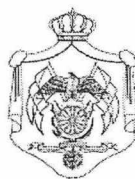


Corrected version of ICC-02/05-01/09-293- Conf-Anx1



Embassy of the Hashemite Kingdom of Jordan
The Hague

Ref. No. E15/304

The Embassy of the Hashemite Kingdom of Jordan to the Netherlands presents its compliments to the Registry of the International Criminal Court (ICC) and reference to its Note Verbale NV/2017/EOSS/085/JCA/nv concerning the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (ICC-02/05-01/09) dated 27 March 2017, has the honor to transmit the following:

- The Jordanian authorities received confirmation that President Omar Al Bashir of the Sudan will be attending the Arab League Summit on 29 March 2017 and heading the Sudanese delegation for the Summit.
- Jordan is hereby consulting with the ICC under article 97 of the Rome Statute of the International Criminal Court (Rome Statute) as regards to the content of the arrest and surrender warrants transmitted in the Registry's two note verbales (NV/DCS/2009/82/ab) and NV/DCS/2010/202/MD/ab) dated 5 March 2009 and 16 August 2010 respectively.
- Jordan considers that President Omar Al Bashir enjoys sovereign immunity as a sitting Head of State under the rules of customary international law.
- Jordan considers that sovereign immunity of President Al Bashir has not been waived by the Sudan. As such, Jordan respects and adheres to this immunity of the State of the Sudan and will act consistently with such immunity.
- Jordan further considers that Security Council resolution 1593 (2005) as containing nothing which may be interpreted as a waiver of the sovereign immunity of a sitting Head of State, in general, or President Al Bashir in particular. Furthermore, nothing in the subsequent practice of the Security Council, including its subsequent resolutions,

may be interpreted to conclude that the language in resolution 1593 on the cooperation of the Sudan to be a waiver of immunity of President Al Bashir. Nor is there anything in resolution 1593 that mandates States, including State Parties to the Rome Statute, to bypass such immunity.

- As such, Jordan considers that its execution of the requests for surrender and arrest contained in note verbales (NV/DCS/2009/82/ab) and NV/DCS/2010/202/MD/ab) to be inconsistent with its obligations under the rules of customary international law as regards to sovereign immunity of a sitting Head of State.
- Article 98 (1) of the Rome Statute concerns an *obligation on the ICC* regarding how to proceed with a request of surrender or assistance which would require the requested State to act inconsistently with the latter's obligation under international law with respect to the immunity of the State of a person of a third State. Furthermore, article 27 (2) of the Statute as regards to immunity not barring the ICC from exercising its jurisdiction concerns the courts exercise of jurisdiction. Nothing 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.

The Embassy of The Hashemite Kingdom of Jordan avails itself of this opportunity to renew to the Registry of the International Criminal Court the assurances of its highest consideration.



Registry of the
International Criminal Court

The Hague