

## DIPLOMATIC AGENDA

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# Time ripe for ICC to flex its muscle

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**H**aving started its first trial of a war crimes suspect just two months ago, the International Criminal Court is rather young.

The court was created on July 1, 2002 and currently has 108 member states.

But, with a budget of \$134 million and a staff of 571, the court needs to flex some muscle.

So far, it has issued 13 warrants of arrest but has only five suspects in its cells while seven remain free. All the suspects under custody are from Africa. They are Thomas Lubanga, Germain Katanga, Mathieu Ngudjolo Chui, Jean Pierre Bemba and ex-Liberian President Charles Taylor.

Among the most prominent suspects still on the loose is Uganda's Joseph Kony and Sudanese President Omar Hassan al-Bashir.

**The main handicap is the failure of the United States to embrace the international treaty**

President Bashir, whose warrant was issued on March 4, 2009 over war crimes in Darfur, may prove to be the court's main Achilles heel.

Since the warrant was issued, Bashir has visited five countries; Egypt, Eritrea, Libya, Qatar and Saudi Arabia.

Four major global organisations: the Arab League, the African Union, the Organisation of the Islamic Conference, and the Non-Aligned Movement are all against the Bashir warrant. In diplomatic terms, the UN Security Council cannot ignore even one of these organisations.

The worst scenario would arise if any of these groupings passes a resolution calling on their members to quit the ICC.

In the Security Council, China and Russia have come out openly on the side of Sudan while France, Britain and the US want the warrant carried out.

## Rationale

The court's rationale for action on Darfur is that under Resolution 1593, the UN Security Council mandated it to investigate and charge any suspect involved in war crimes in the region.

Resolution 1593 states that failure of any UN member state to carry out the warrant is a violation of UN rules.

Before President Bashir's warrant was issued, two other suspects - Mr Ahmad Muhammad Harun, who is Sudan's minister of state for humanitarian affairs, and Mr Kushayb, leader of the Janjaweed militia - were listed as suspects over the deaths of some 300,000 people and displacement of 2.5 million in Darfur.



**Sudan's President Omar Hassan al-Bashir (left) is welcomed at the Khartoum airport by Vice President Ali Osman Mohamed Taha after a visit to Eritrea on March 23, 2009.** Photo/ REUTERS

The warrants for the minister and the Janjaweed leader were issued in April, 2007.

The main handicap the court faces is the failure by the US, the world's sole superpower, to embrace the ICC treaty.

The treaty was actually signed by the Clinton administration on December 31, 2000, but was revoked by the Bush administration on May 6, 2002.

Later, a law was passed in the US Congress that authorises the president of the United States to order a raid on the ICC should it arrest a US soldier.

The other question is over the investigations carried out by the ICC in Darfur.

Under the ICC statute, the consent of a non-member country must be sought before any investigation is carried out on its territory. This was one of the reasons Sudan expelled 13 non-governmental organisations from Darfur, accusing them

of spying for the ICC.

But, if it is true that the ICC only relies on the NGOs for its charges against Bashir and the other two suspects, it would be violating its own rules.

Right now, the ICC is aware that securing the arrest of a sitting head of State is no easy feat to crack.

The only way out is for the court to turn to the UN Security Council to demand a commitment from member countries that they would carry out an arrest warrant against President Bashir. The 53-member AU has been the most vocal in the opposition to the arrest warrant.

Another top supporter of President Bashir is the Arab League. But at its summit in Qatar last week, the League was split over seeking talks with the UN Security Council over the arrest warrant.

## Political window

Sudan demanded an outright rejection of the warrant, but the League's secretary general, Mr Amr Moussa, said a "political window" should be left open to address the arrest warrant issue. In its final statement, the League expressed "total support for Sudan against any attempt to undermine its sovereignty, security, stability and territorial integrity".

Keeping with its tough agenda, the League should go for a bigger prize by seeking the arrest of former US president George W. Bush over torture in Iraq. That could be a timely move but which can never be carried out.

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