

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom 1
3 Presiding Judge Sylvia Steiner, Judge Sanji Mmasenono Monageng and
4 Judge Cuno Tarfusser

5 Situation Darfur, The Sudan - ICC-02/05-02/09

6 In the matter of the Prosecutor v Bahar Idriss Abu Garda

7 Confirmation of Charges Hearing

8 Monday, 26 October 2009

9 (Open session)

10 (The hearing starts at 9.32 a.m.)

11 THE COURT USHER: All rise. The International Criminal Court is now in
12 session.

13 PRESIDING JUDGE STEINER: Pre-Trial Chamber I is now in session. I would
14 like to welcome all those present here in the courtroom, the public present in the
15 gallery and Mr. Abu Garda himself, and I would like to ask the court officer to
16 call the case, please.

17 THE COURT OFFICER: Situation in Darfur, Sudan. The Prosecutor v. Bahar
18 Idriss Abu Garda, ICC-02/05-02/09.

19 PRESIDING JUDGE STEINER: Thank you very much. First, I want to inform the
20 parties and the participants that in the second part of this morning's session, the
21 second session, it will be -- we will have in this courtroom a representative of
22 New York United Nations Dispute Tribunals for a one-day training programme. His
23 presence in the courtroom is a result of an agreement with the Registry of the
24 International Criminal Court and in accordance with the memorandum received by the
25 Chamber on 9 October 2009. Taking into account that we are in open session, I hope

1 that this does not bring any inconvenience to the parties and participants.

2 I would now ask first the parties and then the participants to introduce
3 themselves, starting by the Prosecution. Mr. Faal.

4 MR. FAAL: Madam President, your Honours, good morning to everyone present
5 here today. The Prosecution is represented by: Mr. Ade Omofade, trial lawyer;
6 Ms. Shyamala Alagendra, trial lawyer; Mr. Victor Baiesu, associate trial lawyer;
7 Pubudu Sachithanandan, associate trial lawyer; Desiree Lurf, associate trial
8 lawyer; Biljana Popova, case manager; and Essa Faal, senior trial lawyer. Thank
9 you.

10 PRESIDING JUDGE STEINER: Thank you very much.

11 Mr. Khan.

12 MR. KHAN: Madam President, your Honours, good morning. Mr. Abu Garda is
13 represented by: Anand Shah, case manager; RoseMarie Maliekel, pro bono assistant;
14 and myself, Karim Khan.

15 PRESIDING JUDGE STEINER: Thank you very much.

16 Legal representatives of victims, please.

17 MS. CISSE: (Interpretation) Good morning, your Honour. I am Ms. Cisse and I
18 represent the victims 445, 456, 463, 619 and 8 -- 580, thank you.

19 MR. KONÉ: (Interpretation) Good morning, your Honours. I am Mr. Koné and I
20 too am a representative of witnesses -- pardon me, of victims.

21 MR. ADAKA: Good morning, Madam Presiding Judge, Honourable Judges. My names
22 are Frank Adaka and I represent victims numbers 0552 to 0556 and victims numbers
23 0563 to 0578. Thank you.

24 MR. AKINBOTE: Good morning, Madam President, your Honours. I represent the
25 same set of victims. My names are Akin Akinbote.

1 PRESIDING JUDGE STEINER: Thank you very much. I just inform for the court
2 reporter. Yes, Mr. Akinbote.

3 We will have some issues to discuss, but I will leave them for the second
4 session of the day because they relate to the presentation by the Defence of its
5 evidence as for tomorrow and the day after tomorrow but because we have no access
6 at this moment to the case file, we will discuss these two issues in the second
7 session.

8 According to the schedule today, we'll have the examination of the third and
9 last witness called to testify by the Prosecution. I wish to recall that although
10 the witness is giving testimony in open court, the practice of this Chamber is that
11 no names be mentioned during the questioning of the witness, and the reason behind
12 that is to grant an additional protection, not to the witness himself, but also to
13 their families that are in their home countries and may be harassed if their
14 identities are revealed through the identification by all media of the name and
15 surname of the said witness. So, please, I recall the parties not to mention and
16 the participants not to mention names. And the Chamber also expects the parties
17 and the participants to treat the witness with all due respect.

18 Having said that, I would like the court officer, please, to bring
19 Witness 445 into the courtroom.

20 Mr. Khan.

21 MR. KHAN: Madam President, a few matters, with your leave. In relation to
22 the last matter, I would be grateful for the Court's direction regarding how to
23 address the witness. Should the witness be addressed simply as Witness 445 or does
24 the Bench consider that, as a matter of courtesy, another designation may be
25 respectful and appropriate?

1 Of course, I would fully honour the injunction not to mention the name, but
2 your Honours would be best placed perhaps to know whether or not, as a matter of
3 courtesy the witness should be addressed as Witness 445, or by another designation
4 that perhaps is obvious from the statement the Bench has. Your Honour, that's the
5 first issue.

6 The second issue is a brief matter that perhaps your Honours can consider
7 whenever convenient. My case manager had discussions towards the end of last week
8 with both the court officer - the legal officer in court - and the computer
9 section. We would very much like for the next witness for there to be -- for him
10 to have computer access. And we are told, from my understanding, this is very
11 simple, a cable is needed, but the leave of the Bench is required, and it may
12 assist the witness to be able to access his documents on-line. Your Honour, that's
13 one matter.

14 The other housekeeping matter is the issue of briefs that I would ask the
15 Bench to consider. Your Honour did give an opportunity to the parties, on a
16 previous occasion before the confirmation hearing started, to make representations
17 as to the utility of a brief. Your Honours, I note that the Prosecution have
18 submitted aide-mémoires in relation to peacekeeping legal elements of the offence
19 and the alleged participation of my client. No objection, of course, is taken to
20 any of that, but considering the matters that are before the Bench, at this point I
21 don't see a compelling need to present a brief at all - a written brief - in
22 addition to any submissions that I make in Court.

23 Now, your Honours, of occur, it's a matter for the Bench to decide whether or
24 not the parties file a brief. If the Prosecution do still wish to file a brief,
25 and I believe they do, and if the Bench decides that the parties still be entitled

1 to file a brief, I would ask that an order be given that the Defence file perhaps a
2 week after the Prosecution file their brief, to give us the last word and to
3 consider the Prosecution arguments.

4 Your Honour, the last matter is an application that I don't anticipate at all
5 it can be resolved right now, but it's one that would help the Defence. We saw
6 last week that Friday was used as a spillover in order to finish the witnesses
7 scheduled for last week. There are, of course, a plethora of matters that have to
8 be dealt with by my team and what one sees in the court, of course, is the tip of
9 the iceberg. Your Honours, it would be helpful for us if your Honours could
10 consider allowing the Defence to give closing arguments -- give our closing
11 statement on Friday. It would allow us time to focus this week, in the next couple
12 of days, on other pressing matters.

13 Your Honours, there would be no objection if the Prosecution also wished to
14 give their closing speech, or if the victims wish to gave their closing speech on
15 Friday. But, be that as it may, even if we continue with the schedule as-is, I
16 would ask that consideration be given that the Defence, at least, be entitled on
17 Friday morning to give its closing speech on Friday. Your Honour, of course, it's
18 a matter completely within the Bench's discretion, but I raise it now so your
19 Honours can consider the merits of that application.

20 Your Honour, I am grateful for the time. These are the matters that I wish
21 to bring to the Court's attention at this point. I am grateful.

22 PRESIDING JUDGE STEINER: Thank you very much, Mr. Khan. Only in relation to
23 the -- I will give the floor to the Prosecution. So, Mr. Faal first.

24 MR. FAAL: Thank you, Madam President. Madam President, the Prosecution
25 would wish to say a few words on some of the issues raised by my learned friend,

1 Mr. Khan, with regards to how to address the next witness. The Prosecution shares
2 the same views with Mr. Khan.

3 We had previously checked this issue with the witness. We do understand that
4 he would prefer to be called "General." He does not mind that his identity is
5 known to the public. He has testified in previous international tribunals, so we
6 do think that by calling him "General" would be an appropriate title in the current
7 circumstances. We hope that your Honours would not have any difficulty accepting
8 that.

9 The other issue, your Honour, is having computer access for the Defence
10 witness who is to testify. Your Honours, I do believe that that may be -- that may
11 cause inconveniences in the proceedings. During testimony, I suppose that witness
12 would be requested to check into his e-mails for information in order to be able to
13 answer questions. I have never seen that done anywhere, but even if it has been
14 done somewhere, I think it would be very inconvenient and it would not go down well
15 with proper conduct of proceedings.

16 If there are issues to which the witness is unable to answer to in view of
17 the fact that he did not know that such an issue should -- would arise, he should
18 be allowed, at the appropriate time, to go back and collect the information and
19 come back. That may be very efficient. A lot of the information that the witness
20 may be asked may not be even within -- with his own -- within his possession. It
21 may be within -- within the possession of his -- of members of his team, because he
22 does not work in isolation. So the request, I think, should be rejected, because
23 it would just cause unnecessary delay in the proceedings, it would cause
24 unnecessary obstructions.

25 Your Honour, on the next issue, the filing of the brief, the Prosecution

1 would wish to file a brief. We do hope that all the parties would be ordered to
2 file the brief on the same day, within a particular deadline. Your Honours, the
3 principle of the Defence having the last word is being observed throughout the
4 proceedings. When we deliver our closing submissions, the Defence would have the
5 opportunity to have the last word, but that should not extend to the briefs. The
6 briefs are intended to allow the parties to give their own observations. It's not
7 supposed to be a response to one party's observations, as the Defence is seeking to
8 get by its application. We, therefore, request this all the parties be ordered to
9 file their final observations within a particular deadline and all the parties
10 should comply with that deadline.

11 On the last issue, Madam President, your Honours, closing arguments on
12 Friday. The Prosecution has no objection to it. We leave it entirely in your
13 Honour's discretion. It may have some implications, like, travel dates for some of
14 the parties, but the Prosecution is flexible with this and we leave it entirely in
15 your Honour's hands. Thank you, Madam President. Thank you, your Honours.

16 PRESIDING JUDGE STEINER: Mr. Khan?

17 MR. KHAN: Your Honour, with your leave just to clarify, in relation to the
18 application that was mooted by me in relation to the next witness, I do want to be
19 clear. At no point do I anticipate asking that witness to go and look at e-mails
20 and start searching his documents. I won't be doing that. I will ask him
21 questions. It is simply in the event he says he cannot remember, instead of having
22 to adjourn proceedings and go out of the court and start looking at documents, it
23 would allow him, in what is, after all, an eCourt -- which is an eCourt, to have a
24 window on relevant materials that may be necessary for him to answer questions.

25 Your Honour, all this questioning is under the control of the Bench. All of

1 this questioning is under the control of the Bench, and the Bench will ultimately
2 be the arbiter as to whether or not there is merit or there is necessity in the
3 witness referring to any material that he has access to. Your Honours, there is
4 clearly a safeguard. It is simply a proposal that, in my respectful submission,
5 would prevent delay. There is no prejudice at all to the Prosecution, because what
6 the Prosecution is saying is that the witness can leave court and do exactly the
7 same thing. Well, your Honours, either there is merit in the witness refreshing
8 his memory or there is not. If there is, why not do it in the presence of the
9 Court in a manner that saves Court time and that is technologically feasible?

10 Your Honour, I hope that clarifies. I am not going to be asking him to
11 search his computer. I have -- I anticipate straightforward questions that should
12 be obvious to him from the nature of his job and the responsibilities that attach
13 to that job.

14 Your Honour, in relation to the filing of the brief, your Honour will, of
15 course, consider the provisions of 121(9) which, of course, do allow parties to
16 file written observations on fact and law three days before the hearing. That's
17 121(9). The Prosecution had that option. They didn't do it; they didn't avail
18 themselves of 121(9). And I don't oppose if they -- if your Honours think there is
19 merit in the Prosecution filing additional observations, of course, they can do so.
20 But those observations are not in the abstract; they relate, of course, to the
21 proceedings themselves. So, your Honours must ask, well, what is the added value?
22 What do they add to the submissions that will be put forward in closing argument?

23 In the event -- to the extent that there is added value, it must relate to
24 what evidence has been gleaned in these hearings. In that regard, it is my
25 respectful submission that the principle that inspires the right of the Defence to

1 have the last word is just as applicable in filing the written brief at the end of
2 proceedings. There is no prejudice to the Prosecution. It is only fair. It is
3 consistent with the spirit of the documents that your Honours will have regard to
4 and to the Rules of Procedure and Evidence. And in that regard, the objection of
5 my learned friend really is rather surprising and, in any event, is not
6 well-founded, in my respectful submission. I am grateful.

7 PRESIDING JUDGE STEINER: The Chamber will decide on all the issues. The
8 first one related to the way by which the witness should be addressed is decided.
9 I think with the agreement of my colleagues on the Bench, the witness to be called
10 by his patent, which is "General."

11 In relation to the other requests, the modification on the schedule, the
12 access on-line of the Defence witness and in relation to the brief, the Chamber
13 will decide in the beginning of this afternoon's session.

14 Just to remind in relation to one of these issues related to the briefings,
15 that in the Lubanga case and in the Katanga and Ngudjolo case, the Chamber kept the
16 practice of giving first a time limit for Prosecution and legal representatives and
17 then for the Defence. So the Chamber will decide on whether to keep its
18 precedents, or whether there is any reason that justifies to depart from its
19 precedents.

20 So, now I ask again, please, the court officer to bring Witness 445 into the
21 courtroom.

22 (The witness enters court)

23 PRESIDING JUDGE STEINER: The Chamber welcomes the witness.

24 THE WITNESS: Thank you, sir.

25 PRESIDING JUDGE STEINER: We were informed about your preference to be called

1 General. If that is fine with you, you will be referred to as General.

2 THE WITNESS: Thank you, your Honour.

3 PRESIDING JUDGE STEINER: So, good morning, General.

4 THE WITNESS: Good morning, your Honour.

5 PRESIDING JUDGE STEINER: You are before Pre-Trial Chamber I. You are called
6 to give your testimony in the case of the Prosecutor v Bahar Idriss Abu Garda. You
7 are going to be questioned first by the Prosecution and then by the legal
8 representatives of victims and finally, in this afternoon, by the Defence. The
9 Judges may as well put some questions, if need be. Have you been informed about
10 the procedures related to your testimony in court?

