



Original: English

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

Date: 7 July 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

**Public
URGENT**

Decision on the "Prosecution's Urgent Notification of Travel in the Case of *The Prosecutor v Omar Al Bashir*"

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 State of
Qatar

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 Urgent Notification of Travel 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, Sudan to the Court.²

2. On 4 March 2009, Pre-Trial Chamber I (“PTC I”), formerly seized of the present case, issued a warrant of arrest against Omar Hassan Ahmad Al Bashir (“Mr. Al Bashir”) for crimes against humanity and war crimes.³ These warrants of arrest remain to be executed.

3. On 6 March 2009, upon instruction of PTC I, the Registry transmitted the “Request to the State of Qatar for the arrest and surrender of Omar Al Bashir” to the competent authorities of said State. A copy of the warrant of arrest issued on 4 March 2009 was attached.⁴

4. On 12 July 2010, PTC I, still being seized of the present case, issued a second warrant of arrest against Mr. Al Bashir for the crime of genocide which remains to be executed.⁵

¹ ICC-02/05-01/09-203 and 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;

⁴ ICC-02/05-01/09-9.

⁵ 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.

5. 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.⁶

6. On 3 July 2014, the Presidency issued the “Decision on the constitution of Pre-Trial Chambers”.⁷

7. On 7 July 2014, the Chamber received the Notification in which the Prosecutor avers that, on the basis of news reports, Mr. Al Bashir will embark tomorrow, Tuesday, 8 July 2014, on a two-day visit to the Qatari capital, Doha, in response to an invitation from Qatar’s Emir Sheikh Tamim bin Hamad Al-Thani.⁸ The Prosecutor alleges that Mr. Al Bashir received the invitation to visit Qatar during a meeting with the Qatari Foreign Minister Khalid Al-Attiyah on 6 July 2014 in Khartoum.⁹

8. Accordingly, the Prosecutor requests the Chamber to take steps to ensure that the warrants of arrest issued by the Court against Mr. Al Bashir are executed.¹⁰ More specifically, she requests the Chamber (i) to inform the authorities of the State of Qatar of the pending visit of Mr. Al Bashir;¹¹ (ii) to seek information from the relevant authorities of the State of Qatar regarding the possible visit of Mr. Al Bashir; (iii) to remind the authorities of the State of Qatar of the existence of the warrants of arrest against Mr. Al Bashir; and (iv) to remind

⁶ Presidency, ICC-02/05-01/09-143.

⁷ Presidency, ICC-02/05-01/09-202.

⁸ ICC-02/05-01/09-203, para. 1.

⁹ ICC-02/05-01/09-203, para. 9.

¹⁰ ICC-02/05-01/09-203, para. 11.

¹¹ ICC-02/05-01/09-203, para. 2.

the relevant authorities of the State of Qatar of the SC Resolution 1593 (2005) urging all States to cooperate fully with the Court.¹²

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

10. 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.

11. Accordingly, the State of Qatar, as a non-State Party to the Statute, has no obligations *vis-à-vis* the Court arising from the *Statute*. In this regard, the Chamber recalls that the situation in Darfur, Sudan 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 States* and concerned regional and

¹² ICC-02/05-01/09-203, para. 11.

¹³ UNTS, Vol. 1155, art. 34; See also 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.

other international organizations to cooperate fully” with the Court (emphasis added).¹⁴ Thus, having been provided already with the first warrant of arrest against Mr. Al Bashir and the corresponding request for arrest and surrender, the State of Qatar may decide to execute the outstanding warrant of arrest.

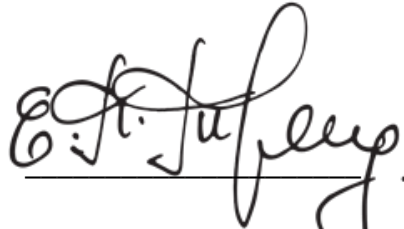
12. In this context the Chamber wishes to point out that the Court has no enforcement mechanism and thus relies on the States’ cooperation, without which it cannot fulfil its mandate and contribute to ending impunity.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **Renews its invitation** to the competent authorities of the State of Qatar to arrest Omar Hassan Ahmad Al Bashir and surrender him to the Court, in the event he enters its territory;
- b) **Orders** the Registrar to prepare and transmit a new request for arrest and surrender which includes both warrants of arrest issued by this Court against Omar Hassan Ahmad Al Bashir;
- c) **Orders** the Registrar to notify the present decision to the competent authorities of the State of Qatar; and
- d) **Orders** the Registrar to prepare a report to be filed with the Chamber in due course concerning said visit.

¹⁴ S/RES/1593 (2005).

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

A handwritten signature in black ink, appearing to read 'E. Trendafilova', written over a horizontal line.

Judge Ekaterina Trendafilova
Presiding Judge

A handwritten signature in blue ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser

A handwritten signature in blue ink, appearing to read 'Van den Wyngaert', written over a horizontal line.

Judge Van den Wyngaert

Dated this Monday, 7 July 2014

At The Hague, The Netherlands