



In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 7 July 2025

Language: English

Classification: Confidential

**Prosecution response to Rule 130 request
with confidential Annex 1**

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TABLE OF CONTENTS

I. INTRODUCTION	2
II. THE RELIEF SOUGHT GOES BEYOND THE SCOPE OF RULE 130	2
III. A NON-INTERNATIONAL ARMED CONFLICT EXISTED THROUGHOUT THE INDICTMENT PERIOD.....	9
A. A NIAC Existed from at Least March 1998.....	13
1. Frequency and Scope of Armed Violence.....	13
2. Means and Methods of Warfare.....	18
(a) Personnel	18
(b) Weapons and Equipment	21
3. Casualties and Humanitarian Impact	23
4. Perception and Characterisation of the Armed Conflict	26
B. The NIAC Continued From 20 June 1999 Through September 1999	28
1. Context and Agreements.....	30
2. Statements by Parties to the Armed Conflict	33
3. The Parties Maintained the Means for Waging War.....	35
4. Non-Compliance with International Obligations Extended to Hostile and Provocative Acts	38
IV. CLASSIFICATION.....	43
V. CONCLUSION.....	43

I. INTRODUCTION

1. The Request¹ is primarily notable for what it does not do. It does not challenge the occurrence of any of the charged crimes, and it does not challenge the Accused's responsibility for them.

2. In fact, the Defence fails to seek the dismissal of any charge, rendering the entire Request outside the scope of Rule 130.² The proper time to consider the arguments raised is when the Panel is deliberating its judgment. Even if considered on its merits, however, the Request fails as there is abundant evidence that a non-international armed conflict ('NIAC') existed throughout the Indictment period, including during the two challenged timeframes. The Defence's cursory submissions distort the law, ignore whole swathes of evidence, and inappropriately seek a piecemeal assessment of the conflict's scope. The Request should be rejected accordingly.

II. THE RELIEF SOUGHT GOES BEYOND THE SCOPE OF RULE 130

3. Rule 130 dictates a count-by-count assessment, as unanimously determined by the Trial Panels of this court.³ The Defence attempts to dismiss this jurisprudence by claiming that no KSC trial judge has managed to adequately articulate the correct

¹ Joint Defence Motion Pursuant to Rule 130, With Confidential Annexes 1 and 2, KSC-BC-2020-06/F03256, 12 June 2025, Confidential ('Request').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules.

³ See *Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Motions to Dismiss Charges, KSC-BC-2020-07/F00450, 26 November 2021 ('G&H Decision'), para.23 ('[f]urthermore, for the purpose of dealing with the present motions, the Panel need not inquire into the sufficiency of the evidence in relation to each paragraph of the Indictment. Rather, the evidence should be examined in relation to each count'); *Prosecutor v. Mustafa*, Decision on the Defence Rule 130(1) motion to dismiss any or all charges of the Indictment, KSC-BC-2020-05/F00326, 23 February 2022 ('Mustafa Decision'), para.14 ('for the purpose of dealing with the Motion, the evidence should be examined in relation to each count, as opposed to each paragraph of the Indictment, as clarified by the reference to the word "charge" in Rule 130(1) and (3) of the Rules'); *Prosecutor v. Shala*, Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment, KSC-BC-2020-04/F00652, 15 September 2023 ('Shala Decision'), para.18 ('[f]urthermore, the evidence should be examined in relation to each count, as opposed to each paragraph of the Indictment, as clarified by the reference to the word "charge" in Rule 130(1) and (3) of the Rules').

inquiry under the rule in the present circumstances.⁴ However, the cited findings from *Gucati and Haradinaj* and other cases were not *obiter dicta*;⁵ rather the count-by-count approach formed the foundation of every Trial Panel's application of Rule 130, and rightly so. The Defence argues elsewhere in the Request that a failure to rule 'in accordance with established caselaw' would violate the constitutional rights of the Accused, overlooking that the Request depends on doing just that—ignoring the established caselaw concerning the scope of Rule 130.⁶

4. Prior KSC rulings fully align with a contextual interpretation of Rule 130. The KSC's statutory framework distinguishes between the inclusion or removal of charges and the scope of those charges. For example, a difference is recognised between the SPO adding 'new charges' or substituting 'more serious charges' in the context of amending indictments under the Law⁷ and Rules, with either kind of amendment triggering additional procedural safeguards.⁸ Rule 118(1)(b) similarly authorises the Trial Panel to invite the SPO to either 'reduce' or 'narrow' the indictment, capturing changes to both the number of charges and their scope.⁹ Indeed, Rule 118(1)(c) expressly foresees the possibility of more than one crime site or incident falling within the scope of a single charge. By contrast, Rule 130 addresses only the 'Dismissal of Charges', without any provision for adjusting their scope.

⁴ Request, KSC-BC-2020-06/F03256, paras 17-21.

⁵ Request, KSC-BC-2020-06/F03256, para.21.

⁶ Request, KSC-BC-2020-06/F03256, para.162. Needless to say, the Defence is not correct in labelling this as a constitutional issue. See Kosovo Constitutional Court, [Case of Bajram Zogiani](#), KI69/14, 10 August 2015, paras 4, 32, 49, 51 (rejecting an Article 24 equality of law claim, with reference to ECtHR jurisprudence at para.49: 'the Court emphasizes that [...] it is not in principle its function to compare different decisions of national courts, even if given in apparently similar proceedings; it must respect the independence of those courts [...]') citing, *inter alia*, ECtHR, *Engel and others v. Netherlands*, [Judgment](#), 5100/71, 8 June 1976, para.103.

⁷ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁸ Law, Articles 39(8) and 40(7); Rule 90(2)-(3).

⁹ The provision provides, in full: 'At the Specialist Prosecutor's Preparation Conference, after having heard the Parties, the Panel may: [...] invite the Specialist Prosecutor to reduce or narrow the number of charges in the indictment, if applicable'. See also Decision on Thaçi Defence Motion to Narrow the Charges in the Indictment, KSC-BC-2020-06/F01337, 2 March 2023.

5. The Defence's comparison to the Rule 90 framework is therefore misplaced,¹⁰ because this rule applies to the scope of a charge in a way Rule 130 does not.¹¹ Rule 90 is designed to safeguard the rights of the accused against any modifications to the indictment—interests that are not comparable to those at stake in the Rule 130 context. A more appropriate analogue to a Rule 130 assessment is found in the determinations made at the judgment stage,¹² where Rule 163(4) mandates a count-by-count assessment.¹³ Every Trial Judgment issued by the KSC to date has applied Rule 163(4) in precisely this way.¹⁴

6. The ICTY practice cited by the Defence¹⁵ does not support their position. The 2004 amendment to ICTY Rule 98 *bis* was introduced partly to ensure a count-by-count assessment as part of a broader effort to streamline what had become a cumbersome and inefficient process in the Tribunal's early years.¹⁶ ICTY judges concluded that the

¹⁰ *Contra* Request, KSC-BC-2020-06/F03256, paras 31-36.

¹¹ Changes to the scope of the charges have been labelled 'new charges' when calling them 'more serious charges' more squarely applies, but this distinction makes no difference in the Rule 90(2) context. See Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b), KSC-BC-2020-06/F00635, 23 December 2021, Confidential, paras 24-25. Note also that the ICTY jurisprudence on amended indictments, upon which the Defence's definition of a 'charge' derives (Request, KSC-BC-2020-06/F03256, para.36), was interpreting a statutory provision which made no distinction between 'new' versus 'more serious' charges. See ICTY Rule 50(B) ('[i]f the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges'); ICTY, *Prosecutor v. Popović et al.*, [Decision on further amendments and challenges to the Indictment](#), IT-05-88-PT, 13 July 2006, para.11.

