

THE GAP BETWEEN NARRATIVES AND PRACTICES

---

DARFUR: THE RESPONSES FROM THE ARAB WORLD

## 2. ARAB OFFICIAL POSITIONS TOWARDS PRESIDENT AL BASHIR'S INDICTMENT

Dr. Noha Bakr  
Essam Abdel Shafi

March 2010

**FRIDE**  
A EUROPEAN  
THINK TANK FOR GLOBAL ACTION



## A COLLECTION OF PAPERS TO PROMPT AN INTER-ARAB DIALOGUE ON POLICIES TOWARDS THE CONFLICT IN DARFUR

This paper is part of a collection of seven research papers published within the framework of the project '*The Gap between Narratives and Practices. Darfur: Responses from the Arab world*' undertaken by FRIDE from October 2008 to March 2010.

The project aims to develop an understanding of Arab states and society, as well as their attitudes and policies towards massive violations of human rights in their region. The research conducted for this purpose is manifold and aims at facilitating an inter-Arab dialogue; as well as the generation of ideas about how other actors may play a positive role to engage the Arab world in redressing the massive violations of human rights in the particular case of Darfur and beyond.

The project undertaken by FRIDE and funded by the Ford Foundation has gathered together a number of researchers and activists to develop background research, meet in an international conference in Tunis in October 2009 to discuss their findings and draw conclusions and recommendations in different thematic areas, including Arab perceptions of the crisis, Arab policies as individual states and within the framework of regional and international organisations, and other external responses related to or that influence what Arab actors could do regarding the Darfur conflict.

Cover photo: © Flickr\_Internews Network

© FRIDE

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of the publishers.

## THE PUBLICATIONS, FOLLOWED BY THE AUTHORS' BIOGRAPHIES, ARE:

1. **DARFUR AND ARAB PUBLIC OPINION: STRATEGIES FOR ENGAGEMENT**  
Jacob Høigilt
2. **ARAB OFFICIAL POSITIONS TOWARDS PRESIDENT AL-BASHIR'S INDICTMENT**  
Noha Bakr and Essam Abdel Shafi
3. **BRIDGING THE GAP BETWEEN NARRATIVE AND PRACTICES:  
THE ROLE OF THE ARAB LEAGUE IN DARFUR**  
Annette Weber
4. **THE AFRICAN UNION IN DARFUR: UNDERSTANDING THE AFRO-ARAB RESPONSE TO THE CRISIS**  
Sarjoh Bah
5. **THE UN RESPONSE TO THE DARFUR CRISIS**  
Joanna Weschler
6. **THE EU'S ROLE TOWARDS THE DARFUR CRISIS FROM 2003 UNTIL TODAY**  
Giji Gya
7. **REALIGNING US FOREIGN POLICY WITH REALITY IN DARFUR:  
FORMULATING A WHOLE-OF-SUDAN POLICY**  
Allison Rohe

**Essam Mohamed Abdel Shafi Abdel Wahab** holds a PhD in Political Science from the Faculty of Economics and Political Science, Cairo University. He is currently a researcher at the Center of Cultural Studies and Intercultural Dialogue, Faculty of Economics and Political Science, Cairo University.

**A. Sarjoh Bah** is a Senior Fellow and Program Coordinator of African Security Institutions, at New York University's Center on International Cooperation. Dr. Bah was the Program Coordinator of CIC's Peace Operations Program, and was the Lead Scholar and Volume Editor of CIC's flagship publication, the *Annual Review of Global Peace Operations: 2008 and 2009*. He holds a Ph.D. in International Relations and Comparative Development from Queen's University, Canada. Prior to his current engagement, he worked as a Senior Researcher at the Institute for Security Studies and an international consultant to several organizations including the European Commission, the Intergovernmental Authority on Development and the Center for Humanitarian Dialogue among others. He has conducted extensive research and is widely published, and specializes in regional security cooperation in Africa and international multilateral diplomacy.

**Noha Bakr** has a PhD in the interdisciplinary field of International Relations and International Organisations and is currently an assistant professor at the American University in Cairo. She has authored and co-authored several publications in the field of international, regional and national security. Dr Bakr has also published numerous political analytical articles in Egyptian newspapers, and has been invited as a guest on national and international TV channels, analysing political topics. She previously worked as a political and communication consultant for foreign donors to Egypt.

**Giji Gya** has 12 years experience in analysis of peacekeeping and crisis management missions, international security, crisis response, SSR and disarmament and of UN, EU and NGO work in international fora. Ms. Gya also lectures on human security and gender and is the developer of the CSDP Mission Analysis Partnership. She is currently the Executive Director of the International Security Information Service (ISIS Europe) based in Brussels.

**Jacob Høigilt** is Middle East researcher at Fafo Institute for Applied International Studies in Oslo, Norway. His research has revolved around issues of language, religion and politics in the Arab world. The regions on which he writes include Egypt and the Levant. Høigilt has written a number of articles about Islam, language and politics in international academic journals, and he contributes articles and op-ed pieces in Norwegian journals and papers. He wrote his PhD thesis about Islamic rhetoric in contemporary Egypt, and a book on the same subject is forthcoming on Routledge in 2010/2011.

**Allison Rohe** is an independent consultant working between New York and Madrid in the field of international relations and social intervention. She has worked at several European and American think-tanks and non-governmental organizations in the field of humanitarian action and armed conflicts, specializing in US foreign policy and whole-of-government policy approaches towards States in crisis. Additionally, Ms. Rohe has also lectured at the University of Madrid in graduate programs on International Development on the subject of humanitarian crises and information management. Ms. Rohe began her career in the area of humanitarian action, working with MSF in Kosovo on a fact-finding field mission focusing on minorities; subsequently, her work centered on policy research, focusing on mitigating the underlying causes of violent conflict through policy and the alignment of post-conflict responses. Her studies have included Political Science at Smith College, Journalism at the Universidad Complutense de Madrid and a Master in Corporate Social Responsibility at the Universidad de Alcalá (Madrid).

**Annette Weber** is a senior associate with the German Institute for International and Security Studies (SWP) in Berlin. Her regional expertise is on the Horn of Africa; she works mainly on conflict analysis, fragile states, non-state actors and state building. Her current focus is mainly on the situation in Sudan; the Darfur conflict as well as the fragile peace between the north and southern Sudan. Her other current focus is Somalia and the problem of maritime security. She writes extensively and advises the Bundestag and the German administration on these issues. Previously she worked as a coordinator for the Ecumenical Network on Central Africa, mainly on the Democratic Republic of Congo, Rwanda and Burundi. Annette Weber was also a researcher with Amnesty International in London for Sudan and worked as a consultant for Human Rights Watch and Amnesty International on Sudan and Uganda. She wrote her PhD dissertation on questions of gender and citizenship in southern Sudan and Eritrea.

