

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 March 2015

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

**Public
URGENT**

**Decision Regarding Omar Hassan Ahmad Al Bashir's Travel to the Kingdom of
Saudi Arabia and the Arab Republic of Egypt**

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of 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 Kingdom of Saudi Arabia
the Arab Republic of Egypt

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”) renders this decision on the “Prosecution’s Notification of Travel of Suspect Omar Al Bashir in the Case of *The Prosecutor v Omar Al Bashir*” (the “Notification”).¹

1. On 31 March 2005, the Security Council (the “SC”), acting under Chapter VII of the Charter of the United Nations (the “UN”), adopted Resolution 1593(2005) referring the situation in Darfur to the Court.²

2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I (the “PTC I”), formerly seized of the present case, issued two warrants of arrest (the “Warrants of Arrest”) against Omar Hassan Ahmad Al-Bashir (“Mr. Al Bashir”).³ These Warrants of Arrest remain to be executed.

3. On 15 March 2012, the Presidency issued the “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations”, in which it re-assigned, *inter alia*, the situation of Darfur, Sudan to this Chamber.⁴

4. On 10 October 2013, the Chamber issued the “Decision Regarding Omar Al-Bashir’s Potential Travel to the Federal Republic of Ethiopia and the Kingdom of Saudi Arabia”.⁵ Following this decision, the authorities of the Kingdom of

¹ ICC-02/05-01/09-231 and its public annex A.

² S/RES/1593 (2005).

³ Pre-Trial Chamber I, “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/05-01/09-1; Pre-Trial Chamber I, “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/04-01/09-3; Pre-Trial Chamber I, “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 12 July 2010, ICC-02/05-01/09-95; Pre-Trial Chamber I, “Second Decision on the Prosecution’s Application for a Warrant of Arrest”, 12 July 2010, ICC-02/05-01/09-94.

⁴ Presidency, ICC-02/05-01/09-143.

⁵ Pre-Trial Chamber II, ICC-02/05-01/09-164.

Saudi Arabia were notified of the request for arrest and surrender for Mr. Al Bashir by the Registry.⁶

5. On 14 October 2014, the Chamber issued the “Decision on the “Prosecution’s Notification of Travel of Suspect Omar Al Bashir in the Case of *The Prosecutor v Omar Al Bashir*”.⁷ Following this decision, the authorities of the Arab Republic of Egypt were notified of the request for arrest and surrender for Mr. Al Bashir by the Registry.⁸

6. On 16 March 2015, the Presidency constituted the Chamber anew following the termination of office of Judge Ekaterina Trendafilova and the assignment of Judge Christine van den Wyngaert to the Appeals Chamber.⁹

7. On 24 March 2015, the Chamber received the Notification, in which the Prosecutor informs the Chamber of the “intended visits of Omar Al Bashir to the Kingdom of Saudi Arabia (...) and to the Arab Republic of Egypt”.¹⁰ Based on media reports, Mr. Al Bashir is “expected to visit Saudi Arabia on 25-26 March 2015 for talks with King Salman Bin Abdel Aziz and to visit Egypt on 28-29 March 2015 to participate in the Arab Summit”.¹¹ Accordingly, the Prosecutor requests the Chamber to take all necessary steps to ensure that the warrants of arrest issued by the Court against Mr. Al Bashir are executed. In particular, the Prosecutor requests the Chamber to (i) seek information from the relevant authorities of the Kingdom of Saudi Arabia and the Arab Republic of Egypt

⁶ ICC-02/05-01/09-165.

⁷ Pre-Trial Chamber II, ICC-02/05-01/09-211.

⁸ ICC-02/05-01/09-212.

⁹ Presidency, Decision on the constitution of Pre-Trial Chambers and on the assignment of the Mali situation, 16 March 2015, ICC-02/05-01/09-229.

¹⁰ ICC-02/05-01/09-231, para. 1.