11 THE WITNESS: Yes, your Honour.

12 PRESIDING JUDGE STEINER: In accordance with Article 68 of the Statute of the
13 Court and Rule 66 of the Rules of Procedure and Evidence, you are required to give
14 an undertaking as to the truthfulness of the evidence you are going to give today.
15 I also have to remind you that, in accordance with Rule 66(3) of the Rules, the
16 Court has jurisdiction over the offence of giving false testimony before it when
17 under the obligation to tell the truth. Have you understood, General, the
18 seriousness of your undertaking?

19 THE WITNESS: I do.

20 PRESIDING JUDGE STEINER: So I would ask you, please, to stand up in order to
21 proceed to your swearing-in.

22 THE WITNESS: I, (Expunged), solemnly swear that I will speak the truth, the
23 whole truth and nothing but the truth.

24 PRESIDING JUDGE STEINER: Thank you very much. Only for the purpose of the
25 formal identification of the witness I ask, please, the court officer to turn this

1 hearing into private, just for a few minutes, and immediately after the formal
2 identification the questioning of the witness will start in open session.

3 THE COURT OFFICER: Private session.

4 (Private session at 9:57 a.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 9:59 a.m.)

19 PRESIDING JUDGE STEINER: Thank you. Please.

20 MS. ALAGENDRA: If I may, your Honour?

21 PRESIDING JUDGE STEINER: Of course you may.

22 MS. ALAGENDRA: Thank you.

23 WITNESS: WITNESS DAR-OTP-P-0445

24 QUESTIONED BY MS. ALAGENDRA:

25 Q. Good morning, General.

1 A. Good morning, Madam.

2 Q. My name is Shyamala Alagendra.

3 PRESIDING JUDGE STEINER: Are you starting with the questioning?

4 MS. ALAGENDRA: Yes, your Honour.

5 PRESIDING JUDGE STEINER: If you wait just one second.

6 MS. ALAGENDRA: I apologise, your Honour.

7 PRESIDING JUDGE STEINER: I thought it was some question that you would like
8 to put as a preliminary matter.

9 MS. ALAGENDRA: No, your Honour, I apologise.

10 PRESIDING JUDGE STEINER: It's first my obligation to ask, General, whether
11 you feel at ease.

12 THE WITNESS: Very much so.

13 PRESIDING JUDGE STEINER: If at any moment you don't feel at ease any longer,
14 please don't hesitate to inform the Bench.

15 THE WITNESS: I will do so.

16 PRESIDING JUDGE STEINER: Thank you very much.

17 Now the Prosecution has the floor.

18 MS. ALAGENDRA: Thank you, your Honour.

19 THE INTERPRETER: This is the English booth speaking. If the Judge could
20 remind participants to pause between question and answer, we would very much
21 appreciate that, particularly since we are working in relay.

22 MS. ALAGENDRA:

23 Q. I will try again, sir.

24 A. Yes, okay.

25 Q. My name is Shyamala Alagendra, I represent the Prosecution here this

1 morning and I have some questions for you.

2 A. You may go ahead.

3 Q. Thank you, sir. Sir, am I correct that you retired from the Kenyan Armed
4 Forces?

5 A. Yes, I am retired.

6 Q. And what was the rank that you had attained at the time of your
7 retirement?

8 A. I attained the rank of Lieutenant-General.

9 PRESIDING JUDGE STEINER: I am sorry to interrupt you, it was my mistake and
10 I do apologise for that, but to remind yourself and the General that they need to
11 speak slowly and to give a pause between the answer and the following question,
12 because we have interpretation into Arabic and it takes some time for the
13 interpreter to complete his or her interpretation. So, in order not to sacrifice
14 too much our interpreters, I ask you to please speak very slowly.

15 MS. ALAGENDRA: I will do so, your Honour.

16 Q. Sir, could you please tell the Court what rank you had attained at the
17 time of your retirement from the Kenyan Armed Forces?

18 A. When I retired from the Kenyan Armed Forces, I had attained the rank of a
19 Lieutenant-General.

20 Q. And hence the appropriate address is General?

21 A. That's correct.

22 Q. Sir, for how long had you served with the Kenyan Armed Forces?

23 A. I had served for over 42 years. To be precise, I think it's 42 years,
24 eight months and a few days.

25 Q. And what year did you retire, sir?

1 A. I retired on 1 January, the year 2005.

2 Q. General, during your time with the Kenyan Armed Forces, did you have
3 occasion to serve with the United Nations?

4 A. Yes, I had the occasion to serve with the United Nations on four
5 occasions.

6 Q. Can we start, please, with your first deployment with the United Nations.
7 Could you tell the Court when that was and what the deployment was?

8 A. My first deployment was in Namibia, in 1989, and I was then seconded to
9 the United Nations as the deputy force commander of the entire forces in Namibia.

10 Q. Could you help us with the name of the mission you were deployed to,
11 please?

12 A. The name of the mission was called UNTAG; in other words, United Nations
13 Transitional Assistance Group.

14 Q. Did you have a second deployment after that?

15 A. Yes, I had a second deployment which was basically not United Nations from
16 the beginning, but ended as a United Nations peacekeeping mission in Mozambique.

17 Q. Sir, I am just going to request you - and I myself will do the same - is
18 to pace your answers.

19 PRESIDING JUDGE STEINER: No, the problem is not really with the answers, but
20 for you to wait --

21 MS. ALAGENDRA: For the translation.

22 PRESIDING JUDGE STEINER: -- a little bit before you pose your next question,
23 please.

24 MS. ALAGENDRA:

25 Q. General, you were telling the Court about your deployment in Mozambique.

1 Please proceed.

2 A. Yes, I stated that after Namibia I was seconded to a mission which began
3 as what you would call an African mission, sort of, in Mozambique to try and bring
4 the two sides together, RENAMO and the Government of Mozambique. Eventually, when
5 that mission matured, then it turned into a United Nations mission, which then
6 foresaw a peacekeeping mission in Mozambique and brought final settlement of the
7 Mozambican peace process.

8 Q. And did you have a deployment with a United Nations mission in Mozambique?

9 A. I wasn't, no.

10 Q. What was your next deployment with the United Nations?

11 A. My next deployment with the United Nations was in Liberia in the year
12 1993 - towards the end of 1993 - to 1995 as the chief military observer. Again
13 this was a United Nations mission, but we were observing an ECOWAS mission in
14 Liberia.

15 Q. Sir, could you help us with the name of the mission please?

16 A. UNOMCIL.

17 Q. Did you say UNOMCIL?

18 A. Yes, United Nations Observer Mission In Liberia.

19 Q. Could that be UNOMIL?

20 A. UNOMIL, sorry. UNOMIL, yes.

21 Q. And after your deployment with UNOMIL, did you have any other deployment
22 with the UN?

23 A. Yes, I had another deployment in Sierra Leone, where I was force commander
24 of the United Nations Mission in Sierra Leone, UNAMSIL.

25 Q. What year was that, General?

1 A. That was the year 2000 to the year 2003.

2 Q. And did you have another UN deployment after this?

3 A. Yes, I had another deployment next door in Liberia - this is the second
4 time - which was in October 2003 until the end of 2004.

5 Q. Sir, apart from your service with the United Nations, did you have
6 occasion to be involved in any assessments of African Union peacekeeping missions?

7 A. Yes. I headed an assessment mission, a UN-mandated assessment mission of
8 AMIS, the African mission in -- AMIS, in El Fasher, or in Darfur.

9 Q. And what was your position within this assessment mission?

10 A. I was the chief of the assessment mission. I was the boss of the
11 assessment mission.

12 Q. And did you work with a team?

13 A. Yes, I worked with a team of about 35 senior military officers from
14 various countries, including some from NATO.

15 Q. General, I would like to ask you a few questions about your time in
16 Namibia. You've told the Court that you served as deputy force commander in that
17 mission. Could you please tell the Court what were some of your responsibilities
18 in this position?

19 A. As the deputy force commander, first and foremost, I was deputising for
20 the force commander; in other words, I was number two in leadership, which meant I
21 had the day-to-day -- running the day-to-day operational matters within the entire
22 mission, military matters. I was the adviser, also, of the force commander, and I
23 was the link between the force commander and the various contingents as far as
24 operational and administrative matters are concerned.

25 Q. Sir, how long did the UN mission in Namibia last for?

1 A. The UN mission in Namibia lasted one year.

2 Q. And did you continue to remain in Namibia after that?

3 A. Yes, I remained in Namibia for three months after the UN mission was
4 ended.

5 Q. Can you please tell the Court what you were doing during those three
6 months?

7 A. Just before the end of that mission, the UN mission, the Government of
8 Namibia requested three countries that had contingents on the mission to remain a
9 little longer so that they could help train the new Namibian army and, at the same
10 time, provide protection to the new government which was going to be put in place.
11 And one of the countries was Kenya, which I was part of. The other two countries
12 declined, that they could not stay beyond the UN mission, for various reasons.
13 Kenya, however, agreed to stay on for three months and I stayed on as the
14 contingent commander and adviser to the government of Namibia during that time.

15 Q. Sir, can you tell the Court what was the purpose of this new mission by
16 the Kenyan contingent?

17 A. The purpose was, first of all, to provide the protection to the Government
18 of Namibia because it had not really had an army, as such, which was transiting
19 after the UN was pulling out. Secondly, the Namibian government wanted us to help
20 them form, you know, a regular army out of their formerly militia forces, both the
21 ones which were outside the country and the ones which were inside the country, and
22 also to advise the Government of Namibia on how they can form a formal military
23 force, a viable military force, that will take over the responsibility of
24 protecting the borders of its country.

25 Q. General, during this time, do you recall if there was any significant

1 incident against your contingent in Namibia?

2 A. Yes, I remember very well when, on one occasion, there was an attack on
3 one of our posts, military post, by armed persons. It was an attack in the night
4 and shots were fired at our troops at the main entrance of the gate. Our troops
5 returned fire, and one person was killed.

6 Q. Did you come to know why your contingent was attacked?

7 A. We investigated this with the help of the Namibian police and we
8 eventually got the information this these were renegades, renegade former colonial
9 forces of the Namibia military who were not happy with the transformation or what
10 was going on, you know, thereafter. And they wanted to come and get weapons from
11 our own, you know, troops. They thought they would attack our camp and they would
12 get weapons.

13 Q. Sir, can you tell the Court what, if any, was the public reaction to this
14 incident?

15 A. The public reaction, the ordinary people were happy that it did not
16 succeed, but there was another group which was very keen to get to the press and
17 blame the Kenyan, you know, contingent for killing a Namibian. They did not think
18 that that was, you know, the right thing for us to have done in such circumstances.
19 So there was a concerted effort in the press to smear -- or to put a smear campaign
20 against our contingent, but both the Government of Namibia and the ordinary people
21 supported the action that we had taken.

22 Q. What, if any, was the reaction of the Kenyan government or the Kenyan
23 people to this incident?

24 A. The Kenyan government was quite happy, because if -- for example, if our
25 troops didn't return fire and they lost weapons, it would have meant that the

1 reasons why they were there, to protect the people of -- or the facility of, or the
2 Government of Namibia, was not being done by our own troops.

3 Q. Sir, I would like to move on to the time you served with UNOMIL as chief
4 military observer. Could you tell Court, please, what type of mandate was UNOMIL
5 operating under?

6 A. UNOMIL was operating under the observer mission; in other words, it was
7 observing the agreement between the various fighting factions in Liberia which had
8 now agreed upon a settlement. So UNOMIL was to observe that the implementation of
9 this agreement was going according to the way it was expected to be. We were
10 observing both the ECOWAS or ECOMOG troops, what they were doing, and we were also
11 observing the other fighting forces, like the Charles Taylor group, and there was
12 another group which split into two.

13 Q. Sir, are you able to tell the Court under which chapter --

14 PRESIDING JUDGE STEINER: Sorry. May I interrupt you? I think we have to
15 adopt here as jurisprudence of the Court the precedent of Trial Chamber I, the
16 Presiding Judge, Judge Fulford, that established that before a question is put and
17 an answer is given, the relevant party needs to count to five. Is that correct?
18 It's a precedent that is now jurisprudence. So, before you put the question, and
19 General, before you answer, please count to five.

20 THE WITNESS: Five.

21 PRESIDING JUDGE STEINER: Yes. To give interpreters time to complete their
22 job. Thank you.

23 MS. ALAGENDRA: Again, I apologise, your Honour.

24 Q. General, can you tell the Court under which chapter of the Charter of the
25 United Nations the deployment of UNOMIL would fall under?

1 A. It fell under Chapter VI.

2 Q. Could you explain to us, please, what is the Chapter VI mandate?

3 A. The Chapter VI mandate is what we call the traditional peacekeeping
4 chapter, which means there is peace to be kept. The warring factions have agreed
5 on a settlement plan and it is expected that all parties will cooperate to ensure
6 that there are no spoilers.

7 Q. In what circumstances would the UN deploy under Chapter VI?

8 A. The UN will deploy when there is peace to be kept and when the parties
9 have agreed on a settlement plan; in other words, a comprehensive peace agreement
10 is signed by all parties and they have agreed on the timeframe in which it will be
11 implemented. Hence, the UN comes in as to help them move forward until they have
12 completed the implementation of the peace accord.

13 Q. Is there a Chapter VII mandate, sir?

14 A. Yes, there is a chapter mandate, a Chapter VII mandate.

15 Q. Please, can you tell the Court in what circumstances the UN would deploy
16 under a Chapter VII mandate?

17 A. The UN, until recently, was very reluctant to deploy its men and women in
18 a Chapter VII mandate because a Chapter VII mandate is an enforcement chapter; in
19 other words, you are -- you have the capability to enforce peace or the
20 implementation of the accord. Most recently, because of the problems that the UN
21 had encountered with Chapter VI, the UN has decided that when they deploy troops
22 this time, they are under Chapter VII; in other words, they have the capacity,
23 capability, the resolve, men and women well-trained to ensure that, if they have to
24 enforce peace, then they can do so.

25 Q. General, coming back to UNOMIL, please can you tell the Court what was the

1 role that UNOMIL was meant to perform at the time of its deployment?

2 A. You are talking about UNOMIL?

3 Q. Yes.

4 A. Not the one in --

5 Q. In Liberia?

6 A. In Liberia. We were to observe - only observe - what the parties were
7 doing to ensure that the agreement which had been reached and signed between the
8 parties was being implemented. Observe and report. Observe and report.

9 Q. And, as the chief military observer, what was your role and function in
10 this mission?

11 A. As the chief -- sorry, as the chief military observer, I was the overall
12 commander of all the military observers who were deployed in Liberia to monitor the
13 peace process and report back to United Nations headquarters in New York. My job
14 was to ensure that I deploy the military observers and I ensure that I am in touch
15 with all the fighting forces, the leadership, command and control and resolve any
16 difficulties or issues that may arise during our deployment there, but at the same
17 time report to the United Nations headquarters on a daily basis.