**Joanna Weschler** has been since 2005 director of research at Security Council Report with responsibilities that include: overseeing research as well as providing editorial and production supervision for the organization's work. Was UN representative for Human Rights Watch (1994-2005). Previously, she was the Poland researcher for Helsinki Watch; Brazil researcher for Americas Watch; as well as director of HRW's Prison Project. She has conducted human rights investigations in countries on five continents and written numerous reports and articles on human rights. She has a master's degree in Spanish and Latin American Studies from the University of Warsaw and a master's in journalism from Columbia University. She is a native of Poland, where she was a reporter for the Solidarity Union press agency, in charge of covering most meetings between Union President Lech Walesa and the communist government, and meetings of the executive leadership of the union.

## 2.

# ARAB OFFICIAL POSITIONS TOWARDS PRESIDENT AL BASHIR'S INDICTMENT

Dr. Noha Bakr  
Essam Abdel Shafi

## CONTENTS

Summary

Introduction

Determinants of Arab official positions towards the indictment of President al-Bashir

The nature of relations with the US

Regional ambitions

Arab Positions towards the International Criminal Court

\* Official Positions towards President Al Bashir Prosecution

The first group: states most involved in the crisis:

Egypt

Lybia

Qatar

The Republic of Yemen

Syria

The second group: statements denouncing the indictment frequently released in Arab circles.

Saudi Arabia

Kuwait

United Arab Emirates

Lebanon

Argelia

\* Informal responses

Individual responses

Responses of civil

Conclusion and Evaluation

## SUMMARY

This research is based on the analysis of Arab positions towards the issuance of an arrest warrant against the Sudanese President Omer Al Bashir, who has been accused of committing war crimes and crimes against humanity in the Darfur region. The paper focuses on the determinants and nature of these positions (whether unilateral by individual states, bilateral or multilateral) and evaluates them. In this context, the paper addresses the following aspects:

1. The determinants of official positions towards the indictment of Al Bashir.
2. Official responses to the indictment of Al Bashir.
3. Unofficial positions towards the indictment of Al Bashir.
4. Conclusion and evaluation

## INTRODUCTION

Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), submitted an application to the ICC requesting the issuance of an arrest warrant against Al Bashir for committing war crimes and genocide in Darfur against its population of Fur, Massalit, and Zaghawa ethnic groups, using the state apparatus under the pretext of conducting a counter-insurgency campaign in the region.

The prosecutor achieved his first goal, which was to weaken the position of the most senior official in Sudan; the president, who also heads a number of military, security and judicial institutions as well as the ruling party (NCP) of the country, was formally accused and was forced to prove his innocence of the charges, something impossible in the light of the complications surrounding the Darfur crisis with its regional and international implications<sup>1</sup>.

According to some observers, the ICC arrest warrant against President Al Bashir would have not been issued if there had not been evidence demonstrating that the court was dealing with major crimes. The UN Security Council adopted Resolution 1564 in 2004 and requested the Secretary-General establish an international commission to investigate the reports of violations of international human rights law and identify the perpetrators of these crimes. In October 2004, the UN Secretary-General set up a committee, chaired by Antonio Cassese, including a number of international figures (such as Mr. Mohammed Fayed, former Egyptian Minister of Information and Foreign Affairs).<sup>2</sup>

The ICC justified its arrest warrant against President Al Bashir on the grounds that he was responsible of the accusations listed in the memo submitted by the prosecutor in July 2008, which is to say, of committing war crimes and crimes against humanity, indicating that the prosecution's case is based on articles 2 and 7 of the ICC Statute<sup>3</sup>.

Part of the reasoning of the court's decision, as per its statement, runs as follows:

- The court holds that there are sufficient grounds to suspect that Al Bashir, in his capacity as President of the Sudan and Commander of the Armed Forces, is criminally responsible of having coordinated and implemented armed campaigns. The court bases this belief on the fact that he is in control of all parts of Sudan, and used such control to execute the counter-insurgency campaign.
- The crimes that form the basis of the charges were committed during a five year counter-insurgency campaign by the government of Sudan against the Sudanese Liberation Movement/Army (SLM/A), the Justice and Equality Movement (JEM) and other armed groups opposing the government in Darfur.
- Al Bashir's official capacity as an incumbent Head of State does not exclude him of criminal responsibility, nor does it grant him immunity against prosecution before the ICC.
- Al Bashir is suspected of being criminally responsible for indirectly contributing as well as intentionally committing crimes, directing attacks in vital areas against the civilian population of Darfur, as well as murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging in those areas.
- The civilian population in these areas has been subjected to attacks by the Sudanese Armed Forces, and their allied groups such as Janjaweed Militia, the Sudanese Police Force, the National Intelligence and Security Service.

<sup>1</sup> Nabil Sharaf El Din, Cairo leads diplomatic effort to suspend arrest warrant for one year. Elaph website, accessed on the 5<sup>th</sup> of March, 2009.

<sup>2</sup> Hafiz AbuSe'da, Making the Sudanese President Accountable Reinforces Peace and Stability, Al Youm Assabi'e Newspaper, Cairo, the 12<sup>th</sup> of March, 2009.

<sup>3</sup> The warrant of arrest lists five counts of crimes against humanity: murder, article 7(1)(a); extermination, article 7(1)(b); forcible transfer, article 7(1)(d); torture, article 7(1)(f); and rape, article 7(1)(g); and two counts of war crimes: intentionally directing attacks against a civilian population or against individual civilians not taking direct part in hostilities under article 8(2)(e)(i); and pillaging, article 8(2)(e)(v).

- Al Bashir is suspected of having coordinated the counter-insurgency campaigns, and there are reasonable grounds to believe that he was in control of all branches of the security apparatus of Sudan, and used such control to implement the counter-insurgency campaign.
- The majority of the pre-trial chamber's members found that the material provided by the prosecution in support of its application for a warrant of arrest failed to provide reasonable grounds to believe that the government of the Sudan acted with specific intent to destroy the Massalit and Zaghawa groups.
- The crime of genocide is not included in the warrant issued for the arrest of Al Bashir. However, the judges asserted that if additional evidence is gathered by the prosecution, the decision would not prevent the prosecution from requesting an amendment to the warrant of arrest in order to include the crime of genocide.
- The court noted that the judges instructed the court registrar to prepare an arrest warrant as soon as practicable, and try to secure the arrest of Omar Al Bashir, or that he hand himself in, requesting all states party to the Rome Statute and all United Nations Security Council (UNSC) members not signatories to the Statute, as well as to any other State, to fully cooperate with the court in this regard.
- The Judges found that, according to UNSC resolution 1593 and articles 25 of the UN Charter, the obligation of the government of Sudan to fully cooperate with the Court prevails over any other international obligation that the Government of Sudan may have undertaken pursuant to any other international agreement.
- Pre-Trial Chamber I found that the Government of Sudan had systematically refused to cooperate with the Court since the issuance of warrants for the arrest of the Sudanese Minister for Humanitarian Affairs, Ahmad Harun, and Janjaweed militia leader, Ali Kushayb, in May 2007.
- The Judges emphasised that, according to article 87(8) of the Rome Statute, 'if the Government of Sudan continues to fail to comply with its cooperation obligations to the Court, the competent Chamber may make a finding to that effect, and decide to refer the matter to the Security Council.'
- The Judges affirmed that the UNSC resolution 1593 urges all states, whether party to the Rome Statute or not, as well as other international and regional organisations, to cooperate fully with the Court.<sup>4</sup>

Arab attitudes towards the crisis sparked by the arrest warrant varied in terms of the sources in question (formal and informal responses). A range of attitudes can be seen from each source according to the nature of a number of factors, which we can break down as follows:

<sup>4</sup> Hafiz AbuSe'da, *Making the Sudanese President Accountable Reinforces Peace and Stability*, Al Youm Assabi'e Newspaper, Cairo, the 12<sup>th</sup> of March, 2009.

