm.

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10. For these reasons, Mexico respectfully requests the Chamber to grant it leave to submit written observations as *amicus curiae* on the matters stated above.



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**Alejandro Alday**  
**Legal Adviser, Ministry of Foreign Affairs,**  
**on behalf of the Government of the**  
**United Mexican States**

27 April 2018

Mexico City, Mexico