18 Q. General, during your time with UNOMIL, do you recall if there was any
19 significant incident against peacekeepers under your command?

20 A. Yes, there were incidences, and one which comes to mind is one where my
21 unarmed military observers were attacked by one rebel group overnight. They were
22 taken hostages, their equipment were taken away from them, which included vehicles,
23 communication, gears, their own personal belongings, and then some of them - some
24 of those observers - were spirited towards the border of Liberia and Ivory Coast,
25 where they were left on their own to move across the river into Ivory Coast, and

1 eventually we were able to go and retrieve them and bring them back to Monrovia.

2 Q. Sir, are you able to tell the Court the reaction, if any, from the various
3 quarters to this incident?

4 A. It was a very, very uncalled for action, first of all, because these were
5 unarmed military observers and, even if they were armed, the peacekeepers should
6 not be stopped from doing the job that they are doing, they should not be put under
7 such uncalled for actions, being taken hostages, and hence the UN protested very,
8 very firmly to the leadership of the organisation that took our military observers
9 hostages. Not only that, the various countries - we call them troop contributing
10 countries - whose military observers were taken hostages also protested.

11 Q. General, I am going to move on now to the time when you served as the
12 force commander for UNAMSIL. Could you tell the Court, please, what was the
13 mandate of UNAMSIL at the time?

14 A. When I got to Sierra Leone, the mandate of the peacekeeping mission had
15 changed from Chapter VI to the enforcement Chapter VII, although in-between we were
16 expected to be under Chapter-VI-and-a-half. There is really no
17 Chapter-VI-and-a-half, but when I got there the mandate was now Chapter VII. In
18 other words, we were building towards Chapter VII, because when I got there the
19 mission was transiting from Chapter VI to Chapter VII. So, during my time,
20 throughout my time, we were under Chapter VII.

21 Q. General, what were the circumstances surrounding your deployment?

22 A. When I got to Sierra Leone, I found a force which had been there for about
23 nearly a year -- nearly a year. The force was very demoralised, it was inactive
24 and there were a lot of changes taking place. The soldiers who had been there too
25 long, some were still there and some were being withdrawn. In other words, the

1 larger contingents, like the Nigerian contingent which had transited from an ECOWAS
2 mission in the same place, were moving out and they were bringing in fresh troops
3 which would come under my command. It was a little bit disorganised mission when I
4 got there. The morale was very low amongst the troops and the officers. The
5 equipment that they had was wanting; in other words, they did not have very good
6 equipment to undertake a Chapter VII. That is what I found.

7 Q. Sir, was there any incident that led to the troops and the mission being
8 in the state in which you took it over in?

9 A. Yes, in May 2000 - yes, May 2000 - there was an attack on a contingent,
10 first of all one contingent, by one rebel group, which then spiralled into other
11 attacks within a very short time, and some military observers, soldiers and other
12 contingent peacekeepers were taken hostages by this particular rebel group. In
13 doing so lives were also lost, some military personnel were killed during that
14 action, and that is what precipitated all that disorganisation in the mission.

15 Q. Prior to your deployment as the force commander, did you travel to Sierra
16 Leone?

17 A. Yes.

18 Q. Could you please explain to the Court the circumstances under which you
19 travelled to Sierra Leone?

20 A. After the attack on peacekeepers in Sierra Leone, I travelled to Sierra
21 Leone with a Kenyan delegation which had a mandate given to it by the Kenyan
22 government to go and investigate what had happened during the time when the
23 peacekeepers had been taken hostages and some were killed, because Kenya had a
24 contingent during that time in Sierra Leone and it is that contingent which
25 suffered some of the casualties. Again, it is the same contingent that also had

1 some of its men taken hostages.

2 There was another contingent which was not Kenyan, for example, the Zambian
3 contingent, and there were other -- the Nigerian also suffered, and there were -- I
4 think there were also some military observers, including some British officers, who
5 had been taken hostages. In fact, there were two. One was rescued by the Kenyan
6 contingent, but the other one eventually managed to escape.

7 So, the Kenyan government decided that they would go and they would send this
8 small team to physically go to Sierra Leone and find out what really had happened
9 and whether there was a need for Kenya to continue to deploy its troops in a
10 peacekeeping mission which looked as if it was a failure. There was a hue and cry
11 by the ordinary citizens of Kenya that, when we sent our men and women on a
12 peacekeeping mission, they are not supposed to go out there and be molested, or be
13 at the mercy of rebels. And if they cannot be protected -- because Kenya had lost
14 four soldiers. If they cannot be protected, then why send them on a peacekeeping
15 mission, or if they cannot protect themselves.

16 Q. General, what, if any, was the reaction of any of the other troop
17 contributing countries to this attack on the peacekeepers?

18 A. All the countries that had their men and women on that particular mission,
19 raised, you know, their voices, first of all, complained to the United Nations on
20 the same line like Kenya, because Kenya also had complained to the United Nations.

21 Zambia, for example, also was of the opinion that there was no need for them
22 to continue to keep their troops there because they are the ones who had the
23 largest contingent which was taken hostage. Nearly 400 men and women were taken
24 hostages by the rebel group.

25 India also complained. Nigeria complained. Guinea complained. And so was

1 Ghana. Those are the countries that were -- had their peacekeepers in the vicinity
2 where the mayhem took place and they were not happy about what was happening.

3 Q. General, do you recall the name of the rebel group that was responsible
4 for this attack?

5 A. Yes. Yes. It was the RUF, Revolutionary United Front.

6 Q. General, from what you know, are you able to tell the Court what was the
7 motivation of the RUF to attack these peacekeepers?

8 A. The motivation was to show the United Nations that they did not accept
9 disarmament at that particular time when the disarmament began and, you know, to
10 express their anger towards the United Nations that they also can resist
11 implementing the agreement at any one time.

12 Q. General, can you tell the Court if this attack had any impact on the
13 humanitarian assistance work that was going on, on the ground, in Sierra Leone at
14 the time?

15 A. As soon as the attack took place, everything came to a standstill. When I
16 say everything, the UN decided that the area in which this -- or the area in which
17 the RUF was deployed was going to be a no-go area for UN personnel, and there was a
18 complete stop on any humanitarian assistance in this area for as long as the UN was
19 not able to redeploy its troops again and pacify the area. And I can go further by
20 saying that, as soon as it took place, there was no movement of any NGOs. Local or
21 international humanitarian providers all moved out of the area where the RUF was
22 deployed, which was about half of the country, until the time that I came in and we
23 were able to re-establish peace and security in that area and open up that area for
24 the humanitarian relief organisation to go in. So it was something -- for nearly
25 ten months, there was nothing going on in there.

1 Q. General, I will move on to the time when you served as force commander for
2 UNOMIL in Liberia. If I am not mistaken, you said you took up the position in
3 October 2003; am I right?

4 A. You are right.

5 Q. Sir, can you describe for this Court the situation in Liberia at the time
6 of your deployment?

7 A. I am not sure if I can use one word, but I will try. It was chaotic.
8 There was no government really, government in control of the country. There was
9 fighting going on in various corners of the country. Monrovia, the capital, was
10 besieged by rebel groups. And the humanitarian crisis was very, very dire, indeed.

11 Q. Sir, as the force commander for UNOMIL, what were your responsibilities?

12 A. First of all, as the word "commander" states, it meant I was in charge of
13 all the UN peacekeepers, military peacekeepers, deployed in UNOMIL. Secondly, my
14 responsibility was to turn the security situation back to normalcy by using my
15 troops, in other words, deploying them, taking over the responsibility of providing
16 a secure environment throughout the country and ensuring that all the areas was
17 accessible to the humanitarian relief providers, as well as the UN personnel who
18 would be deployed throughout the country, and also provide protection to civilians
19 under the imminent threat of danger.

20 Q. During the time you were deployed there, do you recall if there was any
21 significant incident against the peacekeepers under your command?

22 A. Yes, there were several, but I can remember some very severe ones, like
23 when the time came for us to deploy -- because when I took over the command, we had
24 a very small force. And as and when I started getting more and more troops, the
25 idea was to deploy throughout the country and ensure that, by deployment, we can

1 open up the no-go areas where the rebel groups had denied not only the humanitarian
2 and the UN access but also other civilians. So, I remember one particular one,
3 when I had gotten enough troops to deploy into a particular area. This was a very
4 vital area on the border of Sierra Leone and Liberia, or Liberia and Sierra Leone,
5 and I had discussed my deployment plan with the rebel group, the largest rebel
6 group, which was called -- I am trying to remember the -- anyway, the largest rebel
7 group. It will come.

8 MR. KHAN: Your Honour, Madam President, there is no objection from the
9 Defence if my learned friend wishes to lead on that issue.

10 PRESIDING JUDGE STEINER: The Prosecution then may rephrase the question in
11 order not to be considered by the Defence as a leading question, please.

12 MS. ALAGENDRA: Your Honours, is it all right if the name of the rebel group
13 does not become an issue and we just move on with his testimony?

14 THE WITNESS: I am quite sure I will remember it. It's blocked.

15 PRESIDING JUDGE STEINER: Yes, it's all right.

16 MS. ALAGENDRA: Thank you, your Honours.

17 Q. Sorry, General, had you finished your answer?

18 A. I said, I had discussed my deployment plan with the leadership of the
19 rebel group. The timing of my deployment and the number of troops I was going to
20 deploy in that particular area, I discussed with them. When the day came for
21 deployment, the rebel group refused to allow for this particular deployment, for
22 whatever reason. I went back to them and I told them, "I am not going to accept
23 that you will dictate when and how I am going to deploy my troops. This is
24 something that I will not accept, because we are here to deploy and carry on with
25 our job." So, I ordered my troops to move on and deploy. I told the commander of

1 the rebel group, "If need be, I myself will lead the deployment," so that they know
2 that I meant business, and I did that because I had the correct mandate to deploy,
3 I had the capability to use whatever means was at my disposal to get on with the
4 job that I was doing, and we did it.

5 Q. General, I am going to move on to the time when you served on the
6 assessment mission to AMIS. You told the Court that was in 2006. Am I correct,
7 sir?

8 A. You are correct.

9 Q. Before going into your actual work itself, I have a few questions for you
10 on the AMIS mission itself. Do you recall when AMIS was deployed to Darfur?

11 A. No, I can't remember exactly when because during that time I was in West
12 Africa myself, but I believe it could have been two to three years before I went
13 for my assessment mission.

14 Q. How would you describe the mandate of AMIS at the time?

15 A. The mandate of AMIS was supposed to be a monitoring mandate, monitoring.

16 Q. And are you able to tell the Court the responsibilities, or tasks, of the
17 AMIS force within this mandate?

18 A. The task assigned to AMIS was to monitor the various fighting components,
19 or fighting groups, within the areas of their responsibilities within Darfur.
20 Monitor.

21 Q. Do you recall any of the precise responsibilities they had to perform
22 within this mandate?

23 A. They had to patrol. They had to -- I don't know how they were going to do
24 it, but they were supposed to protect also - protect civilians.

25 Q. Sir, in describing their role to protect civilians you said, "I don't know

1 how they were going to do it." What did you mean by that, sir?

2 A. First of all, the mandate to monitor is a very, very vague mandate,
3 monitor what was happening. Now, how would you protect when you are only
4 monitoring what is happening? Secondly, they did not have the equipment to protect
5 civilians. They did not have sufficient number of troops who would be deployed
6 throughout the areas where civilians were and, once you have monitored and you have
7 found out that they are under threat, then you have the equipment and manpower to
8 protect. They did not have that.

9 Q. Was this mandate of AMIS similar to any of the deployments you have spoken
10 about?

11 A. The mandate was close to what we had in Liberia when I was, you know,
12 chief military observer; in other words, we had no responsibility to protect. We
13 only had the responsibility to monitor the implementation of the peace accord, and
14 I think that is what the AMIS mission in Darfur was.

15 Q. Sir, moving on now to the work you did in the assessment mission, could
16 you please tell the Court what was the scope of this assessment mission meant to
17 be?

18 A. The scope was to look at the entire organisation of the AMIS mission in
19 Darfur and come up with a plan that would enhance its effectiveness, chain of
20 communication, as well as if we found out that that mission did not have, for
21 example, the correct mandate, then we will recommend under what mandate it should
22 be. We were also to look at the deployment of the troops that were under this
23 particular mandate, wherever they were, and find out whether there was something
24 that they could do better which they were not doing because it looked as if the
25 mission was not doing what it entailed to do up to that particular time.

1 Q. General, you may have already answered this question, but can you tell the
2 Court, please, which organisation was responsible for sending out this assessment
3 mission of AMIS?

4 A. It was the United Nations.

5 Q. Sir, can you very briefly tell the Court some of the work that you and
6 your team undertook during this mission?

7 A. First of all, the first thing we did was to look at the various reports
8 that had been written about the AMIS mission per se, because there had been one or
9 two assessment missions before our assessment mission. We had to look at the
10 reports, the findings of these two assessment missions, so that when we go out
11 ourselves we can look at the areas where there were weaknesses and strengths and
12 find out whether those have now been addressed. So, that is the first thing we
13 did. We did that during short prelude meetings in Nairobi.

14 Once we had done that, we moved on to Addis to follow the movement of how the
15 AMIS was structured, and if there were any difficulties in the structure command
16 and control, the civilian line of command and the military line of command, all the
17 way from Addis to Khartoum and then down to El Fasher. Once we got there, then we
18 looked at the actual command and control headquarters - military headquarters - in
19 El Fasher, all the way down to the deployed -- deployment areas in various
20 localities, like Nyala and others. We sent our troops out there, officers that
21 were under my command, and then they came back with a complete report of their
22 findings.

23 Q. General, during this mission, did you conduct any exercises to determine
24 the effectiveness of AMIS troops?

25 A. Once my officers who had gone out and the ones who were with me at the

1 headquarters had completed our tasks, we then organised a training session which we
2 called a MapEx, map exercise, to assimilate what a well-organised headquarters and
3 deployed troops on the ground, you know, should be like; in other words, we had
4 found out where their weaknesses were and where their strengths were. Now we
5 wanted to organise a training exercise for them on the ground so that they can
6 practice their own troops, their own headquarters, and to ensure whether they will
7 learn from our training sessions. So we organised this at El Fasher, assimilating
8 a well-organised organisation, including assimilation of troops deployed in various
9 areas, or going on patrols, being attacked by rebel groups. We assimilated that
10 and we wanted to see their reactions, how they would react if they had this,
11 because that is one of the areas where we found that they were weak about.

