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PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, THE SUDAN

IN THE CASE OF THE PROSECUTOR

V.

BAHAR IDRIS ABU GARDA

**Public Redacted Version of
Prosecution's "DOCUMENT CONTAINING THE CHARGES SUBMITTED
PURSUANT TO ARTICLE 61(3) OF THE STATUTE"
filed on 10 September 2009**

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I. THE PERSON CHARGED.....	5
II. STATEMENT OF FACTS	6
A. BACKGROUND	6
1. THE ARMED CONFLICT IN DARFUR.....	6
2. THE REBEL GROUPS WHICH PARTICIPATED IN THE ATTACK ON THE MGS HASKANITA.....	8
A. JEM COLLECTIVE LEADERSHIP (“JEM-CL”).....	8
B. SLA-UNITY	9
C. SLA-ABDUL SHAFIE FACTION	10
D. COOPERATION AND JOINT MILITARY OPERATIONS BETWEEN SLA-UNITY AND JEM	10
3. THE DEPLOYMENT AND MANDATE OF THE AFRICAN UNION MISSION IN SUDAN (AMIS) TO DARFUR	11
B. THE ATTACK ON THE MGS HASKANITA ON 29 SEPTEMBER 2007	12
1. EVENTS LEADING UP TO THE ATTACK.....	12
2. PLANNING FOR THE ATTACK	13
3. THE ATTACK ON THE MGS HASKANITA ON 29 SEPTEMBER 2007	14
C. FACTS RELEVANT TO ARTICLE 8 <i>CHAPEAU</i> ELEMENTS	17
D. FACTS RELEVANT TO INDIVIDUAL CRIMES CHARGED.....	19
1. FACTS RELEVANT TO COUNTS 1 AND 2: VIOLENCE TO LIFE - MURDER (ARTICLE 8(2) (C) (I) AND ATTEMPTED MURDER (ARTICLE 25(3)(F))	19
2. FACTS RELEVANT TO COUNT 2: INTENTIONALLY DIRECTING ATTACKS AGAINST PERSONNEL, INSTALLATIONS, MATERIALS, UNITS OR VEHICLES INVOLVED IN A PEACEKEEPING MISSION (ARTICLE 8(2) (E) (III)).....	21
3. FACTS RELEVANT TO COUNT 3: PILLAGING (ARTICLE 8 (2)(E)(V)).....	22
III. INDIVIDUAL RESPONSIBILITY: ARTICLE 25(3) (A) OF THE ROME STATUTE.....	23
A. OBJECTIVE ELEMENTS OF JOINT COMMISSION OF A CRIME	23
1. AGREEMENT AND COMMON PLAN.....	23
2. THE COORDINATED ESSENTIAL CONTRIBUTION BY CO-PERPETRATORS RESULTING IN THE REALIZATION OF THE OBJECTIVE ELEMENTS OF THE CRIME	25
B. OBJECTIVE ELEMENTS OF COMMISSION OF THE CRIME THROUGH ANOTHER PERSON, REGARDLESS OF WHETHER THAT OTHER PERSON IS CRIMINALLY RESPONSIBLE	26
1. ABU GARDA’S CONTROL OVER THE ORGANIZATION.....	26
2. ORGANISED AND HIERARCHICAL APPARATUS OF POWER	27
3. EXECUTION OF THE CRIMES SECURED BY COMPLIANCE WITH THE SENIOR AUTHORITY'S ORDERS	28
C. ABU GARDA ACTED WITH THE REQUIRED MENS REA	28
1. ABU GARDA FULFILLED THE SUBJECTIVE ELEMENTS OF THE CRIMES.....	28

A. ABU GARDA INTENDED THE PERSONNEL, INSTALLATIONS, MATERIALS AND UNITS OR VEHICLES INVOLVED IN THE PEACEKEEPING MISSION TO BE THE OBJECT OF THE ATTACK.....	28
B. ABU GARDA’S KNOWLEDGE OF THE PROTECTED STATUS OF THE AMIS.....	29
PERSONNEL AND OBJECTS	29
C. ABU GARDA INTENDED TO DEPRIVE THE OWNER OF THE PROPERTY AND TO APPROPRIATE IT FOR PRIVATE OR PERSONAL USE.....	31
2. ABU GARDA AND THE OTHER COMMANDERS, [TEXT REDACTED], WERE ALL MUTUALLY AWARE AND MUTUALLY ACCEPTED THAT IMPLEMENTING THEIR COMMON PLAN MAY RESULT IN THE REALIZATION OF THE OBJECTIVE ELEMENTS OF THE CRIME	31
3. ABU GARDA AND THE OTHER COMMANDERS [TEXT REDACTED] WERE AWARE OF THE FACTUAL CIRCUMSTANCES ENABLING THEM TO JOINTLY CONTROL THE CRIME	32
IV. CHARGES.....	32

The Prosecutor of the International Criminal Court ("the Court") pursuant to his authority under Article 61(3) (a) of the Rome Statute ("the Statute") charges:

BAHAR IDRIS ABU GARDA

with **WAR CRIMES** as set forth below:

I. THE PERSON CHARGED

Bahar Idriss ABU GARDA

1. **Bahar Idriss ABU GARDA** ("ABU GARDA") is a Sudanese citizen of Zaghawa origin. He was born on 1 January 1963 in Nana, about 12 kilometres north of Tina, North Darfur, the Sudan. **ABU GARDA** attended Bassao Primary School east of Tina and later moved on to Al Fashir, North Darfur for his secondary school education. He then attended the Technical Institute College (renamed Sudan University), where he completed a 3-year course in Secretarial Studies and obtained a diploma.

2. While in college, **ABU GARDA** joined the "Muslim Brotherhood" (National Islamic Front ("NIF")). After his graduation, he joined the Security Organization of NIF and worked for the Government of the Sudan ("GoS") Strategic Planning Centre. In 1999, he was appointed to manage the N'Djamena branch of the Gum Arabic Company in Chad, a position he held until 2002.

3. In or around 2002, **ABU GARDA** joined the Justice and Equality Movement ("JEM") and was appointed JEM representative in Chad. He remained in this post until mid-2004 when he left Chad. He returned to Darfur and became the Secretary of JEM Western Sector. On 3 January 2005, **ABU GARDA** became JEM Vice President which effectively made him the second highest ranking official in the group.

4. On 26 September 2007, as a result of a power struggle among the top leadership, the Chairman of JEM Dr. Khalil Ibrahim issued a decree (Decree No. 28 of 2007), terminating the appointment of **ABU GARDA** as Head of JEM Western Sector and as Vice President of JEM.

5. On 4 October 2007, **ABU GARDA** formally announced the formation of a breakaway rebel faction called JEM Collective Leadership ("JEM-CL") effective from 3 October 2007. **ABU GARDA** became chairman of this movement from its inception.

6. On 18 January 2008, JEM-CL together with a number of other rebel factions established a coalition of rebel groups called the United Resistance Front ("URF"). **ABU GARDA** became its Chairman and General Coordinator of Military Operations.

II. STATEMENT OF FACTS

A. BACKGROUND

1. The Armed Conflict in Darfur

7. From about August 2002 to the date of filing of the Document Containing the Charges (“DCC”), and thus at all times relevant to the charges brought by the Prosecution, an armed conflict of a non-international character has been and continues to be waged in Darfur, the Sudan, between the GoS together with forces under its control on the one hand and various armed rebel groups including the JEM and the Sudan Liberation Army/Movement (SLA/M) on the other.

8. The Darfur region is located at the western border of the Sudan and is comprised of the three Sudanese States: North Darfur, West Darfur and South Darfur. Since the Sudan became independent from Egypt and Great Britain in 1956, there have been tensions between groups from the north of the country which have dominated the central government based in Khartoum and groups from other parts of the Sudan.

9. From at least 1989 to 2002, the GoS pursued policies aimed at further control of Darfurian tribes, in particular the Fur, Zaghawa and Masalit. These tribes are traditionally dominant in Darfur, where they constitute the three largest tribes, with strong links to the land. During those years, members of these groups engaged in different armed rebellions.

10. One such rebellion in Darfur started in or around August 2000 when young men from the Fur and Zaghawa tribes, later joined by some Masalit, organized an armed group called the Darfur Liberation Army/Front (“DLA”). The DLA launched attacks against GoS facilities and outposts. The DLA changed its name to the Sudan Liberation Army/Movement (“SLA/M”) under the leadership of Abdul Wahid El Nour in or around February/March 2003. The declared objectives of the SLA/M were the creation of a “united democratic Sudan on a new basis of equality, complete restructuring and devolution of power, even development, cultural and political pluralism and moral and material prosperity for all Sudanese”.

11. The other rebel group, the JEM, a predominantly Zaghawa group, was established in or about August 2001 as a political movement opposed to the GoS in Khartoum under the chairmanship of Dr. Khalil Ibrahim. From 3 January 2005, **ABU GARDA** served as Vice President, the second in command in JEM, and its Secretary General with responsibility for the Western Sector. [TEXT REDACTED].

