

Forum: International Criminal Court

Topic: ICC v. Omar Hassan Ahmad

Al Bashir

Dalia Masri / Awn Kanaan / Sumayyah Olabi

Introduction

The International Criminal Court case against former Sudanese President Omar Hassan Ahmad Al Bashir marked the first time an arrest warrant has ever been issued for a head of state, on the grounds of accusations revolving around crimes against humanity, genocide, and war crimes committed during the Darfur conflict. During the Darfur conflict, the ICC alleges that government forces carried out extensive attacks against civilians, predominantly against three ethnic groups: the Masalit, Zaghawa, and Fur. In the investigation referred by the United Nations Security Council Resolution 1593, the International Criminal Court was granted jurisdiction over all crimes that occurred during the Darfur conflict, which led to, in 2009 and 2010, the issuance of arrest warrants for Al Bashir, which indicted him for the mass destruction caused against various groups, particularly the three ethnic groups in Darfur.

In Darfur in 2003, under the assumption that the Sudanese government caused severe political marginalization and economic negligence, rebel groups began mass protests against the Sudanese government. In retaliation against these rebel groups, the Sudanese government, operating under the alleged orders of President Al Bashir, initiated both recruitment and coordination with the Janjaweed militia to suppress said rebellion led by rebel groups in Darfur. With the support of Al Bashir and the Janjaweed, widespread attacks on many communities and villages in Darfur occurred. It was alleged that these attacks involved involuntary displacement, mass murder, torture, rape, and the destruction of civilian property, signalling the beginning of the Darfur conflict. Al Bashir remained president up until 2019, despite the warrants issued in 2009 and 2010.

The International Criminal Court's prosecution of Al Bashir draws global attention towards the significance of international criminal law in addressing accusations of crimes against humanity,

genocide, and war crimes in the modern world. Even though Al Bashir has yet to be transferred into ICC custody, the arrest warrants remain, and in turn the issue stays relevant as states question the balance between international accountability and state sovereignty.

Definition of Key Terms

International Criminal Court (ICC)

The International Criminal Court, adopted in July 1998 and later established under the Rome Statute in July 2002, is an independent judicial body that exercises jurisdiction over individuals charged with genocide, crimes against humanity, war crimes, and crimes of aggression. The ICC is intended to complement rather than replace national courts. It can only act when national courts have been found unable or unwilling to try a case. Additionally, it only exercises jurisdiction over crimes that occurred after the Statute took effect in 2002.

Rome statute

The Rome Statute of the International Criminal Court is the international treaty that founded the Court. Comprising a Preamble and 13 Parts, it establishes the governing framework for the Court.

Darfur

A historical region of the Billād al-Sūdān (“Land of the Blacks”) located in present-day western Sudan. Between 2003 and 2005, mass atrocities arose in Darfur.

Janjaweed

An Arab militia that operates mainly in Darfur, Sudan. During the Darfur conflict, the Janjaweed

were armed, supported, and recruited by the Sudanese government to fight rebel groups.

Militia

A military organization of citizens with limited military training, often used for emergency service, usually for local defence. An example of a militia is the Janjaweed in Sudan.

Fur

A non-Arab ethnic group residing predominantly in Darfur, Western Sudan. The Fur people are the largest ethnic group in their region.

Masalit

The Masalit are a non-Arab ethnic group. These tribes live in remote areas of western Sudan and Chad. The Masalit of Sudan are concentrated in the Dar Masalit district of the northern Darfur Province.

Zaghawa

The Zaghawa are a non-Arab ethnic group of eastern Chad and western Sudan, including Darfur.

General Overview

History of The Case

The case of the ICC V. Omar Hassan Ahmad Al Bashir is historic in the ICC regarding the atrocities of the Darfur conflict. The case is central to Omar Hassan Ahmad Al Bashir, specifically his alleged involvement and ordering of war crimes, genocide, and crimes against humanity during the Darfur conflict in the western Sudanese region. In 2003, the conflict sparked due to an armed rebel group accusing the Sudanese government of political and economic marginalization, which the Sudanese government countered by launching military operations

against the rebel groups, where many speculated that the government supported the Janjaweed militia, which caused widespread violence and crimes against humanity among civilians and villages.