12 Q. General, why did you find it necessary to conduct these exercises?

13 A. In my mandate it also included that, once we had done the assessment, we
14 were to organise a training session for them so that they can enhance their
15 capability to do the job which they were expected to do. That's why we organised
16 that training for them. It was not just to go and assess them, write a report and
17 send the report back to the United Nations, but also to ensure that, the areas
18 which we thought were lacking, we could organise a training for them so that they
19 can gain from the assessment mission.

20 Q. Sir, during your mission, did you receive any information about the
21 impartiality or otherwise of the AMIS?

22 A. Yes, some of our officers that we deployed in the field to go to AMIS
23 areas did not only talk to AMIS. They also talked to local people, government, you
24 know, forces, rebel forces in those areas, and when they came back we got the
25 reports that in some areas AMIS was being seen as if it was a weak organisation, it

1 was an organisation which was only there to protect the interests of the
2 government, for example, and as such the civilians saying that AMIS cannot protect
3 them because AMIS is in bed with, you know, the government forces. Those were
4 allegations.

5 Q. Were you provided with any substantial information to support these
6 allegations?

7 A. I don't think that, you know, I can say we got the substantial evidence to
8 prove that, but what we got was that one side was very happy with AMIS. For
9 example, the government forces that we dealt with and officials were saying AMIS
10 was doing an excellent job, while the civilians were saying AMIS was not doing a
11 good job.

12 Q. Did you verify these allegations, sir?

13 A. If you can call this verification, I remember talking to -- I don't know
14 whether it is verification but I remember, you know, having a courtesy call on the
15 Wali of El Fasher and he himself confirmed to me that he thought AMIS was doing a
16 very good job and all those people who are complaining about AMIS doing a shoddy
17 job were those people who were intent in scuttling the peace process, but I am not
18 so sure whether you can call that, you know, supporting the allegation against
19 AMIS.

20 Q. And did this reason that you have just told the Court as being the
21 motivation for these allegations, did it find a way into your final report?

22 A. Yes, it did. I put it in the report.

23 Q. During your assessment mission, did you hear about any incidents against
24 the peacekeepers of AMIS?

25 A. Yes. The force commander himself told us of incidences - not only one,

1 several incidences - whereby the troops would embark on patrols doing their normal
2 duties and they get to a checkpoint, for example, manned by rebel groups, and the
3 rebel groups would tell them, "You are going nowhere. Go back from where you came
4 from," and they would turn round and go back, without accomplishing their job.
5 Very sad.

6 Q. Did you come to know anything about the relationship between the AMIS
7 troops and the rebels?

8 A. Yes, they reported was, that is AMIS, that they had rebel groups which
9 were always anti-AMIS to be in their areas. There were some who were cooperating
10 with them, would cooperate with them, would allow them to patrol their areas,
11 investigate reports of houses burnt down, this kind of thing, but there are --
12 there were others which were absolutely hostile.

13 Q. General, did you eventually submit your conclusions or report back to the
14 UN that deployed you on this mission?

15 A. Yes. We compiled a very detailed report when we got back to Nairobi but,
16 prior to that - prior to that - on our way back to Nairobi, because we were going
17 to fly back through Addis, we had a meeting with the AU headquarters and gave them
18 a preliminary report and our findings, and we informed the AU headquarters that
19 once we get back to Nairobi we would sit down, write a detailed report which will
20 go -- we will send to the UN headquarters which had deployed us and that report
21 will eventually get back to them, and we did that.

22 Q. General, can you tell this Court some of the significant findings or
23 conclusions that you reported back to the UN on, with regards to your assessment
24 mission of AMIS?

25 A. The major ones were: One, we found out that the mandate that was given to

1 AMIS, in our view, was lacking in authority to do the job that they were expected
2 to do. The second thing was AMIS lacked several things: One, the manpower. They
3 were required, for example, I think at that time, to have 8,000 men and women; they
4 hardly had, you know, 5,000. They did not have the equipment to do the job, the
5 equipment like vehicles, communication equipment. They were not properly, you
6 know, provided for with the logistics that soldiers deployed in such a hostile
7 environment would require. The soldiers were not being paid regularly, which can
8 impact negatively on their morale. Again, the area in which they were deployed was
9 too large, even for the 8,000 that was envisaged, and that came out very clearly in
10 our report, that the area to be covered, even if the AU was able to raise the 8,000
11 men and women required, in our view, they would not be able to accomplish the job
12 that they were supposed to accomplish. We also brought out that they had -- the AU
13 had directed that AMIS deploy troops around the various IDP camps, so that they
14 could - I don't know how they were going to do it - protect the IDPs, maybe
15 protecting them by just being there, because it is possible sometimes. They didn't
16 have the manpower to do that. We also noted in some contingents, training, the
17 training of the soldiers was lacking, especially on-the-job training. They may
18 have been trained very well back home, but in a situation like the one in Darfur,
19 or in any peacekeeping, there has to be continuous training so that these troops
20 will be able to deliver. That was lacking. So those are the major concerns that
21 we raised.

22 Q. General, do you recall when you submitted your report?

23 A. The actual date I cannot remember, but immediately on arrival in Nairobi
24 we spent about a week, and within that one week we had completed our report, and
25 then we submitted the report straightaway to New York because we had the facility

1 to send the report.

2 Q. Would this have been still in 2006?

3 A. Yes, it was in 2006, immediately after our mission.

4 Q. Sir, did you hear of any significant attacks on AMIS peacekeepers in
5 Darfur that may have taken place in the year 2007?

6 A. Yes, I did.

7 Q. Could you please tell us about this, sir?

8 A. I heard that there was an attack on peacekeepers in some area called
9 Haski, Haski - I think it begin with "SA" something - and some Nigerian men or
10 military, and if -- I can't remember exactly, you know, how many were killed, were
11 actually killed, and also one or two officers from other countries also were killed
12 by a rebel group.

13 Q. Do you recall when this attack may have taken place?

14 A. It was before the end of 2007. It could have been in July or a little,
15 you know, later than that but it was in 2007.

16 Q. Does the location Haskanita sound familiar to, General?

17 A. It does. Exactly. That is why I was struggling with "Has", just like I
18 was struggling with LURD. LURD is the rebel group that created problem for us in
19 Liberia.

20 Q. Sir, were you able to form an impression of the attack from what you knew
21 about it and, if so, how would you describe this attack in your own words?

22 A. Having been a peacekeeper and especially a commander on various occasions
23 of peacekeeping forces in various areas, when I heard about the attack on
24 peacekeepers in Darfur, first of all, I was very disappointed. Not only
25 disappointed, but I felt bad. And having been in Darfur and seeing the suffering

1 of the ordinary people, and knowing that these peacekeepers were deployed there to
2 protect civilians, and now they have become the target, that really, you know,
3 bothered me. I felt bad that perhaps they should have been in a position to defend
4 themselves because something like -- I think 11 or a little more were killed and at
5 one stage there was a very large number missing after that attack, and nobody knew
6 whether they will eventually turn -- they will be found but I think eventually
7 they -- you know, a good number were eventually, you know, accounted for, accounted
8 for. So, to me, as a peacekeeper, I thought that was the worst that could happen,
9 you know, to peacekeepers.

10 PRESIDING JUDGE STEINER: If I may, I am informed by court officer that we
11 have five more minutes of tape but, as a matter of fact, Prosecution would have, in
12 theory, 25 minutes to finish its examination. I would like to ask whether the
13 Prosecution will need 25 minutes, because then we will have to move our schedule.

14 MS. ALAGENDRA: Your Honours, I can safely say that we will probably need
15 about 15 minutes more.

16 PRESIDING JUDGE STEINER: So then we move on for five minutes. Then we have
17 to suspend because of the tape. And when we come back after the break you will
18 still have ten minutes to finalise your examination.

19 MS. ALAGENDRA: Much obliged, your Honour.

20 Q. General, from your extensive experience in the military and in
21 peacekeeping operations, please, could you tell the Court what would be the impact
22 of an attack such as that which occurred in Haskanita against AMIS peacekeepers
23 have, on the various quarters that would be affected by such an attack?

24 A. An attack on peacekeepers is terribly devastating to the force, first of
25 all. Men and women who are in that particular force find it terribly devastating

1 because they, as peacekeepers, are not an enemy to anybody. And, as such, anyone
2 who looks at them as a threat and turns his or her weapons against them, sends a
3 very chilling experience to these soldiers. They do not expect anybody, including
4 civilians, to turn their weapons, if they do have their weapons, against them,
5 because they are peacekeepers. And then again, to the organisation itself, for
6 example, AMIS, AU, United Nations, they will abhor such actions and very strongly
7 they will condemn the organisation that -- whose peacekeeper -- or whose group
8 turns their weapons against the peacekeepers and, not only that, it goes all the
9 way to troop contributing countries. You will find that troop contributing
10 countries, some troop contributing countries would even threaten, if not withdraw,
11 their own peacekeepers from such mission if their peacekeepers are molested by the
12 fighting groups. We saw that in Sierra Leone. India and Jordan withdrew their
13 peacekeepers after that attack which the RUF meted on UNAMSIL peacekeepers in
14 Sierra Leone. They withdrew their troops completely. India withdrew over 3,500
15 men, sent them back home with their equipment. Jordan withdrew 2,800 men, sent
16 them back home. Said, "No, we are not going to remain here because there is no
17 peace to be kept and we cannot allow our peacekeepers to be attacked by rebel
18 groups."

19 PRESIDING JUDGE STEINER: With the permission of the Prosecution, we will
20 stop by now and continue later. I would ask, please, the court officer to
21 accompany the witness to the waiting room.

22 MR. KHAN: Madam President, while that is being done, perhaps I could just
23 ask for some guidance and an answer can be given by the Bench in due course. There
24 are occasions in the course of proceedings where it is necessary or useful for the
25 Defence to send a member out of the courtroom. In my respectful submission, the

1 most innocuous and least disruptive manner is simply for the team member that I
2 require to leave to leave the courtroom, of course bowing in courtesy to the Court.
3 Your Honour, I have been notified and told that the practice that has been enjoined
4 upon us is to interrupt proceedings and to formally get leave of the Court. That
5 is why I didn't rise because when a witness is in the box, I think such an
6 administrative matter becomes unnecessarily disruptive. So I would at a due point
7 ask for guidance from the Bench, if indeed I do require a team member to leave, if
8 any offence will be taken if the team member who does leave, bowing to the Court
9 before departing?

10 PRESIDING JUDGE STEINER: For this Bench, no offence at all.

11 MR KHAN: I am most grateful.

12 PRESIDING JUDGE STEINER: The team leaders, your team members can leave the
13 courtroom whenever you deem it necessary.

14 MR. KHAN: I am much obliged to you.

15 PRESIDING JUDGE STEINER: The same for the Prosecution, of course.

16 So now we will suspend then this session. We will resume at 12 o'clock
17 sharp. The session is suspended.

18 THE COURT USHER: All rise.

19 (Recess taken at 11:29 a.m.)

20 (Upon resuming at 12:03 p.m.)

21 THE COURT USHER: All rise.

22 PRESIDING JUDGE STEINER: Please be seated. I would ask, please, the court
23 officer to bring the witness in.

24 (Witness enters court)

25 PRESIDING JUDGE STEINER: So for -- I give the floor to the Prosecution to

1 finish his questioning. I just, as I said in the beginning of this session, would
2 like to inform that we have in our presence in the courtroom the representative of
3 New York United Nations District Tribunals for the one-day training programme
4 established in agreement with the Registry of this Court and the Chamber. So,
5 welcome to this courtroom.

6 Now we will proceed with the Prosecution for the last ten minutes of its
7 questioning of the witness.

8 MS. ALAGENDRA: Thank you, your Honours.

9 Q. General, please can you tell the Court if after your retirement from the
10 Kenyan Armed Forces if you had occasion to return to Sierra Leone.

11 A. Yes, I did.

12 Q. Why did you return to Sierra Leone, sir?

13 A. I was invited by the Defence of one Issa Sesay to testify in his defence.
14 He was a member of the RUF. In fact, he was the leader of the RUF after Foday
15 Sankoh had been arrested and kept out of the way.

16 Q. Do you recall, sir, some of the charges that were brought against the
17 accused persons in that RUF trial?

18 A. He was accused of murder, rape and employing child soldiers in civil war,
19 and I think he had other charges against -- I am not so sure whether he also had
20 charges against humanity, or something like that. Is there something like that?

21 Q. Do you recall, sir, if there were any charges brought against those
22 accused persons in relation to the attacks on the peacekeepers in Sierra Leone?

23 A. Yes, there were also charges against -- you know, charges against
24 attacking the peacekeepers. Issa Sesay also had that charge against him, yes.

25 Q. General, do you recall the outcome of that trial?

1 A. Issa Sesay was sentenced to a very long incarceration, I think something
2 over 50 years. He is going to serve over 50 years of being in jail.

3 Q. General, are you able to tell the Court what, if any, would be the effects
4 of such trials when leaders of rebel groups are held accountable for attacks
5 against peacekeepers?

6 A. As a peacekeeper, or a former peacekeeper, a former soldier and I believe
7 a human being, there can only be one effect -- or there could be two, but I think
8 one. It will send the right signals to those who take up arms, for whatever
9 reasons, in their countries. And when it comes to implementing agreements like the
10 one that we had in Sierra Leone, and they turn their weapons against peacekeepers,
11 that the world is not going to sit idle and let you do what you want to do, turn
12 your weapons against peacekeepers. That is one.

13 There can also be -- and that is what I think, it can also send a signal to
14 the rebel groups to be more intransigent in reaching settlements. And that is what
15 I remember in Sierra Leone, for example, at one time there was a lot of debate
16 amongst the ordinary citizen. There was also debate amongst us peacekeepers that
17 if this trial -- if a trial, you know, begins immediately, is it going to be
18 helpful to the peace process, or is it going to be negative to the peace process?
19 But, thank God, in Sierra Leone, from what I have seen, there have only been
20 positive developments as a result of the trial of Issa Sesay and the others.

21 MS. ALAGENDRA: Thank you very much, General. I have no questions for you.

22 Thank you, your Honours.

23 PRESIDING JUDGE STEINER: Thank you very much. We will now turn to the legal
24 representatives of victims, but just informing that as a matter of fact we have 20
25 minutes. Only if it is strictly necessary the Chamber will compensate the legal

1 representatives in tomorrow's afternoon, but if possible the Chamber would very
2 much appreciate if we could stay within the schedule and finish this session at
3 12:30 and start in the afternoon with the Defence. With these observations, I give
4 the floor to the legal representatives of victims.