## DETERMINANTS OF ARAB OFFICIAL POSITIONS TOWARDS THE INDICTMENT OF PRESIDENT AL BASHIR.

The determinants affecting official Arab positions towards President Al Bashir's indictment are varied. In any event, the following can be highlighted:

### STRATEGIC INTERESTS:

The impact of this factor was notably reflected in the attitudes of Arab countries that are neighbouring states of Sudan, such as Egypt and Libya. With regard to Egypt, the Sudanese crisis imposes many challenges on the country, as we can see below:

#### Political borders:

There is a theory doing the rounds which holds that certain foreign influences are interested in controlling Darfur by stirring up trouble, spreading allegations of ethnic cleansing, and provoking an intervention by international forces, thus gradually alienating it from its surrounding Arab countries. According to this theory, a plot has been hatched to establish an independent state in the west of Sudan, controlled by the Zaghawa group which leads the insurgency in the region, together with the establishment of a military base which will secure oil pipelines which have already been laid in West Africa and from there across the Atlantic Ocean to the United States, without going through straits or sea lanes which might endanger them. This future Western control together with the "Zaghawa state" will have an impact on the surrounding Arab countries, especially Egypt and Libya. Another element that further intensifies the risk for Egypt is that the North of Sudan, which has a border with Egypt, was a space for the separatist Nubian movement hostile to Egypt and Sudan. This movement seeks to restore the ancient Nubian state in Egypt and Sudan, demanding independence of the Nubians from both countries in order to establish the Nubian state. This movement opposes building dams on the Nile in the North of Sudan; it also claims that Nubians in Egypt and Sudan are subject to "ethnic and cultural cleansing".

#### Water:

Egypt needs a united Sudan that can be relied upon and good relations with the Nile Basin Countries, and the conflict in Sudan endangers these needs. The scenarios of fragmentation and separation would give each separated region the opportunity to attain different relations with Egypt based on mutual interests, but also on competition by other African countries that object to the current water share allocated to Egypt. On top of this, signing the Nile Water Agreement, or preparing a legal and institutional framework similar to the agreement with the Nile basin countries is still prevented given these country refusal to accept the 1992 and 1959 treaties, which insure granting Egypt its full share of water. Deterioration of the situation in Sudan weakens the Egyptian position, because the majority of the Nile basin countries oppose the current allocation of water to Egypt, and it is impossible for this share to be increased.

#### Red Sea Security:

Also potentially hazardous for Egypt and a threat to its national security in the worst case scenario presented by the 'chaos and fragmentation' view of Sudan, is the likelihood of it losing control over security of the Red Sea. The presence of Sudanese forces in the East of Sudan who want to take over port Sudan, Sudan's marine port on the Red Sea, for a separate state and act according to an agenda hostile to Egypt is also worrying.<sup>5</sup>

<sup>5</sup> Mohamed Jamal Arafa, Water, borders and Red Sea security: Sudan and the ICC, three challenges for Egyptian security. Islamonline.net accessed the 9<sup>th</sup> of March, 2009.

With regard to Libyan Arab Republic, there are a number of motivations and interests that shape its attitudes towards the crisis. The continuation and escalation of the conflict in Darfur endangers the Libya's national security. Furthermore, Libya is home to large numbers of Zaghawa sympathisers, so that any foreign military intervention would put pressure on Libya. Also, international intervention will restrain the regional role Libya can play in the region. Thus, the Libyan interest requires a peaceful resolution, confining the conflict to an African context, ensuring that no international intervention takes place in the region. Besides, Libya wants to improve its relationship with the US, by allowing relief convoys to pass through its territory, consolidating the Libyan-French relations, and at the same time maintain strong relations with the Salvation government in Sudan.

## THE NATURE OF RELATIONS WITH THE US

The nature of relations with the US has a notable influence over the positions of some Arab countries such as Syria, Yemen, and Algeria, in that the confrontational nature of their relations with the US has affected their attitudes towards the crisis. This group of countries has tended to view the ICC decision as part of the US policy to destabilise Arab countries and control Arab resources. The same stance has been adopted by those who call themselves the revolutionary and resistance Arab forces.

## REGIONAL AMBITIONS

This factor is mainly notable in Qatar's positions towards the crisis, where the ICC decision against Al Bashir coincided with the Arab Summit held in Doha, Qatar taking the summit rotating presidency, and its invitation to President Al Bashir to attend the summit despite international objections. Prior to that, Qatar had hosted the works of the Arab and African Ministerial Committee on Darfur, in January 14, 2009 and announced an initiative for reconciliation between the Sudanese groups, under which Qatar held the Darfur peace talks, between the two delegations of Justice and Equality Movement (JEM) and the Sudanese government, The peace talks were concluded with the signing of the Doha Agreement between the Darfur factions and the Khartoum government in February 17, 2009

## ARAB POSITIONS TOWARDS THE INTERNATIONAL CRIMINAL COURT

The Arab countries' position towards signature and ratification of Rome Statute has influenced its attitudes towards the ICC's decision. 107 states ratified the Rome Statute; 3 of them are Arab states including ratification by Comoros on the 18<sup>th</sup> of August, 2006. There are 139 state parties which haven't ratified the Rome Statute, 13 of them are Arab countries, while 9 Arab countries haven't signed the convention yet (i.e. Iraq, Lebanon, Libya, Saudi Arabia, Yemen, Tunisia, Palestine, Somalia, and Mauritania).<sup>6</sup>

**Table: Arab Countries and the Rome Statute of the ICC<sup>7</sup>**

RATIFICATION	SIGNATURE	STATE	No
05.11.2002	07.10.1998	Djibouti	1
11.04.2002	07.10.1998	Jordan	2
	08.09.2000	Sudan	3
	08.09.2000	Kuwait	4
	08.09.2000	Morocco	5
18.06.2006	22.09.2000	Comoros	6
	27.11.2000	United Arab Emirates	7
	29.11.2000	Syria	8
	11.12.2000	Bahrain	9
	20.12.2000	Oman Sultanate	10
	26.12.2000	Egypt	11
	28.12.2000	Yemen	12
	28.12.2000	Algeria	13

Note: Countries ordered according to the date of signature of Rome Statute.

