



**Ms. Fatou Bensouda
Deputy Prosecutor of the International Criminal Court**

The Confirmation of Charges Hearing

The Case of the Prosecutor v. Bahar Idriss ABU GARDA

ICC-02/05-02/09

Opening Statement

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The Hague

19 October 2009

Madam President, Your Honours,

This case is about a deliberate attack against peacekeeping forces in September 2007, in Haskanita, Darfur, the Sudan; it is about an intentional attack against persons and objects with protected status under international criminal law. A crime under the Rome Statute.

This case is about the killing of 12 peacekeepers and the ransacking of their camps in Haskanita and the ensuing dismantling of the camp. The peacekeepers came from Nigeria, Mali, Senegal, Botswana, the Gambia and other countries.

They came to serve and protect the civilians, fellow Africans in Darfur, thousands of people who have been the victims of crimes by Sudanese forces and integrated Janjaweed/Militia over the last six years. The peacekeepers had been deployed by the African Union ("AU") to Haskanita to protect the civilians from killings and rapes, to monitor the ceasefire between the Government of the Sudan ("GoS") and rebel forces in Darfur, the Sudan, and to facilitate the delivery of humanitarian assistance. They were murdered. The base was closed down, leaving thousands of civilians unprotected.

Mr. Bahar Idriss Abu Garda, a rebel commander, now stands charged for his role in that attack.

The Prosecution's evidence will show that the peacekeepers had protected status, that Mr. Abu Garda knew of this status and yet he planned and ordered the attack with other co perpetrators.

The attack took place on 29 September 2007. It was a day in the Muslim Holy month of Ramadan - at approximately 7:30 in the evening, at a time when many of the AMIS personnel were preparing to break their Ramadan Fast.

Mr. Abu Garda's breakaway JEM rebel forces, together with forces belonging to the SLA Unity and SLA Abdul Shafie rebel groups, launched an attack on the AMIS peacekeeping forces at the Military Group Site ("MGS") in Haskanita in South Darfur. On that evening, about 1,000 rebels, armed with machine guns, Dushkas, rocket-propelled grenades and other heavy weapons, stormed the MGS in a convoy of about thirty vehicles. The attack continued till the early hours of the morning of 30 September 2007. Mr. Abu Garda's breakaway JEM rebel forces together with the rebel forces belonging to SLA Unity and SLA Abdul Shafie, (who we will, in the course of these proceedings, collectively refer to as the combined rebel forces), deliberately killed 12 African Union peacekeepers and injured 8 more. The murdered peacekeepers were not killed accidentally or in cross-fire. Most were shot at close range, executed. With 10 peacekeepers killed and several more seriously injured, two of whom later died, the remaining AMIS personnel hid themselves in toilets, trenches and other parts of the camp they thought could provide refuge, while others fled into the darkness in order to escape the brutality of the attack.

With the MGS now at their disposal, the combined rebel forces ransacked and completely pillaged the camp. They looted properties of the African Union and the personal properties of the peacekeepers. From military hardware down to basic possessions such as mobile phones and military uniforms. Mr. Abu Garda's men and the combined rebel forces then destroyed the installations at the MGS.

The Prosecution evidence will show that the peacekeepers, installations and material of the camp were protected persons and objects at all times relevant to the charges. Article 8(2)(e)(iii) of the Rome Statute provides that *"intentionally directing attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance or peacekeeping mission in accordance with the Charter of the*

United Nations, as long as they are entitled to the protection given to civilians or civilians objects under international law of armed conflict” is a war crime.

The Statute builds upon the Convention on the Safety of United Nations and Associated Personnel of 1994 which criminalized attacks on United Nations and associated personnel, except within the context of a peace enforcement operation under Chapter VII of the Charter, when such personnel are combatants.

At no point did the peacekeepers in Haskanita lose their protected status. The attackers suggested that there was collaboration between the peacekeepers and the Government of the Sudan. The evidence however suggests the contrary.

In fact, the evidence will show that the attackers were fully aware of the protected status of the AU camp and its personnel. These rebel groups were part of the agreements establishing the base, they had been there before, they knew the markings. There was no mistake.

And the evidence will show that this attack was planned and executed under the command of Mr. Abu Garda, with other co perpetrators.