5 MS. CISSE: (Interpretation) Thank you, your Honour, I would like to ask a
6 question of the General.

7 QUESTIONED BY MS. CISSE:

8 Q. You said that the mandate in Darfur was surveillance and monitoring of
9 ceasefire and peace agreements very similar to those of the mission that you took
10 place -- part in, in Liberia. Could you tell us in concrete terms what is the
11 procedure that military observers in the field in Haskanita were to follow when
12 they saw an attack, for example shelling of a village, or rebel attacks? Where did
13 their responsibilities end?

14 A. Military observers can see something like what you have just described
15 happening within easy reach, or can get information from other sources. Then they
16 will mount -- it may not be immediately. It may be, you know, a few hours after
17 something has happened, or even days. They will then mount an investigation
18 mission. So, they will go out there to find out what really happened, document it,
19 talk to victims and sometimes they are able even to talk to some people who are in
20 the same organisation which actually did what they did, because they have to come
21 back with concrete information and then report it - the information - to their
22 headquarters, what they've found. Then from there on the headquarters takes on the
23 responsibility of either further investigation, or reporting it to, you know, the
24 higher headquarters. Like, in that particular case, the higher headquarters would
25 be either Khartoum or Addis Ababa.

1 Q. Does that mean that, once they've done the investigation and drawn up a
2 report, they can do nothing else?

3 A. It will depend on whether there is a need for a follow-up or a follow-on
4 action. If there is no need for a follow-on action or investigation, they've done
5 their job. That's it.

6 Q. You said that rebel groups were hostile to AMIS and were keeping them from
7 fulfilling their mission. Could you provide more information? Which groups were
8 involved?

9 A. The information we got from the force headquarters was that not all of
10 them. Some were - some rebel groups were - hostile to AMIS military observers,
11 policemen and women, or military. And if I remember, one particular one which they
12 mentioned was JEM. JEM, which split up into other smaller -- you know, smaller
13 factions. There are also Janjaweed. In some areas Janjaweed were, you know, also
14 hostile to AMIS in some areas. Not everywhere.

15 Q. My last question is, you said that the villagers were hostile and you had
16 the impression -- and they had the impression that AMIS was not protecting them.
17 Don't you think that would -- don't you think that was an erroneous perception in
18 regards to the mission?

19 A. Can you reframe that question?

20 Q. Yes. You said that the villagers were hostile, that they had the
21 impression that they were not protected by AMIS. My question is as follows --

22 MR. KHAN: Madam President, your Honours, may I just seek guidance from the
23 Court? According to the guidelines as set out by the Lubanga Trial Chamber - and
24 we have, of course, already cited His Honour Judge Adrian Fulford once today -
25 there has been a holding that leading questions are not permitted by victim

1 representatives, bearing in mind their functions, and so I would ask my learned
2 friend to be mindful of that injunction when framing her questions.

3 PRESIDING JUDGE STEINER: Thank you, Mr. Khan, but I would prefer that you do
4 not interrupt when someone is saying something. You could have waited. But in any
5 case your motion is correct, so could you please try not to lead the witness. If
6 you are referring to part of its statement, could you please tell the Chamber to
7 which part of the statement you are referring?

8 MS. CISSE: (Interpretation) I don't think my question was leading. He said
9 that he had seen that the villagers were hostile. I admit that I don't have the
10 reference, but he did make that statement. So, I will reformulate my question.

11 Q. In your opinion, why were the villagers hostile to AMIS?

12 A. Your Honour, I don't think I said that villagers were hostile. The
13 information we got, the impression, was that the villagers, the ordinary --
14 especially those who had been -- who had moved on because their dwellings had been
15 burnt down were disappointed that AMIS, which they thought was deployed in Darfur
16 to protect civilians, was not doing so, because civilians thought that the
17 deployment of AMIS was to protect them from the various rebel groups who continued
18 to molest them or who had actually burnt down their dwellings and, as such, they
19 were now IDPs. That's the impression.

20 MS. CISSE: (Interpretation) Thank you. I have no other questions.

21 PRESIDING JUDGE STEINER: Mr. Koné?

22 QUESTIONED BY MR. KONÉ (Through interpretation)

23 MR. KONÉ: Thank you, your Honour.

24 Q. General, throughout the course of your professional career and your
25 experience in the field of peacekeeping, have you ever seen or heard of civilian

1 populations remain -- attacking a peacekeeping mission?

2 A. In my entire service with the United Nations peacekeeping missions, I have
3 never heard of ordinary civilians taking up arms to go and attack peacekeepers,
4 especially unarmed, you know, civilians; I have never heard about that. It is
5 unusual, because they expect the peacekeepers to protect them and, hence, they
6 would have no reason to attack the peacekeepers.

7 Q. Thank you. Another question: Is it possible that several enemy rebel
8 groups in the same area within a -- were in a field of about ten kilometres?

9 A. Can you reframe or can you ask the question again, especially about the
10 ten kilometres radius? I didn't get that correctly.

11 Q. I would like to know: Is it possible that enemy rebel groups operating in
12 the same zone and in the same area within a radius of ten -- two kilometres?

13 A. It is --

14 PRESIDING JUDGE STEINER: Sorry if I interrupt. You were talking about two
15 kilometres or ten kilometres?

16 MR. KONÉ: (Interpretation) Ten kilometres. Yes.

17 Q. I am talking about two kilometres; two kilometres.

18 MR. KHAN: Madam President, I hesitated to rise, I tried to just remain
19 seated. Perhaps my learned friend wishes to be a tad more specific. Which theatre
20 are we discussing? Of course, the General has had experience in Sierre Leone and
21 in of course Darfur, in Liberia, in Namibia. It is not clear if the question is
22 relevant at all; that's my first observation. But, to the extent it is, perhaps a
23 foundation would assist us in determining that basic issue.

24 PRESIDING JUDGE STEINER: Can you clarify and be more specific on relevance
25 of the question, please, Mr. Koné?

1 MR. KONÉ: (Interpretation) Thank you, your Honour. With all due respect to
2 the legal representatives of the victims and to the Defence, I think that the
3 question was specific. We are here to defend the interests, and it is in
4 accordance with those interests that we ask our questions. The question is open,
5 and the General was not a victim in the field but he does have experience and
6 knowledge of the facts, and this is one reason why he is here today as a witness.
7 That is why I will reformulate the question. I asked him if all the same was it
8 possible that enemy rebel groups could be operating in the same zone at the same
9 time within a radius of two kilometres.

10 MR. KHAN: Your Honour, Madam President, I do object. It seems that the
11 assumption of my learned friend is fundamentally misconceived. The purpose of the
12 General's testimony, as I understand it, and it may well be that my perception is
13 otherwise misconceived, is because it is viewed and considered that his evidence is
14 generally relevant to the issue of gravity, as well as the whole thrust of
15 peacekeeping operations, and the Prosecution have called him so that the Bench can
16 have the benefit of the General's extensive experience.

17 He is not a fact witness, as I understand matters, in relation to Haskanita
18 itself. Indeed, he was neither in Haskanita nor in Sudan at the material time. He
19 has testified that he heard about the incident although, of course, we have not yet
20 obtained information as to the basis of the General's knowledge.

21 Your Honour, I make no issue -- I take no issue on that, but it is, in my
22 respectful submission, a leap to expect the General, without proper foundation, to
23 opine as to the presence of rebels in September 2007 within a two-kilometre zone
24 when he wasn't even in the country.

25 PRESIDING JUDGE STEINER: I think the objection made by the Defence is

1 sustained even because it was not clear whether the question put by Maître Koné
2 refers to Darfur, to September 2007, which rebel groups. So that is why I ask,
3 again, please, Mr. Koné, Maître Koné, could you reframe your question and make it
4 clear whether you were talking about Darfur, Haskanita or about a theoretical
5 question based on the experience, the previous experiences of the witness?

6 MR. KONÉ: (Interpretation) Thank you, your Honour. Indeed, it's a question
7 that's theoretical that I am asking in light of the General's personal experience.
8 I did not say the word "Haskanita" or "Darfur" in my earlier questions. I wanted
9 to get an idea from his experience, thanks to the answer that he would be giving to
10 this question. Thank you.

11 THE WITNESS: Your Honour, from my own experience, rebels who are -- or a
12 rebel group which is considering another rebel group as an enemy would want to be
13 -- to have a buffer zone, a very good buffer zone. They would not want to be very
14 close to each other, and that is from my own experience. Having said that - having
15 said that - depending on the topography of the country, for example, in Liberia or
16 Sierre Leone, where you would find that a demarcation, like a river, a big river,
17 Mano River, for example, okay, you may find that there is a rebel group which comes
18 all the way up to that river, and another rebel group, and -- and they will be
19 shooting at each other sometimes, they like to do that -- is on the other side.
20 But in normal deployment, in an area where there is no clear demarcation, they tend
21 to be far apart from each other, for obvious reasons.

22 MR. KONÉ: (Interpretation) Thank you. Before we continue, your Honour, once
23 again I would like to ask your indulgence. Of the 30 minutes that were granted to
24 me, 10 minutes were given to the Defence -- pardon me, to the Prosecution -- and we
25 also were interrupted by Defence remarks. I still have three questions to ask, if

1 you don't mind.

2 PRESIDING JUDGE STEINER: The interruptions made by the Defence are not
3 discounted on the time that the Bench steals from the participants. I need just to
4 ask whether we can have ten more minutes now, and that depends on the interpreters,
5 or whether we will come back after the break and, of course, the Defence will not
6 suffer any prejudice on the two hours allocated to it.

7 MR. KHAN: Madam President, if it is any assistance, I don't anticipate
8 needing to detain the General for the full two hours, so there is no objection at
9 all if ten minutes or so is given to the representatives of the victims for proper
10 questioning.

11 PRESIDING JUDGE STEINER: Thank you very much. Therefore, we will continue
12 with the questioning by legal representatives of victims after the lunch break, and
13 so, therefore, I ask the court officer, please, to accompany our witness, General,
14 to the waiting room.

15 (The witness stands down)

16 PRESIDING JUDGE STEINER: Therefore, this session now will be suspended for
17 the lunch break, and we will resume at 2 o'clock in the afternoon. This session is
18 suspended.

19 THE COURT OFFICER: All rise.

20 (Luncheon recess taken at 12:33 p.m.)

21 (Upon resuming at 2:04 p.m.)

22 THE COURT USHER: All rise.

23 PRESIDING JUDGE STEINER: Please take a seat. Good afternoon. We are here
24 now for the third session of today's hearing. I notice the presence of Deputy
25 Prosecutor, Madam Fatou Bensouda. Welcome again to this courtroom.

1 So, we will start with the continuation of legal representatives' questioning
2 of the witness, reminding the legal representatives that they were kindly given ten
3 minutes from the time allocated to Defence counsel and so I would ask the legal
4 representatives to have good use of these ten minutes. You have the floor.

5 Oh, sorry. I am really sorry. Please, court officer. I apologise. Without
6 the witness it will be difficult to start the questioning, I agree.

7 (The witness enters court)

8 PRESIDING JUDGE STEINER: General, welcome back.

9 THE WITNESS: Thank you.

10 PRESIDING JUDGE STEINER: We will continue now with your questioning by legal
11 representatives of victims.

12 THE WITNESS: Thank you, your Honour.

13 PRESIDING JUDGE STEINER: Maître Koné?

14 MR. KONÉ: (Interpretation) Thank you, your Honour.

15 Q. General, often you rub shoulders with rebel groups. Can you tell us how
16 those groups were organised? To be clear, were they groups that were acting within
17 a hierarchy, following orders, or were these groups rather independent within which
18 people did as they wish?

19 MR. KHAN: Madam President, I apologise for having to rise so early this
20 afternoon. I wonder, perhaps, if my learned friend can be a little bit more
21 specific as to which rebels, in which theatre, that the general has experience in
22 he is seeking to get information about.

23 PRESIDING JUDGE STEINER: Yes, sustained.

24 Would you please, Mr. Koné, be more specific which rebels you are referring
25 to.

1 MR. KONÉ: (Interpretation) Your Honour, I think that this witness is here
2 to share his experience with the Court. It's a broad question that I am asking of
3 the witness, given his experience in the field. He was involved in many
4 peacekeeping missions and he did so over several years. This is why I am asking
5 general questions. That is why I will repeat my question.

6 Q. Within your missions, you were in contact with rebel groups. Were they
7 organised groups that obeyed orders within a hierarchy, or were they disorganised
8 groups within which people did as they wish whenever they wanted? My question is
9 specific. Thank you.

10 A. The rebel groups that I served with, or not served with, but I want to use
11 the same words as you say, "rubbed shoulders with," always wanted to have a
12 hierarchy sometimes similar to the military hierarchies, or police. There was
13 always some chain of command, all the way from the top going all the way down.
14 They assimilated. And the reasons why they did, you would always find that there
15 were always some ex-military or ex-police in the hierarchy of command. Even those
16 who were not -- who joined as civilians, you know, like child soldiers, then
17 emulated what would be like sort of a loose military organisation.

18 Q. My last question. Through your investigations, did you find anywhere that
19 the Sudanese government had threatened the -- had threatened AMIS?

20 A. Not at all. From the organisation - you know, the AMIS organisation -
21 whether it was, you know, the civilian AMIS organisation, we -- I talked to, or the
22 military AMIS organisation, there was nowhere that I heard the Government of Sudan
23 had threatened AMIS.

24 MR. KONÉ: (Interpretation) Thank you, General. Thank you, your Honour.

25 PRESIDING JUDGE STEINER: Mr. Adaka.

1 QUESTIONED BY MR. ADAKA:

2 Q. Good afternoon, General. If I can just take you back a little bit, you
3 recall you told this Chamber about the impact of such rebel attacks on troop
4 contributing countries, okay? Did you also have an opportunity to make an
5 assessment of the impact of such attacks on the families and dependents of the
6 peacekeepers involved?

7 A. Very much so.

8 Q. Could you kindly tell this Court what your assessment revealed to you?

9 A. The families of the peacekeepers, for example the ones who were taken
10 hostages in Sierra Leone, was enormous. The families were agonising where are
11 their loved ones, what has happened to them, because it would go for quite some
12 time before we knew where they were.

13 I want to give you an example. A Kenyan one-star general was taken hostage
14 and for two weeks we did not know where he was, whether he was alive or dead. I
15 lived very close -- during that time I was the vice-chief of general staff. I
16 lived very close to the family in Nairobi and I would go and try and, you know,
17 talk to the family, to encourage them that we are doing all we could to find out
18 where General Mulenge was. And as much as you would want to encourage them to move
19 on, you could see the helplessness, especially the wife, the children. They would
20 be very much, you know, affected. And that happened with the soldiers, you know,
21 also.

