

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 March 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

**Urgent
Confidential**

Prosecution's Observations on the *Note Verbale* submitted by the Embassy of the Hashemite Kingdom of Jordan to the Netherlands to the Registrar concerning the possible visit to the Hashemite Kingdom of Jordan of Omar AL BASHIR

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Julian Nicholls

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States Representatives

The competent authorities of the
Hashemite Kingdom of Jordan

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Observations

1. The Prosecution requests Pre-Trial Chamber II (the "Chamber") to order the Registrar to seek immediate clarification from the Hashemite Kingdom of Jordan ("Jordan") on whether it has identified a problem that would impede or prevent the execution of the Court's requests for arrest and surrender of Omar Hassan Ahmad Al Bashir ("Mr Al Bashir") should he travel to Jordan.
2. The Prosecution files this submission confidentially pursuant to Regulation 23bis(2) of the Regulations of the Court as it refers to the contents of confidential annexes.
3. On 21 February 2017, the Court, via the Registrar, presented a request for cooperation via a *Note Verbale* in accordance with rule 176(2) of the Rules of Procedure and Evidence to the Embassy of Jordan to the Kingdom of the Netherlands reminding it of Jordan's obligation to arrest Mr Al Bashir and surrender him to the Court, and, in case Jordan identifies any problem which may impede or prevent the execution of the request for cooperation, to consult with the Court without any delay in accordance with article 97 of the Statute.
4. On 24 March 2017, Jordan responded with a *Note Verbale* to the Registrar conveying information on the steps leading to a possible visit by Mr Al Bashir to its territory to attend the forthcoming Arab League Summit in Jordan on the 29 March 2017. Jordan noted in its *Note Verbale* that the Foreign Ministry of the Republic of the Sudan ("Sudan") has applied for visas for Al Bashir to attend the Summit in Jordan and that Mr Al Bashir is registered as part of the delegation from Sudan.

5. In the penultimate paragraph of its *Note Verbale*, Jordan stated that “Jordan adheres to its international obligations, including those [sic] the applicable rules of customary international law, while taking into account all its rights thereunder”.
6. This statement by Jordan does not make clear whether it intends to comply with its obligations under the Rome Statute to arrest and surrender Mr Al Bashir should he enter its territory or, potentially, whether it considers that the Court’s pending cooperation requests would require it to “act inconsistently with its obligations under international law” within the meaning of article 98. Nor has Jordan notified the Court that it has identified a problem that would impede or prevent the execution of the Court’s requests for arrest and surrender, within the meaning of article 97.
7. Due to the imminent potential travel of Mr Al Bashir to Jordan, it is important and in the interest of the Court, the victims, and all parties to clarify these issues as expeditiously as possible.
8. Accordingly, with a view to resolving any question or misunderstanding that may have arisen on the part of Jordan with respect to its obligations as a State Party under the Statute, the Chamber should order the Registrar to seek immediate clarification from Jordan regarding whether it has identified a problem that would impede or prevent the execution of the Court’s requests for arrest and surrender, and if so, to remind Jordan of its obligation under article 97 to consult with the Court without delay in order to resolve the matter.

9. For the avoidance of doubt, the Chamber should also order the Registrar to provide Jordan with its previous decisions with respect to the assertion of conflicting international obligations by States Parties concerning the arrest and surrender of Mr Al Bashir.



Fatou Bensouda, Prosecutor

Dated this 24th March 2017

At The Hague, The Netherlands