Each of the groups that participated in the attack had their own motive. Mr. Abu Garda’s forces had just split from the mainstream JEM group under its leader, Dr. Khalil Ibrahim. They needed equipment, and recognition as a fully-fledged rebel force, and an invitation to participate in upcoming peace talks in Sirte, Libya.

On the morning of the attack, Government of the Sudan forces had attacked the combined rebel forces in the nearby town of Dalil Babiker, inflicting substantial losses on them. Having suffered these heavy losses, the combined rebel forces needed to replenish their depleted stocks of fuel, food and ammunition.

It was soon after this attack by GoS forces at Dalil Babiker, that Mr. Abu Garda together with his commanders and the commanders from the SLA-Unity group, held a meeting at which they devised the plan to attack the AMIS camp in Haskanita on 29 September 2007.

Your Honours, for a long time the international community has struggled to deal with attacks against United Nations and other peacekeeping staff.

The attack on MGS Haskanita was widely documented and condemned as the worst of such attacks in Darfur.

On 2 October 2007, the President of the United Nations Security Council, Leslie Kojo Christian (Ghana) issued a statement on behalf of the Council, condemning the deadly attack on the AMIS peacekeepers in the following terms: *“The Security Council this afternoon condemned the murderous attack on African Union peacekeepers in Haskanita, South Darfur, reportedly committed by a rebel group”*.

He also invoked the Council’s resolution 1769 (2007) in which it *“demanded the immediate cessation of hostilities and attacks on the African Union Mission in the Sudan (AMIS), the Council insisted that all parties comply with that demand and cooperate fully with the deployment of the United Nations light and heavy support packages to AMIS, and with the African Union-United Nations Hybrid Operation in Darfur (UNAMID)”*.

On 2 October 2007, the Peace and Security Council of the African Union, also expressed its *“outrage and condemned, in the strongest terms”* what it referred to as a *“heinous and cowardly act perpetrated by unidentified elements who are bent on undermining the peace process and further complicate the situation in Darfur”*.

The AU never re-established the base at Haskanita, leaving the civilians that had depended on its protection, defenceless.

Your Honours, in the course of this Confirmation Hearing, you will hear from a Prosecution military expert witness who told the Prosecution that an attack such as the one on the MGS Haskanita *“has a devastating effect on peacekeeping operations in other countries.The attack on AU forces in Haskanita ... portrayed the peacekeepers as legitimate targets. The attack itself was beastly, and should not have occurred. The attack sent a very chilling and disturbing message.”* This expert will come before you. He told the Prosecution that *“The trial and conviction of leaders of rebel groups who indulge in attack on peacekeepers would send a positive message to others like them who feel that they can get away with an attack on peacekeepers.”*

The impact of this attack has been tremendous. Not only did it cause the deaths of 12 innocent peacekeepers, it also destroyed the lives of many of the survivors. Witnesses say *“Within AMIS people were shocked and scared that an attack like Haskanita could happen”*. Another witness, also a peacekeeper within the MGS Haskanita told the Prosecution that after the attack by men under the command of Mr. Abu Garda, *“sometimes I have nightmares where I find myself again in this situation, in dreams. Especially when I take notes (about anything) I often remember the attack and I have to stop doing it. And I am sometimes discouraged in my military career. I do not enjoy reading military books anymore because they remind me of the experience of the attack. And I do not like to see blood situations”*.

Your Honours, this unlawful attack against peacekeepers had an even more far reaching impact. Its effects have been felt by families of the victims and their communities. Your Honours, many of these victims have been approved to participate in these proceedings. Many have indicated in their applications that

the breadwinners of their families have been killed. Your Honours, the story of one of the victims is particularly compelling. She had been trying to have children with her husband before he was posted as a peacekeeper to Darfur. As a result of gunshot injuries he is unable to father children. The civilian victims of the Government's genocidal campaign, dependent on the AU for protection, were again exposed to additional crimes for lack of protection that the MGS might have provided.

Your Honours, peacekeepers must be protected by more than the weapons and armour of war. They must be shielded by all the power of international law - including this Court. Warring parties around the world must know that international justice will not tolerate impunity for those who violate the protected status of peacekeeping forces.

Mr. Essa Faal will now present the prosecution's case against Abu Garda.

Madam President, Your Honours, I thank you.