12. The declared aims of the JEM were to fight against marginalisation and to bring about political change in Darfur. It was largely made up of Kobe Zaghawa from West Darfur.

13. JEM later created a military wing which initially recruited its fighters mainly from the Zaghawa from West Darfur. JEM has an elaborate and organized military structure.

For the purposes of its military operations, JEM divided Darfur into sectors and had commanders and troops stationed in each sector.

14. From August 2002 to sometime in March 2003, while the parties continued to fight militarily, the GoS engaged in negotiations with the SLA/M and the JEM. The campaign of the Sudanese Armed Forces was unsuccessful and the rebels continued to launch attacks against GoS military installations, including police stations and garrisons. The negotiations broke down in March 2003.

15. From March 2003, the Sudanese People's Armed Forces ("GoS Armed Forces"), supplemented by the Popular Defence Force (PDF), the Popular Police Force (PPF) and Border Intelligence Unit (BIU), and the Militia Janjaweed that were integrated into these forces, began implementing the GoS massive campaign of killings, rapes, tortures and forced displacement of the local population throughout the Darfur region. They were considered to support the SLA/M, the JEM and other armed groups opposing the GoS.

16. The SLA/M and the JEM entered into several peace agreements with the GoS, most notably: (i) the Peace Agreement signed on 3 and 4 September 2003 between the GoS and the SLA/M; (ii) the Humanitarian Ceasefire Agreement ("HCA") signed on 8 April 2004 between the GoS, JEM and SLA/M and (iii) the Agreement on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur, signed on 28 May 2004.

17. Pursuant to this latter agreement, AMIS was deployed in Darfur and given the responsibility to monitor the implementation of the HCA.

18. During a conference in Haskanita around October-November 2005, the original SLA/M split into two factions: SLA/MM under the leadership of Minni Arko Minawi (Minawi faction) and SLA/AW under the leadership of Abdul Wahid El-Nour (Wahid faction).

19. After a protracted period of negotiations, the Darfur Peace Agreement ("DPA") was signed in Abuja, Nigeria on 5 May 2006. While all parties to the conflict participated in the talks, only the GoS and the SLA/MM signed the DPA. After signing the DPA, SLA/MM aligned with the GoS and Minawi was appointed Senior Assistant to the President and Chairman of the Transitional Darfur Regional Authority. Some of the factions that did not sign the DPA including SLA-Unity signed the Declaration of Commitment to the DPA with the Government of Sudan.

20. The SLA/AW faction of the SLA/M and the JEM did not sign the Agreement. After the signing of the DPA, fighting continued and is still ongoing, between the GoS and the SLA/MM on the one hand, and the other non-signatory rebel forces on the other.

21. On 30 June 2006, Dr. Khalil Ibrahim signed the "Founding Declaration" of the National Redemption Front (NRF) in Asmara, Eritrea, announcing the formation of a new

alliance of rebel groups opposed to the DPA. The Declaration commits JEM to an alliance with SLA Khamis Abdallah and the Sudan Federal Democratic Alliance (SFDA).

22. After hearing the final recommendations of the Sudan People's Initiative (SPI), around 12 November 2008 President Omar Hassan Al Bashir announced a government-backed plan seeking "immediate ceasefire" to hostilities and peace for Darfur. However, this and other ceasefire agreements were never implemented and the hostilities subsist up to the date of filing this DCC.

2. The Rebel Groups which participated in the attack on the MGS Haskanita

a. JEM Collective Leadership ("JEM-CL")

23. JEM-CL is a splinter group from JEM which announced its existence in October 2007.

24. Between May 2004 and May 2007, several top JEM officials left JEM and established their own rebel factions. For instance:

(i) former JEM Chief of Staff Djibril Abdelkareem Barey (*aka* "Tek"), broke away and set up the National Movement for Reform and Development ("NMRD");

(ii) JEM's third-in-command and chief representative on the Joint Ceasefire Commission in N'Djamena, Mohamed Saleh Hamid "Harba" split from JEM and formed the Field Revolutionary Command (FRC); and

(iii) Abdel Rahim Adam Abu Risha (erstwhile General Secretary for JEM, Southern Darfur) left and set up JEM Peace Wing, and joined with three Darfur SLA Free Will leaders to sign the "Declaration of Commitment to the Darfur Peace Agreement" on 8 June 2006.

25. From its inception, the Chairman of JEM, Dr. Khalil Ibrahim, was absent from the field. The power for running the affairs of the Movement in Darfur accumulated in the hands of **ABU GARDIA** [TEXT REDACTED].

26. Around June 2007, Dr. Khalil Ibrahim returned to Darfur from Europe and set out to reassert his authority over the JEM forces in the field. [TEXT REDACTED].

27. A power struggle ensued over the leadership of JEM. [TEXT REDACTED].

28. This effectively resulted in a split within JEM. Dr Khalil Ibrahim continued to lead the JEM troops in the North while **ABU GARDIA** [TEXT REDACTED] led the remaining troops. Dr Khalil Ibrahim went to Haskanita, where some of the JEM forces were based, and sought to remove the JEM troops (that were with **ABU GARDIA**) to his

bases in the North. Some of the troops left with Dr. Khalil Ibrahim while others opted to remain under the command of **ABU GARDA** [TEXT REDACTED].

29. On 26 September 2007, Dr. Khalil Ibrahim issued another decree (Decree No. 28 of 2007) terminating the appointment of **ABU GARDA** as Head of JEM Western Sector and his position as an Advisor to the President of JEM.

30. **ABU GARDA** [TEXT REDACTED] continued to claim that [TEXT REDACTED] had sacked Dr. Khalil Ibrahim from JEM and carried on military operations using [TEXT REDACTED] JEM troops as well as JEM vehicles and JEM equipment. [TEXT REDACTED] also issued statements and recruited soldiers under the name of JEM.

31. **ABU GARDA** purported that his group is the real JEM. **ABU GARDA** assumed leadership and [TEXT REDACTED] continued to carry out his functions as overall commander of the group. [TEXT REDACTED] had effective command and control of the forces that split [TEXT REDACTED]. This was the case when [TEXT REDACTED] attacked Haskanita on 29 September 2007.

32. This new arrangement was formally announced in the Founding Declaration issued on 4 October 2007 which established a new collective leadership for the Sudanese Justice and Equality Movement consisting of fifteen members headed by **ABU GARDA** to take effect on 3 October 2007. **ABU GARDA** [TEXT REDACTED] called [TEXT REDACTED] group JEM-Collective Leadership (JEM-CL)¹. [TEXT REDACTED]. **ABU GARDA**'s effort to take over main JEM failed as Dr. Khalil Ibrahim continued to have command and control over the majority of its forces.

33. On 18 January 2008, JEM-CL together with a number of other rebel factions established a coalition of rebel groups called the United Resistance Front ("URF"). **ABU GARDA** was appointed Chairman and General Coordinator of Military Operations.

b. SLA-Unity

34. As described in paragraph 18 above, in late 2005 Minni Minawi broke away from SLA/M and established his own faction. Soon after the signing of the DPA, further divisions appeared in SLA/AW. These divisions culminated in the further split of the SLA/M into various rebel factions including:

(i) Front for Liberation and Rebirth (SLA-Free Will) led by Abdel Rahman Musa Abbaker;

(ii) SLA-Classic, formed by 32 leaders of the SLM Military Council and the Field Command under the chairmanship of Ahmed Yacoub Abdul Shafie Bassey;

¹ Unless where the context so admits, references to JEM in particular as relate to the attack on the MGS Haskanita apply only to that part of JEM led by **ABU GARDA** and later known as JEM-CL.

(iii) Transitional Revolutionary Council, led by former Vice Chairman of SLA/M Khamis Abdalla Abaker; a Coalition which would later become the Group of 19 (G-19); and

(iv) the remnants of SLA/AW still led by Abdul Wahid El Nour.

35. In the SLA/MM, many senior commanders were disenchanted with Minni Minawi after he signed the DPA and decided to leave his faction.

36. Commanders from the various breakaway factions from SLA/AW and SLA/MM decided to come together to form a united faction during a conference held in Um Rai, North Darfur in May 2007. As a result of the conference, a new faction called SLA-Unity was created under the Chairmanship of Abdallah Yahya. [TEXT REDACTED].

c. SLA-Abdul Shafie faction

37. On 25 July 2006, there was a further split in SLA/AW. Some troops opted to join the faction headed by Abdul Shafie as the Chairman (Abdul Shafie faction). Sometime in September 2007, the forces of the Abdul Shafie faction based in eastern Jebel Marra were subjected to a series of attacks from the GoS troops and SLA/AW. Between 200 to 280 troops from the Abdul Shafie faction were rescued by rebels belonging to SLA-Unity based near Haskanita [TEXT REDACTED]. The leaders of the rescued group signed an agreement with representatives of SLA-Unity for joint operations. From that moment onwards up to and after the attack on the MGS Haskanita, the two groups operated jointly under the *de facto* operational leadership of SLA-Unity.²

d. Cooperation and Joint Military operations between SLA-UNITY and JEM

38. Since its creation in May 2007 SLA-Unity collaborated with JEM in carrying out joint military operations. As early as 21 June 2006, [TEXT REDACTED], together with seven other JEM officers and with representatives of SLA including the Chief of the Staff Council, Adam Bakhit signed a military and political agreement in Bir Markhiy for coordination of military operations. Further, on 30 July 2007, the JEM and SLA-Unity issued a declaration, in which they affirmed their political cooperation and partnership in the Darfur issue.

