

**PUBLIC**  
**ANNEX A**

**Reference list for hearing in *Prosecutor v. Bashir* (OA2), on Monday 10 September**

**Question Group A**

- A1 See e.g. [ICC-01/05-01/13-2276-Red](#), para. 76; [ICC-01/04-02/06-1962](#), para. 53; [ICC-01/09-01/11-1598](#), para. 105.
- A2 See e.g. [ICC-ACRed-01/16](#), para. 56; [ICC-01/09-01/11-1598](#), para. 105.
- A3 UN Human Rights Committee, [General Comment 31: the Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 18.
- A4 See e.g. African Commission on Human and People's Rights, [Resolution on Guidelines and Measures for the Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa \(the Robben Island Guidelines\)](#), 2<sup>nd</sup> Ed., 2008, para. 16(b); European Court of Human Rights, Grand Chamber, [Al-Adsani v. the United Kingdom](#), Application No. 35763/97, Judgment, 21 November 2001, paras. 52-67. See also [A. Sanger, 'Immunity of state officials from the criminal jurisdiction of a foreign state,'](#) [2016] 65(1) *International and Comparative Law Quarterly* 213, pp. 213, 222-223; African Commission on Human and People's Rights, [Mouvement ivoirien des droits humains \(MIDH\)/Côte d'Ivoire](#), 246/02, 2008, para. 98 (in the context of domestic immunities).
- A5 See e.g. International Law Commission, [Third report on peremptory norms of general international law \(jus cogens\) by Dire Tladi, Special Rapporteur](#), UN Doc. A/CN.4/714, para. 114; African Commission on Human and People's Rights, [Al-Asad v. Djibouti](#), 383/10, 2014, para. 179; European Court of Human Rights, Grand Chamber, [Al-Adsani v. the United Kingdom](#), Application No. 35763/97, Judgment, 21 November 2001, paras. 60-61, 65; ICTY, [Prosecutor v. Furundžija](#), IT-95-17/1-T, Judgment, 10 December 1998, paras. 144, 153-157; see also para. 163-164, 171.
- A6 See e.g. International Law Commission, [Third report on peremptory norms of general international law \(jus cogens\) by Dire Tladi, Special Rapporteur](#), UN Doc. A/CN.4/714, paras. 32, 36-40, 138-141.
- A7 See e.g. [D. Akande and S. Shah, 'Immunities of state officials, international crimes, and foreign domestic courts,'](#) [2010] 21(4) *European Journal of International Law* 815, especially pp. 832-838; [A. Orakhelashvili, 'Immunities](#)

[of state officials, international crimes, and foreign domestic courts: a reply to Dapo Akande and Sangeeta Shah,](#) [2011] 22(3) *European Journal of International Law* 849; [D. Akande and S. Shah, 'Immunities of state officials, international crimes and foreign domestic courts: a rejoinder to Alexander Orakhelashvili,'](#) [2011] 22(3) *European Journal of International Law* 857. *But see also e.g.* International Law Commission, [Third report on peremptory norms of general international law \(jus cogens\) by Dire Tladi, Special Rapporteur](#), UN Doc. A/CN.4/714, paras. 121-132.

- A8 International Court of Justice, [North Sea Continental Shelf Cases \(Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands\)](#), Judgment of 20 February 1969, ICJ Reports 1969, pp. 3, 44, para. 74.
- A9 International Law Commission, [First report on formation and evidence of customary international law by Michael Wood, Special Rapporteur](#), UN Doc. A/CN.4/663, 17 May 2013, paras. 54-85.
- A10 International Law Commission, [Fifth report on identification of customary international law, by Michael Wood, Special Rapporteur](#), UN Doc. A/CN.4/717, 14 March 2018, para. 67.
- A11 International Court of Justice, [Case concerning Military and Paramilitary Activities In and Against Nicaragua \(Nicaragua v. United States of America\)](#), Judgment of 27 June 1986, ICJ Reports 1986, pp. 14, 98, para. 186.
- A12 International Law Commission, [Text of the draft conclusions as adopted by the Drafting Committee on second reading](#), UN Doc. A/CN.4/L.908, 17 May 2018, Conclusion 8; International Law Commission, Report of the International Law Commission: Seventieth session (30 April–1 June and 2 July–10 August 2018), A/73/10 (2018), para. 62.
- A13 International Court of Justice, [North Sea Continental Shelf Cases \(Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands\)](#), Judgment of 20 February 1969, ICJ Reports 1969, pp. 3, 44, para. 77.
- A14 International Court of Justice, [Asylum Case \(Colombia/Peru\)](#), Judgment of 20 November 1950, ICJ Reports 1950, pp. 266, 286]; International Law Commission, [Text of the draft conclusions as adopted by the Drafting Committee on second reading](#), UN Doc. A/CN.4/L.908, 17 May 2018, Conclusion 9.