¹¹ *Ibid.* (footnote omitted); ICC-02/05-01/09-231-AnxA.

regarding the potential visits; and (ii) remind those authorities of the existence of the warrants of arrest and of SC Resolution 1593 (2005).¹²

8. The Chamber notes articles 21(1)(a) and (b), 87(5), 89(1), and 91 of the Rome Statute (the "Statute").

9. As highlighted previously by this Chamber in a number of decisions, only States Parties to the Statute are under an obligation to cooperate with the Court. Given that the Statute is an international treaty governed by the rules set out under the Vienna Convention on the Law of Treaties, it is only with the State's consent that the Statute can impose obligations on a non-State Party.¹³ Thus, non-States Parties may decide to cooperate with the Court on an *ad hoc* basis, as foreseen in article 87(5)(a) of the Statute. This principle may be altered by the SC which may, by means of a resolution adopted under Chapter VII of the UN Charter, create an obligation to cooperate with the Court on those UN Member States which are not parties to the Statute. In such a case, the obligation to cooperate stems directly from the UN Charter.

10. Accordingly, the Kingdom of Saudi Arabia and the Arab Republic of Egypt, as non-States Parties to the Statute, have no obligations *vis-à-vis* the Court arising from the Statute. In this regard, the Chamber recalls that the situation in Darfur was referred to the Court by way of SC Resolution 1593(2005), which also recognizes that States not parties to the Statute (apart from Sudan) have no obligation under the Statute. However, SC Resolution 1593(2005) still "urge[d] all

¹² ICC-02/05-01/09-231, para. 2.

¹³ UNTS, Vol. 1155, art. 34; See also Pre-Trial Chamber II, "Decision on the 'Prosecution's Notification of Travel in the Case of The Prosecutor v Omar Al Bashir'", 1 October 2014, ICC-02/05-01/09-208, para. 10; Pre-Trial Chamber I, "Decision on the request of the Defence of Abdullah Al-Senussi to make a finding of non-cooperation by the Islamic Republic of Mauritania and refer the matter to the Security Council", 28 August 2013, ICC-01/11-01/11-420, para. 12.

States and concerned regional and other international organizations to cooperate fully” with the Court (emphasis added).

11. In this context the Chamber wishes to point out that the Court has no enforcement mechanism, and thus, relies on the States’ cooperation, without which it cannot fulfil its mandate and contribute in ending impunity.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **Renews its invitation** to the competent authorities of the Kingdom of Saudi Arabia and the Arab Republic of Egypt to arrest Omar Hassan Ahmad Al Bashir, in the event he enters their respective territory and to surrender him to the Court;
- b) **orders** the Registrar to send a Note Verbale to the Kingdom of Saudi Arabia and the Arab Republic of Egypt:
 - (i) reminding the Kingdom of Saudi Arabia and the Arab Republic of Egypt of the requests for the arrest and surrender of Omar Hassan Ahmad Al Bashir as already transmitted to the competent authorities on 10 October 2013 and 15 October 2014, respectively and
 - (ii) enquiring about the visit of Omar Hassan Ahmad Al Bashir, reminding the competent authorities of the Kingdom of Saudi Arabia and the Arab Republic of Egypt of SC Resolution 1593(2005) and inviting those States once more to cooperate with the Court in the arrest of Omar Hassan Ahmad Al Bashir and his surrender to the Court.

- c) **orders** the Registrar to notify the present decision to the competent authorities of the Kingdom of Saudi Arabia and the Arab Republic of Egypt; and
- d) **orders** the Registrar to transmit to the Kingdom of Saudi Arabia and the Arab Republic of Egypt an Arabic translation of the present decision and a copy of said decision in its original language; and
- e) **orders** the Registrar to prepare a report to be filed with the Chamber in due course concerning said visits.

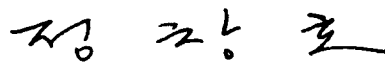
Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated this Tuesday, 24 March 2015

At The Hague, The Netherlands