39. In accordance with these agreements, JEM and SLA-Unity carried out numerous joint military operations, including the operations in Wadbanda in Kordofan on 29 August 2007, the operation in Adila on 1 August 2007, in Haskanita on 10 September 2007, in Dalil Babiker on 29th September 2007 and in Haskanita (North Darfur) on 29 September 2007, among others.

² Unless where the context so admits, subsequent references to SLA Unity mean the combined troops of SLA Unity and SLA Abdul Shafie groups

3. The Deployment and mandate of the African Union Mission in Sudan (AMIS) to Darfur

40. The African Union Mission in Sudan (AMIS) was set up by the Peace and Security Council of the African Union (AU) to implement the Council's decisions made in response to the situation in Darfur, the Sudan. The catalyst for its formation was the signing of the HCA in N'Djamena on 8 April 2004 by the GoS, SLA/M and JEM which provided for the establishment of the Ceasefire Commission (CFC) mandated to operationalize the ceasefire mechanisms put in place by the HCA, as well as to monitor and submit reports of alleged ceasefire violations to a Joint Commission (JC).

41. In addition, at the request of the parties, the AU Peace and Security Council on 25 May 2004 made a decision to deploy an AU Observer Mission, with the required civilian component and, if necessary the protection element, "to support the work of the Ceasefire Commission (CFC)" in ensuring the effective monitoring of the HCA. The mandate of AMIS was "(a) to monitor and observe compliance with the Humanitarian Ceasefire Agreement of 8 April 2004 and all such agreements in the future;(b) to assist in the process of confidence building; and (c) 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".

42. In a presidential statement issued on 26 May 2004, the Security Council expressed "*its full and active support for the efforts of the African Union to establish the ceasefire commission and protection units*" and called on the opposition groups and the GoS "*to facilitate the immediate deployment of monitors in Darfur*". The Council also in several statements called on the parties to cooperate fully with AMIS.

43. The deployment of AMIS troops began in June 2004. On 20 October 2004, the AU made a decision to enhance AMIS, including its size and mandate, and transform it into "a full-fledged peacekeeping mission" to ensure effective implementation of the HCA. The mission was defined to include military, civilian police and civilian personnel.

44. AMIS was divided into eight sectors; Sector 8 was based in Al Deain and it had four military observer group sites (MGS), including MGS Haskanita, and one military observer team site (MTS), which reported to Al Deain HQ.

45. Each MGS consisted of Military Observers (MILOBs), Civilian Police (CIVPOLs), the Protection Force (PF), interpreters and representatives of the parties to the conflict (GoS and rebels). The protection of these two groups, when they went out to conduct their activities in the field, was the responsibility of the Protection Force (PF).

46. In addition, on 9 November 2004, the GoS, SLA/M and JEM signed a Protocol on the Enhancement of the Security Situation in Darfur in accordance with the N'Djamena Agreement, in which they agreed to "*extend[] unreserved cooperation to AMIS to enable*

it discharge its mandate and operational tasks” as set out in 20 October 2004 AU Peace and Security Council Communiqué.

47. On 31 July 2007, the UN Security Council adopted Resolution 1769 authorizing the establishment of the AU/UN Hybrid operation in Darfur (UNAMID) which would “incorporate AMIS personnel and the UN Heavy and Light Support Packages to AMIS” and assume authority from AMIS “as soon as possible and no later than 31 December 2007”.

B. THE ATTACK ON THE MGS HASKANITA ON 29 SEPTEMBER 2007

1. Events Leading Up To The Attack

48. Some time in August 2007, after **ABU GARDA** [TEXT REDACTED] had split from the main JEM under Dr. Khalil Ibrahim, [TEXT REDACTED] moved to the outskirts of Al Fashir with about 500 troops who were loyal to them and 25 vehicles formerly belonging to JEM. In Al Fashir, **ABU GARDA** [TEXT REDACTED] informed [TEXT REDACTED] troops that they had separated from the main JEM group under the Chairmanship of Dr. Khalil Ibrahim.

49. From Al Fashir, **ABU GARDA** [TEXT REDACTED] moved together with their troops towards Haskanita. During these movements **ABU GARDA** [TEXT REDACTED] continued to recruit new soldiers into [TEXT REDACTED] group, increasing their numbers.

50. Sometime in mid-September, Dr Khalil Ibrahim came to the camp in Um Durab where the breakaway forces were stationed and withdrew JEM fighters loyal to him and took them to the north. Some of the troops decided not to go with him and decided to stay in HASKANITA [TEXT REDACTED]. **ABU GARDA** [TEXT REDACTED] continued to act as the real JEM, using the JEM name, JEM vehicles and equipment, and maintaining the same structures that existed within the group that remained with them.

51. In the meantime, as mentioned in paragraph 37 above, the SLA-Unity troops under the command of [TEXT REDACTED] rescued remnants of the Abdul Shafie faction. The troops signed an agreement with them for joint operations effectively under the command and control of SLA-Unity. They left the Jebel Mara area together and headed for the SLA-Unity base near Haskanita.

52. On or about 25 September 2007, the combined SLA-Unity and SLA Abdul Shafie, [TEXT REDACTED] moved to the nearby town of Dar es Salaam, where they met **ABU GARDA** [TEXT REDACTED].

53. **ABU GARDA**, [TEXT REDACTED] held a meeting [TEXT REDACTED]. The SLA-Unity and SLA Abdul Shafie troops continued on to Haskanita where some of the JEM and SLA-Unity troops were based, and they spent the night there. On the morning of 28 September 2007, some members of the JEM, SLA-Unity and the SLA Abdul Shafie

Faction [TEXT REDACTED] went to Dalil Babiker where other JEM troops were based. The forces arrived in Dalil Babiker on 28 September 2007. **ABU GARDA** [TEXT REDACTED] remained in Haskanita.

54. On the next day, on 29 September 2007, around midday, GoS forces attacked the joint JEM, SLA-Unity and SLA Abdul Shafie forces near their camp in Dalil Babiker as they were about to leave the area. Having sustained heavy losses, including personnel and equipment, the JEM and combined SLA-Unity and SLA Abdul Shafie forces withdrew from their camp in Dalil Babiker and moved to another location nearby.

2. Planning for the Attack

55. Shortly after the attack on the rebel forces in Dalil Babiker, **ABU GARDA** [TEXT REDACTED] arrived at the location to which the JEM and combined SLA-Unity and SLA Abdul Shafie forces had retreated near Dalil Babiker.

56. At this location, **ABU GARDA** met with JEM and SLA-Unity commanders [TEXT REDACTED] (all members of the common plan). At the meeting these commanders agreed among themselves to attack the MGS Haskanita.

57. Immediately after the meeting, the commanders who attended including **ABU GARDA** [TEXT REDACTED] ordered their troops to board their vehicles and to “move” with them.

58. As the troops were preparing to board their vehicles, [TEXT REDACTED] told some of the troops that they (the combined rebel forces) were going to attack the MGS Haskanita. [TEXT REDACTED] told some of the troops that whenever “those people” went to Nyala or AL-DEÁN, they come back with government people, and that they are spies of the government. The troops understood [TEXT REDACTED] to mean that they were going to attack the MGS Haskanita.

59. The JEM forces under the command of **ABU GARDA** [TEXT REDACTED], SLA-Unity and SLA Abdul Shafie forces [TEXT REDACTED], immediately boarded their vehicles and headed for the MGS Camp in Haskanita. Other commanders from JEM and SLA-Unity [TEXT REDACTED] went together with the troops heading for the MGS Haskanita. The combined rebel forces were armed with various types of weapons including 106 calibre weapons, dushkas, AK-47's, anti aircraft weapons and rocket propelled grenades (RPGs).

60. As the combined rebel forces moved towards the MGS Haskanita. [TEXT REDACTED] instructed some of the rebel troops to position themselves at a road close to the AU MGS Haskanita, blocking the area and preventing any vehicles from entering or leaving the area.

61. The combined JEM and SLA-Unity forces arrived in a forest near the MGS Haskanita. **ABU GARDA**, [TEXT REDACTED], held another meeting. After the

meeting they directed their respective troops to move behind them and distributed their troops in various vehicles.

3. The Attack on the Mgs Haskanita on 29 September 2007

62. At about 7pm on 29 September 2007, the combined SLA/ JEM forces comprising of about 1000 troops in a convoy of approximately 30 vehicles armed with heavy weapons launched a surprise attack on the MGS Haskanita.

63. At the time of the attack, there were about 157 AMIS personnel based at the MGS Haskanita comprising 7 Military Observers (“MILOBS”), 10 Civilian Police (“CIVPOLs”) and a Protection Force of about 140 soldiers. Among the AMIS personnel that were present at the MGS Haskanita, only the protection force members were armed.

