

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/05**

Date: **20 November 2008**

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka, Judge
Judge Sylvia Steiner, Judge

SITUATION IN DARFUR, THE SUDAN

Public Document

Summary of the Prosecutor's Application under Article 58

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

1. The Office of the Prosecutor (hereafter the “Prosecution”) requests the issuance of warrants of arrest against the individuals mentioned in this Application for the war crimes of violence to life (murder and causing severe injury to peacekeepers) under Art. 8 (2) (c) (i), intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission under Art. 8(2) (e) (iii), and pillaging under Art. 8(2) (e) (v) of the Rome Statute (“Statute”), committed in Darfur on 29 September 2007.

The context

2. The crimes charged in this Application were committed in the context of and associated with an armed conflict of a non international character which has existed in Darfur between the Government of the Sudan and rebel forces from about August 2002 up to the date of the filing of this Application.

The crimes

3. The crimes charged in this Application focus on an unlawful attack carried out on 29 September 2007 by rebel commanders and their forces in Darfur, the Sudan against the African Union Mission in Sudan (hereafter “AMIS”) peacekeeping personnel, installations, material, units and vehicles which were stationed at the Military Group Site (MGS) Haskanita (Sector 8) (hereafter “MGS Haskanita” or “the Camp”), Umm Kadada Locality, North Darfur.

The alleged perpetrators

4. The individuals against whom the arrest warrants are sought were commanders of rebel groups in Darfur that carried out the attack charged in this Application. As commanders, they planned and directed the attack. They commanded forces of around 1,000 men in a convoy of approximately 30 vehicles mounted with heavy weapons to attack AMIS peacekeepers at the MGS Haskanita. The attackers killed twelve (12) peacekeepers and severely wounded eight (8) others. In addition, they destroyed the communications installations, dormitories, vehicles and other materials belonging to AMIS. After the attack, the three commanders personally participated, alongside the joint rebel forces, in pillaging the Camp, and removing property belonging to AMIS including approximately seventeen (17) vehicles, as well as refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition and money.

The personnel and property attacked

5. Under the Statute, intentionally directing attacks against personnel and property involved in a peacekeeping mission in accordance with the United Nations Charter and killing of peacekeeping personnel taking no active part in hostilities are war crimes, as long as the personnel and property are entitled to the protection given to civilians and civilian objects under international humanitarian law. AMIS was a peacekeeping mission authorized in accordance with the United Nations Charter, first through UN Security Council Resolution (“UNSCR”) 1556 of 30 July 2004 and then through subsequent resolutions. The mandate of AMIS was “to monitor and observe compliance with the Humanitarian Ceasefire Agreement of April 8, 2004 and all such agreements in the future, to assist in the process of confidence building, and to contribute to a secure environment for the delivery of humanitarian relief and, beyond that, the return of IDPs and refugees to their homes, in order to assist in increasing the level of compliance of all Parties with the Humanitarian Ceasefire Agreement and to contribute to the improvement of the security situation throughout Darfur.”¹ AMIS personnel were not taking any active part in hostilities before, or at the time of the attack.

The admissibility of the case

6. The Appeals Chamber has ruled that that “[a]n initial determination on the admissibility of a case cannot be made an integral part of the decision on an application for a warrant of arrest for the reason that article 58 (1) of the Statute lists the substantive prerequisites for the issuance of a warrant of arrest exhaustively...” Nonetheless and without prejudice to the above, the Prosecution submits the following observations on both the gravity and complementarity thresholds under the Statute..

¹ The AMIS mandate further indicates: “In order to meet these objectives, the following tasks were delineated...to monitor and verify the provision of security for returning IDPs and in the vicinity of existing IDP camps; to monitor and verify the cessation of all hostile acts by all the Parties; to monitor and verify hostile militia activities against the population; to monitor and verify efforts of the GoS to disarm Government controlled militias; to investigate and report about allegations of violations of the Humanitarian Ceasefire Agreement; to protect civilians whom it encounters under imminent threat and in the Immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the GoS; to protect both static and mobile humanitarian operations under imminent threat and in the immediate vicinity, within capabilities; to provide visible military presence by patrolling and by the establishment of temporary outposts in order to deter uncontrolled armed groups from committing hostile acts against the population; to assist in the development of proactive public confidence-building measures; to establish and maintain contact with the Sudanese police authorities; to establish and maintain contact with community leaders to receive complaints or seek advice on the issues of concerns; to observe, monitor and report the effective service delivery of the local police; and to investigate and report all matters of police non-compliance with the Humanitarian Ceasefire Agreement.”