22 Q. Thank you, sir. Then will I then be correct to say that the families are
23 usually traumatised by their experience?

24 A. Very much so.

25 MR. ADAKA: Thank you very much.

1 QUESTIONED BY MR. AKINBOTE:

2 Q. General, just as a follow-up, will it be the same impact on the families
3 and dependents of dead soldiers always?

4 A. The same. And, again, I want to give an example. The four Kenyan
5 soldiers who died, it took me a year-and-a-half, while I was then now the commander
6 of the force in Liberia, to identify where the bodies of two were buried by the
7 rebels. And the families all this time kept on asking, "Have the remains of our
8 loved one been found?" We eventually found where they were, exhumed the bodies,
9 did a DNA test and eventually transported the bodies back home.

10 PRESIDING JUDGE STEINER: Thank you very much, legal representatives.

11 Now, General, you will start to be examined by Defence counsel, Mr. Khan.

12 Mr. Khan, you have the floor.

13 MR. KHAN: Madam President, your Honours, I'm most grateful.

14 QUESTIONED BY MR. KHAN:

15 Q. General, good afternoon.

16 A. Good afternoon, sir.

17 Q. You will be pleased to learn I don't anticipate having to ask you
18 questions for very long. I think as the Prosecutor -- as the Bench said this
19 morning, if you can try to remember Judge Adrian Fulford's injunction to pause
20 after my question, but I think perhaps the Bench and the Court has known that if
21 Judge Fulford has been cited as precedent it may well be that you are the example
22 that we have seen today as to how to implement that precedent. So, thank you very
23 much for how you answered questions this morning.

24 Now it's right, is it not, General, that you gave a statement to the
25 Prosecution earlier this year?

1 A. Yes, sir.

2 Q. Now, I want to read one portion of that statement and ask you some
3 questions about it. You say - and you touched upon it in your questions in-chief -
4 that whilst you were preparing the report for AMIS you "... received some
5 information that the AU force was not impartial." That's right, isn't it?

6 PRESIDING JUDGE STEINER: Mr. Khan, which paragraph you are referring to,
7 please?

8 MR. KHAN: Paragraph 87, your Honour -- 86.

9 THE WITNESS: Yes.

10 MR. KHAN:

11 Q. Now, the information on the allegation that AMIS was operating not in an
12 impartial manner came to your attention from multiple sources. Is that correct?

13 A. That is correct, sir.

14 Q. Those sources included both your own intelligence officers. That's right,
15 isn't it?

16 A. That's correct, sir.

17 Q. As well as information they received from non-governmental organisations
18 in the field of Sudan. That's right, isn't it?

19 A. That's correct, sir.

20 Q. In addition, these allegations that AMIS was not operating impartially
21 came to you from the rebels themselves?

22 A. That is from my officers as sent on the ground, yes, sir.

23 Q. And you mention it also came to your attention through the good offices of
24 your -- the men under your control through AU police and some government sources?

25 A. That is correct, sir.

1 Q. So from a multiplicity of sources, extending on the one hand from the
2 Government of Sudan, to the rebels and civilians in between, you received
3 information that there was disquiet in a large section of Sudan, at least amongst
4 all these groups, that AMIS -- AMIS' role was not without controversy. That's a
5 fair way of putting it, isn't it?

6 A. That's correct, sir.

7 Q. Now, moving on --

8 PRESIDING JUDGE STEINER: Mr. Faal.

9 MR. FAAL: Madam President, the Prosecution would object to that question for
10 the simple fact that that is far from what the witness said. Mr. Khan lumped up
11 together a lot of things which the witness has said and other things which he did
12 not say. For instance, on the basis of the testimony we heard, there was --

13 MR. KHAN: Your Honour, I do apologise to interrupt. There is a witness
14 under oath. There is an objection, but it is not correct for my learned friend to
15 start giving evidence himself.

16 Your Honour, I can deal with the question again if my learned friend has
17 difficulties with it, but the observation I would make, with your Honour's leave,
18 is we do have perhaps a most impressive witness in the box, a witness who has
19 experience and palpable intelligence and who would, in my respectful submission,
20 have no difficulty whatsoever in dealing with any deficiency in my question so as
21 to ensure that the Bench has relevant information before it. But, your Honour, I
22 do object if my learned friend's objection goes to the substance, because that is
23 argumentative.

24 MR. FAAL: Madam President, first of all, I think I should be accorded the
25 courtesy of being allowed to finish when I am on my feet. It is not best practice

1 to interrupt counsel while counsel is on his feet. I graciously sat down when Mr.
2 Khan got up, so he should accord me the courtesy to finish with my submissions
3 before he jumps up to make observations on my objections. It's only courteous and
4 only that way we can have smooth proceedings.

5 Going back to my objection, Madam President, when counsel for victims was
6 questioning (Expunged), he tried -- he tried, or rather, Madam President, he was
7 asked to state in which part of the transcript the witness has said particular
8 things. We did not see that in the Defence questioning. The correct thing would
9 be to refer the witness to the part of the transcript where he had said a
10 particular thing and that way it would be sure that this is what the witness said.

11 And the other thing that I object to, Madam President, is recharacterisation
12 of what the witness has said in a manner that, if one is not very attentive, it may
13 be misleading because it does not adequately represent what the witness has said.
14 For that reason, we object to that question being asked.

15 If the witness -- what a witness has said before is the subject of the
16 question, perhaps the best thing would be to refer to the relevant part of the
17 transcript where the witness has said as much. That way, everybody would be clear
18 that this is what the witness said.

19 I hope, Madam President, that this objection would be sustained, such that
20 there won't be any misleading or words being put in the mouth of the witness; words
21 that the witness never uttered. Thank you, Madam President.

22 PRESIDING JUDGE STEINER: Mr. Khan --

23 MR. KHAN: Your Honour --

24 PRESIDING JUDGE STEINER: -- this is one of the consequences of the tolerance
25 of the Bench with the so-called leading questions. I think the objection made by

1 the Prosecution in a certain way is -- has to be sustained, since you were
2 repeating words that the witness didn't say, which can bring some confusion to the
3 Chamber. So if the purpose of the examination is to give the Chamber the elements
4 the Chamber needs to evaluate the testimony, the credibility of the witness and the
5 information the witness is giving, maybe it would be better for the Defence to
6 rephrase and not to put in the witness' mouth words that the witness never said.
7 So I would like -- I would ask you, please, Mr. Khan, to proceed, rephrasing your
8 last question.

9 MR. KHAN: Your Honour, I will do exactly that, bearing in mind your Honour's
10 comments just now.

11 Q. General, do forgive me. I wouldn't, for the life of me, presume or be so
12 bold as to try to put any words in your mouth. So please, do forgive me. Is it
13 correct, bearing in mind - and I think I referred to paragraph 86 of your statement
14 as the source - is it correct that in your capacity as the head of the AMIS
15 investigative commission, the assessment commission, you received information from
16 the Government of Sudan, sources from the Government of Sudan, from the AU police,
17 from civilians, all of them expressing disquiet about the role of AMIS? Is that
18 fair or is that --

19 MS. ALAGENDRA: Your Honours, if I may object to this question, your Honour.

20 PRESIDING JUDGE STEINER: Mr. Khan, please, you finish your question first.

21 MR. KHAN:

22 Q. Let me put it again for the third time: Is it correct, quoting from
23 paragraph 86 of your statement, that the intelligence officers on your staff
24 provided information that the AU force was not impartial and that information came
25 from sources which included NGOs in the field, rebels, the local population, AU

1 police and some government forces? Is that a correct reflection of your evidence
2 or have I mischaracterised it one bit?

3 A. When you talk about some government, you know, sources -- did you say
4 "sources"?

5 Q. "Some government sources," General, is the term I used, and that is the
6 phrase that you mention in your statement.

7 A. Exactly. Not, not, you know, the hierarchy of the government but some
8 people lower down, lower down working for the government. Some, yes.

9 Q. I'm most grateful. And with that clarification aside, is that paragraph a
10 correct and accurate portrayal of the information that came to your attention?

11 A. That is the information that we received, or I received.

12 Q. When you were interviewed by the Prosecution, did they press you -- were
13 you pressed on the precise nature of the information that you received, which
14 suggested that the AU forces may not have been impartial?

15 A. No, your Honour, not at all.

16 Q. I am grateful. Perhaps just for the sake of clarity, were you asked to
17 give details as to the government sources, albeit at a lower level, that provided
18 this information? Were you asked that question or were you not asked that question
19 by the investigators?

20 A. I was not asked by the investigation any question to that effect.

21 Q. I am most grateful, General. And perhaps you will bear with me a moment;
22 does the same apply to the information you referred to receiving from NGOs to the
23 effect that the AU force was not impartial? Did they ask for that information or
24 did they not ask for that information?

25 A. Not at all. Not at all, your Honour.

1 Q. And General, the same applies, does it not, to the information received
2 from civilian sources spoken to by your intelligence officers, you were also not
3 asked to provide details as to the nature of that information; is that correct,
4 sir?

5 A. That is correct, because they did not know what information that we had
6 gathered, so they did not ask me specific ...

7 Q. The information they were aware of you gathering is the information you
8 referred to in your statement; is that right?

9 A. That's correct.

10 Q. And after you made your statement, after you signed your statement, sir,
11 was there any contact by the investigation division of the OTP asking any follow-up
12 questions in that regard?

13 A. None at all, up to the present moment; they've not come back to me.

14 Q. I am most grateful. General, are you aware -- did you become aware in the
15 course of your work in Sudan or afterwards of evidence -- of evidence that the
16 Government of Sudan was conducting bombing exercises using white-coloured
17 helicopters that were painted the same colour as AMIS planes and helicopters? Were
18 you aware of that or not?

19 A. I don't think I followed.

20 Q. Let me try again: Were you aware of any information which suggested that
21 the Government of Sudan had painted its helicopters and bomber aircraft white?
22 Were you aware of that or not?

23 A. No, I wasn't.

24 Q. Now, I will read a section, just a paragraph, General, of a book disclosed
25 by the Prosecution. It is the book by the authors Flint and de Waal, "A New

1 History of a Long War", and ask if that helps refresh your memory in any regard.
2 And for the sake of the record, your Honour, it's ERN DAR-OTP-0159-0189. It has --
3 it bears an EVD number, EVD-D05-0002, and it is a public document. General, it's a
4 shortish paragraph, and the authors write this.

5 PRESIDING JUDGE STEINER: Mr. Khan, if you say at which page it is, maybe the
6 court officer could display the page for -- in order to facilitate the reading of
7 the relevant paragraph.

8 MR. KHAN: Madam President, of course. DAR-OTP-0159-0775.

9 THE COURT OFFICER: Mr. Khan, is this the registration number for the first
10 page of the document, because I would need the first page also, before --

11 MR. KHAN: I am grateful. Your Honours, the first page is the first number
12 that I read out, which is DAR-OTP-0159 to 0189. Madam President, it's a short
13 point. I am in your hands. I am quite content to wait. If you allow me just to
14 proceed and read it --

15 PRESIDING JUDGE STEINER: I allow you to proceed. And, if need be, we will
16 come back -- we are facing difficulties in finding the right page. You can
17 proceed, Mr. Khan.

18 MR. KHAN: I am much obliged.

19 Q. General, the authors write this: "The credibility of AMIS died a death of
20 a thousand cuts in matters big and small. In every community across Darfur there
21 was a complaint." And then they continue: "The joint commission, the political
22 oversight body for the Ceasefire Commission met rarely, and there was no mechanisms
23 for following up decisions. As insecurity grew around IDP camps, both as a result
24 of Janjaweed activity and rebel threats after the Darfur peace agreement was
25 signed, AMIS officers in many locations began to rely on the government

1 representatives in their observer bases in the countryside for intelligence, and
2 even force protection. In March 2006, Sudan Air Force officers painted their
3 aircraft in AMIS colours and used them for a number of military activities,
4 resupplying garrisons and bombing, which was prescribed by the ceasefire. AU
5 troops took photographs of the repainting, an act of perfidy prohibited" --

6 THE COURT OFFICER: This is just to inform you that we have displayed the
7 page, so please press PC1 on the remote beside your computers, and you will be able
8 --

9 MR. KHAN:

10 Q. General, as you will see, I was reading from the bottom of the left-hand
11 side on the screen. Can you see that, sir?

12 A. I can see it. Thank you.

13 Q. It is difficult. The monitor is a little bit far from your chair.

14 A. I can see it.

15 Q. So I am sorry if you are perched awkwardly.

16 A. Thank you.

17 Q. So allow me to continue, perhaps:

18 "AU troops took photographs of the repainting, an act of perfidy prohibited
19 by the Geneva Conventions, but their political masters stayed silent. They didn't
20 even file reports on the incident." Did you, in the course of your assessment
21 mission, ever hear information along those lines, sir?

22 A. This information was never given to us during the time we were there.
23 What I can remember very well, now that I have seen this, is from the press back at
24 home that something like this was happening. Now I can remember. This is -- but
25 not during our mission we were there.

1 Q. I am most grateful, General. And going on to the next page, again perhaps
2 a relevant matter to be considered, the authors write that, "Between May" -- and
3 this is not on the screen at the moment, but it is on the next page for the court
4 officer's attention, and at the top of the page, and it is emboldened in yellow,
5 "Between May and August 2006, the Darfur Peace Agreement and the subsequent
6 decision to expel from the Ceasefire Commission the rebels who hadn't signed the
7 accord destroyed what remained of the AU's impartiality and with it the troops'
8 security and ease of movement."

9 Are you aware, General, of the expulsion of non-signatory parties causing
10 problems on the ground?

11 A. Yes.

12 Q. And it was problems like these, problems like this, was it not, that
13 caused certain individuals or groups to question the impartiality of AMIS; is that
14 right, sir?

15 A. I assume that is correct.

16 Q. I am most grateful. Now, General, going to another part of the book - and
17 for the Court's information and for those of my learned friends sitting across the
18 room on behalf of the Prosecution and the victims - it bears a DAR number,
19 DAR-OTP-0159-0802, and that is page 233 of the Flint and de Waal book.