### OFFICIAL POSITION TOWARDS PRESIDENT AL BASHIR PROSECUTION

The positions of Egypt, Libya, Qatar, Yemen and Syria are the most noteworthy, as they are all countries very much involved in the crisis. In addition, there is the usual denunciation and condemnation by some other countries like Saudi Arabia, UAE, Kuwait, Tunisia, Algeria and Lebanon. The positions can be further divided into the following two groups:

#### THE FIRST GROUP: STATES MOST INVOLVED IN THE CRISIS:

##### Egypt

Egypt feels that any threat to the security of Sudan poses a direct threat to Egyptian security due to the reasons outline already. Since the warrant was issued, Egypt has warned of the serious nature of the situation. It warned that justice in Sudan can be better served by a political settlement that achieves stability, an end to hostilities and war, along with a reaffirmation of the unity of Sudan. For Egypt, Sudan is in serious danger and the ICC decision adds further complication to the situation. The Egyptian government added that the decision of the Court will lead to a long, drawn-out legal process which could destabilise the region over a long period of time. Egypt has attempted to convince Sudan to cooperate with ICC. In the meantime an investigation into the war crimes in Darfur by the Sudanese judiciary may be considered, which would break the uneasy deadlock between Sudan and ICC.<sup>8</sup>

<sup>6</sup> Hisham Al-Bastawisi, Prosecution of President Al Bashir, Damascus Center for Theoretical and Civil Rights Studies, 11.09.2008

<sup>7</sup> Source: ICC Information Center- Arabic version is available at the following link:<http://www.islamonline.net/arabic/famous/2003/09/article03a.SHTML>

<sup>8</sup> Ma'at Legal ad Constitutional Studies Center: Analysis of press content of arrest file: Legal tracking of the Sudanese President caused by Darfur crisis in July, August and September 2008

Certain nuances in the Egyptian point of view have surfaced, forming into two internal positions within the ruling regime in relation to the way the crisis has been handled:

The first position, held by the national security agencies, argues in support of Sudan and consolidating unity. It is this tendency in Egyptian circles which orchestrated the visit of President Mubarak to Southern Sudan in November 2008 to ease mounting tension between North and South at the time. This tendency also encouraged the participation of Egypt in the joint African-International force in Darfur. This view regards the support of Sudan as an Egyptian national security concern and a vital priority. Sudan is viewed by this group as Egypt's backdoor, and it must be firmly secured.

The second group is led by some of the leading figures in the ruling National Party and the Ministry of Foreign Affairs. They judge the crisis by its impact on Egyptian relations with the West and Washington in particular. This group has argued that Egypt should consider 'giving up' on the conflict in Darfur and deal with it as a neutral mediator. Egypt was reluctant to extend its support to the Sudanese regime due to the lobbying of this group, and allowed other countries to take the initiative, moving too late to curb the aftermath of the crisis.<sup>9</sup>

Due to the challenges thrown up by the Sudanese crisis for Egyptian policies, and the diversity of internal trends in dealing with the crisis, official levels of response towards the crisis were similarly numerous as shown below:

#### Official Declarations:

Official Egyptian declarations were issued by a number of officials including President Husni Mubarak, the chairman of the People's Council, Ahmed Fathi Srour, and the minister of foreign affairs, Ahmed Abu El-Ghait. They focused on a number of issues, such as:

The official declarations sought to affirm the role of Egypt in achieving national reconciliation in Sudan, in addition to the deferral of the warrant issued by ICC against the Sudanese President Omer Al Bashir in relation to war crimes in Darfur.

They also included requesting the Arab League to lobby in the UN and the AU to persuade the Security Council to instruct the ICC to defer taking action for at least one year. Egypt also requested the Security Council hold an emergency meeting aimed at activating Article 16 of the ICC Statute to defer the arrest warrant<sup>10</sup>.

Attempts were made to convince USA to block the arrest warrant of Al Bashir, but Washington refused to comply with this Egyptian request.

An appeal was made for the Sudanese people to be given a chance, and for politicians to thrash out a common position ensuring the welfare of all the people of the country.<sup>11</sup>

A call was made for an international conference under the auspices of UN Secretary General to be held in order to reach an extensive and comprehensive agreement on how to deal with the various challenges that Sudan faces. Top of the agenda was the Darfur crisis and the future of the Comprehensive Peace Agreement, which aims to ensure the stability of Sudan, the security of its people, and to help the country benefit from peace<sup>12</sup>.

A call was made for all Sudanese political tendencies to show solidarity and unity and maximise their efforts together in securing peace in Darfur.<sup>13</sup>

<sup>9</sup> Mohamed Jamal Arafa: Waters, Borders and the Red Sea Security: Sudan and ICC...Three Challenges to the Egyptian Security, Islamonline Website, accessed on the 9<sup>th</sup> of March, 2009. [http://www.islamonline.net/servlet/Satellite?c=ArticleA\\_C&cid=1236508831308&pagename=Zone-Arab-News/NWALayout](http://www.islamonline.net/servlet/Satellite?c=ArticleA_C&cid=1236508831308&pagename=Zone-Arab-News/NWALayout)

<sup>10</sup> For further information related to these declarations, see CNN network, on Wednesday the 4<sup>th</sup> of March, 2009 and newspaper Al-Ahramr, Cairo, 26 February 2009 ed.

<sup>11</sup> [http://www.islamonline.net/servlet/Satellite?c=ArticleA\\_C&cid=1235628765708&pagename=Zone-Arab-News%2FNWALayout](http://www.islamonline.net/servlet/Satellite?c=ArticleA_C&cid=1235628765708&pagename=Zone-Arab-News%2FNWALayout)

<sup>12</sup> <http://www.alssiyasi.com/?browser=view&EgyxpID=20121>

<sup>13</sup> Nabil Sharaf Eldin: A few Egyptian and Arab Alternatives Available to Save Al-Bashir from international Tracking, Ilaf, 5.3.2009

### Exchange visits

On the 14<sup>th</sup> of February 2009, President Mubarak sent the foreign affairs minister, Ahmed Abu El-Ghait, and chief of intelligence, Omer Suleiman, on a visit to the Sudanese capital to discuss Darfur and the ICC decision against Al Bashir, as well as to reiterate Egyptian support of the steps taken by Sudan towards peace and stability throughout the country.<sup>14</sup>

On 25 March 2009 President Mubarak discussed with President Al Bashir in Cairo some of the possibilities for settling the crisis in Darfur, the humanitarian needs of the region, the possibility of initiating court proceedings within Sudan against suspects of violations in order to overrule possible foreign intervention against the region.<sup>15</sup>