This conflict goes beyond standard ICC cases, as its effects and aftermath were far more severe than regular cases, sparking one of the most severe humanitarian crises in the 21st century. The United Nations estimates that the crisis and conflict caused hundreds of thousands of deaths, in addition to over 2.5 million civilians being forcefully displaced both internally and externally from their homes and countries due to the widespread village destruction, mass murder, rape, and torture, obliging ethnic groups like the Fur, Masalit, and Zaghawa to seek safety and asylum.

Referral to the ICC

If a country is not a State Party to the Rome Statute, the International Criminal Court does not automatically have jurisdiction to prosecute crimes committed, which is where the ICC faces a complication in the case since Sudan was not a State Party to the ICC, delaying the ICC's process of prosecution. However, this changed on the 31st of March 2005 when the United Nations Security Council (UNSC) adopted Resolution 1593, which referred the conflict to the ICC, marking the first time in history that the UNSC referred a situation involving a non-State party to the court, representing the intensity and depth of the issue. After the UNSC's referral to the ICC, the Office of the Prosecutor for the ICC conducted thorough investigations on the case, including photographs and satellite images, eyewitness testimonies, official documents, and humanitarian reports describing the humanitarian crisis in depth. These investigations uncovered greater truth than what was known at the time, as the investigation provided enough evidence for grounds of prosecution against Omar Hassan Ahmad Al Bashir for genocide, war crimes, and

crimes against humanity.

Arrest Warrants and Charges

Although evidence was collected to paint Omar al Bashir as allegedly responsible on all charges, it began on the 4th of March 2009 with the ICC issuing its first arrest warrant against Al Bashir with five counts of crimes against humanity and two counts of war crimes, which on the 12th of July 2010 was followed by a second arrest warrant of three counts of genocide against the ethnic groups targeting particularly Fur, Masalit, and Zaghawa, marking the first sitting head of state to be indicted by the ICC. In this case, the Prosecution claims that Al Bashir used his position as President of Sudan and Commander-in-Chief of the Sudanese armed forces negatively, alleging that he abused his power to coordinate attacks against civilians and ethnic groups through official government forces in partnership with the Janjaweed militia. However, the defense challenges the ICC's jurisdiction over the case, arguing that Sudan was responding to an armed rebellion in the region rather than organizing a campaign of genocide.

Challenges to International Justice

During Al Bashir's time as acting president, the Sudanese government denied the ICC's jurisdiction, refusing to surrender him from his role, which then followed the political transition in 2018, where Sudan's transitional authorities indicated willingness to cooperate with the ICC; however, Al Bashir is yet to be transferred into ICC custody.

Major Parties Involved

Omar Hassan Ahmad Al Bashir

Omar Hassan Ahmad Al Bashir is the defendant of the case; he served as the President of Sudan from 1989 till 2019, when he was removed from office. The ICC claims that he exercised authority over the Sudanese government in addition to the Janjaweed militia during the time of the Darfur conflict and should be held legally responsible for the atrocities in the region, prosecuting him on the grounds of crimes against humanity, genocide, and war crimes.

International Criminal Court (ICC)

The International Criminal Court (ICC) is the body responsible for prosecuting individuals for crimes of genocide, crimes against humanity, or war crimes, most commonly heads of state or high-ranking leaders, to help prevent and stop corruption, ethnic cleansing, and widespread violence. In this case, the UNSC referred the Darfur conflict to the ICC in 2005, where the ICC opened an investigation against Al Bashir, eventually leading to arrest warrants against him.

United Nations Security Council (UNSC)

The United Nations Security Council is the United Nations committee that referred the Darfur conflict to the ICC through resolution 1593 (2005), granting it jurisdiction for prosecution and investigation even though Sudan isn't a party to the Rome Statute.