20 General, I will read out another portion, with their Honours' leave. And the
21 authors write this: "Determined to make the agreement work, the AU foolishly
22 became a partner in this project. That is the DPA, the Darfur Peace Agreement,
23 "had been written in anticipation that all rebel movements would join and included
24 provisions for the AU to provide technical assistance, supplies and logistics to
25 the rebels once they had signed. In the event, AMIS' fidelity to this particular

1 element of the agreement, while disregarding others, put it on one side of a
2 continuing war. By August, the AU had become 'the enemy' of the signatories" --
3 "of the non-signatories, its men and its vehicles as much as a target as the
4 government's for several months."

5 "The AU ...", this is the next paragraph down, "... began its cooperation
6 with Minawi by flying his chief of staff and close relative, Arko Suleiman Dhahia
7 Domay, to the village of Bir Maza, in the heart of the territory controlled by the
8 rebel commanders who had rejected the Darfur Peace Agreement, known as the
9 non-signatories. Here, on 20 May, Arko Suleiman waved his pistol in the air and
10 told a crowd of hundreds summoned from villages all around: 'We can kill anyone
11 who is against this agreement?'"

12 Are you aware of the AU providing such transport assistance where threats
13 were made which resulted in a loss of confidence in the impartiality of AMIS as a
14 whole? Are you aware of that type of thing?

15 A. Not -- not aware, sir.

16 Q. Let me give you just perhaps one more example, so that the Bench can have
17 a flavour of the information and perhaps hopefully to refresh your memory. This
18 appears in the same book at DAR-OTP-0159-0803. In the middle of the page, General,
19 the authors give an example of an incident where "... AU planes supported Minni,"
20 meaning Minni Minawi, "in Bir Maza and Kulkul, taking his wounded away." So, it
21 deals with the wounded:

22 "Jar Al Nabi said later, AU cars took petrol to Minni. They helicoptered his
23 men to Oriri with weapons ...", with weapons, "... in big boxes. I told them there
24 can be no cooperation with the AU because the AU is fighting us. The AU has become
25 our enemy."

1 Have you heard of incidents like that, where the AU for whatever reason
2 allowed its vehicles and its planes to be used to transport weapons that would be
3 used against another party in a conflict? Had you heard things like that, sir?

4 A. I didn't hear of it and, if that is the case, I am very sorry to say that
5 that would create a problem.

6 Q. What problem would it create, sir?

7 A. In peacekeeping, the force that is there, or the organisation that is
8 helping to bring the sides together, is supposed to be at best neutral, not become
9 part of the fighting or escalating, you know, the problem.

10 Q. I am grateful. And, General, being an enormously experienced general with
11 the benefit of vast experience in many different conflict zones, would you think
12 that such conduct, if true, could give rise to impartiality of the peacekeepers
13 being lost? Could you accept it is a danger?

14 A. It is a danger and the confidence will be lost.

15 Q. Yes, I am grateful. Now, General, it is correct, isn't it, that in your
16 experience traditionally there have been three primary conditions that must be in
17 place before peacekeeping operations? I am not -- of course, you are aware of all
18 this. I am not talking for the moment about peace enforcement. I am talking about
19 peacekeeping observer missions and the like. And these three conditions are the
20 consent of the parties, is that right?

21 A. That's correct.

22 Q. The second condition is the essential requirement that the peacekeepers
23 act with impartiality?

24 A. That is correct.

25 Q. Is that right?

1 A. That is correct.

2 Q. And, General, the third condition is that there must be no use of force,
3 save in self-defence?

4 A. That is correct.

5 Q. I am grateful. Now, I am going to put questions to you, General, if I
6 may, with your permission, and I would be grateful for your comment and your
7 answers, and I think it will illuminate and assist everybody in this courtroom.
8 What would you have done -- well, let me go back. Are you aware that many rebel
9 groups did not sign the Darfur Peace Agreement?

10 A. I am aware of that.

11 Q. Were any guidelines put in place, as far as you are aware, as to how AMIS
12 should interact and deal with those groups who had not signed the Darfur Peace
13 Agreement?

14 A. No.

15 Q. You have described in general terms, I believe -- and do correct me if I
16 am wrong. I don't want to put words in your mouth. You have described in general
17 terms disparate practice within Darfur. In some areas the rebels were cooperative
18 and engaged AMIS, is that right?

19 A. That's correct.

20 Q. And in some areas rebels displayed hostility to AMIS. Is that correct?

21 A. That's correct.

22 Q. The mandate of a mission of peacekeeping is predicated, is it not, upon
23 there being a peace to keep?

24 A. That is correct.

25 Q. Where there is fighting, where there is ongoing violence between

1 belligerent parties, it is at the very least terribly difficult for observer
2 missions to do their work properly. Is that right?

3 A. That is correct.

4 Q. And the resources that are given to a mission are determined in part as a
5 matter of generality by the assumption that there is a peace to keep, is that
6 right?

7 A. That is correct.

8 Q. It may seem obvious, but in circumstances where there is ongoing violence,
9 perhaps a much more robust intervention force would be required. Is that correct?

10 A. That is absolutely correct.

11 Q. I am grateful. You spoke this morning about -- or you mentioned this
12 morning that the mandate of AMIS was not only to observe, but it was also to
13 protect civilians. Do you remember mentioning that?

14 A. That is what we were given when we got to El Fasher, that they were
15 expected to protect civilians.

16 Q. Yes. And you noted really one of the nub issues, if I can put it like
17 that, that you wondered perhaps aloud to the Court how they could protect when they
18 were only monitoring what was happening. Do you remember saying that, sir?

19 A. Exactly.

20 Q. Knowing that to at least one audience, the civilians in Sudan, AMIS was
21 portraying itself as an African Union-led mission that would safeguard and seek to
22 protect civilians, knowing the resources that were actually made available, do you
23 think that wholly unrealistic expectations -- sorry, do you believe that the
24 civilians in Sudan, knowing the ambit of AMIS's participation, would be led to
25 believe that there would be protection when AMIS simply couldn't provide it?

1 A. The civilians definitely did not have faith that the AMIS would protect,
2 you know, those who were in danger, because they didn't have the means and the
3 manpower to do so.

4 Q. And in your experience in many theatres, do you ordinarily think it is
5 better to explain in a very straight manner what the mandate and powers of a
6 military force are? Do you think -- putting it hopefully better, do you think that
7 best practice is to tell the civilians what you can do and what you can't?

8 A. No, not at all, not in a military situation.

9 Q. Is it important in a military situation for the military to assert its
10 power, even if it doesn't have that power?

11 A. Not at all.

12 Q. Is it important in a military environment for the military to project
13 authority to the various sides that they are dealing with?

14 A. It boils down to the mandate that is given to them. If, for example, a
15 force is there even to enforce the agreement then they will have the means to do
16 so, but if they are there as a monitoring force, there is no way they can assert
17 their power when they don't have the means to do so.

18 Q. But what of the situation, as pertained to AMIS, where they had a role to
19 monitor, but they also said they had a role to protect? What would the position be
20 there, General?

21 A. The position will be unattainable.

22 Q. Any suggestion to the people, to the civilians that were yearning for an
23 end to violence, would be thoroughly deceptive, would it not, if they were being
24 led to believe that an observer mission would come to the rescue and provide
25 protection?

1 A. That is true.

2 Q. It is true?

3 A. It is true.

4 Q. General, can I refer to Haskanita and ask you your views as an experienced
5 military man as to the consequences of the following.

6 MS. CISSE: (Interpretation) Madam President, we are sorry, but for the past
7 ten minutes the French transcript has not been working.

8 PRESIDING JUDGE STEINER: Could the Presiding Judge be informed on what is
9 going on with the French transcript?

10 (Brief pause)

11 PRESIDING JUDGE STEINER: Maître Cisse, the Presiding Judge has been informed
12 that there is really a problem with the transmission of the transcript, because the
13 message has been sent and so IT is already taking care of this. So would it be
14 possible for us to proceed, or would you prefer that we stop the questioning until
15 the problem is solved?

16 MS. CISSE: (Interpretation) As far as we are concerned, we would have liked
17 to see the entire transcript at the end. We should be able to have access to that.

18 PRESIDING JUDGE STEINER: (Microphone not activated) ... of the transcript
19 will be available. It's just a matter of a few minutes to be restored, but in any
20 case the Defence -- the legal representatives will have the full transcript
21 available.

22 So, I'm sorry for the interruption, Mr. Khan. You can proceed.

23 MR. KHAN: Not at all, Madam President, your Honours.

24 Q. General, I was attempting to take you back to 2007 and ask you to give
25 your impressions from your accumulated experience as to the consequences of the

1 following. In the event that AMIS had responsibility to come to the protection of
2 civilians within their immediate vicinity, would you consider that a village of
3 Haskanita, visible from the military group site, may fall within a sufficiently
4 accessible area as to be in the Protection Force's immediate vicinity?

5 A. If they had a mandate to protect civilians within the area where they were
6 deployed, they had a responsibility to do that.

7 Q. I am most grateful, General. And you have seen the mandate of AMIS, have
8 you not?

9 A. I have.

10 Q. And the mandate, on the face of it, does embrace villagers in that kind of
11 proximity, is that right?

12 A. That's correct.

13 Q. Now, the Prosecution has led evidence in this case that between June and
14 September 2007 patrols from the camp were not operating outside of the camp. What
15 would you think would be the effect on civilians who had been bombed, who had been
16 bombed from the air, if they could see the military group site personnel safe and
17 sound whilst they were in fear of their lives? Does that have the potential,
18 General, to cause dissatisfaction and anger amongst civilians that were living in
19 fear?

20 PRESIDING JUDGE STEINER: Mr. Khan, I think now we have to stop for a while
21 because we don't have the English transcript either.

22 (Brief pause)

23 PRESIDING JUDGE STEINER: I'm sorry, General. I apologise to the parties,
24 but I am informed that the Judges, the parties and participants have to log off and
25 log in again in order to have the transcripts restored. So the court officers will

1 be here to give the necessary help for those that cannot do it by themselves,
2 starting by the Presiding Judge, please.

3 THE COURT OFFICER: Please simply turn off your transcripts and turn them
4 back on again, and it should be working now.

5 (Brief pause)

6 PRESIDING JUDGE STEINER: Is everyone connected again to Transcend? Not yet,
7 Mr. Khan? Do you need any assistance?

8 MR. KHAN: No, Madam President. For once, I think I am coping.

9 THE WITNESS: Even me, your Honour, I am coping.

10 MR. KHAN: Madam President, I have logged on but my screen is blank. I am
11 grateful. Madam President, whenever you so instruct I can continue.

12 Q. General, I do apologise, I hope you do forgive me. If I can put the last
13 question, can you read it from the screen?

14 A. Yes, I can read it.

15 Q. So perhaps without having to torture everybody with another inelegant
16 question, perhaps we can have one of your very elegant answers.

17 MS. ALAGENDRA: Your Honours, could I please ask that the Defence repeat the
18 question?

19 MR. KHAN: Of course.

20 Q. General, I will put it shorter: What do you think would be the possible
21 effects on a civilian town that was subject to air bombardment when they could see
22 close by, a short distance away, of only a few kilometres, a military AMIS camp
23 that was not coming to their protection? Would that cause the civilians, in your
24 experience, to be disenchanted with their lot, or not?

25 PRESIDING JUDGE STEINER: Mr. Khan.

1 MR. FAAL: Madam President, we object to that question because it calls for a
2 speculative answer. Thank you, Madam President.

3 PRESIDING JUDGE STEINER: It calls for an opinion of the witness that is an
4 expert. I see that Mr. Khan asked, "in your opinion." The witness is allowed to
5 answer.

6 MR. KHAN: I am most grateful, Madam President.

7 Q. General, perhaps this time if you do look at the screen, and if you could
8 please give us all the benefit of your answer, I will be most grateful. Can you
9 see or should I ask the usher to bring the --

10 A. No, I can see.

11 Q. -- the monitor a bit closer?

12 A. No, I can see.

13 Q. I am most grateful.

14 A. From my own experience, and we have -- I have experienced that in the past
15 in one or two missions, when you are unable to protect the civilians and you are
16 deployed to protect them, they become terribly disappointed with you as a
17 peacekeeper.

18 Q. What would you have done, General, if in those circumstances a large group
19 of civilians, maybe with some rebels, came to the doors of the camp and said, "We
20 are so completely fed up with AMIS, we think we would be better off without you.
21 Leave. And if you don't leave, if we are attacked again, we will attack you"?
22 What would your response be in those circumstances?

23 PRESIDING JUDGE STEINER: The witness can answer, but I must say that this is
24 quite speculative. Do you insist in this kind of question?

25 MR. KHAN: Your Honour, if the General can answer this one question, I will

1 try perhaps to give less speculative ones after this.

2 Q. General, can you answer that question or should I rephrase it?

3 MS. ALAGENDRA: Your Honours, could I interrupt at this point, please? Your
4 Honours, what counsel for the Defence is doing is giving snippets of Prosecution
5 evidence to the witness to comment on, and he is not giving the witness the whole
6 evidence for him to be able to give a reasoned opinion, if at all. And for that
7 reason, your Honour, I object to this line of questioning.

8 MR. KHAN: Madam President, in my respectful submission, there is not a --
9 there is no merit in the objection put forward just now by my learned friend.
10 Whether or not as Defence counsel I fully and accurately present the Prosecution's
11 case, it is a matter that will be determined by your Honours in due course. I am
12 not going to prosecute the whole case of my learned friends through the General; I
13 am focussing on what I think are the relevant factors. The extent to which those
14 are helpful, are germane and material, will be determined by your Honours in the 60
15 days after these hearings are concluded.

16 In my respectful submission, I can understand fully why my learned friends
17 sitting opposite are anxious about the evidence that is coming from the General
18 but, in my respectful submission, it is relevant, it is probative, it is helpful
19 and it is insightful, and I would ask that the objection be overruled.

20 PRESIDING JUDGE STEINER: Mr. Khan, since you make it clear whether your
21 question refer to some actual fact, or whether your question is just a hypothetical
22 one, I think you can proceed and your objection is overruled.

23 MR. KHAN: I am much obliged.

24 Q. General, do you have that last question of mine in your mind?

25 A. If you can just put it again.

1 Q. Forgive me, General, I am trying to scroll down and find my last question.

2 A. Yes.

3 Q. In general, General, in general, if you encountered a situation where a
4 large group of civilians who were disaffected in the manner we have described, if
5 they came to your camp and said in unequivocal terms, "We are so fed up with what's
6 going on and our lot that we think we will be better off without you, and if we are
7 attacked again by -- if we are attacked again, we will attack you," what would you
8 have done?