On the 12<sup>th</sup> of July, 2007, President Al Bashir visited Egypt and met with President Mubarak to discuss the development of the situation in Sudan and matters of mutual interest, prior to participating in the summit of non-alliance in Sharm Elsheikh (on the 15<sup>th</sup> and 16<sup>th</sup> of July 2009). The meeting took place after negotiations by Omer Suleiman and Ahmed Abu El-Ghait with the leaders of a number of armed groups in Darfur as part of the Egyptian efforts to unite the groups with a view to securing an acceptable framework suitable to ultimately establishing a permanent and comprehensive peace accord within the region.<sup>16</sup>

### Special Envoys:

On the 15<sup>th</sup> of February 2009, envoys of President Mubarak, the minister of foreign affairs, Ahmed Abu El-Ghait, and the head of intelligence, Omer Suleiman, arrived in Libya where they met with Colonel Muamar Al-Gadafi as part of efforts to counter the international arrest warrant against President Omer Al Bashir.<sup>17</sup> On the 15<sup>th</sup> of March 2009, Minister Omer Suleiman visited the American capital as part of a campaign canvassing for international support for a deferral of the arrest warrant for a year, along with an international conference to discuss the Darfur crisis.<sup>18</sup>

### Libya

Libyan activity took place at various different levels in response to the crisis. These activities ranged between official declarations, receiving Al Bashir, and manipulating the chairmanship of the African Union to extend political support for President Al Bashir against the ICC.

At the level of declarations, Libya confirmed its rejection of the ICC decision which it described as illegal and invalid. It argued that the decision seeks to upset peace and stability in Sudan and Africa. It pointed out that events in Darfur are nothing compared to Palestine, Iraq and Afghanistan. Libya described the decision of the Court as selective and declared that it would not abide by them. Libya also reiterated its support for the Sudanese people and condemned and rejected the international arrest warrant. Libya also stated that the decision is a serious precedent which proves the partiality, lack of independence, and unjust nature of the Court.<sup>19</sup>

Libya asked the Security Council to look seriously into the reservations expressed by many regional organisations, including the AU, the UN's main partner in Darfur. Libya also argued that the grave consequences of the ICC's actions on the ongoing peace efforts ought to be taken in consideration. The Security Council was urged by Libya further to use every available means to give the peace processes underway every opportunity in the quest to find a permanent and comprehensive settlement for the conflict in Darfur.

<sup>14</sup> <http://arabic.cnn.com/2009/basher/2/15/sudan.criticize/index.html>

<sup>15</sup> Mohamed Jamal Arafa: Mubara calls on Al-Bashir to avoid international intervention in Darfur, on the 25<sup>th</sup> of March, 2009

<sup>16</sup> Nabil Sharaf El-Din: Mubarak-Al-Bashir summit discusses tools to achieve peace in Darfur, accessed on the Ifaf website on the 12<sup>th</sup> of July, 2009

<sup>17</sup> <http://arabic.cnn.com/2009/basher/2/15/sudan.criticize/index.html>

<sup>18</sup> <http://www.alssiyasi.com/default.asp?browser=view&EgyxpID=21265>

<sup>19</sup> CNN Network, Wednesday 4.3.2009

Libya's efforts in mediation between different Sudanese groups succeeded in obtaining the signatures of five armed groups in Darfur, the Tripoli Charter, which committed them in principle to participating in comprehensive negotiations, as well as uniting their negotiating positions. Libya continued its efforts with the governments of Sudan and Chad to resume dialogue aimed at implementing their mutual treaties and ultimately reaching full naturalisation of relations. Colonel Gaddafi received visitors including a number of ex-African presidents and encouraged them to make efforts in search of peace in Darfur<sup>20</sup>. Gaddafi also received President Al Bashir on the 26<sup>th</sup> of March, 2009.

Libya was behind the resolution of the African Union on the 4<sup>th</sup> of July, 2009 to withdraw all cooperation with the ICC after its decision concerning President Al Bashir. The resolution criticised the Security Council for refusing to reply to the Union's request of deferring against Al Bashir<sup>21</sup>.

### **Qatar**

Qatar announced that the arrest warrant will not serve security and stability in Darfur, while warning that it will obstruct Qatar's peace efforts in Darfur. It asked the Security Council to use its jurisdiction as per Article 16 of ICC Statute to defer deciding on the application for one year, which would give some leeway to reach the desired peace in Darfur<sup>22</sup>.

On the 24<sup>th</sup> of March, 2009, the Qatari minister of foreign affairs, Hamad bin Jasim, visited Sudan to invite President Al Bashir to attend the Arab summit in Doha. Bin Jasim revealed that his country was under much pressure not to receive Al Bashir. Yet he confirmed that Doha would not yield to these pressures. He added that the Sudanese president was fully free to take his own decision whether to attend or not. He declared that Darfur negotiations in Doha would continue and that other opposition parties would join in.<sup>23</sup>

### **The Republic of Yemen**

Yemen condemned the Court's decision, and described it as 'a serious precedent of blatant interference in the internal affairs of states. The indictment will not, by any means, support peace making efforts in Darfur, but instead threatens security and stability in the region.' Yemen declared that the warrant of arrest 'will undermine stability of Sudan, and damage the efforts being exerted to bring peace in Darfur.' The Yemeni Foreign Minister, Abu Bakr Al Qirb, reaffirmed Yemen's denouncement of the ICC application against President Al Bashir (on the 19<sup>th</sup> of July, 2009). He said 'Yemen regards the ICC action as a blatant interference in the internal affairs of a brother country, Sudan, a violation of its sovereignty, and a disregard of international law.' He confirmed that the claim will further complicate the situation in Darfur, as well as compromise reconciliation and peace efforts, threatening the security and stability of Sudan as well as the wider region.<sup>24</sup>

The Republic of Yemen declared its full solidarity with Sudan, and called for Arab and African efforts to reach a resolution for Darfur to be given a chance, highlighting that the Sudanese judiciary is the body with jurisdiction to hear all cases pertinent to this issue, as a pure internal affair.<sup>25</sup>

### **Syria**

Syria has announced its concerns over the arrest warrant against President Al Bashir. It stated that the ICC decision constitutes a serious precedent which ignores the impunity of sitting head of states granted in the Vienna Convention of 1961. The Court's decision could have major consequences that seriously affect the stability of Sudan, and the chances of the political settlement for the Darfur crisis, which gained the support of the League of the Arab States (LAS) and the African Union, and led to the signature of the Good Will Agreement in Doha. Syria

<sup>20</sup> [http://www.foreign.gov.ly/online/news\\_details.php?id\\_news=2238](http://www.foreign.gov.ly/online/news_details.php?id_news=2238)

<sup>21</sup> <http://www.alqasavoice.ps/arabic/?action=detail&id=37185>

<sup>22</sup> <http://arabic.smc.sd/armain/artopic/?artID=49527>

<sup>23</sup> [http://www.islamonline.net/servlet/Satellite?c=ArticleA\\_C&pagename=Zone-Arabic-News/NWALayout&cid=1237705547538](http://www.islamonline.net/servlet/Satellite?c=ArticleA_C&pagename=Zone-Arabic-News/NWALayout&cid=1237705547538)

