

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 17 February 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

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 Federal Republic of Ethiopia

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 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 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 In that decision, the Chamber also ordered that the requests

¹ ICC-02/05-01/09-183 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 Presidency, ICC-02/05-01/09-143.

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

for arrest and surrender be transmitted to the competent authorities of the Federal Republic of Ethiopia.⁶

5. On 24 October 2013, the Chamber received the “Report of the Registry on the ‘Decision Regarding Omar Al-Bashir’s Potential Travel to the Federal Republic of Ethiopia and the Kingdom of Saudi Arabia’” together with two annexes appended thereto.⁷ According to this report, no reply was received by the Court in response to a Note Verbale transmitted by the Registrar concerning said visit to the Federal Republic of Ethiopia.⁸ Moreover, according to media reports this visit actually took place notwithstanding the Court’s Note Verbale.⁹

6. On 30 January 2014, the Chamber received a notification, in which the Prosecutor averred that, on the basis of media reports, Mr. Al-Bashir arrived in Addis Abeba on Tuesday, 28 January 2014 to attend the “AU 24th summit” scheduled to take place by the end of January 2014.¹⁰

7. On 30 January 2014, the Chamber issued the “Decision on the ‘Prosecution’s Urgent Notification of Travel in the Case of *The Prosecutor v Omar Al Bashir*’” (the “30 January 2014 Decision”).¹¹

8. On 10 February 2014, the Chamber was notified of the report of the Registry on the 30 January 2014 Decision¹² together with two annexes appended

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

⁷ ICC-02/05-01/09-167.

⁸ ICC-02/05-01/09-167, p. 4.

⁹ ICC-02/05-01/09-167, p. 4.

¹⁰ ICC-02/05-01/09-179-AnxA; ICC-02/05-01/09-179, para. 7.

¹¹ Pre-Trial Chamber II, ICC-02/05-01/09-180.

¹² ICC-02/05-01/09-182.

thereto.¹³ According to this report, no reply was received by the Court in response to a Note Verbale transmitted by the Registrar concerning said visit to the Federal Republic of Ethiopia.¹⁴ Moreover, according to media reports this visit actually took place notwithstanding the Court's Note Verbale.¹⁵

9. On 17 February 2014, the Chamber received the Notification, in which the Prosecutor avers that, on the basis of media reports, Mr. Al-Bashir travelled to the Federal Republic of Ethiopia to participate in the "Ethiopian government's celebrations of 'Liberation Day'".¹⁶ 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. The Prosecutor also requests the Chamber to (i) seek information from the relevant authorities of the Federal Republic of Ethiopia regarding said visit; and (ii) remind those authorities of the existence of the warrants of arrest, and of SC Resolution 1593 (2005).¹⁷

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

11. 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.¹⁸ Thus, non-States Parties may decide to

¹³ ICC-02/05-01/09-182-Anx1 ; ICC-02/05-01/09-182-Anx2.

¹⁴ ICC-02/05-01/09-182, p. 4.

¹⁵ ICC-02/05-01/09-182, p. 4 ; ICC-02/05-01/09-182-Anx2.

¹⁶ ICC-02/05-01/09-183, para. 7; ICC-02/05-01/09-183-AnxA.

¹⁷ ICC-02/05-01/09-183, pp. 5-6.

¹⁸ 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

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.

12. Accordingly, the Federal Republic of Ethiopia, 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 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 other international organizations to cooperate fully” with the Court (emphasis added).¹⁹

13. 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.

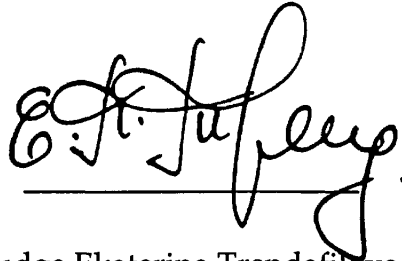
Mauritania and refer the matter to the Security Council”, 28 August 2013, ICC-01/11-01/11-420, para. 12.

¹⁹ S/RES/1593 (2005).

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **orders** the Registrar to remind the Federal Republic of Ethiopia of the request for the arrest and surrender of Omar Al-Bashir transmitted to the competent authorities of that country on 10 October 2013 and 30 January 2014;
- b) **orders** the Registrar to send a Note Verbale to the Federal Republic of Ethiopia, enquiring about Omar Hassan Ahmad Al-Bashir's visit, reminding it of SC Resolution 1593(2005) and inviting said State once more to cooperate with the Court in the arrest and surrender of Omar Hassan Ahmad Al-Bashir to the Court;
- c) **orders** the Registrar to notify the present decision, to the competent authorities of the Federal Republic of Ethiopia; and
- d) **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.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul

Judge Cuno Tarfusser

Dated this Monday, 17 February 2014

At The Hague, The Netherlands