¹² See *G&H Decision*, KSC-BC-2020-07/F00450, para.19; *Mustafa Decision*, KSC-BC-2020-05/F00326, para.11; *Shala Decision*, KSC-BC-2020-04/F00652, para.15.

¹³ Rule 163(4) ('[t]he Panel shall determine a sentence in respect of each charge in the indictment under which the Accused has been convicted [...]').

¹⁴ *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, paras 981, 1006; *Prosecutor v. Mustafa*, Further redacted version of Corrected version of Public redacted version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.828; *Prosecutor v. Shala*, Public redacted version of Trial Judgment and Sentence with one confidential annex, KSC-BC-2020-04/F00847/RED, 16 July 2024, para.1121.

¹⁵ Request, KSC-BC-2020-06/F03256, paras 24-30.

¹⁶ In this regard, see ICTY, *Prosecutor v. Mladić*, [Oral Decision on Defence Request for Acquittal Pursuant to Rule 98 bis](#), 15 April 2014 ('Mladić Decision'), T.20923-20924; ICTY, *Prosecutor v. Hadžihasanović and Kubura*, [Decision on Motions for Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence](#), IT-01-47-T, 27 September 2004, para.20 ('[i]t is worth noting the extent and frequency to which Rule 98 *bis* has come to be relied on in proceedings before the Tribunal, and the prevailing

appropriate unit of analysis for a no-case-to-answer inquiry was the count—mirroring the approach now taken by the KSC.¹⁷ The Defence’s attempt to revive an outdated and rejected model from the ICTY’s earlier practice runs counter to the expediting function and discretionary nature of Rule 130, and ignores the ICTY’s own institutional evolution.¹⁸

7. Any comparison between other courts and the KSC needs to be done globally, and not just by noting the difference in the word ‘charges’ versus ‘counts’. The KSC does not use ‘counts’ in its statutory scheme, so Rule 130 using the word ‘charges’ does not necessarily reveal an intention to change the scope of the inquiry from post-2004 ICTY practice. The judges whose interpretation of Rule 130 is now contested were themselves involved in its adoption,¹⁹ which means the Defence arguments hinge on attributing a legislative intent not shared by the rule’s actual creators.

8. Limiting Rule 130 to a count-by-count assessment is also in line with its purpose. As with its equivalents at international courts and tribunals,²⁰ Rule 130 serves to expedite proceedings by removing charges from the case which have no reasonable prospect of a conviction before the Defence presents evidence or the judges begin deliberations.²¹ The applicable standard reflects this aim, requiring the Panel to

tendency for Rule 98 *bis* motions to involve much delay, lengthy submissions, and therefore an extensive analysis of evidentiary issues in decisions. This is in contrast to the position typically found in common law jurisdictions from which the procedure is derived. While Rule 98 *bis* is a safeguard, the object and proper operation of the Rule should not be lost sight of. Its essential function is to bring an end to only those proceedings in respect of a charge for which there is no evidence on which a Chamber could convict, rather than to terminate prematurely cases where the evidence is weak’); ICTY, *Prosecutor v. Strugar*, [Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98 bis](#), IT-01-42-T, 21 June 2004 (‘*Strugar* Decision’), para.20.

¹⁷ See generally ICTY, *Prosecutor v. Hadžić*, [Oral Decision on Defence Motion for Acquittal Pursuant to Rule 98 bis](#), 20 February 2014, T.9104-9108. The SCSL jurisprudence addressed by the Defence interpreted this inquiry in the same way. See Request, KSC-BC-2020-06/F03256, paras 21-22.

¹⁸ Other features of Rule 130 including 10 day timelines, no replies, and no Defence right of appeal, further underline the limited scope of assessment that was intended under this provision.

¹⁹ Rule 1(1). *Contra* Request, KSC-BC-2020-06/F03256, para.30.

²⁰ See ICTY Rule 98 *bis*, ICTR Rule 98 *bis*, IRMCT Rule 121, STL Rule 167, SCSL Rule 98.

²¹ ICTY, *Prosecutor v. S. Milošević*, [Decision on Motion for Judgement of Acquittal](#), IT-02-54-T, 16 June 2004, para.11 (‘[t]he main rationale for the “no case to answer” procedure is that an accused charged

determine only 'if there is no evidence capable of supporting a conviction beyond reasonable doubt on the particular charge in question'.²² At this juncture, the Panel is not tasked with assessing the guilt or innocence of the accused.²³ The Panel is rather to evaluate the capacity of the evidence, if accepted, to sustain a conviction beyond reasonable doubt—meaning the issue is not whether the Panel would convict, but whether it *could*.²⁴ The evidence sufficient to support findings at this stage need only be illustrative,²⁵ the credibility and reliability of SPO evidence should not be assessed,²⁶ and the evidence is to be taken at its highest level.²⁷

9. The Defence does not appear to dispute these principles,²⁸ nonetheless the Request fails to identify any count that could meet the threshold for dismissal under Rule 130. An inquiry into charges that cannot result in their dismissal would do little to advance the proceedings, and would amount to a premature assessment of issues

with a crime should not be called upon to answer that charge if, at the end of the prosecution case, there is insufficient evidence on which a jury acting reasonably could convict him'); *Strugar Decision*, para.13 ('[...] the fundamental concept is the right of an accused not to be called on to answer a charge unless there is credible evidence of his implication in the offence with which he is charged'). See also ICC, *Prosecutor v. Gbagbo and Blé Goudé*, [Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions](#), ICC-02/11-01/15-1400, 31 March 2021 (notified 1 April 2021), para.106.

²² Rule 130(3).

²³ *G&H Decision*, KSC-BC-2020-07/F00450, para.18. See similarly SCSL, *Prosecutor v. Norman et al.*, [Decision on Motions for Judgement of Acquittal Pursuant to Rule 98](#), SCSL-04-14-T, 21 October 2005 ('*Norman et al.* Decision'), paras 34-41.

²⁴ See e.g. *G&H Decision*, KSC-BC-2020-07/F00450, para.18; ICTY, *Prosecutor v. Jelisić*, IT-95-10-A, [Judgement](#), 5 July 2001, para.37; ICTY, *Prosecutor v. Radoslav Brđjanin Concerning Allegations Against Milka Maglov*, IT-99-36-R77, [Decision on Motion for Acquittal Pursuant to Rule 98 bis](#), 19 March 2004 ('*Maglov Decision*'), paras 7, 9; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, [Decision on Motion for Judgement of Acquittal](#), 2 February 2005 ('*Bagosora Decision*'), para.6; STL, *Prosecutor v. Ayyash et al.*, STL-11-01, [Transcript](#), 7 March 2018 ('*Ayyash et al.* Decision'), pp.6-9; SCSL, *Prosecutor v. Brima et al.*, SCSL-04-16-T, [Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98](#), 31 March 2006 ('*Brima Decision*'), para.10.

²⁵ *G&H Decision*, KSC-BC-2020-07/F00450, para.24.