9 A. I would be terribly worried myself, and I would do everything possible,
10 everything possible to do what I am expected to do. If I had the means to protect
11 the civilians, I'll show that I will protect it, by not just showing but giving
12 that protection. But, at the same time, such a demand will have to go up to the
13 command headquarters that we have been given an ultimatum by the local population,
14 as well as the rebels. And the people up there will probably give me guidance
15 because what you are trying to describe is a situation whereby it's a lower command
16 is the one which is being --

17 Q. Threatened?

18 A. -- being threatened. And, in the hierarchy, there is a higher command who
19 could either use diplomatic means to resolve the issue for you on the ground there
20 or to issue instructions, give you the necessary means to ensure that you are doing
21 what you are supposed to do there.

22 PRESIDING JUDGE STEINER: Mr. Khan, you promised that this would be your last
23 speculative question. I hope you keep to your promise.

24 MR. KHAN: Your Honour, I will try. But I do have a few more questions that
25 deal with -- that seek to elicit from the General, for the benefit of your Honours,

1 his experience and, in order to do that, I wish to present a few hypotheticals.
2 Your Honours, I will not be too long with that but I would ask for your indulgence,
3 with your Honour's leave.

4 PRESIDING JUDGE STEINER: We have been already very indulgent. You can
5 proceed.

6 MR. KHAN: Your Honour, I am much obliged.

7 Q. General, knowing your experience, being aware of your experience, if you
8 had been threatened by any rebels whilst you were in charge of a military base,
9 would you ever tell these rebels, "Well, if you want to take over our camp, just
10 come and enter. We won't fight you." Would you ever say anything like that?

11 A. Not me. I never invited rebels to come to my camp.

12 Q. Would you think that if such an invitation was made it could, perhaps, be
13 described as recklessly endangering the men under your command? ?

14 MR. FAAL: Madam President.

15 PRESIDING JUDGE STEINER: Mr. Faal.

16 MR. FAAL: Thank you, Madam President, for giving me the floor. The
17 Prosecution would ask that the Defence be asked to explain the relevance of the
18 question because it is certainly not a matter borne out of the evidence. Thank
19 you, Madam President.

20 PRESIDING JUDGE STEINER: Mr. Khan?

21 MR. KHAN: Your Honour, I am happy to move on. The question arises out of
22 the last witness' evidence at paragraph 130. Your Honour, I can move on but that's
23 the basis of my question. The statements are in evidence. It's the last witness
24 that was brought by my learned friend sitting opposite, and it's paragraph 130.
25 And it was in relation to that that I wish to put forward the hypothesis or the

1 theoretical. Your Honour, the last witness, of course, being 446.

2 PRESIDING JUDGE STEINER: Thank you for the clarification.

3 MR. KHAN: Your Honours, I am in your hands. Either the question can stand
4 or I -- I will move on. It's a matter completely for your Honours, but it's --
5 it's page 16 of that statement, at the top of the page, and your Honour, I will try
6 to be careful not to put it as a specific but as a hypothetical.

7 PRESIDING JUDGE STEINER: As a hypothetical.

8 MR. KHAN: Yes.

9 PRESIDING JUDGE STEINER: You can proceed.

10 MR. KHAN: I am grateful. Your Honour, should I wait for His Honour Judge
11 Tarfusser or may I proceed? I am most grateful.

12 Q. General, I don't know if you managed to squeeze in an answer before the
13 objection of the Prosecution; did you answer my last question?

14 A. No, I did not.

15 Q. Would you be so kind to try?

16 A. Yes, I will, if you put it to me again.

17 Q. I will, of course. Yes. If you had been in charge of a military base --
18 now, my last question was this: You said that you would never have given such an
19 invitation or made such a remark, and I was asking whether or not you would
20 consider making such a remark to recklessly or unnecessarily endanger the men under
21 your command?

22 A. Definitely, including myself.

23 Q. Would you describe it as a reckless statement or just an inappropriate
24 one?

25 A. I think the word is, it is an inappropriate statement.

1 Q. I am grateful.

2 A. It is not helpful.

3 Q. Now, going back, General, to the principle of impartiality, you are aware,
4 are you not, that in various sectors in Sudan, at the time you carried out your
5 assessment mission, there were AMIS bases; is that right?

6 A. That's correct.

7 Q. You are aware, are you not, that in those bases were Government of Sudan
8 representatives and also some representatives on the side of the rebels? Are you
9 aware of that, sir?

10 A. I am aware.

11 Q. If it came to your knowledge that one representative - let's call him the
12 representative of the Government of Sudan - was using his presence in the base to
13 give the coordinates of rebels outside the base, and of civilians, so that they
14 could be bombed, would you think that could have the potential to endanger your
15 essential ingredient of impartiality?

16 A. That is correct; obvious.

17 Q. You would not allow that state of affairs to continue, would you?

18 A. Not at all.

19 Q. And if the rebels in this scenario came to you and said very clearly, "We
20 know that the Government of Sudan representative is misusing his presence in order
21 to cause material damage to us," you would be extremely alert, would you not, as to
22 that allegation?

23 A. Of course.

24 Q. And if you believed the allegation to be true - after any inquiries you
25 made - if you believed that information to be true, you would no doubt be

1 exceptionally anxious that the presence of this individual was endangering the base
2 over which you had command. That is right, is it not?

3 A. That's correct.

4 Q. Because, of course, you are aware, being a very experienced military
5 officer, that a base -- that any premises could lose their protected status if they
6 were used in a manner to afford a material advantage to one party or be used to
7 attack and cause death to another. That is right, is it not?

8 A. That's right.

9 Q. Perhaps my last question. We'll see how it goes. Let's look at it from
10 another vantage point. If you were a party to a conflict and you had men under
11 your command that were being killed because of an individual that is assisting the
12 enemy, and that person you knew was based, let us say, in a military -- that person
13 was situated in a military base, you wouldn't just let your men die, would you?

14 A. My first and foremost responsibility, of course, would be to my men. And
15 I would do all I could to ensure that they are not in danger. I am not talking as
16 a rebel.

17 Q. Yes, of course.

18 A. I am talking as a military man.

19 Q. Of course. And as a military man, if this individual that was causing the
20 death of your men was in what would otherwise be a civilian location, you would
21 perhaps be loath to attack it; is that right? You would be hesitant to attack?

22 A. As a military man, I would not just go, you know, and attack a civilian --

23 Q. Yes.

24 A. -- area --

25 Q. Yes.

1 A. -- without, you know, pinpointing --

2 Q. Yes.

3 A. -- the individual I want to deal with.

4 Q. And if -- perhaps if you had such information and you wanted that person
5 -- you wanted that intelligence to stop leaking, you may give a warning to the
6 people that controlled the premises where those representatives were staying. You
7 may give them an ultimatum. Is that fair? Is that possible?

8 A. That's a possibility, but it is not the only way of dealing with a
9 situation like that.

10 Q. But at the end of the day, General, if these ultimatums didn't work and
11 if, as a result, you -- your men kept being killed, you would make sure that that
12 state of affairs changed; is that right?

13 A. I'd find another way.

14 Q. Yes. You would find a way to make sure that your men were not killed.

15 A. Exactly.

16 Q. You wouldn't allow any premises to be used as a Trojan horse in order to
17 kill your men. That's right, isn't it?

18 A. That's true.

19 MR. KHAN: I'm most grateful, General.

20 Your Honours, I have no further questions.

21 PRESIDING JUDGE STEINER: Thank you, Mr. Khan.

22 Judge Monageng has a question to you, General.

23 JUDGE MONAGENG: General, just to clear my mind, you kept referring to a
24 Wali. Wali. Can you tell us what Wali means?

25 THE WITNESS: I think Wali --

1 JUDGE MONAGENG: Yes, who he is.

2 THE WITNESS: Yes. I think Wali is a government representative within, you
3 know, a local organisation in town. For example, Wali, I think is like a mayor.
4 They call it Wali, you know, in Sudan. It's the government representative on the
5 ground. For example, if you went to El Fasher today, there is that man called
6 Wali. He is a government representative.

7 JUDGE MONAGENG: Thank you.

8 PRESIDING JUDGE STEINER: General, I also would ask your clarification on
9 just one point. This assessment that you prepared for the UN in relation to the
10 AMIS situation in Darfur you prepared in the format of a report. What is the
11 format and to which organ of the UN has it been sent?

12 THE WITNESS: It was a report to the DPKO, Department of Peacekeeping
13 Operations, which actually, you know, gave us the mandate to go and assess the
14 command, control and other related issues on AMIS deployment, how they were doing
15 their job in the field, and come up with a training session to enhance the various
16 headquarters' ability to work -- to be more responsive to the job that they had
17 been given and the mandate that they had. Because up to that time, two assessment
18 missions had gone out, more or less did the same thing, but it appeared as if there
19 wasn't much improvement in their day-to-day work, operational work, administrative
20 capability and, you know, protection of -- for example, protection of civilians.

21 So I -- it came up -- or we came up with a very detailed report which covered
22 all the areas that we needed to cover, for example, operational matters. The
23 command structure, what we thought -- or the command structure we found on the
24 ground and the command structure that we thought would be more -- much better than
25 the one that was on the ground.

1 There are weaknesses and strengths. And we came with a recommendation that
2 if AMIS could do A, B, C, D, they would probably be in a much better position to
3 produce results. That report also eventually went to AMIS headquarters. Some of
4 the recommendations were eventually put -- in other words, the organisation put in
5 place, because I eventually got note that our report was quite helpful. But some
6 they didn't implement. They did not implement. And the reasons when I asked, "Why
7 did you not implement some?" They said, "We don't have the money to implement some
8 of the recommendations."

9 PRESIDING JUDGE STEINER: Thank you, General. Do you know whether this
10 report is a public document? Usually, these kinds of reports are public, are
11 easier to be assessed or are confidential.

12 THE WITNESS: It is a confidential report, your Honour. I won't be able to
13 say whether DPKO would be able to, you know, give it out. I don't think they
14 would. But from my own experience, such report is sent back to DPKO, and it's the
15 DPKO which either gives it to whoever, you know, it was meant for; in other words,
16 in this case, it was really meant for the AU headquarters to see that these are the
17 difficulties that your force on the ground is facing, and if you can do A, B, C, D,
18 maybe you will be able to enhance, you know, their capability.

19 PRESIDING JUDGE STEINER: Thank you very much, General. My last question for
20 my clarification, if I understood well, this AMIS mandate was under Chapter VI of
21 the UN Charter.

22 THE WITNESS: I should think so. It looked to me as it was under Chapter VI.

23 PRESIDING JUDGE STEINER: Under these conditions, the peacekeepers are
24 allowed to self-defence or also to defend the military bases or the equipment.
25 What is exactly their mandate in this case of self-defence?

1 THE WITNESS: Your Honour, you are absolutely right, that under the mandate
2 or Chapter VI, it includes defending yourself, defending the premises under which
3 you are in, the property of the UN, if you are serving in a UN peacekeeping
4 mission. In this case, AMIS was serving under the AU, so the property of the AU
5 they had to defend. Also, where you are deployed. For example, in this case, they
6 were also expected to protect civilians under imminent threat of danger, or
7 whatever. So, that is what it is.

8 PRESIDING JUDGE STEINER: Thank you very much, General.
9 Judge Monageng.

10 JUDGE MONAGENG: General, especially in paragraph 86 of your statement, you
11 use AU Force, you use AMIS, you use AU police. For clarity, just for final
12 clarity, what are you talking about?

13 THE WITNESS: AU Force is AMIS. I'm sorry to have confused you. AU Force is
14 AMIS. Okay, AMIS -- you could say AMIS included the civilian component of the AU
15 mission in Darfur because -- for example, even in UNAMSIL, when I was talking about
16 UNAMSIL, UNAMSIL is a mission which is composed by not only military, there is
17 police, there is civilian elements and others. So, when I talk about AU force, I
18 actually mean the AMIS force. It is the same thing, one and the other, excluding
19 the civilian elements. For example, in El Fasher, there was a civilian element
20 attached to the force, including the special representative who was a civilian.

21 JUDGE MONAGENG: Thank you very much.

22 PRESIDING JUDGE STEINER: Thank you very much, General, for your presence
23 here, for bringing your expertise to the parties, participants and to the Chamber.
24 I think your interrogation has come to an end, so the Court just -- Mr. Khan,
25 something?

1 The Court just thanks you very much for your presence, for the statement
2 given, and wishes you a nice journey back to your homeland. Thank you very much.

3 The court officer, please, accompany the witness.

4 THE WITNESS: Thank you, your Honour. I appreciate.

5 (The witness is excused)

6 PRESIDING JUDGE STEINER: So before we suspend today's session, the Chamber
7 has some decisions to be issued, the first of them in relation to Mr. Khan's
8 request that his witness has direct access to his files.

9 The Chamber is of the view that instead of disrupting the questioning, it
10 will facilitate the questioning and, therefore, will contribute to the
11 expeditiousness of the proceedings. Therefore, the Chamber grants the Defence
12 request and orders the Registry to set up all necessary technological arrangements
13 for the purpose of allowing the witness to have access from the courtroom to his
14 files.

15 In relation to the request that final observations be made on Friday instead
16 of Thursday, the Chamber is open for suggestions even about having all final
17 observations on Friday; meaning, that the parties and participants would have
18 Thursday to prepare themselves. So the Chamber would like to know by tomorrow
19 whether this is agreeable also to the OTP and legal representatives of victims;
20 otherwise, the schedule for Thursday is kept for the Prosecution and legal
21 representatives to present their final observations and Friday morning for the
22 Defence as requested.

23 Finally, considering that tomorrow's session is for the purpose of
24 examination of a Defence witness, and that there are no prior statements by this
25 witness, considering that the Chamber might allow victims to participate in stages

1 of the proceedings that the Chamber deems appropriate and in a manner that is not
2 prejudicial to, or inconsistent with, the rights of the suspect, considering that
3 the Defence in its filing 192 requested protective measures as to the identities
4 and statements of its witnesses - other than the witness that is called to testify
5 tomorrow - decides that in the closed session of tomorrow victims' legal
6 representatives will be allowed to participate and to question the Defence witness
7 within the time allocated to them in the confirmation hearing schedule.

8 Having said that, I would like to thank very much the parties, Prosecution
9 team, Defence team, legal representatives of victims, also our interpreters as
10 always so cooperative and indulgent with the Chamber, staff members of Pre-Trial
11 Chamber and Pre-Trial Division, legal support and court officers present during
12 this hearing, thank you all very much.

13 I declare that this hearing be suspended, and we will resume tomorrow morning
14 at 9:30 in closed session. The hearing is suspended.

15 THE COURT USHER: All rise.

16 (The hearing ends at 3:43 p.m.)