64. The combined rebel forces had timed their attack such that the AMIS personnel in the camp were taken by surprise and were unable to effectively defend themselves. At the time the attack took place, the AMIS personnel were getting ready to pray and break their Ramadan fast. Some of the AMIS personnel were performing ablution, some were cooking, some were bathing and some were walking towards the mosque for prayers.

65. Upon arriving close to the camp, the combined rebel forces started firing in the direction of the MGS Haskanita compound. They then attacked and destroyed the communication installations in the compound, killing one radio operator and causing injury to another.

66. As a result of the destruction of the communication installations, the AMIS personnel were not able to send out calls for assistance from other AMIS Units, and had to use their Thuraya satellite phone instead.

67. At the northern entrance gate, the combined rebel forces shot and killed the AMIS guards that were stationed there. In response to the attack, the AMIS protection force fired shots in the air to warn the attackers. Undeterred, the combined rebel forces continued their attack on the camp.

68. The AMIS personnel moved an Armed Personnel Carrier (APC) towards the front gate in order to prevent the attackers from gaining access into the camp. After an exchange of fire, the attackers hit the APC and destroyed it. L.Cpl Danjuma Madaki, who was manning the vehicle, was shot by the attackers and killed. Once the APC was destroyed, the attackers were able to enter the MGS compound through the gates. Some of the attackers placed aluminum sheets over the barbed wires surrounding the MGS camp and climbed into the camp. Later, when L.Cpl Danjuma Madaki’s body was found it was seen ridden with shrapnel.

69. During the attack, some of the local Sudanese staff members assigned to the MGS Haskanita, [TEXT REDACTED], were collaborating with the combined rebel forces.

70. When the attackers started shooting, the AMIS personnel ran in all directions. Some [TEXT REDACTED] hid in the trenches around the MGS Haskanita Compound. Some including [TEXT REDACTED] and Major Ibrahim Diagne hid in their tents.

71. The members of the AMIS Protection Force fought back to defend themselves and the camp. After about two hours of fighting, the attackers gained entry into the MGS Haskanita. [TEXT REDACTED] troops [TEXT REDACTED] entered the camp. Once they entered, the combined rebel forces moved in all directions inside the camp. One group of attackers headed straight towards the logistics area of the Camp where the vehicles, fuel tanks and food stores were located. Another group of attackers headed towards the living quarters.

72. The attackers pursued the AMIS personnel in the trenches and in their tents and shot at them. Some of these personnel were killed and others sustained severe injuries. The rebels demanded that the armed members of the AMIS Protection Force hand over their weapons. Those who refused to surrender their weapons were shot and killed or severely injured. [TEXT REDACTED], a CIVPOL Officer, took cover in one of the trenches in the MGS with a member of the Protection Force. Some of the rebels approached the area where [TEXT REDACTED] was hiding, and demanded their weapons by saying “gun...gun”. The Protection Force member did not respond. One of the rebels shot him. Immediately after that the rebel repeated the words “gun..gun”, and [TEXT REDACTED], who was unarmed, did not respond. The rebel said “Allahu Akbar” and then shot [TEXT REDACTED] in the back. The rebels then moved to another area of the camp demanding weapons. Not long afterwards, the rebels returned to where [TEXT REDACTED] was lying. They lifted him up to see if he was dead, and saw the blood on him. Thinking that he was dead, they pushed him back to the ground [TEXT REDACTED] survived but sustained severe injuries as a result of this shooting, and the Protection Force member died as a result of his gunshot injury.

73. Sgt. Mayoro Kebe, a CIVPOL officer, initially hid in the trenches with a fellow CIVPOL officer, [TEXT REDACTED]. Sgt. Mayoro Kebe left his hiding place and returned to his tent to recover his money. Upon arriving at the tent, he heard a member of the combined rebel forces approaching him, so he hid under his bed. The rebel shot and killed Sgt. Mayoro Kebe under his bed.

74. Major Gaolatine Tiro was a military observer (MILOB). During and in the course of the attack, he was shot at twice. The first time, he was coming out of the MILOBS Office when the attackers shot him in the back and injured him. He managed to get to the clinic in the compound where his wound was dressed by medics. He then left the clinic and headed towards the PAE Office when he was shot again and killed. The attackers, with the help of the collaborators from local civilian contractors in the camp, had searched the camp specifically for Major Gaolatine Tiro.

75. Major Ibrahim Diagne hid in his tent with a Sudanese person who served as AMIS Interpreter in the MGS Haskanita. The attackers were led to the tent of Major Ibrahim Diagne by a local employee called [TEXT REDACTED], who was collaborating with

them during the attack. [TEXT REDACTED] was seen leading the attackers to various parts of the MGS camp where they could find property to loot. At the time of the attack, [TEXT REDACTED] was seen carrying an AK-47 rifle and wearing a turban like the other attackers. Ibrahim Diagne was found together with a local staff who told him not to speak too much to the attackers because they were dangerous and could be on drugs. One of the attackers came behind the local staff and hit him with the butt of a gun on his head and on his back causing him to faint. The attackers demanded money. Major Ibrahim Diagne explained to them that he did not have any money as he had just returned from holiday. The attackers shot and killed him on the spot. Major Ibrahim Diagne's body was found in a pool of blood with gunshot wounds all over his body including ankle, arm, chest and back of the head.

76. During the attack, the AMIS personnel, with the exception of members of the Protection Force, were not armed. Some of them were crying and because they did not speak Arabic, gestured with their hands in an effort to communicate with their attackers.

77. The combined rebel forces shot and killed 10 AMIS peacekeepers. Two (2) other peacekeepers later died from injuries sustained during the attack.

78. The attackers also shot many AU personnel, [TEXT REDACTED]. All sustained severe gunshot injuries as a result of the attack. One officer went missing after the attack and remains unaccounted for.

79. During the attack the rebel forces under the command of **ABU GARDA**, [TEXT REDACTED] engaged in large-scale looting of the MGS Haskanita camp. The combined rebel forces looted property belonging to AMIS and the personal property of the AMIS personnel, including about 17 vehicles belonging to AMIS, ammunition and weapons from the armory, large quantities of fuel, food, refrigerators, laptops, cell phones, uniforms, jewellery, mattresses, suitcases, tents and money belonging to the AMIS personnel. They also looted money belonging to PAE from their safe deposit box.

80. In addition to the destruction of the APC, the attackers vandalised equipment and property and set fire to some of the installations, armoury and residential tents in the Camp, destroying them completely.

81. During the attack, some of the AMIS personnel were able to identify some members of JEM and SLA/Unity [TEXT REDACTED].

82. After the attack ended the JEM and SLA-Unity combined forces left the MGS and converged at a location near the MGS Haskanita. While there, **ABU GARDA** came and joined the JEM troops there. He checked on those members of his group who were injured. After that they all headed to Jebel Adola. **ABU GARDA** also joined the troops at this location.

83. **ABU GARDA**, [TEXT REDACTED] shared the looted vehicles between their respective groups. The share of AU vehicles for the JEM-CL was then allocated to the

commanders including **ABU GARDA** [TEXT REDACTED]. [TEXT REDACTED]. Some of the looted vehicles were subsequently sold, and some, including **ABU GARDA**'s looted vehicle were exchanged with vehicles belonging to the Chadian Armed Forces.

84. Some of the items looted were also used personally by the rebels. Some of them were later seen wearing uniforms and jewellery looted during the attack. Other items, including telephones and computers, were sold by the rebel fighters. Some of the money that was looted during the attack was used to the rebel fighters to buy personal items including alcohol.

C. FACTS RELEVANT TO ARTICLE 8 *CHAPEAU* ELEMENTS

85. The war crimes alleged in Counts 1, 2, and 3 of this DCC occurred in the context of and was associated with a protracted period of armed conflict of a non- international character between the Government of Sudan (GoS) together with forces under its control and the various armed rebel groups that operated in the Darfur region including the JEM and the SLA-Unity as described in paragraphs 7 to 39 above.

86. The SLA and the JEM (i) were the two of the many groups opposing the GoS in Darfur. They organized themselves between 2001 and 2002 and began to resort to armed violence in 2002. SLA-Unity also continued its armed violence against the GoS after it broke away from SLA/M in 2007.

87. As at the time of the attack at the MGS Haskanita, both the SLA-Unity and the JEM under **ABU GARDA** had the ability to carry out sustained military operations for a prolonged period of time. Since at least March 2003, the various factions of the SLA/M and the JEM were involved in numerous military operations against the GoS forces, including (i) at the end of 2002/beginning of 2003 in the Jebel Marra locality; (ii) in March /April 2003 on government installations in Kutum and Tine; (iii) on 25 April 2003 on the Al Fashir airport; (iv) in July 2003 on the police station in Bindisi; (v) in August 2003 on a Central Reservists office in Mukjar and on the military garrison in Arawala; and (vi) on 13 and 22 March 2004 on various buildings, including the police station and prison in Buram; (vii) on 18 September 2007 by the Abdul Shafie faction included in SLA-Unity in Dobo; (viii) on 29 September 2007 in Dalil Babiker as described in paragraph 54. At the relevant time, the SLA-Unity and the JEM controlled certain areas of the territory in the Darfur region, including much of Jebel Marra, North Darfur and Dalil Babikir, in particular the Haskanita area.