<sup>24</sup> Al Misri Alyoum Newspaper, Cairo, Issue date 22.07.2008

<sup>25</sup> <http://www.yemen-nic.info/news/detail.php?ID=18737>

called on the UN Security Council to carry out its responsibilities towards the upholding of peace and stability in Sudan, and suspend the ICC decision.<sup>26</sup> It also argued that the arrest warrant is an attempt to blackmail Sudan, and a blatant interference in its affairs.<sup>27</sup>

Syria received Mustafa Osman Ismail, presidential advisor to the Sudanese president on the 2nd of June, 2009, to discuss how to coordinate efforts to address the consequences of the indictment decision.<sup>28</sup>

## THE SECOND GROUP: STATEMENTS DENOUNCING THE INDICTMENT FREQUENTLY RELEASED IN ARAB CIRCLES.

### Saudi Arabia

Saudi Arabia reflected its concerns over the ICC decision to arrest the Sudanese President Omer Al Bashir, confirming that the measure will not resolve the problems of Sudan, but is likely instead to worsen them. The Kingdom assured its support to Sudan to face whatever undermines its sovereignty, stability and unity, emphasising the responsibility of the international community to continue making joint efforts to face the consequences of the decision. Saudi Arabia called on the UN Security Council to carry out its responsibility towards the current pressure that has been put on peace and stability in Sudan.<sup>29</sup>

### Kuwait

Kuwait believes that the ICC decision will end neither the violence nor the problems Sudan is currently facing. Indeed, on the contrary, inappropriate decisions could lead to deterioration of the security situation in Sudan, and cause the regime to collapse, which would create a vacuum and cause chaos and additional victims. A call was made to reject the decision of Luis Ocampo, the ICC Prosecutor General, and the plot against Arab countries that endangers the peace process in Darfur and in the South of Sudan<sup>30</sup>.

The Amir of Kuwait reflected that the ICC decision to issue a warrant of arrest against President Al Bashir does nothing to support Arab and African efforts to resolve the Darfur crisis, and called on the UN Security Council to postpone the court proceedings to allow peace efforts to come to fruition. He also urged Sudan to do more humanitarian work in Darfur.

### United Arab Emirates

UAE expressed concerns over the negative implications of the ICC decision, which in the UAE's view will affect the stability of the country and the current political dialogue taking place in Sudan. The UAE called on the UN Security Council to activate Article (16), of the Rome Statute, which would allow the execution of the arrest to be postponed.<sup>31</sup>

In addition to these statements, some press releases, for example that of the 22nd of February 2009, noted that there is an offer from some Arab countries, including Saudi Arabia and Qatar, to host Al Bashir in case the court decided to indict him. This offer was made to avoid further complications in the Sudanese situation with the ICC.<sup>32</sup>

<sup>26</sup> <http://arabic.smc.sd/armain/artopic/?artID=49527>

<sup>27</sup> Al-Quds Al-Arabi, 24.07.2008

<sup>28</sup> <http://arabic.smc.sd/armain/artopic/?artID=49527>

<sup>29</sup> <http://arabic.smc.sd/armain/artopic/?artID=49527>

<sup>30</sup> Ma'it Center for Constitutional and Legal Studies, Analysis of the newspaper coverage of the arrest issue: the legal prosecution of the Sudanese President due to Darfur crisis, July- August- September 2008.

<sup>31</sup> <http://arabic.smc.sd/armain/artopic/?artID=49527>

<sup>32</sup> <http://www.echoroukonline.com/ara/international/33225.html>

### Lebanon

Lebanon declared that 'the ICC Prosecutor-General action against President Al Bashir has serious and grave implications on the peace process. The decision sends out a negative message to the armed movements and leads to a hardening of their positions.' Lebanon confirmed that the UN Security Council must make upholding international peace and security a top priority, and that the situation in Sudan cannot afford actions which might bring uncertain implications in their wake.'

### Algeria

Algeria declared its readiness to mobilise at the Arab and African level to stymie the attempt to prosecute President Al Bashir, and to provide support to assist Sudan addressing issues internally, emphasising its support of Sudan to settle its own problems internally, without interference of any external party.<sup>33</sup>

## INFORMAL RESPONSES

Informal responses at the Arab level to the indictment have varied in terms of interpretations of the crisis. The responses have been seen at several different levels. The first of these is the legal and political questions raised. The second level is related to the source of the response, where a distinction has to be made between individual responses and those declared by civil organisations, especially human rights organisations:

### FIRST LEVEL - LEGAL AND POLITICAL APPROACH

#### Legal approach

The ICC prosecutor's indictment of Al Bashir has triggered legal and political debate among interested parties and observers in Arab societies. The legal debate surrounding the indictment of Al Bashir is reflected in several ways.

The first of these tendencies emphasises that the evidence used in the ruling is invalid and insufficient to constitute grounds to issue a verdict against the Sudanese president, as the ICC relied on testimonies obtained from external parties, and not from the Sudan itself, for instance several NGOs working in Darfur, known for their opposition to the Sudanese regime, and bias to some Western countries, which makes their testimonies questionable. In addition, the ICC has relied on testimonies delivered by people from Darfur and rebels who are interested in overthrowing the current Sudanese regime.

The second of these tendencies argues that the ICC decision is based on a legal process containing several violations, most notably:

- The decision has compromised the independency of the Sudanese national judiciary, since the jurisdiction of the ICC is precautionary and complementary, and only referred to if the internal justice system has failed to deal with the case, which has not been demonstrated conclusively by any evidence.
- The decision is not in keeping with international law which prohibits prosecution of serving heads of state according to the ruling of the International Justice Court in 2003, which recognised that incumbent senior officials enjoy immunity. This means that ICC prosecutor does not have the right of habeas corpus.
- The Rome Statute which established the ICC states that the ICC has no right to prosecute citizens of states which have not ratified the Statute. Supporters of this argument assume that the ICC jurisdiction with regard to Darfur situation is questionable, given that Darfur situation was referred to the ICC by the

<sup>33</sup> [http://www.arabic.xinhuanet.com/arabic/2008-08/07/content\\_687310.htm](http://www.arabic.xinhuanet.com/arabic/2008-08/07/content_687310.htm)

UN Security Council in 2005, Resolution No.(1593), noting that Rome Statute provides that the referred case should not threaten international peace and security which does not apply to the case of Darfur.

- The claim of the ICC general prosecutor is not in keeping with the one of the basic principles of international law that protects against interference in the internal affairs of sovereign states. The Darfur conflict is still an internal Sudanese affair, even if it has been internationalised, and so Sudan has the right to find its own solution to the problems there.

