



Original: English

No.: ICC-02/05-01/09
Date: 24 February 2015

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 Regarding Omar Al Bashir's Travel to the United Arab Emirates and his
Potential Travel to the Kingdom of Saudi Arabia, the State of Kuwait and the
Kingdom of Bahrain**

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

United Arab Emirates

Kingdom of Saudi Arabia

State of Kuwait

Kingdom of Bahrain

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 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 6 March 2009 and 21 July 2010, acting upon PTC I’s instruction, the Registrar prepared and transmitted two requests to, *inter alia*, all UN SC members that are not States Parties to the Rome Statute for the arrest and surrender of Mr. Al Bashir for the purposes of the execution of the two Warrants of Arrest.⁴

4. 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 in Darfur, Sudan to this Chamber.⁵

¹ ICC-02/05-01/09-223 and its 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 ICC-02/05-01/09-8 and ICC-02/05-01/09-97.

⁵ Presidency, ICC-02/05-01/09-143.

5. 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”.⁶ Following this decision, the authorities of the Kingdom of Saudi Arabia were notified of the request for arrest and surrender for Mr Al Bashir by the Registry.⁷

6. On 18 November 2013, the Chamber issued the “Decision Regarding Omar Al-Bashir’s Potential Travel to the State of Kuwait”.⁸ Following this decision, the authorities of the State of Kuwait were notified of the request for arrest and surrender for Mr Al Bashir by the Registry.⁹

7. On 24 February 2015, the Chamber received the Notification, in which the Prosecutor avers, on the basis of media reports, that Mr. Al Bashir travelled with a high-level Sudanese delegation to the United Arab Emirates on Saturday, 21 February 2015 where he is expected to stay until today, Tuesday, 24 February 2015.¹⁰ In the following days, Mr Al Bashir is expected to travel to the Kingdom of Saudi Arabia, the State of Kuwait and the Kingdom of Bahrain.¹¹ Accordingly, the Prosecutor requests the Chamber to take all necessary steps to ensure that the Warrants of Arrest against Mr. Al Bashir are executed.¹² In particular, the Prosecutor requests that the Chamber (i) seek information from the relevant authorities of the United Arab Emirates, the Kingdom of Saudi Arabia, the State of Kuwait and the Kingdom of Bahrain regarding Mr. Al Bashir’s visit; and

⁶ Pre-Trial Chamber II, ICC-02/05-01/09-164.

⁷ ICC-02/05-01/09-165.

⁸ Pre-Trial Chamber II, ICC-02/05-01/09-169.

⁹ ICC-02/05-01/09-170.

¹⁰ ICC-02/05-01/09-223, paras 1 and 9.

¹¹ ICC-02/05-01/09-223, paras 1 and 3.

¹² ICC-02/05-01/09-223, paras 2 and 11.

(ii) the existence of the Warrants of Arrest and the SC Resolution 1593 (2005) urging all States to cooperate fully with the Court.¹³

8. The Chamber notes articles 21(1)(a) and (b), 87(5), 89(1), 91 and 92 of the Rome Statute (the “Statute”).

9. The Chamber highlights that 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.¹⁴ 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 for 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 United Arab Emirates, the Kingdom of Saudi Arabia, the State of Kuwait and the Kingdom of Bahrain, as non-State 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, 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 obligations under the Statute. However, SC Resolution 1593 (2005) still “urge[d] *all States* and

¹³ ICC-02/05-01/09-223, para. 11.

¹⁴ 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.

concerned regional and other international organizations to cooperate fully” with the Court (emphasis added).¹⁵

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 to ending impunity.

FOR THESE REASONS, THE CHAMBER HEREBY

In relation to the United Arab Emirates and the Kingdom of Bahrain

- a) invites** the competent authorities of the United Arab Emirates to arrest Omar Hassan Ahmad Al Bashir and surrender him to the Court;
- b) invites** the Kingdom of Bahrain to arrest Omar Hassan Ahmad Al Bashir and surrender him to the Court, in the event he enters its territory;
- c) orders** the Registrar to transmit to the United Arab Emirates and the Kingdom of Bahrain respectively a request for arrest and surrender of Omar Hassan Ahmad Al Bashir for the Warrants of Arrest; or in case of urgency, to request, in accordance with article 92 of the Statute, the provisional arrest of Omar Hassan Ahmad Al Bashir;
- d) orders** the Registrar to send a Note Verbale to the United Arab Emirates and the Kingdom of Bahrain, enquiring about said visit, reminding them of the SC Resolution 1593(2005) and inviting them to cooperate with the Court in the arrest and surrender of Omar Hassan Ahmad Al Bashir;

¹⁵ S/RES/1593(2005).

In relation to the Kingdom of Saudi Arabia and the State of Kuwait:

- e) **renews its invitation** to the competent authorities of the Kingdom of Saudi Arabia and the State of Kuwait to arrest Omar Hassan Ahmad Al Bashir, in the event that he enters their respective territory, and to surrender him to the Court;
- f) **orders** the Registrar to send a Note Verbale to the Kingdom of Saudi Arabia and the State of Kuwait:
 - (i) reminding the Kingdom of Saudi Arabia and the State of Kuwait 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 18 November 2013, 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 State of Kuwait 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;

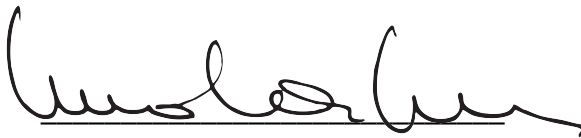
In relation to the United Arab Emirates, the Kingdom of Saudi Arabia, the State of Kuwait and the Kingdom of Bahrain:

- g) **orders** the Registrar to notify the present decision to the competent authorities of the United Arab Emirates, the Kingdom of Saudi Arabia, the State of Kuwait and the Kingdom of Bahrain; and
- h) **orders** the Registrar to prepare a report to be filed with the Chamber in due course concerning said visit.

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 black ink, appearing to read 'C. Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser

A handwritten signature in black ink, appearing to read 'C. Van Den Wyngaert', written over a horizontal line.

Judge Christine Van Den Wyngaert

Dated this Tuesday, 24 February 2015

At The Hague, The Netherlands