²⁶ See *G&H Decision*, KSC-BC-2020-07/F00450, para.18; *Maglov Decision*, para.9; ICTY, *Prosecutor v. Mrkšić et al.*, IT-95-13/1-T, [Transcript](#), 28 June 2006, T.11311-11312; *Norman et al.* [Decision](#), paras 37-38; *Ayyash et al.* [Decision](#), pp.10-11.

²⁷ See *G&H Decision*, KSC-BC-2020-07/F00450, para.22; *Brima Decision*, para.11; *Ayyash et al.* [Decision](#), pp.6-9; ICTY, *Prosecutor v. Karadžić*, IT-95-5-18-AR98bis.1, [Judgement](#), 11 July 2013, para.37.

²⁸ See Request, KSC-BC-2020-06/F03256, paras 10-13.

properly left for the final judgment.²⁹ As one ICC Trial Chamber put it, a motion for dismissal ‘ought to be entertained only if it appears sufficiently likely to the Chamber that doing so would further the fair and expeditious conduct of proceedings’.³⁰ That is transparently not the case here. Underscoring the reality that the Request’s use of Rule 130 is neither correct nor appropriate is the fact that granting the Request would produce no meaningful procedural benefit.³¹ Noting, in particular, that all the allegations listed in Annex 1 of the Request are also charged as crimes against humanity, no incident, much less any count, would be removed. The Parties and Panel would still need to address every crime site in the indictment, along with all the associated legal elements and evidentiary material relevant to the charged crimes.

10. Even in cases where other courts have engaged in inquiries beyond a strict count-by-count review prior to the 2004 ICTY amendment, they have rejected the kind of

²⁹ In this regard, see ICTR, *Prosecutor v. Ntawukulilyayo*, [Decision on Defence Motion for No Case to Answer](#), ICTR-05-82-T, 2 July 2009, para.6 (analysis of the indictment below the level of full counts would draw Chambers ‘into an “unwarranted substantive evaluation of the quality of much of the Prosecution evidence”, which is not necessary, nor appropriate when considering a Rule 98bis motion’); *Bagosora* [Decision](#), para.9; ICTY, *Prosecutor v. Kordić and Čerkez*, [Decision on Defence Motions for Judgment of Acquittal](#), IT-95-14/2, 6 April 2000 (‘Kordić and Čerkez Decision’), para.27 ([t]he Chamber considers that the application of the standard of proof beyond a reasonable doubt at this stage of the case would give rise to certain problems. For example, a ruling that it was satisfied beyond a reasonable doubt of the guilt of the accused, while not making it impossible, would certainly render it more difficult to acquit the accused at the end of the case. Moreover, a finding at the halfway stage of proof of guilt beyond reasonable doubt would oblige the accused to call evidence, and this in a regime where he is under no obligation to do so. This eventuality would certainly raise a problem of consistency with the rights of the accused under the Statute. Further, a finding of proof of guilt beyond reasonable doubt would render it impossible to acquit the accused at the close of the case if he calls no evidence. On the other hand, if the applicable standard were the lower criterion of evidence sufficient to raise the possibility of conviction, it would be perfectly feasible to make such a finding and acquit the accused at the end of the case if he calls no evidence, for the reason that the Trial Chamber is not satisfied beyond a reasonable doubt of his guilt’).

³⁰ ICC, *Prosecutor v Ntaganda*, [Decision on Defence request for leave to file a ‘no case to answer’ motion](#), ICC-01/04-02/06-1931, 1 June 2017, para.26. See also ICC, *Prosecutor v Ntaganda*, [Judgment on the Appeal of Mr Bosco Ntaganda against the “Decision on Defence request for leave to file a ‘no case to answer’ motion”](#), ICC-01/04-02/06-2026 OA6, 5 September 2017 (‘Ntaganda Decision’), paras 46 (upholding the Trial Panel’s broad discretion regarding the hearing of no case to answer motions), and 49 (finding no rights implications arising simply from declining to entertain such a motion).

³¹ *Contra* Request, KSC-BC-2020-06/F03256, paras 37-44.

piecemeal, temporal segmentation now sought by the Defence.³² Indeed, as addressed further below, the compartmentalised review the Defence advocates for is especially ill-suited to determining the temporal scope of an armed conflict.

11. Although the Defence raises general assertions about potential efficiencies, these claims are either inaccurate,³³ vague and unsubstantiated,³⁴ or negligible.³⁵ The submissions on streamlining the Prosecution case, trimming the case record, and clarifying the charges are equally misconceived,³⁶ noting in particular that the SPO completed its case presentation on schedule in April 2025. In this light, and given the discretion afforded by Rule 130(3),³⁷ the Panel could additionally reject the Request

³² See *Kordić and Čerkez Decision*, para.34 (finding the partial dismissal of charges based on a temporal division ‘not appropriate’).

³³ See Request, KSC-BC-2020-6/F03256, para.37 (claiming that no further consideration of the scope of the armed conflict would be necessary).

³⁴ See Request, KSC-BC-2020-6/F03256, paras 39, 42 (relating to the need for the Defence to present evidence on these issues: there is currently no concrete information that the Defence intends to present *any* evidence exclusively going to these issues, let alone a significant volume). See also *Mladić Decision*, T.20924-20925 ([t]he Defence is not forced to spend the resources to challenge charges which it believes have not been supported by evidence. The Defence is not forced to present any evidence for that matter’).

³⁵ See Request, KSC-BC-2020-6/F03256, para.39 (that the war crimes at ‘some locations’ need not be considered, while acknowledging that the incidents at those same locations would still have to be considered as crimes against humanity). In fact, the Request both misleadingly represents and oversimplifies the purported potential gains by for example (i) including in Annex 1 incidents charged as having occurred around or after 16 and 18 June 1999, despite purporting to only challenge the timeframe from 20 June 1999 onwards (Annex 1, Table B, line 23, 24); and (ii) failing to acknowledge that for all the locations identified in Annex 1, Table A, armed conflict contextual elements would still need to be considered as the challenge would impact only certain individual victims and not the location as a whole.

³⁶ See Request, KSC-BC-2020-6/F03256, paras 43-46. The judges in the *Prlić et al.* hearing relied upon by the Defence (Request, KSC-BC-2020-6/F03256, para.28) rejected arguments that the Rule 98 *bis* procedure was an appropriate juncture to raise matters concerning the specificity of the charges. ICTY, *Prlić et al. Oral decision pertaining to the request presented by the Petković Defence*, 28 January 2008, T.26900-26903, 26921 ([t]he Trial Chamber notes that the indictment could have been the subject of a preliminary motion after the 15th of December, 2004. The Trial Chamber would like to say that if the Defence teams had felt that the amendment of Rule 98 *bis* could have adverse effects as far as human rights are concerned, a fair trial, expeditious trial, and the presumption of innocence, in that case it should have seized the Trial Chamber as soon as possible and should not have waited for the 98 *bis* procedure to be applied’).

³⁷ Rule 130(3) provides (with emphasis added): ‘the Panel *may* dismiss some or all charges therein [...] if there is no evidence capable of supporting a conviction beyond reasonable doubt on the particular charge in question’. ICTY Rule 98 *bis* is different in that it uses mandatory language (emphasis added:

solely on the basis that it offers no practical utility. In any event, the Request also fails on the merits, as outlined below.