The third of these tendencies emphasises the legality of the prosecution of Al Bashir by the ICC, for a number of reasons, including:

- The ICC has jurisdiction to hear the most serious crimes under article (8) of the ICC Rome Statute, which covers war crimes, crimes against humanity and crimes of aggression, and genocide. According to this school of thought, and based on the arrest warrant issued on the 4<sup>th</sup> of March, 2009, by the pre-trial chamber I of the ICC, Al Bashir has committed war crimes and crimes against humanity, with the charge of genocide dropped due to insufficient evidence.
- Furthermore, Article (15) of the Rome Statute of the ICC, establishes jurisdiction for the trial of individuals, whether heads of state or not.
- Moreover, Article (27) of the Rome Statute stipulates that prosecution equally applies to all persons, regardless of their official capacity.
- In addition, although Sudan hasn't ratified the Rome Statute, it has ratified the Charter of the United Nations, thus making President Al Bashir eligible for prosecution by the ICC.
- Further, the ICC has indicted former head of states that never made it to trial, with Yugoslav head of state Slobodan Milosevic, former Liberian President Charles Taylor, former president of Chad, Hussein Habre and Radovan Karadzic, leader of the Bosnian Serbs all tried by international courts.<sup>34</sup>

### Political approach

Some analysts view the ICC's indictment of Al Bashir as a political decision in essence, especially when considered in light of long-standing double standards with the ICC seen as biased in favour of the USA and the West in Darfur. It was UN Security Council Resolution No.(1593), dated the 31<sup>st</sup> of March, 2009 which referred the situation in Darfur to the general prosecutor of the ICC. The prosecutor's decision came on the 14<sup>th</sup> of June 2008. These critics assume that the indictment came at a sensitive transitional period in Sudan quite deliberately, a time in which the peace agreement was being implemented, and elections were to be held (in July 2009), along with a referendum on self-determination for the South in 2011. The implication is that the goal was the destabilisation and fragmentation of the country by reigniting the conflict in Darfur and elsewhere, always likely scenarios, along with the growing likelihood of the separation of the South. Charges against Al Bashir aim at exhausting the capacity of the Sudanese regime to resist plots aimed at fragmenting the country and separating the South and Darfur from the central government in Khartoum. This scenario, as we have seen, is to be followed by external interference from the USA (and others) in the internal affairs of Sudan, with a view to securing its oil wealth. The following evidence is used to back up their (conspiracy) theory.

Sudan is the third biggest oil producer in sub-Saharan Africa. In addition, Sudan has headed the list for African oil exports since 1999. Darfur more specifically contains oil reserves estimated at 7 billion barrels, and the equivalent of one third of the world's stockpile of uranium, in addition to livestock, agricultural production, particularly wheat, cotton and other natural products.

<sup>34</sup> Ali Abdel Fatah Al Harouni, Gulf States and the crisis of the arrest of Al basher, between denouncement summits and pressure mechanisms, Emirates Media and Studies Center, Wednesday 1<sup>st</sup> April 2009.

The tension that characterises Sudan's relationship with the West is due to the firm stand it takes against the West's plot to carve up the region. Al Bashir's resistance of the US administration has provoked a response, with the US looking for any pretext to punish Sudan by undermining it and stealing its wealth.

The government of Sudan allowed China to invest in oil reserves estimated at 1.6 billion barrels; this arrangement means that the main competitor of the US in the world has acquired one third of its oil imports from Africa. This represents a threat to U.S. interests in the continent. Sudan has also opened its doors to Russian and Malaysian investments, limiting the accessibility of American and Western investment in Sudan.

## SECOND LEVEL: INFORMAL RESPONSES SOURCE

Within the informal responses level, a distinction between two sources has to be made:

**1. Individual responses:** Those are the responses of political analysts interested in Sudanese affairs. Their responses are based on personal and ideological preferences, as well as their position in relation to the political regimes in their own countries, as some tend to interpret the crisis depending on the political regime they live under. Thus, some political analysts support the ICC decision because they oppose their own government, or buy into the conspiracy theories if they have some kind of association with the ruling political regime. Exceptions to this rule are limited to individuals of clear ideological affiliation (Islamists, nationalists, liberals) where attitudes are based on the nature of their association with the US. Some relevant issues here are Islam, the threat to Muslim identity as perceived by several Islamist trends, the fragmentation of pan Arab nationalism, controlling Arab wealth as argued by nationalists, the promotion of freedoms and civil rights as argued for by a wide range of liberals.

**2. Responses of civil society organisations:** The attitude of human rights organisations was generally to support and endorse the ICC's step. This is no doubt owing to the critical situation in Darfur, where massive human rights violations among the population of the region have taken place and government has not only failed to protect but furthermore is accused of complicity in the abuses some of which have befallen their workers.

Public threats released by the head of Sudan's National Security and Intelligence Services on the 20<sup>th</sup> of February 2009 increased concerns of further attacks against activists. He threatened supporters of the ICC with cutting off their hands, heads and limbs. The statement called on the universal movement for human rights and the UN human rights bodies to work together to put pressure on the Sudanese authorities to meet its international commitments in terms of ensuring freedom of expression and the freedom to receive and circulate information, to ensure the right of NGOs to independently carry out their activities without being exposed to arbitrary governmental interferences, and to uphold the human rights guarantees enshrined in the UN Declaration on Human Rights.<sup>35</sup> The 'Arab Alliance on Darfur' declared that Arab should have advised Al Bashir on how to positively address the ICC charges rather than encouraging him to underestimate the issue, and that Arab countries must deal with the ICC decision in a positive way. The declaration also stated that if Khartoum had changed its stance on the decision, the current situation would be so complicated. The alliance held a conference parallel to the Arab summit, entitled "Darfur and the Arab Summit". The conference was held in Cairo, from the 6<sup>th</sup> through until the 8<sup>th</sup> of March 2009, and it met to send a delegation to the Arab summit to hand in the recommendation that came out of the parallel conference, and to put pressure on the summit to approve real mechanisms which would ensure civilians were protected and the conflict in Darfur ended.

<sup>35</sup> <http://www.cihrs.org/Arabic/NewsSystem/Articles/1499>

In March 2009, the Cairo Institute for Human Rights Studies (CIHRS) issued a press release welcoming the ICC judges endorsement of the warrant request by the ICC prosecutor in July 2008 to arrest the Sudanese President Omer Al Bashir on accusations of war crimes and crimes against humanity in Darfur. The CIHRS added that 'the request to appear before the Court does not automatically mean conviction. In fact, if Sudanese officials seek an opportunity to proclaim their innocence, the ICC is the best place to do so. The Court maintains the highest degree of independence and impartiality. In fact, upon the ICC Prosecutor's request to issue an arrest warrant against Al Bashir last July, there was generally the hope that the Sudanese regime would show the highest degree of responsibility towards its own people and take tangible measures to hold perpetrators accountable for [crimes] and prevent others from committing war crimes and crimes against humanity in Darfur. Instead, the Sudanese Government moved in the opposite direction; continuing with its aerial bombardment of dozens of villages in Darfur and providing support and impunity for forces and pro-government militias for attacks on the civilian population and camps for internally displaced persons (IDPs). Such assaults have left hundreds dead and some 90,000 civilians homeless. In light of such unrelenting military operations, humanitarian relief organisations are facing severe difficulties in delivering humanitarian aid to some four million residents and IDPs in Darfur. Furthermore, 170 humanitarian aid workers have been kidnapped over the last year and eleven others were killed as a result of the ongoing violence.'