Government of Sudan

The government of Sudan is a major party involved, as during Al Bashir's presidency the Sudanese government denied the ICC's jurisdiction to prosecute, refusing to surrender him to authorities; however, post the political transition, the ICC noticed a switch in authorities' cooperation, and they were more willing to cooperate with his arrest.

Janjaweed Militia

The Janjaweed Militia is an armed militia group that is allegedly involved and directly responsible for carrying out widespread attacks against civilians in Darfur alongside the Sudanese government forces, where multiple investigations have uncovered their crimes of murder, rape, village destruction, forced displacement, and many more crimes against village minorities and ethnic groups.

Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM)

The Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) are the main rebel groups that sparked the beginning of the Darfur conflict in 2003. These rebel groups claim that the Sudanese government had marginalized the region and launched attacks against government forces with economic and political motives.

Timeline of events

Date	Event
February 2003	February of 2003 marked the beginning of the Darfur conflict after the Sudan Liberation Army attacked Sudanese

	government forces.
2003-2004	Sudanese government forces and the Janjaweed army allegedly started conducting widespread attacks against civilians throughout the Darfur region.
31st of March 2005	The UNSC adopts resolution 1593 referring the Darfur conflict to the ICC granting it jurisdiction for prosecution.
June 2005	The ICC formally opens an investigation uncovering crimes committed during the period of conflict.
14th of July 2008	The ICC prosecutor requested an arrest

	warrant against Omar Hassan Ahmad Al Bashir.
4th of March 2009	The ICC issued its first arrest warrant against Omar Hassan Ahmad al-Bashir, charging him with five counts of crimes against humanity and two counts of war crimes.
12th of July 2010	The second arrest warrant was issued for three counts of genocide.
April 2019-2021 (Till present)	Omar al-Bashir was removed from office in April 2019 following nationwide protests against his rule. After his removal, Sudan's transitional authorities showed a greater willingness to cooperate with the ICC, including discussing his possible transfer to face trial.

Attempts to solve the issue:

United Nations Security Council Resolution on the Situation in Darfur, Sudan, 31 March 2005, (S/RES/1593)

This resolution adopted by the Security Council encourages the Court to support international cooperation with the United Nations, other states, and Non-Governmental Organizations to strengthen efforts aimed at promoting the rule of law, protecting human rights, and ensuring accountability. The resolution also refers the situation in Darfur since July 1, 2002, to the Prosecutor of the International Criminal Court, and requires Omar Hassan Ahmad Al Bashir, the government of Sudan, and all parties involved in the Darfur conflict to cooperate with the court and the prosecutor, allowing ICC investigators to collect evidence, provide documents and information, identify suspects in Darfur and arrest any individual wanted by the ICC. These investigations eventually led to arrest warrants against al-Bashir and other Sudanese officials; however, this resolution was not very effective as Sudan refused to cooperate with the Court.

International Criminal Court Arrest Warrant Against Bashir.

On July 14th, 2008, the chief prosecutor of the ICC called for an arrest warrant to be issued against Omar Hassan Ahmad al-Bashir, charging him with crimes against humanity, war crimes, and genocide in Darfur, Sudan. But the Sudanese government, which was not a state party to the Rome Statute, denied these charges and declared Bashir's innocence. On March 4th, 2009, the ICC issued the first arrest warrant for Bashir. This arrest warrant was historically substantial as it marked the first ICC arrest warrant against a sitting head of state, charging him with war crimes and crimes against humanity, excluding genocide. But al-Bashir continued traveling around the world, avoiding arrest, revealing weakness in implementing ICC decisions. Later in July 2010, the ICC issued another arrest warrant against Bashir, charging him with genocide, highlighting the gravity of his alleged crimes. However, the ICC is not yet capable of

enforcing these arrests due to Sudan's refusal to surrender al-Bashir.