III. A NON-INTERNATIONAL ARMED CONFLICT EXISTED THROUGHOUT THE INDICTMENT PERIOD

12. While interpreting the elements of crimes is unnecessary to resolve a Rule 130 motion,³⁸ the Defence exaggerates the threshold of intensity needed to trigger a NIAC and understates the necessity of attaining a peaceful settlement before a conflict can be considered to have ended.³⁹ The required intensity threshold serves only to distinguish a NIAC from ‘mere cases of civil unrest or single acts of terrorism’.⁴⁰ A decline in intensity or a cessation of hostilities also does not, by itself, end an armed conflict, which continues until there is a peaceful settlement as demonstrated by the lasting cessation of armed confrontations without a real risk of resumption.⁴¹

‘the Trial Chamber *shall*, [...] enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction’). At the other end of the spectrum, the ICC lacks any statutory provision equivalent to Rule 130. Whether to hear a no-case-to-answer motion at the ICC is a highly discretionary determination, and in modern practice the judges will not even permit the filing of such a motion without first granting leave. *See generally* Ntaganda [Decision](#).

³⁸ G&H Decision, KSC-BC-2020-07/F00450, paras 20-21.

³⁹ For the peaceful settlement requirement, *see generally* Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020 (‘Confirmation Decision’), para.89; ICTY, *Prosecutor v. Kunarac et al.*, [Judgement](#), IT-96-23 & IT-96-23/1-A, 12 June 2002, para.57; ICTY, *Prosecutor v. Tadić*, IT-94-1, [Decision on Defence Motion for Interlocutory Appeal on Jurisdiction](#), 2 October 1995 (‘*Tadić* Decision’), para.70. *Contra* Request, KSC-BC-2020-06/F03256, para.113 (claiming international law provides no substantive guidance as to when a non-international armed conflict ends).

⁴⁰ ICTY, *Prosecutor v. Kordić and Cerkez*, [Judgement](#), IT-95-14/2-A, 17 December 2004, para.341; Confirmation Decision, KSC-BC-2020-06/F00026/RED, para.88; ICTY, *Prosecutor v. Boškoski and Tarčulovski*, [Judgement](#), IT-04-82-T, 10 July 2008 (‘*Boškoski and Tarčulovski* TJ’), paras 177, 185. Acts of brief duration at a single location have been found to be of sufficient intensity to trigger the application of international humanitarian law. *See* Inter-American Commission on Human Rights, [Tablada Case](#), Report No. 55/97, Case No. 11.137: Argentina, OEA/ Ser/L/V/II.98, Doc. 38, 18 November 1997, Section IV.A.iii, para.156.

⁴¹ *Tadić* [Decision](#), para.70 (‘[i]nternational humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is achieved’); ICRC, [How is the term “armed conflict” defined in international humanitarian law?](#), April 2024, p.19 (defining the end of a non-international armed conflict on grounds that either ‘one of the parties ceases to exist’ or ‘there is a lasting cessation of armed confrontations

13. The Defence relies prominently on three academic articles to support its argument that a NIAC ends when the hostilities fall below a certain level of intensity.⁴² The cited commentators propose that an intensity threshold could be an alternative test to determine the end of a NIAC, but all acknowledge that the existing requirement is that of a 'peaceful settlement'.⁴³ The Defence also omits the scholars' conclusions that 'once the [intensity] threshold has been met, there should be a presumption that it continues to be met absent strong evidence to the contrary' and that the 'end-threshold would probably have to be set at a lower level than the [intensity] threshold that would bring about the start of a conflict'.⁴⁴ These conclusions align with both international courts⁴⁵ and the ICRC.⁴⁶

without real risk of resumption'); ICRC, [Commentary on the Third Geneva Convention \(III\) relative to the Treatment of Prisoners of War](#), Article 3, 2020 ('ICRC Commentary'), para.525. The Defence makes reference to the 'real risk of resumption' standard at para.154 of the Request. *See also* Confirmation Decision, KSC-BC-2020-06/F00026/RED, para.136.

⁴² Request, KSC-BC-2020-06/F03256, para.113 (fn.221).

⁴³ Milanović, [The End of Application of International Humanitarian Law](#), 893 *International Review of the Red Cross* (2014), pp.163, 179-180; Derejko, ['A Forever War? Rethinking the Temporal Scope of Non-International Armed Conflict.'](#) 26(2) *Journal of Conflict & Security Law* (2020), pp.4-9; Bartels, ['From Jus In Bello to Jus Post Bellum: When Do Non-International Armed Conflicts End?'](#), in Stahn, Easterday, Iverson (eds.), *Jus Post Bellum: Mapping Normative Foundations* (Oxford University Press, 2014), pp.297, 300-301.

⁴⁴ [Milanović](#), p.180 (first quotation); [Bartels](#), p.310 (second quotation). *See also* [Derejko](#), p.11 ('[w]hile a certain intensity of armed violence is required for the existence of a NIAC and the activation of IHL in the first instance, hostilities do not necessarily need to be maintained at this level on a day-to-day basis over the course of the NIAC [...] once IHL is activated, there is not quantitative threshold for acts of violence between the Parties to fall within the remit of hostilities—a single bullet from a sniper's rifle is sufficient'). Defence arguments do not seem to appreciate this qualification. *See* Request, KSC-BC-2020-06/F03256, para.147.

⁴⁵ ICTY, *Prosecutor v. Gotovina et al.*, [Judgement Volume II of II](#), IT-06-90-T, 15 April 2011 ('Gotovina TJ'), para.1694; ICC, *Prosecutor v. Al Hassan*, [Public redacted version of Trial Judgment](#), ICC-01/12-01/18-2594-Red, 26 June 2024 ('Al Hassan Judgment'), paras 1264-1269 (para.1266 in particular, citations removed: '[t]herefore, the Chamber rejects the Defence's argument that as of April 2012, there were only issues of 'banditry' or 'terrorism' that required a security response. Given the holistic nature of the assessment of the facts that is required, the Chamber also finds unpersuasive the Defence's arguments relating to individual confrontations taken in isolation, to show that they were not 'intense' enough by themselves').

⁴⁶ ICRC [Commentary](#), paras 519-530 (para.527 in particular: 'it is not possible to conclude that a non-international armed conflict has ended solely on the grounds that the armed confrontations between the Parties have fallen below the intensity required for a conflict to exist in the first place').

14. The conflict charged must also be assessed on the basis of the unique evidentiary record of this case. The Defence's external comparisons overlook, among other issues: (i) when the prosecution in another case pleads or agrees to a narrower armed conflict timeframe, meaning that the fact-finder was not required to make determinations on all times charged in this case;⁴⁷ (ii) how those cases addressed a smaller geographic scope, which may have shaped the evidence presented;⁴⁸ and/or (iii) that the actual timeframe identified was broader than what the Defence suggests.⁴⁹

⁴⁷ For instance, all three cases cited at paragraph 110 (fn.215) in the Request concern charges where the ICTY Prosecution did not plead an armed conflict before May 1998 or after 20 June 1999. ICTY, *Prosecutor v. Dorđević*, [Fourth Amended Indictment](#), IT-05-87/1-PT, 2 June 2008, paras 20, 78 ('beginning on or about 1 January 1999 and continuing until 20 June 1999'); ICTY, *Prosecutor v. Limaj et al.*, [Second Amended Indictment](#), IT-03-66-PT, 6 November 2003 ('*Limaj* Indictment'), paras 18, 21, 25 ('in or about May 1998 through to on or about 26 July 1998'); ICTY, *Prosecutor v. Milutinović et al.*, [Third Amended Joinder Indictment](#), IT-05-87-PT, 21 June 2006, paras 20, 78 ('beginning on or about 1 January 1999 and continuing until 20 June 1999'). See also Supreme Court of Kosovo, *Prosecutor v Latif Gashi et al.*, AP-KZ 139/2004, [Decision](#), 21 July 2005, p.11 ('it was not necessary for the trial panel to establish the precise day on which the internal armed conflict in Kosovo commenced. Similarly, it was not necessary for the trial panel to establish the precise day on which the internal armed conflict in Kosovo ceased. It only had the obligation to establish that an internal armed conflict [...] existed throughout the time period alleged in the amended indictment [...]').