7. In assessing the gravity of the crimes charged in this Application, and consistent with the Appeals Chamber ruling that Article 8 Chapeau requirement “in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes” should not be construed narrowly, the issues of the nature, manner and impact of the attack are critical. In the present case, an attack was intentionally directed at international peacekeepers, 12 of whom were killed, 8 of whom were severely wounded, AMIS facilities were completely destroyed and properties that were needed for effective discharge of its mandate pillaged. AMIS operations were severely disrupted, thus affecting its protective mandated roles with respect to millions of Darfurian civilians in need of humanitarian aid and security. Intentional directing attacks against peacekeeping operations constitute exceptional serious offences which “strike at the very heart of the international legal system established for the purpose of maintaining international peace and security”.² Peacekeepers are mandated to protect and attacking them jeopardizes their mandate and puts at risk the very viability and continuation of their operations.³ The African Union (“AU”) in a statement issued soon after the attack described “the attack as heinous and cowardly act will not deter the determination and commitment of the AU in bringing about lasting peace and alleviating the suffering of the people in Darfur, including through the early deployment of the African Union- United Nations Hybrid Operation in Darfur (UNAMID) with enhanced capacity and strength, in accordance with the UNSC resolution 1769”. The UN also condemned ‘this murderous attack’ in a UNSC Presidential statement dated 2 October 2007. As noted in the Preparatory work to the Establishment of an International Criminal Court “attacks [were] committed against persons who represented the international community and protected its interests; [the] attacks [were] in effect directed or committed against the international community...and the international community had a special responsibility to ensure the prosecution and punishment of these crimes.”⁴ Moreover, as the International Law Commission commented in relation to such attacks in the context of the 1996 Draft Code of Crimes, such attacks “constitute violent crimes of *exceptionally serious gravity* which have serious consequences not only for the victims, but also for the international community”.⁵

8. With regards to complementarity, there are no national proceedings in relation to the case.

² A/51/10 (1996), ILC Commentary to Art. 19, Draft Code of Crimes.

³ ILC Commentary.

⁴ Summary of the Proceedings of the Preparatory Committee, A/AC.249/1, 7 May 1996.

⁵ A/51/10 (1996), ILC Commentary to Art. 19, Draft Code of Crimes

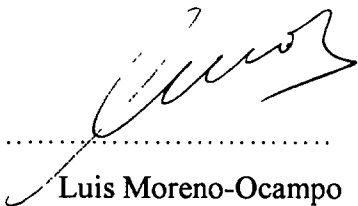
The protection of witnesses

9. Victim and witness protection considerations apply to this Application. In fulfillment of its statutory responsibilities, the Office of the Prosecutor has continuously monitored the security of witnesses, and appropriate protective measures have been taken. Both the Prosecution and the Victims and Witnesses Unit will continue to monitor and assess the risk to witnesses.

The relief sought

10. In view of the above, and in accordance with Art. 58(1) (b), the Prosecution respectfully requests the issuance of warrants of arrest. However, as there has been public notice of this Application, all concerned commanders of rebel forces in Darfur have the opportunity to express their willingness to voluntarily appear before the Court. Subject to the Pre-Trial Chamber's determination, the Prosecution submits that a summons to appear could be an alternative pursued by the Court if the Court receives information as to the possible voluntary appearance of the individuals.

11. The Prosecution has filed confidentially an unredacted version of this Application for the Chamber's review.



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Luis Moreno-Ocampo

Prosecutor

Dated this 20th day of November 2008

The Hague, Netherlands