Possible Solutions

Solution #1:

Enhance international cooperation in enforcing ICC arrest warrants.

This proposal encourages all states that are members of the Rome Statute to fully abide by their obligation to arrest and surrender individuals wanted by the court. This is an important proposal because many countries in Africa allowed Bashir to continue his travels without arrest despite the ICC's warrant. Furthermore, the ICC does not have the authority or the capacity to directly arrest an individual. Instead, it relies on states, specifically States Parties to the Rome Statute, to carry out arrest warrants.

This proposal also encourages enhanced cooperation between the ICC, the United Nations, the Security Council, and the African Union. Strengthened communication and cooperation between these bodies would accelerate information sharing, support domestic efforts in securing state compliance, and support a more coordinated international response to the enforcement of ICC arrest warrants. Consequently, full compliance by States Parties with their obligations under the Rome Statute would considerably enhance the Court's effectiveness in enforcing arrest warrants and holding individuals accountable for international crimes.

Solution #2:

Promote ceasefire and strengthen humanitarian protection in Darfur

This proposal aims to use international efforts to establish and maintain a ceasefire in Darfur, meanwhile strengthening humanitarian assistance and civilian protection. This is useful because a ceasefire would help reduce violence, prevent further casualties, and create a more peaceful environment for humanitarian organizations to provide aid to victims. This aid includes food, clean water, medical care, and shelter to

impacted communities and displaced individuals.

In addition, improved communication between the United Nations, the African Union, humanitarian organizations, and the Sudanese Government would ensure safe access to conflict-affected areas and areas with ongoing conflict, facilitate the safeguarding of vulnerable individuals, and ensure that aid and assistance reach those in need.

By addressing both the immediate humanitarian crisis and the ongoing violence, this proposal would enhance regional stability and public security, while complementing international efforts to promote justice and accountability in Darfur.

Guiding questions

1. How does international law apply to this case?
2. What are the international crimes under the Rome Statute?
3. What is the difference between each of the crimes under the Rome Statute?
4. What crimes under the Rome Statute did al-Bashir allegedly commit?
5. What are examples of these crimes that al-Bashir is accused of committing?
6. What events led to the ICC's investigation of Omar Hassan Ahmad al-Bashir?
7. Were there any previous trials or arrest warrants issued against al Bashir?
8. When was Omar al-Bashir elected president of Sudan?
9. What was the cause and origin of the Darfur conflict?
10. Did the militias allegedly orchestrated by al-Bashir initiate the violence?
11. What other state parties were involved in the Darfur conflict?
12. Who were the main armed groups in the Darfur conflict?
13. How many casualties and displaced individuals resulted from attacks by the Sudanese militia in Janjaweed?

14. How did al-Bashir remain president for years after the ICC's arrest warrant was issued?
15. What are al-Bashir's main legal defences?
16. What is the prosecutor's main argument against al-Bashir?
17. Why did the ICC initially lack jurisdiction over Sudan?
18. What organizations did the ICC cooperate with throughout this case?

Appendix

- International Criminal Court – Case: Omar Hassan Ahmad Al Bashir: https://www.icc-cpi.int/darfur/albashir
- Rome Statute of the International Criminal Court: https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf
- United Nations Security Council Resolution 1593 (2005): https://documents.un.org
- Human Rights Watch –hrw.org/the-day-in-human-rights/2023/08/21
- Amnesty International – Sudan: https://www.amnesty.org/en/documents/afr54/1116/2026/en/
- United Nations High Commissioner for Refugees (UNHCR): https://www.unhcr.org
- https://joshuaproject.net/people_groups/13578/SU

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Contact Information

President: Dalia Masri

Email: dalia_masri@abs.edu.jo

Phone: +962 777222100

Deputy President: Awn Kanaan

Email: awn_kanaan@abs.edu.jo

Phone: +962 799323323

Chair: Sumayyah Olabi

Email: sumayyah_olabi@abs,edu.jo

Phone: +962 790283846