⁴⁸ For example, the *Haradinaj et al.* case focused only on crimes in the Dukagjin Zone. See ICTY, *Prosecutor v. Haradinaj et al.*, [Fourth Amended Indictment](#), IT-04-84-T, 16 October 2007, para.26 ('[t]he common criminal purpose of the JCE was to consolidate the total control of the KLA over the Dukagjin Operational Zone'). The *Haradinaj et al.* Trial Chamber did not have before it evidence from witnesses like W04290 on how events in other areas like the Drenicë/Drenica Zone could inform the earlier existence of an armed conflict.

⁴⁹ For instance, the Defence fails to mention that the (Defence) exhibits cited in paragraph 161 of the Request indicate a starting armed conflict date of 27 February 1998. 1D00254, Section 1.5; 1D00255, Section 3.1; 1D00106_ET, Article 3(1)(1.8). The Defence also neglects to clearly indicate that some of its cited cases across paragraphs 116-117 provide open ended formulations for the end of the armed conflict, undercutting the proposition that any armed conflict past 20 June 1999 would be 'such a historical outlier' as to impact the credibility of the KSC. Request, KSC-BC-2020-06/F03256, para.162. In this regard, see ICTY, *Prosecutor v. Dorđević*, [Public Judgement with Confidential Annex Volume I of II](#), IT-05-87/1-T, 23 February 2011, para.1579 ('[t]his armed conflict continued until at least June 1999'); ICTY, *Prosecutor v. Haradinaj et al.*, [Public Judgement With Confidential Annex](#), IT-04-84bis-T, 29 November 2012, para.570 (fn.2039); Supreme Court of Kosovo, *Prosecutor v Kolašinać*, AP-KZ 230/2003, [Decision](#), 5 August 2004, p.21 (specifying June 1999 without a specific date). See also, TBA_F03214, IT-03-66 P9a; P02777, pp.1-2.

15. Not only does the Request repeatedly present a misleading impression of what is required to establish a NIAC,⁵⁰ it ignores large volumes of material evidence,⁵¹ cites to materials not in evidence,⁵² and attempts to artificially segment and consider each incident in isolation.⁵³ Determining the start and end of a NIAC necessarily requires a holistic assessment of the conflict's overall arc. This case charges a single, continuous armed conflict, and the unchallenged evidence concerning other periods further confirms its existence during the disputed times.⁵⁴ This is yet another indication of the inappropriateness of conducting a Rule 130 analysis in the terms proposed in the Request, however—mindful of the applicable '*Boškoski* factors'⁵⁵ as noted by the Defence—evidence supporting the existence of a NIAC across the challenged timeframes is summarised below.

16. In the absence of Defence submissions on the organisational requirements for a NIAC, the SPO will respond solely— and to the extent necessary⁵⁶— to the intensity arguments raised, reserving its position on all unaddressed issues.⁵⁷

⁵⁰ See e.g. Request, KSC-BC-2020-06/F03256, paras 62, 64, 80-81, 84-85, 96, 108-109 (making submissions on the 'asymmetry' of the conflict, or suggesting that frontal warfare is needed).

⁵¹ This is particularly evident for the period before March 1998, for which no evidence is referenced at all in the Request. The ICTY would routinely examine incidents of violence outside the temporal limits of an indictment in order to determine whether the armed violence is 'protracted'. See *Boškoski and Tarčulovski* [TJ](#), para. 186 (fn.758, further citations therein). A glaring example, for instance, can be found in the attempt to support the false narrative of Prekaz/Prekaze as an isolated event, by ignoring the Serbian forces' attacks in Qirez/Ćirez and Likoshan/Likošane that immediately preceded it.

⁵² See e.g. Request, KSC-BC-2020-06/F03256, para.63 (citing ICTY, *Prosecutor v. Haradinaj*, [Judgement](#), IT-04-84-T, 3 April 2008 ('*Haradinaj et al.* 2008 Judgment')).

⁵³ See e.g. Request, KSC-BC-2020-06/F03256, paras 62, 71, 73, 76, 81, 85, 94, 96.

⁵⁴ To take one example, the agreements in June 1999 were not the first time that a ceasefire had been declared or that negotiations were held, or agreements entered, with a view towards ending the conflict. Those efforts had repeatedly failed. This is essential context for assessing any impact of the agreements entered into in June 1999. See Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023 ('Adjudicated Facts'), Facts 89, 96-101, 111, 116-122, 127.

⁵⁵ *Boškoski and Tarčulovski* [TJ](#), para.177. See also Request, KSC-BC-2020-06/F03256, paras 50, 131.

⁵⁶ The evidence referred to herein is provided in light of the applicable standard at this stage and is by no means exhaustive.

⁵⁷ See Request, KSC-BC-2020-06/F03256, para.53. This said, evidence of intensity also reflects the organisation of KLA forces doing this fighting.

A. A NIAC EXISTED FROM AT LEAST MARCH 1998

17. Contrary to the narrative the Defence is now attempting to construct,⁵⁸ the evidence shows that the events of March 1998 marked a significant turning point for the KLA. W04752, for example, straightforwardly states that:

[t]he attack on the JASHARI family marked the beginning of the conflict between the Serbian forces and the KLA.⁵⁹

18. As set out below, the evidence shows that the *Boškoski* factors for determining the requisite intensity of a NIAC were clearly met by March 1998 at the very latest, and sustained throughout April and May 1998.⁶⁰ For ease of reference, the list of factors considered in *Boškoski* and applied in the Confirmation Decision are discussed under the following headings: (i) the frequency and scope of armed violence; (ii) the means and methods of warfare; (iii) casualties and humanitarian impact; and (iv) the perception and characterisation of the armed conflict.

1. *Frequency and Scope of Armed Violence*⁶¹

19. Through 1996, there were already increasingly regular incidents of violence between and attacks by Serbian forces and the KLA.⁶² In 1997, and in particular, in late 1997, these incidents further increased in frequency and geographical scope with, for

⁵⁸ Request, KSC-BC-2020-06/F03256, para.98.

⁵⁹ P01356_ET, pp.5933, 6017. *See also* P01814, p.SITF00223937 (W01453: 'Adem JASHARI was killed on 05th March 1998 in Prekaz/Prekaze village in Skënderaj/Srbica municipality and that effectively spread the war to a larger area in Kosovo'); W03885, T.20150; W04746, T.5715-5717, 5948; P00793, paras 5, 8; P01814, p.SITF00223937; P00739.4_ET, p.15; P02087.2_ET, p.10; P01096_ET, p.1.