88. The armed conflict has been fought in the whole territory of Darfur. It started in 2002 and still continues to the date of this DCC. Although the SLA/M and the JEM entered into several agreements with the GoS, most notably (i) the Peace Agreement between the GoS and the SLA/M signed on 3 and 4 September 2003; (ii) the Humanitarian Ceasefire Agreement ("HCA") signed on 8 April 2004 between the GoS and the SLA/M and the JEM in N'DJamena; and (iii) the Darfur Peace Agreement

between the GoS and the SLA/M signed on 5 May 2006, these agreements were never fully implemented, and the hostilities between the GoS, and the SLA/M, the JEM and other opposition armed groups have continued in the Darfur region. It was publicly disclosed on or around 12 November 2008 that President Al Bashir announced a government-backed plan seeking an “immediate ceasefire” to hostilities and peace for Darfur. This initiative and several other later initiatives have failed and the hostilities subsist up to the date of filing this DCC.

89. The above constitutes sufficient evidence to establish substantial grounds to believe that the crimes committed on 29 September 2007 in Haskanita (Sector 8), Umm Kadada Locality, North Darfur were committed *in the context* of the armed conflict of a non-international character occurring in the territory of Darfur, at the time relevant to the attack on the MGS Haskanita.

90. The armed conflict played a substantial part in the suspect’s ability to commit the crimes charged in this DCC, as well as the manner in which and the purpose for which the attack was led:

- a. The JEM troops under the command of **ABU GARDA** [TEXT REDACTED] and the SLA-Unity troops who participated in the attack on the MGS Haskanita on 29 September 2007 were engaged in the conflict against the GoS along with the original rebel movements and other breakaway factions. Intensive fights to gain control over the Haskanita area continued between JEM and SLA-Unity on the one hand and the GoS and forces under its control, on the other. Since the arrival of the rebel alliance (JEM/SLA-Unity) in the area in the period leading up to the attack. The GoS was continuously bombing Haskanita village with a view to forcing the rebels’ alliance to withdraw. Thus, throughout their presence in Haskanita area, the JEM under **ABU GARDA** and the SLA-Unity were actively involved in the conflict and were fighting the GoS. It was in this context that the plan to attack MGS Haskanita was devised and subsequently executed by the commanders of the combined rebel forces.
- b. **ABU GARDA** together with other commanders from both JEM and SLA-Unity planned the attack on the MGS Haskanita and led their troops in the attack as part of JEM’s and SLA-Unity’s military campaign, and in the context of their roles as commanders of their respective rebel factions.
- c. There was major fighting that took place between the GoS and the rebel forces at Haskanita on or about 10 September 2007 and also at Dalil Babiker on 29 September 2007. This latter attack had left the combined rebel force without ammunition and sufficient fuel which proved to be a decisive factor in their final decision to carry out the attack against the AMIS personnel. The prospect of replenishing the depleted military resources by looting the property of the Camp was to serve the ultimate goal of the military campaign pursued by **ABU GARDA** and the combined rebel forces and

served as a major incentive for **ABU GARDA** and the other commanders to plan and lead the attack on the MGS. The rebel factions had always seen AMIS as a source for replenishing depleted logistics and have on several occasions attacked AMIS to this end to get vehicles or supplies.

- d. Indeed rebel groups in Darfur have been known to attack humanitarian organizations and AMIS for the purpose of replenishing their supplies. Such attacks include (a) the JEM and NMRD attack on AMIS in Tine on 9 October 2005³; (b) NMRD attack on AMIS on 9 November 2005⁴; (c) JEM and NRF attack on AMIS in Lwabit on 19 August 2006; and (d) SLA/AW attack on AMIS in Gereida on 5 March 2007. While the attack on the MGS Haskanita has been the most serious of them all, by December 2007, over 40 peacekeepers were killed in Darfur.

91. **ABU GARDA** was well aware of factual circumstances that established the existence of an armed conflict in Darfur at the time he planned and led the troops to attack the MGS Haskanita. At the time of the attack, **ABU GARDA** was the overall commander of the JEM forces that attacked the MGS Haskanita, and still remains the overall commander of JEM-CL, as well as URF which are both parties to the armed conflict. **ABU GARDA** has worked for years in top positions in the respective rebel groups in which he is/was a member and has carried out such important functions.

92. On 21 June 2006, JEM signed a military and political agreement with SLA, effectively recognising that they were fighting a war against the GoS. Soon after the attack on the MGS Haskanita, **ABU GARDA** as the Chairman of JEM-CL issued a statement which acknowledged the factual existence of the armed conflict. JEM-CL subsequently participated in the Juba Conference (aimed at harmonizing positions of the rebel factions), as well as the peace conference, in Sirte, Libya on 27-30 October 2007.

93. Thus, there is sufficient evidence to establish substantial grounds to believe that the alleged conduct of **ABU GARDA** took place in the context of and was associated with an armed conflict not of an international character. Furthermore, **ABU GARDA** was aware of the factual circumstances that established the existence of the armed conflict at the time relevant to the crimes charged in this DCC.

D. FACTS RELEVANT TO INDIVIDUAL CRIMES CHARGED

1. Facts relevant to Counts 1 and 2: Violence to Life - Murder (Article 8(2)(c)(i)) and Attempted Murder (Article 25(3)(f))

³ Senegalese soldiers were abducted during this attack. AMIS vehicles and equipment were stolen by the attackers.

⁴ 5 soldiers were injured.

94. On 29 September 2007, **ABU GARDA**, together with other senior commanders of JEM and SLA-Unity planned and carried out the attack on AMIS personnel at the MGS Haskanita.

95. As more fully described in paragraphs 65 to 78, during the attack, the rebels shot at many AMIS personnel in the MGS Haskanita camp. About eight AU personnel, [TEXT REDACTED] sustained severe injuries as a result of the attack. These individuals survived the attack only as a result of assistance they received after the departure of the combined rebel forces.

96. The attackers shot and killed 10 AMIS peacekeepers. Two (2) other peacekeepers later died from injuries sustained during the attack. The attackers killed the following AU personnel: Major Gaolatine Tiro (Botswana), Bala Mohammed (Nigeria), Martin Matthias (Nigeria), Haruna Peter (Nigeria), Duniya Audu (Nigeria), Samuel Orokpo (Nigeria), John Dogara (Nigeria), Tayo Alawo (Nigeria), Usman Saleh (Nigeria), Danjuma Madaki (Nigeria), Mayoro Kebe (Senegal) and Ibrahim Diagne (Mali). Many of those killed were shot in blatant execution style murders, in particular Mayoro Kebe and Ibrahim Diagne.

97. At all times relevant to the charges, AMIS personnel, installations, material, units and vehicles stationed at MGS Haskanita camp were involved in a peacekeeping mission in accordance with the UN Charter. As a peacekeeping force, the AMIS was deployed to Darfur with the consent of the GoS and the rebel factions.

98. Through a number of UN Security Council resolutions and Presidential Statements, the Security Council encouraged and endorsed the deployment of AMIS. In its Resolution 1556 of 30 July 2004, the Security Council endorsed “*the deployment of international monitors, including the protection force envisioned by the African Union, to the Darfur region of Sudan under the leadership of the African Union*” and further expressed “*its full support for the African Union-led ceasefire commission and monitoring mission in Darfur*”. In the same Resolution, the UN Security Council expressed its intention to invoke “article 41 of the Charter of the United Nations” in the event that the GoS failed to fulfil its various commitments. Also in Resolution 1564 dated 18 September 2004, the Security Council emphasised the UN’s endorsement of AMIS. The UN’s support and endorsement of AMIS is also evident from a number of Presidential Statements issued by the Security Council. For example, in a Statement by the President of the Council dated 26 May 2004, the Council expressed “*its full and active support for the efforts of the African Union to establish the ceasefire commission and protection units*”. In a further Presidential Statement issued on 13 October 2005, the UN Security Council expressed its “*unequivocal support for the African Union Mission*” and demanded that the parties to the conflict “*cooperate[d] fully with the African Union Mission*”. On 21 December 2005, the Security Council commended the “positive role” played by AMIS in the restoration of order in Darfur. In a statement by the UN on 2 October 2007 condemning the ‘murderous attack’ on MGS Haskanita, the UN also confirmed that the African Union Troops were peacekeepers.

99. According to the AMIS Rules of Engagement, use of deadly force was authorized only in the case of self defence of AU personnel, highlighting further the self-defensive nature of the mission. At all material times relevant to this DCC, in the MGS Haskanita, only the Protection Force was armed and were subjected to and acted in accordance with these Rules of Engagement.

100. In accordance with its mandate, the AMIS deployed in Darfur, and in particular in Haskanita, was a neutral and impartial force. They did not involve themselves in the fighting between the GoS forces and the various rebel groups. AMIS personnel took no active part in hostilities, and were therefore entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

101. At all material times, **ABU GARDA** and the other commanders and troops under his command knew the mandate of the AMIS, and that their personnel were protected and could not be subjected to any attacks.