- A15 International Court of Justice, [Asylum Case \(Colombia/Peru\)](#), Judgment of 20 November 1950, ICJ Reports 1950, pp. 266, 276.
- A16 See e.g. Permanent Court of International Justice, [The Case of the S.S. "Lotus" \(France v. Turkey\)](#), Judgment of 7 September 1927, 1927 PCIJ (ser. A) No. 10, pp. 25-26; International Court of Justice, [Case Concerning the Rights of Nationals of the United States of America in Morocco \(France v. United States\)](#), Judgment of 27 August 1952, ICJ Reports 1952, pp. 176, 200.
- A17 [C. Kreß, 'The International Criminal Court and Immunities under International Law for States not Party to the Court's Statute,'](#) in Bergsmo and Yan [Eds.], *State Sovereignty and International Criminal Law* (Torkel Opsahl, 2012); C. Kreß and K. Prost, 'Article 98,' in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Court: A Commentary*, 3<sup>rd</sup> Ed. (München/Oxford/Baden-Baden: C.H.Beck/Hart/Nomos, 2016); F. Harhoff and P. Mochochoko, 'International Cooperation and Judicial Assistance,' in R. Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Ardsey: Transnational, 2001), pp. 664-669.
- A18 See e.g. Republic of Kenya, Court of Appeal, [Attorney General and Others v. Kenya Section of the International Commission of Jurists](#) [2018] eKLR, 16 February 2018, p. 24; Republic of South Africa, [Minister of Justice and Constitutional Development and Others v. Southern Africa Litigation Centre and Others](#) [2016] ZASCA 17; but see Republic of Uganda, The Judiciary, ['High Court dismisses Bashir case,'](#) 17 November 2017; ICC Office of the Prosecutor, [Twenty-Sixth Report Pursuant to Paragraph 8 of UN Security Council Resolution \(UNSCR\) 1593](#), 12 December 2017, paras. 21-25.
- A19 Compare e.g. ICC-02/04-01/09-AnxKRK8, para. 12, with ICC-02/05-01/09-289-AnxB. See also C. Kreß and K. Prost, 'Article 98,' in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Court: A Commentary*, 3<sup>rd</sup> Ed. (München/Oxford/Baden-Baden: C.H.Beck/Hart/Nomos, 2016), p. 2138 (concerning Malawi); [D. Akande, 'Denmark invites Sudanese President Bashir to Climate Change Conference,' EJIL: Talk!](#), 19 November 2009.

- A20 International Law Commission, [\*Immunity of State Officials from Foreign Criminal Jurisdiction: Fifth Report by Ms Hernández, Special Rapporteur\*](#), UN Doc. A/CN.4/701, 14 June 2016, p. 95 (draft article 7(3)(i) and (ii)).
- A21 International Law Commission, [\*Report on the work of the sixty-eighth session \(2016\)\*](#), A/71/10, para. 246. See also International Law Commission, [\*Immunity of State Officials from Foreign Criminal Jurisdiction: Sixth Report by Ms Hernández, Special Rapporteur\*](#), UN Doc. A/CN.4/722, 12 June 2018, para. 43; International Law Commission, Report of the International Law Commission: Seventieth session (30 April–1 June and 2 July–10 August 2018), A/73/10 (2018), para. 280 et seq.
- A22 International Court of Justice, [\*Fisheries Case \(United Kingdom v. Norway\)\*](#), Judgment of 18 December 1951, ICJ Reports 1951, pp. 116, 131.
- A23 International Court of Justice, [\*Asylum Case \(Colombia/Peru\)\*](#), Judgment of 20 November 1950, ICJ Reports 1950, pp. 266, 277.
- A24 International Court of Justice, [\*Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area \(Canada/United States of America\)\*](#), Judgment of 12 October 1984, ICJ Reports 1984, pp. 246, 300, para. 114.
- A25 Permanent Court of International Justice, [\*The Case of the S.S. "Lotus" \(France v. Turkey\)\*](#), Judgment of 7 September 1927, 1927 PCIJ (ser. A) No. 10, p. 21.
- A26 Special Court for Sierra Leone, [\*Prosecutor v. Charles Taylor, SCSL-2001-01-I, Decision on Immunity from Jurisdiction\*](#), 31 May 2004.
- A27 International Court of Justice, [\*Case concerning the Arrest Warrant of 11 April 2000 \(Democratic Republic of the Congo v. Belgium\)\*](#), Judgment of 14 February 2002, ICJ Reports 2002, pp. 3, 26, para. 61.
- A28 International Court of Justice, [\*Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area \(Canada/United States of America\)\*](#), Judgment of 12 October 1984, ICJ Reports 1984, pp. 246, 299, para. 111.
- A29 D. Akande, 'International law immunities and the International Criminal Court', [2004] 98 *American Journal of International Law* 407, p. 417.
- A30 [C. Kreß, 'The International Criminal Court and Immunities under International Law for States not Party to the Court's Statute,'](#) in Bergsmo

and Yan [Eds.], *State Sovereignty and International Criminal Law* (Torkel Opsahl, 2012), p. 247.