⁶⁰ Evidence relating to April and May 1998 is summarised for the purpose of demonstrating that the armed conflict which had started by at least March 1998 continued throughout the challenged timeframe.

⁶¹ This section addresses whether the violence is protracted, sustained, and widespread enough to go beyond isolated internal disturbances. It includes evidence on the numbers and dates of armed clashes; the geographical scope and spread of those clashes; and the existence and change of front lines between the parties. *See Boškoski and Tarčulovski* [TJ](#), paras 177, 186; Confirmation Decision, KSC-BC-2020-06/F00026, paras 88-89, 133.

⁶² *See e.g.* Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 16-18; P00269_ET.4; P00269_ET.2; P00269_ET.3; P00269_ET.23; P00269_ET.6; P00269_ET.8; P00778, p.6628.

example, the KLA, 'by decision of the Central Staff', launching a dozen or more coordinated attacks against Serbian police stations across multiple municipalities in three different Operational Zones on 11–12 September of that year.⁶³ These were followed by similar attacks and clashes between Serbian forces and the KLA between October and December 1997.⁶⁴ For example, on 25–26 November 1997, Serbian forces and the KLA engaged in fierce fighting in Rezallë e Re (Lludoviq/Ludović).⁶⁵

20. These armed clashes continued to intensify in early 1998, occurring in multiple locations throughout Kosovo.⁶⁶ For example, on 21–22 January, Serbian forces attacked the compound of KLA commander Adem JASHARI in Prekaz/Prekaze.⁶⁷ By late February, Serbian media had reported 60 attacks on members of Serbian forces; 20 attacks on ethnic Albanians employed in Serbian government agencies or state-owned companies or members of the ruling Socialist Party of Serbia; and 11 attacks on Serbs and Montenegrins.⁶⁸

21. By March 1998, the fighting between Serbian forces and the KLA had become continuous and included 'open battle'⁶⁹ and 'frontal combat'⁷⁰ after Serbian forces launched a large-scale, organised offensive in and around Drenicë/Drenica, including operations in the villages of Likoshan/Likošane and Qirez/Ćirez from 28 February to

⁶³ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 20-21; W04290, T.24927-24928; P00279_ET; P00153_ET; P00761.2_ET, pp.11-16.

⁶⁴ See e.g. P00152_ET; P00269_ET.26; P00269_ET.17; P00280_ET; TBA_F03214, SPOE00055678-SPOE00056018-ET, pp.SPOE00055729-SPOE00055730; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 21.

⁶⁵ See e.g. W04290, T.24928-24932; TBA_F03214, U015-8743-U015-8935-ET Revised 2, pp.U015-8784, U015-8809.

⁶⁶ See e.g. P00154_ET; P00283_ET; P00476_ET, pp.1027-1028.

⁶⁷ See e.g. P00154_ET; P00380, pp.070910; TBA_F03214, U015-8743-U015-8935-ET Revised 2, p.U015-8767; TBA_F03214, IT-04-84 P01141.E; P01745_ET, p.9.

⁶⁸ See e.g. TBA_F03213, IT-04-84 P00006, p.0064-9668.

⁶⁹ See e.g. P01747_ET, p.098251 ('28 February I was in Skënderaj in the morning when I got news that the situation was not good. Police had surrounded Qirez and Likoshan from 09:00 a.m. We could hear all day the cracking of heavy weapons and the noise of helicopters flying past.[...] Thus, the first open battle after November started in Llausha.').

⁷⁰ See e.g. P00778, p.6591. See also Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 750; W04290, T.24937-24939, 24966; P01209_ET, pp.697-698, 702.

1 March;⁷¹ and Prekaz/Prekaze from 3 to 7 March, which also involved a blockade of the surrounding region.⁷²

22. Between approximately 7 to 16 March, there were numerous armed confrontations between Serbian forces and the KLA across a wide front from Glogoc/Glogovac in the direction of Skënderaj/Srbica in the north, towards Mitrovicë/Kosovska Mitrovica in the east; and in the villages along the Çiçavica/Čičavica ridge including many in the Drenoc/Drenovac region.⁷³

23. Armed clashes also occurred in the Llap zone; in the region between Deçan/Dečani, Gjakovë/Đakovica, and Klinë/Klina; between Malishevë/Mališevo and Rahovec/Orahovac; and along a line stretching from Deçan/Dečani to Pejë/Peć.⁷⁴

24. KLA attacks on Serbian border posts also increased in March.⁷⁵ Moreover, towards the end of March, there were armed clashes between the KLA and Serbian forces in the villages of Dubravë/Dubrava and Glogjan/Glođane.⁷⁶

25. Contrary to Defence arguments, the increase in the frequency and scope of armed clashes from late February and throughout March had a direct impact on the overall intensity and scope of the armed conflict, resulting in Serbian forces and the

⁷¹ See e.g. Annex 1 to Prosecution updated report concerning agreed facts, KSC-BC-2020-06/F02573/A01, 13 September 2024 ('Agreed Facts'), Fact 3.4; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 24, 30, 751; W04290, T.24933-24937; P00270_ET.5; TBA_F03213, 070905-070944, pp.070910, 070913; P01251, paras 18-19; P01745_ET, p.U003-9093; TBA_F03213, IT-04-84 P00006, pp.0064-9668-0064-9670.

⁷² See e.g. W04290, T.24936-24937; TBA_F03213, 070905-070944, pp.070910, 070913; P01251, paras 20-21; P01745_ET, p.U003-9094; P02026_ET, pp.6, 17-18; TBA_F03213, IT-04-84 P00006, pp.0064-9668, 0064-9671-0064-9678; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 29.

⁷³ See e.g. P00284_ET; P00794, pp.3336-3337; P00285_ET; P00269_ET.19.

⁷⁴ See e.g. P00284_ET; P00794, pp.3336-3337; P00285_ET; P00269_ET.19.

⁷⁵ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 42; TBA_F03214, IT-04-84 P01021.E; TBA_F03213, ET U003-4161-U003-4162, pp.3-4.

⁷⁶ See e.g. TBA_F03213, ET U003-4161-U003-4162, pp.1-2; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 34, 677.

KLA fighting on a daily basis between March and May 1998, as noted in the Humanitarian Law Center's May 1998 report:

Three incidents in the period between 28 February and 24 March 1998 in which some 80 Kosovo Albanians were killed by Serbian police, had a direct impact on the outbreak of the armed conflict in Kosovo. Fighting between military-police forces of FR Yugoslavia [...] and armed formations of Kosovo Albanians has since then occurred daily.⁷⁷

26. W04290 confirmed this as well:

Q. From March to April 1998, were you based in Aqareve?

A. I was based most of the time in my house, in my village. I spent a considerable amount of time there.

Q. And during this same period, where were the Serb forces stationed in your area?

A. In this period of time, they were positioned in Jashanice, Turiqevc, and Rakinice, also at the entrance of the village of Llaushe, and they were also positioned in the village of Prekaz and in the surroundings. I am talking about the 5th, 6th, and 7th of March. I was positioned in front of them together with some soldiers, and there was fighting almost every day going on.

[...]