102. At all times relevant to this DCC, **ABU GARDA** and the troops under his command, SLA-Unity and SLA Abdul Shafie, knew of the existence of the MGS in Haskanita by reason of the interactions that these groups had with AMIS. JEM and SLA-Unity fighters had operated in Haskanita for over a year prior to the attack. They established a base in Dalil Babiker, just about an hour's drive from Haskanita. The JEM and SLA-Unity forces had had interactions with the peacekeepers in the MGS Haskanita before the attack. Thus, both JEM and SLA-Unity commanders knew the exact location of the MGS Haskanita and knew that there was no GoS military base in Haskanita.

103. Officials of both JEM and SLA-Unity have had a series of contacts with peacekeepers in the MGS Haskanita weeks and days before the attack. For instance, on 27 August 2007, JEM Commander [TEXT REDACTED] accompanied by officers and a spokesman of JEM visited the MGS Haskanita and assured the MGS command that JEM forces were in charge of Haskanita. At this time, **ABU GARDA** was still the second in command of JEM.

104. A few weeks before the attack on the MGS Haskanita, at a point when the GoS offensive against the combined JEM and SLA-Unity force for the control of Haskanita was at its peak, a JEM commander [TEXT REDACTED] and [TEXT REDACTED] (SLA Unity) visited the MGS Haskanita with their troops and demanded suspension of all AMIS flights to Haskanita and the eviction of a GoS Military Officer, Captain Bashir, from the base for allegedly providing GoS pilots with coordinates of rebel positions in the area. AMIS voluntarily agreed to the removal of this officer and he was removed from the camp in the presence of JEM and SLA-Unity troops.

2. Facts relevant to Count 2: Intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a peacekeeping mission (Article 8(2) (e) (iii))

105. The violent attack on the MGS Haskanita on 29 September 2007 by **ABU GARDHA**, and other commanders from JEM and SLA-Unity and troops under their command and control, was directed against the AMIS personnel, installations, material, units and vehicles involved in a peacekeeping mission in accordance with the UN Charter.

106. AMIS personnel, installations, material, units and vehicles at the MGS Haskanita were taking no active part in hostilities or making an effective contribution to the military action of a party to the conflict, and were therefore entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

107. At all material times, **ABU GARDHA**, and the other commanders and troops under his command knew the mandate of the AMIS, and that their personnel and objects were protected and could not be subjected to any attacks.

108. As stated in paragraphs 102 to 104 above JEM and SLA-Unity had significant dealings with members of the AMIS forces prior to the attack and made statements recognising the neutrality of the AMIS forces and the need to ensure the protection of its personnel.

109. **ABU GARDHA** and the other commanders from JEM and SLA-Unity had intended to direct their attack of 29 September 2007 against the AMIS personnel and objects in the MGS Haskanita. At the time of the attack, the attackers knew they were attacking the AMIS in the MGS Haskanita Compound.

110. **ABU GARDHA** and the other JEM and SLA-Unity commanders and their troops knew that the MGS Haskanita Camp was an AMIS Camp and not a GoS Camp. Before the attack, for example, [TEXT REDACTED] told his troops that they were going to attack the MGS Haskanita. Additionally, the set up of the camp was markedly different from GoS camps.

111. At all times relevant to the charges, it was known to the attackers that the personnel in the MGS Haskanita were AMIS personnel and not GoS soldiers. Even in the course of the attack, the attackers had direct contact with the AMIS personnel when they were demanding their possessions and attempting to disarm them. As part of the attack, the rebels looted at least seventeen (17) AMIS vehicles which were all marked with "AMIS" signs. They also pillaged military uniforms which bore emblems and symbols of the countries of their owners.

3. Facts relevant to Count 3: Pillaging (Article 8 (2)(e)(v))

112. **ABU GARDHA** and other commanders from JEM and SLA-Unity and troops under their command and control appropriated multiple items from the MGS Haskanita, belonging to AMIS and the AMIS personnel. The items were taken without the consent of the owners. The looted property included about 17 vehicles belonging to AMIS, ammunition and weapons from the armory, money belonging to PAE from the safe deposit box, large quantities of fuel, refrigerators, laptops, cell phones, suitcases,

uniforms, mattresses and tents. The personal property taken by the rebels from the AU personnel included jewellery, clothing, uniforms and money.

113. The attack and pillaging had a significant negative impact on the ability of AMIS to discharge its mandate. As a result, AMIS initially suspended and subsequently reduced all its activities in the Haskanita area.

114. The pillaging of the MGS Haskanita was accompanied by violence causing death and injury to peacekeepers as described in paragraphs 67 to 78 above as well as destruction of their living quarters, the mosque, communication posts and equipment as described in paragraph 80 above.

115. The takings were done with the intent to deprive the owners of their property. None of the items pillaged by the attackers were returned to AMIS. **ABU GARDA**, and other commanders from JEM and SLA-Unity and troops under their command and control, appropriated the property for their private or personal use, including vehicles, cash, jewellery and fuel. Some of the items such as vehicles are still being used by **ABU GARDA**, [TEXT REDACTED] and their subordinates, others were sold soon after the attack, some were exchanged with Chadian vehicles.

116. Other looted items were shared between the groups. Some of the troops thereafter wore uniforms and jewellery looted from AMIS during the attack. Other items, including the telephones and computers were sold. Some of the money that was looted during the attack or obtained as proceeds from the sale of property was used by the troops to buy local wine for their own consumption.

III. INDIVIDUAL RESPONSIBILITY: ARTICLE 25(3) (a) OF THE ROME STATUTE

117. Without excluding any other applicable mode of liability, **ABU GARDA** is individually criminally responsible as a co-perpetrator or as an indirect co-perpetrator under Articles 25(3) (a) and/or 25(3)(f) for the war crimes referred to in Article 8 of the Rome Statute, and as described in this DCC, which he committed jointly and with other forces from SLA-Unity and JEM.

A. OBJECTIVE ELEMENTS OF JOINT COMMISSION OF A CRIME

1. Agreement and Common Plan

118. There existed a common plan between **ABU GARDA**, [TEXT REDACTED] and other senior commanders in their respective groups pursuant to which the crimes charged in this DCC were committed in the course of the attack on the MGS Haskanita.

119. One of the goals underlying the common plan of **ABU GARDIA** and the other commanders, [TEXT REDACTED], to attack the AMIS forces at the MGS Haskanita was to assert and enhance their military and political power.

120. As described in paragraphs 55 to 57 above, immediately after the GoS forces attacked the rebel groups in Dalil Babiker, on 29th September 2007, **ABU GARDIA** and the other SLA-Unity and JEM commanders [TEXT REDACTED] held a meeting. Between 20 to 33 JEM and SLA-Unity Unit commanders [TEXT REDACTED] participated in the meeting. The commanders agreed among themselves to attack the MGS Haskanita.

121. After the meeting, the commanders who attended the meeting including **ABU GARDIA**, [TEXT REDACTED] ordered their troops to board their vehicles and to “move” with them go on a mission.

122. [TEXT REDACTED]. The mid-level commanders also conveyed the Common Plan down the chain of command to their respective troops, as well as taking direct part in the attack.

123. Soon after the meeting, [TEXT REDACTED] told some of the troops [TEXT REDACTED], that the combined JEM and SLA-Unity forces were going to attack the African Union MGS in Haskanita. [TEXT REDACTED].

124. [TEXT REDACTED].

125. The troops left the area where the meeting took place and where the orders to move were issued and followed their commanders [TEXT REDACTED] straight in the direction of the MGS Haskanita Compound. At the material time, there were no GoS bases in the vicinity.

126. On the way, the combined forces briefly stopped in a forest near the MGS Haskanita, **ABU GARDIA** and the other commanders [TEXT REDACTED] held another meeting. They directed their respective troops to move behind them and distributed their troops in various vehicles.

127. The convoy of about 30 vehicles departed this location and headed to the MGS Haskanita. An eye-witness described the situation as follows: *“When we arrived, they ordered us to move. They shouted, and when they shouted like this, they attacked the African Union compound.”*

128. Thus, the attack on the MGS Haskanita was executed in furtherance of the plan and orders given by **ABU GARDIA** through other members of the common plan [TEXT REDACTED].

129. The above demonstrate the coordinated and pre-planned nature of the attack. The meetings held before the attack were on each occasion followed by the orders of the

[TEXT REDACTED] commanders to their respective troops to board their vehicles and move forward. Hence, the events immediately resulting from these orders (i.e. the actual attack on the MGS Haskanita) further demonstrate the pre-planned and coordinated nature of the attack.

130. The organized and coordinated fashion in which the attack was executed, the timing of the attack, the involvement of three rebel groups, and the manner of the attack and the sequence of the events prior to and immediately following the attack, demonstrate that **ABU GARDA**, [TEXT REDACTED] and their respective forces were acting pursuant to a common plan agreed upon by the commanders. Furthermore, the active collaboration of some of the local staff working at the MGS Haskanita during the attack further demonstrates the pre-planned nature of the attack.