**The statement concluded with the following:**

'Al Bashir's regime has squandered every available opportunity throughout the past six years to demonstrate a real political will to put an end to the ongoing atrocities against the Sudanese people in Darfur. At the moment, the only remaining opportunity to put an end to the suffering of Darfurians, create a safe environment conducive to the return of refugees and displaced and pave the way to peace, is through expanding and reinforcing the role of the UN and humanitarian organizations in Darfur and by supporting the decisions and measures taken by the ICC in this case.'<sup>36</sup>

---

<sup>36</sup> ( ) <http://www.cihrs.org/Arabic/NewsSystem/Articles/1498>

## CONCLUSION AND EVALUATION

There is widespread belief in Arab public opinion and its governments that the arrest warrant against Al Bashir is a continuation of a Western strategy aiming to undermine the Arab world. The exponents of this point of view do not mind admitting that the Khartoum government is partially responsible of wrongdoing or negligence. However, it is widely held that the portrayal of the crisis is deliberately exaggerated for effect and that defending the victims in Darfur is unlikely to be the real motive of the Court, as the measures applied to Sudan haven't been applied to other countries. The Arab refutation of the ICC decision does not rest on the innocence of the Sudanese government therefore, but justice is seen as being an unlikely motive for the ICC and its backers. President Al Bashir, for his part, has not been targeted because he is responsible of anything, but because he is a 'strong link in the chain of Arab resistance', and refuses to bow down to the West, fighting to maintain Sudanese unity and Arab identity. Since taking power in 1989 Al Bashir has succeeded in restoring the fortunes of a country ravaged by twenty years of war, according to the conspiracy theorists. Al Bashir has also laid the groundwork so that Sudan is now ready to benefit from its oil wealth and develop further.

Some basic factors worth highlighting in considering the ICC indictment and the storm it has provoked in the Arab world:

- An international criminal court does not exist in a political vacuum. Law is part of politics and its system. It is thus not a coincidence that the international court is a Western court. It is no coincidence either that Sudan lacks robust courts, to the extent that the rulers of Sudan have not felt that the crimes committed in Darfur need to be investigated, or victims redressed, nor is law enforcement the top priority for the government and the state at present.
- Sudan's wrongdoing in Darfur is not that operations carried out by the Sudanese army have caused death, torture and the displacement of thousands of people. Violence of this kind often takes place in across the world when governments go to quell revolutions or protests. Sudan's wrongdoing lies in the fact that it did not pay appropriate attention when the deaths and displacements took place. It did not feel that the situation was serious enough to conduct an investigation and impose some kind of justice, even if only to achieve political objectives.
- The process leading to the court's decision was prompted by the UN Security Council, under chapter seven. In this sense, the UN Security Council believed that the situation in Darfur presented a danger to international peace and security when the number of victims went beyond 35,000 and 200.000 displaced, and an estimated million and a half refugees. Thus, the ICC decision is binding on Sudan and all other parties to cooperate fully with the Court. With regard to the ICC, even those state members which have failed to ratify the Rome Statute cannot abstain from its international commitments.
- If the Sudanese judiciary had assumed its responsibilities in holding the perpetrators of violence accountable - based on the rule that the international judiciary is complementary to the national judiciary- the situation would have been more easily resolved, with some kind of justice established, victims redressed, and those responsible for war crimes and crime against humanity brought to justice.
- The independence and neutrality of the Court and its chief prosecutor is beyond question for most of the international community. The judges of the court have all been elected by the court's general assembly, which is composed of the state members that ratified the Rome Statute. The court is made up of 18 judges from different 18 nationalities in addition to the prosecutor general. All of them are of known competence, integrity and neutrality.

In the context of these comments, several recommendations are to be highlighted:

### The Sudanese government

- The decision of the Court should be challenged before the pre-trial chamber, according to Article (19) on challenges to the jurisdiction of the Court or the admissibility of the case.<sup>37</sup> What is important is to deal with the court's mechanisms rather than confronting it. Another alternative is to act according to Article (16), which suspends the arrest warrant for one year, and in that time to genuinely work to eliminate the causes that led to the adoption of the decision, and to improve the humanitarian situation for the people in Darfur. In any event, disseminating propagandistic views about an international conspiracy against Sudan, etc is not the answer. It will not help establish security and stability in the country.
- Carry out immediate action to prevent renewal of military operations through, for example, direct talks, agreeing to establish a committee for mediation and reconstruction that includes governmental officials, representatives of Sudanese factions and international actors (e.g. donor governments and international organisations), and to assist in ensuring a safe return for those who have fled from their homes because of the war. To allow diplomats, journalists, charity organisations and human rights organisation access to the war affected areas.
- Address the grievances of the population as well as the rebels by conducting damage assessment in the war-torn areas with the assistance of independent national and international experts, facilitating the allocation of compensations, launching development projects in the region and war affected areas, ending recruiting and the militias and tribal groups, releasing prisoners held in the context of the war, declaring amnesty for the rebels, and cease the arrests and detainment of human rights activists.
- Reduce sectarian tensions and other forms of tension by promoting and facilitating dialogue between communities, including promotion of the participation of the regional population in public debates, and to condemn any form of sectarian discrimination practiced against them.

### Arab and African countries:

It is important to deal with the ICC, rather than confronting it. The court is only a tool, and an effective interaction with it and its decisions may help influence those decisions, or at least limit their impact.

### Regional Arab and African Organizations (e.g. LAS and AU)

It is important to deal with the decision, rather than confronting it. The indictment decision was issued according to the rules of international legitimacy. Regional Arab and African organisations should defend this legitimacy since the latter is a means to solidifying these organisations too.

### Legal organisations

To intensify efforts to alleviate the sufferings of the people in Darfur and to work to mobilise the necessary resources to provide for their basic needs, Provide support, and participation in the peaceful settlement process, conduct damage assessment, and support reconstruction efforts in the war affected areas, encourage dialogue between the government and the parties of the region.

---

1. Article (19) states that: The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(c) A State from which acceptance of jurisdiction is required under article 12.

# FRIDE

— A EUROPEAN —  
THINK TANK FOR GLOBAL ACTION



Calle Goya 5-7. 28001 Madrid  
e-mail: [fride@fride.org](mailto:fride@fride.org)  
[www.fride.org](http://www.fride.org)

**“The Gap Between Narratives and Practices. Darfur: Responses from the Arab world”**

Project Director: Pierre Schori  
Project Coordinator: Isabel Moreno

With the financial support from the Ford Foundation

About FRIDE

FRIDE is an independent think-tank based in Madrid, focused on issues related to democracy and human rights; peace and security; and humanitarian action and development. FRIDE attempts to influence policy-making and inform public opinion, through its research in these areas.