A. After 5 March, there was continuous fighting in various locations in the Drenica operational zone. The shelling started, shelling of our positions and inside various villages. The danger was very high for civilians and the members of the army who were on the front line.⁷⁸

27. As publicly acknowledged by the KLA in its Communique Number 47, the period of March to early May 1998 marked the 'continuation and strengthening to a higher level of war', in particular, in the subzones of Drenicë/Drenica, Erenik, Dukagjin, Pashtrik, and Llap where fighting resulted in human and material losses.⁷⁹

28. In April 1998, escalation continued with sustained combat operations launched by both the KLA and Serbian forces (including VJ and MUP personnel) across multiple locations and days.⁸⁰ For instance, on 18 and 19 April 1998, the KLA launched an attack

⁷⁷ See e.g. TBA_F03213, IT-04-84 P00006, p.0064-9668.

⁷⁸ W04290, T.24938, 24966. See also Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 23.

⁷⁹ See e.g. P00155_ET. See also Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 44; W04752, T.17336.

⁸⁰ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 23, 44-45, 51-52, 55-56, 769; TBA_F03214, IT-04-84 P01157.E, p.1; 1D00132_ET, p.120983; W04748, T.3795, 3925; W04752, T.17336; TBA_F03214, IT-04-84 P01023.E, p.2; TBA_F03214, IT-04-84 P01091.E; TBA_F03214, IT-04-84 P01025.E,

on a refugee settlement in Baballoq/Babaloc, initiating prolonged fighting that lasted until 26 April 1998.⁸¹ Between 22 and 24 April 1998 the KLA conducted organised attacks on the 52nd Military Police Battalion from Suka e Vogelj.⁸² Concurrently, hostilities notably intensified alongside the border with Albania, including at the Morina and Koshare/Košare border posts.⁸³ By at least late April 1998, Serbian forces had shelled the Dukagjin area.⁸⁴

29. As reflected in contemporaneous documents, early May 1998 saw a continued escalation⁸⁵ and continuous fighting between the KLA and Serbian forces across Kosovo, including in the areas of Prizren, Prishtinë/Priština, Gjakovë/Đakovica, Klinë/Klina, Glogjan/Glođane, Glogoc/Glogovac, Llapushnik/Lapušnik, Drenicë/Drenica, and Rahovec/Orahovac.⁸⁶ For instance, by 8 May 1998, the KLA and Serbian forces in the area of Gjakovë/Đakovica had engaged in 10 armed clashes.⁸⁷ These clashes were followed by the first Llapushnik/Lapušnik Gorge battle on 9 May 1998.⁸⁸ Additionally, on 12 May 1998 the war had reached Rahovec/Orahovac,

p.3; P01855, para.9; P01264_ET, p.SPOE00128681; TBA_F03214, IT-04-84 P01158.E, p.1; TBA_F03214, IT-04-84 P01091.E, p.1; TBA_F03191, SPOE00230829-SPOE00230900-ET Revised 2, p.SPOE00230868; P01277_ET, p.U015-8830.

⁸¹ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 49, 53; TBA_F03214, IT-04-84 P01091.E, p.1; P00919_ET, p.5; 1D00132_ET, p.120983; W04710, T.15826.

⁸² See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 51-52, 55; TBA_F03214, IT-04-84 P01158.E, p.1; TBA_F03214, IT-04-84 P01091.E, p.1.

⁸³ See e.g. TBA_F03214, IT-05-87 1D00018, p.1D00-0414, para.9; TBA_F03214, IT-05-87.1 D00571.E, p.1; 1D00132_ET, pp.120982-120983; TBA_F03214, IT-04-84 P01157.E, p.1; TBA_F03214, IT-05-87 1D00018, p.1D00-0479, para.54; P01264_ET, p.SPOE00128592; TBA_F03214, IT-04-84 P01158.E, p.1; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 57.

⁸⁴ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 48.

⁸⁵ See e.g. P01747_ET, p.098264; TBA_F03214, IT-05-87 1D00018, p.1D00-0418, paras 13, 20, 22; TBA_F03214, IT-04-84 P01163.E, p.1; TBA_F03214, ET U021-6731-U021-6732, p.1.

⁸⁶ See e.g. TBA_F03214, IT-04-84 P01035.E; TBA_F03214, IT-04-84 P01164.E, pp.2-4; P01804_ET, pp.099497-099498; TBA_F03214, IT-04-84 P01091.E, pp.2-3; 1D00132_ET, pp.120983-120984; P00067_ET, pp.SITF00437785-SITF00437787; TBA_F03213, IT-04-84 P00006, p.0064-9679; P01855, para.10; P02816_ET, p.SITF00437803; TBA_F03214, IT-03-66 P230.D3, p.3.

⁸⁷ TBA_F03214, IT-04-84 P01163.E, pp.1, 3.

⁸⁸ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 62-63; W04410, T.16819; P00836_ET, p.7; P01277_ET, p.U015-8830; P01264_ET, pp.SPOE00128612, SPOE00128710-SPOE00128711; TBA_F03214, U015-9004-U015-9041-ET, p.U015-9018; P01745_ET, p.U003-9096; P01115.9_ET, p.12; W04290, T.24996.

following an attack in Ratkoc/Ratkovac that escalated into the Gradishë/Gradište battle lasting until 14 May 1998.⁸⁹ Between 19 and 31 May 1998, regular combat operations and clashes between KLA and Serbian forces continued to take place in multiple areas throughout Kosovo.⁹⁰

30. In this context, the Defence's attempt to cast the armed clashes predating the end of May 1998 as 'sporadic incidents',⁹¹ constitutes a clear mischaracterisation of the evidence. In fact, the evidence demonstrates that clashes between Serbian forces and the KLA were occurring at a level of frequency and scope more than sufficient to demonstrate the existence of a NIAC by at least March 1998 which continued through April and May of that year. The Rule 130 standard is clearly met.

2. *Means and Methods of Warfare*⁹²

(a) *Personnel*

31. As early as January 1998, Serbian forces began preparing for a significant increase in the intensity of the armed conflict with the KLA, as evidenced by orders to raise the combat readiness of its military personnel.⁹³

⁸⁹ See e.g. 1D00001, p.095084; W04748, T.3414, 3419, 3794, 3925; P02816_ET, pp.SITF00437803-SITF00437804; P01855, para.10; P00067_ET, p.SITF00437785; P01140.1_ET, pp.22, 25; P02080, para.37.

⁹⁰ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 59-60; P01203, paras 15-16, 18; P01201.1_ET, p.1509; TBA_F03214, IT-04-84 P01091.E, pp.4-5; P00579_ET; TBA_F03214, IT-04-84 P01047.E, p.3; P01202.2_ET, p.7921; P01264_ET, pp.SPOE00128608, SPOE00128592; 1D00132_ET, pp.120983-120984; P00067_ET, p.SITF00437787; TBA_F03213, IT-04-84 P00006, p.K007-8703; TBA_F03191, SPOE00230829-SPOE00230900-ET Revised 2, pp.SPOE00230868-SPOE00230869; TBA_F03213, 070905-070944, pp.070916; P01804_ET, pp.099504-099505.

⁹¹ *Contra* Request, KSC-BC-2020-06/F03256, para.107. See also Request, KSC-BC-2020-06/F03256, paras 106, 108.

⁹² This section addresses the numbers and types of forces deployed; recruitment and training of personnel; the numbers and types of weapons used, in particular heavy weapons; the numbers and types of other military equipment such as armoured vehicles and aircraft; and the use of military tactics which includes the scale and complexity of operations; control of territory; blocking of roads and use of checkpoints; besieging or occupying towns; and the use of military intelligence and surveillance. See *Boškovski and Tarčulovski* [TJ](#), para.177. See also Confirmation Decision, KSC-BC-2020-06/F00026, paras 88, 133.