2. The Coordinated Essential Contribution by Co-Perpetrators Resulting in the Realization of the Objective Elements of the Crime

131. **ABU GARDA**, [TEXT REDACTED] and unit commanders [TEXT REDACTED] exercised joint control over the commission of the crimes by virtue of the essential nature of tasks assigned to them in the implementation of the plan to attack the MGS Haskanita. As such, **ABU GARDA** and these other commanders had the ability to frustrate the commission of crimes by not performing those tasks assigned to them.

132. **ABU GARDA** together with other members of the common plan, made coordinated and essential contributions to the realization of the crimes charged in this DCC through the following means:

- (i) By organizing and participating in the meetings with the other commanders, at which the plan to attack the MGS Haskanita was agreed upon and communicated to the unit commanders and troops; and
- (ii) By directly issuing orders to the combined forces and through other unit commanders to attack the MGS Haskanita;
- (iii) By personally leading and directly participating in the attack.

133. **ABU GARDA** played an overall coordinating role and had direct responsibilities in the implementation of the common plan. For instance:

- (i) **ABU GARDA** had direct and ongoing contacts with the other participants of the attack, including by participating in at least two meetings as described in paragraphs 56 and 61 above during which the plan to attack the MGS Haskanita was agreed upon (i.e. in Dalil Babiker and the forest).
- (ii) **ABU GARDA** ordered the JEM troops through his subordinate commanders, [TEXT REDACTED] to attack the MGS Haskanita.

- (iii) **ABU GARDA** provided needed troops, equipment and materials to carry out the attack by allowing the JEM troops, equipment and materials to be used in the attack.
- (iv) **ABU GARDA** was personally involved in the distribution and/or disposal of some of the items looted from the MGS Haskanita.
- (v) **ABU GARDA** armed with a *dushkas* personally participated in the attack together with other commanders and the large-scale pillaging of the Camp that took place after the attack.
- (vi) **ABU GARDA** failed to punish any of the perpetrators from JEM involved in the attack.

B. OBJECTIVE ELEMENTS OF COMMISSION OF THE CRIME THROUGH ANOTHER PERSON, REGARDLESS OF WHETHER THAT OTHER PERSON IS CRIMINALLY RESPONSIBLE

1. ABU GARDA's control over the organization

134. **ABU GARDA** committed the crimes charged in this DCC through the combined rebel forces over which, together with other commanders, he exercised joint command and control.

135. [TEXT REDACTED] **ABU GARDA** himself was in total control of the JEM forces through a direct military command [TEXT REDACTED].

136. As stated above **ABU GARDA** joined the JEM in or around 2002. On 3 January 2005, **ABU GARDA** became the Secretary General with responsibility for the Western Sector and Vice President of the JEM, which effectively made him the second highest ranking official in the organization. **ABU GARDA** held this position till 26 September 2007, when Dr. Khalil Ibrahim issued the decree (Decree No. 28 of 2007) terminating his appointment as Head of JEM Western Sector, and Advisor to President of JEM. Despite this decree, **ABU GARDA** continued to exercise his authority over troops which remained with him, and he continued to exert his role by purporting to have sacked Dr. Khalil Ibrahim from JEM.

137. In spite of his *de facto* separation and subsequent dismissal from JEM, **ABU GARDA** effectively maintained authority over the troops by virtue of his leadership position in the movement.

138. As explained above, after the purported removal of Dr. Khalil Ibrahim, **ABU GARDA** [TEXT REDACTED] claimed to represent the leadership of JEM. When **ABU GARDA** [TEXT REDACTED] left the main JEM, not all the troops were aware of the details of the split and followed them due to the established sense of leadership of and allegiance to their commanders. During the Chairman's visit to Haskanita, after which the troops came to know of the existing differences in the movement, some opted to stay with

ABU GARDA [TEXT REDACTED], thereby accepting [TEXT REDACTED] authority and command over them.

139. On the operational level, **ABU GARDA** exercised military command over the forces [TEXT REDACTED].

140. [TEXT REDACTED].

141. After **ABU GARDA** [TEXT REDACTED] left Wadi Hawar and moved together with [TEXT REDACTED] troops towards Haskanita, **ABU GARDA** personally led the JEM troops and stayed with them in Katal for about one month prior to the attack. During this time, **ABU GARDA** recruited new soldiers into the group.

142. **ABU GARDA** thus had effective command and control over those renegade JEM forces that were with him during this time.

143. **ABU GARDA** had the power to issue orders to the troops directly, and through his subordinate commanders [TEXT REDACTED], and to direct them on military operations. [TEXT REDACTED]. [TEXT REDACTED].

144. Soon after the attack on the MGS Haskanita, **ABU GARDA** represented his group in the negotiations by the various factions held in Juba, South Sudan as the Chairman of his JEM faction. He also later represented the group in the peace talks in Sirte, Libya. These further demonstrate his position of overall leader and commander of the JEM forces who carried out the attack on the MGS Haskanita.

2. Organised and hierarchical apparatus of power

145. As related in paragraph 32 above, the group of JEM's breakaway commanders who carried out the attack formalized itself in October 2007 with the announcement of the new JEM Collective Leadership ("JEM-CL"). The dismissal of **ABU GARDA** from his position of Secretary General and the ensuing [TEXT REDACTED] marked the process of institutionalization of JEM-CL as a separate entity with all characteristics of a hierarchically organized rebel group.

146. However, the JEM breakaway group effectively existed as an organised and hierarchical apparatus of power as of the time of the split and during the time relevant to the crimes charged in this DCC.

147. At all times prior to this formalization, **ABU GARDA** continued to operate as JEM and maintained the structure as it was. As explained above, the group that formalized itself as JEM-CL shortly after the attack claimed to represent the main JEM and bore the organizational features of the mainstream JEM, including

- (a) the adherence to military discipline;

- (b) militarily structured organisation with hierarchical subordination between the commanders and the soldiers; and
- (c) organization of the movement into camps headed by a commander.

148. The circumstances surrounding the attack clearly show that the troops over which **ABU GARDA** had command and control formed part of a hierarchically organised group. Specifically,

- (a) relations between superiors and subordinates were hierarchically organized;
- (b) the hierarchical structure of power ensured that orders given by the recognised leadership would generally be complied with by the subordinates; and
- (c) the organized structure of power was composed of sufficient subordinates to guarantee that superiors' orders would be carried out, if not by one subordinate, then by another.

3. Execution of the crimes secured by compliance with the senior authority's orders

149. **ABU GARDA** mobilised his authority and control over the apparatus to execute crimes charged in this DCC by securing compliance with his orders.

150. The hierarchically organized group under the command and control of **ABU GARDA** was characterized by the interchangeability of the lowest level soldiers that sought to ensure that the successful execution of the plan would not be compromised by any particular subordinate's failure to comply with an order. The circumstances surrounding the attack indeed show that the soldiers were following their commanders' orders without knowing much of the details of the upcoming attack. They did not know of the other participants in the operation; they only knew of their leaders whose orders they had to pursue. Nor were all of them told in advance of the intended target of the attack.

151. The JEM troops were subjected to a strict military discipline that included serious punishment in case of non-compliance with superior orders. Threat of serious sanctions compelled some of the troops to follow **ABU GARDA** [TEXT REDACTED] and take part in the attack.

152. The automatic compliance with **ABU GARDA**'s orders was further reinforced with strict discipline implying brutal military training practices in the JEM.

C. ABU GARDA ACTED WITH THE REQUIRED MENS REA

1. ABU GARDA fulfilled the subjective elements of the crimes

- a. ABU GARDA intended the personnel, installations, materials and units or vehicles involved in the peacekeeping mission to be the object of the attack**

153. The attack on the MGS Haskanita was deliberate and intentional. Prior to the attack and specifically on 10 September 2007, JEM and SLA-Unity members in Haskanita [TEXT REDACTED] threatened AMIS personnel that “if they (the combined rebel forces) were attacked again by the GoS forces, they will also attack AMIS.” The attack on the MGS Haskanita was launched soon after a GoS attack on the combined rebel forces. In addition, the MGS was also easily distinguishable from the GoS camps. Specifically, (a) there was the AU flag at the MGS which was visible from afar; (b) all the AMIS dormitories and vehicles in Haskanita were white (AMIS being the only force that used white dormitories); (c) the MGS was fenced with barbed wire through which the activities going on inside were visible from the outside. Furthermore, **ABU GARDA**’s troops as well as other members of the common plan, [TEXT REDACTED], were aware of the location of the Camp as representatives of both JEM and SLA-Unity who were present in the area had visited the camp on several occasions, and personally met with AMIS staff.

154. In the first wave of the attacks, combined rebel forces specifically targeted and destroyed the AMIS communication platform rendering it difficult for the AMIS forces to communicate with each other or the outside during the attack. The very fact that the attackers were able to identify exactly where the communication platform was located, shows their prior knowledge of the lay-out and arrangement of the Camp, and hence demonstrates the intention of the group to attack the mission, as such.

155. The manner in which the attack on the MGS Haskanita was executed suggests that the attackers targeted the personnel, installations, materials, units and vehicles of AMIS.

156. As soon as the attack started, the AMIS peacekeepers fired flares in the air to warn off the attackers. The combined rebel forces were undeterred by these warnings and persisted with the attack as they led the charge.

157. Finally, the conduct of the attackers during the operation itself also manifests their intention to target the AMIS personnel and installations as the object of the attack. The Camp had signs at prominent locations indicating that the base belonged to the AMIS. Having entered the Camp, combined forces were not deterred by these signs and markings. Nor were they prevented from driving all AMIS vehicles away after the attack, which all had prominent markings showing that they belonged to the AMIS peacekeeping forces. The looted military uniforms similarly showed that they belonged to the personnel of the AMIS peacekeeping force.

b. ABU GARDA’s knowledge of the protected status of the AMIS personnel and objects

158. The peacekeeping nature of AMIS was generally known to the public at large. JEM and SLA-Unity had detailed knowledge of the mandate and activities of AMIS by virtue of their participation in the agreements on the basis of which the AMIS was deployed to

Darfur. JEM also had its own representatives in the mission and JEM soldiers had regular updates on the nature and activities carried out in the AMIS camps.

159. Further, on various occasions, the AMIS personnel explained the nature of their mandate to the representatives of the rebels visiting the Camp, including at the demonstrations instigated by the rebels.

160. AMIS was widely perceived as a neutral and impartial force, refraining from being involved in the fighting, or otherwise promoting the military cause of any of the parties to the conflict. Indeed, when the combined rebel forces complained about Captain Bashir and demanded his removal from the Camp, AMIS immediately took measures to evacuate him. This evacuation was carried out in the presence of representatives of the combined rebel forces.

161. JEM was fully cognizant of the protected nature of the AMIS personnel and objects. Both SLA-Unity and JEM have had significant dealings with AMIS and made statements recognising the neutrality of the AMIS forces prior to the attack on MGS Haskanita on 29 September 2007 as well as after the attack. A few days before the attack, locals in Haskanita vented their frustration at the ongoing conflict and protested against AMIS. Some of the protesters wanted to attack the MGS Haskanita. Dr Khalil Ibrahim claims to have intervened and publicly told the local population that AMIS is to be protected from attack from all sides.

162. **ABU GARDA**, [TEXT REDACTED] occupied senior positions in their respective rebel groups. They carried out such important functions which necessarily required that they were aware of the protected status of AMIS. They belonged to groups that had signed the Agreement on Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur of 28 May 2004. In that agreement, both JEM and SLA (from which groups the factions that attacked the MGS emanated) committed to ensure the safety and security of AMIS personnel.

163. From the above, it is clear that **ABU GARDA**, [TEXT REDACTED] and indeed the combined rebel forces knew of the protected status of AMIS. In fact, prior to and immediately following the attack, members of the common plan, [TEXT REDACTED], were spreading rumors that AMIS was providing intelligence information to the GoS to help defeat rebels. There is substantial evidence to show that this was done in order to encourage their junior commanders and subordinates to follow the orders to participate in the attack on the MGS Haskanita.

164. In order to reinforce AMIS neutrality and non combatant status, the UN Security Council in Resolution 1769, demanded an immediate cessation of hostilities and attacks on AMIS and expressly reaffirmed the protected status of the mission for the parties. On 20 August 2006, among other parties to the conflict, JEM was unequivocally called on to respect the “neutral and impartial status of AMIS”.

165. **ABU GARDA** was thus aware of the factual circumstances that established the protected status of AMIS personnel and objects which he and others targeted in the attack. In particular, **ABU GARDA** was aware that AMIS personnel, installations, material, units and vehicles remained entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

c. ABU GARDA intended to deprive the owner of the property and to appropriate it for private or personal use

166. Some of the loot was first collected in one place and subsequently shared among the perpetrators.

167. The evidence of subsequent use of the looted vehicles by the perpetrators, including **ABU GARDA**, [TEXT REDACTED] among others, establishes substantial grounds to believe that **ABU GARDA** intended to deprive the owners of the property and to appropriate it for private or personal use.

168. Some of the looted vehicles were subsequently sold, and some were exchanged with vehicles belonging to the Chadian Armed Forces. Further, JEM and SLA-Unity attackers set up a committee to sell some of the vehicles that were pillaged from MGS Haskanita. Several vehicles were sold in Chad and the Sudan.

169. The above constitute sufficient evidence to establish substantial grounds to believe that **ABU GARDA** intended to deprive the owner of the property and to appropriate it for private or personal use.

2. ABU GARDA and the other commanders, [TEXT REDACTED], were all mutually aware and mutually accepted that implementing their common plan may result in the realization of the objective elements of the crime

170. **ABU GARDA**, and the other commanders, [TEXT REDACTED], were all mutually aware and mutually accepted that implementing their common plan would result in the realisation of the objective elements of the crimes charged in this DCC.

171. **ABU GARDA** and the other commanders, [TEXT REDACTED] aware of the substantial risk/likelihood that the implementation of their Common Plan would result in the realization of the objective elements of the crime. When they planned, ordered and led the attack on MGS Haskanita on 29 September 2007, **ABU GARDA** knew that, as a consequence of their common plan, (a) the attack on the personnel and objects involved in the peacekeeping mission; (b) killings of those not taking active part in hostilities; (c) pillaging of the property at the MGS Haskanita would occur, in the ordinary course of events.

172. Moreover, the main objective of the plan by **ABU GARDA** and the other JEM and SLA-Unity commanders was to carry out a) an attack against the personnel and objects involved in the peacekeeping mission; b) violence to life to the persons not taking any active part in hostilities; c) pillaging of the properties in the MGS Haskanita. Therefore, by making a decision to implement the Common Plan, **ABU GARDA** and the other commanders, [TEXT REDACTED], individually accepted that, in the ordinary course of events, implementation of their Common Plan would lead to the commission of the aforementioned crimes and reconciled themselves with them: not only by condoning their commission, but by ordering and leading their respective troops to participate in the attack and ensuring that these outcomes in fact occurred.

3. ABU GARDA and the other commanders [TEXT REDACTED] were aware of the factual circumstances enabling them to jointly control the crime

173. At all material times, **ABU GARDA** and the other commanders [TEXT REDACTED] were aware of the factual circumstances which enabled them as co-perpetrators to jointly control the crimes committed by the JEM and SLA-Unity troops under their command during the attacks on Haskanita.

174. After their planning meetings, **ABU GARDA** and the other commanders briefed their respective groups. In addition, as they approached the MGS Haskanita, they issued the order for the troops to attack.

175. The above demonstrate that **ABU GARDA** and the other commanders, [TEXT REDACTED] were further aware of their respective roles as commanders who controlled the troops that participated in the attack. As such, they were aware that by virtue of their positions of command, they had joint control over the commission of crimes charged in this DCC.

176. For the above reasons, there are substantial grounds to believe that **ABU GARDA** and the other commanders, [TEXT REDACTED], acted with the requisite *mens rea* when they jointly planned and led JEM and SLA-Unity force to attack the MGS Haskanita and commit crimes charged in this DCC.

IV. CHARGES

Count 1: Violence to Life (Article 8 (2)(c)(i) and Article 25(3)(a) and Article 25(3)(f) of the Rome Statute)

On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, knowingly and in the context of and associated with an armed conflict, **ABU GARDA**, jointly, and with JEM forces under his control and SLA-Unity forces, killed twelve (12) AMIS peacekeeping personnel and attempted to kill eight (8) AMIS peacekeeping personnel, with the knowledge that they were personnel involved in a peacekeeping mission established in accordance with the UN Charter and were taking no active part in hostilities and thus entitled to the protection given to civilians

under the international law of armed conflict, thereby committing a crime in violation of Articles 8(2)(c)(i) and 25(3)(a) and 25(3)(f) of the Rome Statute.

Count 2: Intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission (Article 8(2)(e)(iii) and Article 25(3)(a) of the Rome Statute)

On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, knowingly and in the context of and associated with an armed conflict, **ABU GARDIA**, jointly, and with JEM forces under his control and SLA-Unity forces, intentionally directed attacks against AMIS peacekeeping personnel, installations, materials, units and vehicles involved in a peacekeeping mission established in accordance with the Charter of the United Nations, which were entitled to the protection given to civilians and civilian objects under the international law of armed conflict, with the knowledge of the factual circumstances that established that protection, thereby committing a crime in violation of Article 8 (2)(e)(iii) and 25(3)(a) of the Rome Statute.

Count 3: Pillaging (Article 8(2)(e)(v) and Article 25(3)(a) of the Rome Statute)

On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, knowingly and in the context of and associated with an armed conflict, **ABU GARDIA**, jointly, and with JEM forces under his control and SLA-Unity forces, appropriated property belonging to AMIS and its personnel including vehicles, refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition and money, without the consent of the owners and for their private or personal use, thereby committing a crime in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute.



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Luis Moreno-Ocampo

Prosecutor

Dated this 24th day of September 2009

The Hague, The Netherlands