⁹³ See e.g. TBA_F03214, IT-04-84 P01019.E.

32. From the end of February 1998, Serbian forces started deploying multiple units and hundreds of men across the Drenicë/Drenica region to capture or kill members of the KLA, as demonstrated by their encirclement and siege of the JASHARI compound and neighbouring villages from 3-5 March.⁹⁴ The forces deployed included members of the Serbian special police force and VJ.⁹⁵ By March 1998, joint VJ and MUP bases started to appear in all major towns in Kosovo.⁹⁶

33. The clashes that occurred in March 1998—particularly the attacks in Drenicë/Drenica and on Gllogjan/Glođane—represented a widely recognised escalation in the intensity of the armed conflict, galvanizing support for the KLA domestically and abroad, and resulting in dramatic increases in volunteers as well as the KLA's organisational and operational capacity.⁹⁷ Throughout March 1998, the

⁹⁴ See e.g. Agreed Facts, KSC-BC-2020-06/F02573/A01, Fact 3.4; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 24, 30, 751; W04290, T.24933-24937; P00270_ET.5; TBA_F03213, 070905-070944, pp.070910, 070913; P01251, paras 18-19; P01745_ET, p.U003-9093; TBA_F03213, IT-04-84 P00006, pp.0064-9671-0064-9677.

⁹⁵ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 44, 751; W04290, T.24939; P00270_ET.5; TBA_F03213, 070905-070944, pp.070910, 070913; P00794, pp.3301-3302; P01745_ET, p.U003-9093; TBA_F03213, IT-04-84 P00006, pp.0064-9671-0064-9677.

⁹⁶ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 31.

⁹⁷ See e.g. Agreed Facts, KSC-BC-2020-06/F02573/A01, Fact 3.6; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 30, 41, 251; W02652, T.2931, 2933, 2941, 3088; W03885, T.20150; W04147, T.13853-13854; W04278, T.20466-20467; W04290, T.24940, 24966; W04403, T.25707-25708; W04410, T.16771, 16818-16819; W04745, T.25480-25482; W04746, T.5715-5717, 5948; W04748, T.3414; TBA_F03213, 070905-070944, p.070910; P00473, paras 5-6, 11; P00474, paras 5-6, 10, 16; P00761.7_ET, p.3; P00778, p.6590-6592, 6648; P00793, paras 5, 7-8; P00739.4_ET, pp.13-15; P00794, pp.3299-3303, 3336-3339; P01251, paras 18-20, 25-28; P01264_ET, pp.SPOE00128800-SPOE00128681; P01474_ET, pp.3483-3484, 3486, 3583; P01593, pp.U002-9297-U002-9298; P01694.7_ET, p.4; P01814, p.SITF00223937; P02027.1_ET, p.2067; TBA_F03213, IT-04-84 P00006, p.0064-9668; 1D00119, p.8; P00761.4_ET, pp.3-4; P01114.1_ET, pp.3561-3564; P01817_ET, pp.3733-3736, 3738-3756, 3759-3760; P01820_ET, pp.3927-3929, 3983-3984; P01854.1_ET, pp.19-23; P02006.1_ET, p.8; P01834.1_ET, p.14; P00730, p.4179; P01645.1_ET, pp.8-9; W01493, T.11049-11050. See also TBA_F03214, IT-04-84 P01163.E, pp.1-2; P00139_ET; TBA_F03191, SPOE00226527-SPOE00226613-ET Revised, pp.SPOE00226529-SPOE00226531, SPOE00226534, SPOE00226536, SPOE00226548, SPOE00226574; P02389_ET; TBA_F03191, 096791-096792-ET; TBA_F03214, IT-04-84 P01169.E, pp.1-2; P01748_ET, p.U002-3551; P00189, p.U015-8830; P01949_ET, pp.SPOE00141108, SPOE00141110.

KLA continued to grow rapidly and became more visible, particularly in the Drenicë/Drenica region.⁹⁸ The KLA continued its war rhetoric in the following weeks.⁹⁹

34. From early March 1998, KLA members were tasked with deploying and setting up operational military units throughout Kosovo, expanding from established KLA bases and strongholds.¹⁰⁰ For example, in March 1998, KLA units began organising in Shtime/Štimlje and Kleçkë/Klečka;¹⁰¹ and by April 1998, the Lisi, Lumi, Çeliku and Pëllumbi units were formed and operational.¹⁰² Other units active by at least May 1998 included Arti in Rahovec/Orahovac;¹⁰³ and Alpha, Zogu, Korbi, Therra, and Mali in the Drenicë/Drenica area.¹⁰⁴ Additionally, special units were created at this time.¹⁰⁵

35. The Defence understates the numbers and reach of such KLA units. For example, the assertion that the KLA's strategic positions during the 9 May 1998 Llapushnik/Lapušnik Gorge battle were defended only 'by a few KLA soldiers',¹⁰⁶ is contradicted by evidence showing that there were coordinated deployments of several KLA units including the Çeliku, Guri, Lumi, and Pëllumbi units; as well as units of the KLA Military Police.¹⁰⁷

⁹⁸ See e.g. P02026_ET, pp.16-17; TBA_F03214, IT-05-87 1D00018, p.1D00-0479.

⁹⁹ See e.g. P00286_ET, p.U016-2146, para.6.

¹⁰⁰ See e.g. P00761.1_ET, p.20; P00761.3_ET, pp.12-14; P00761.4_ET, pp.3-4; P01814, pp.SITF00223937-SITF00223938; P01817_ET, pp.3751-3758; P01820_ET, pp.3926-3929, 3983-3984; P01333_ET, p.083227; P01881_ET, p.SPOE00226856; P02026_ET, pp.21-22.

¹⁰¹ See e.g. P01814, p.K020-9546; TBA_F03191, SPOE00229777-SPOE00229780-ET, p.SPOE00229780.

¹⁰² See e.g. W02652, T.2941-2942, 2960-2961; W03780, T.19172; P01277_ET, pp.U015-8829-U015-8830; P01333_ET, p.083227; W04744, T.17031. See also, P01119, para.7; W04278, T.20469; P01695, para.4.

¹⁰³ See e.g. W04745, T.25480, 25491.

¹⁰⁴ See e.g. P01745_ET, pp.U003-9095-U003-9096.

¹⁰⁵ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 268, 273, 773, 776-777, 788; P00139_ET; W04290, T.24956-24957.

¹⁰⁶ *Contra* Request, KSC-BC-2020-06/F03256, para.78.

¹⁰⁷ See e.g. P01277_ET, pp.U015-8828-U015-8830; P02027.2_ET, pp.2166-2169; W04290, T.24996-24997; P02027.1_ET, pp.2094-2095; P01745_ET, p.U003-9096; P01114.1_ET, pp.3569, 3572; TBA_F03191, SPOE00230829-SPOE00230900-ET Revised 2, p.SPOE00230868; P01804_ET, pp.099498-099499; P01264_ET, p.SPOE00128612; TBA_F03214, 043855-043856-ET, p.3; W02652, T.3215. See also P01818_ET, p.36.

36. Moreover, in response to the continued intensification of armed clashes, Serbian forces also further increased their presence on the ground, ordering additional troops to full combat readiness, and strengthening their defences by establishing more forward command posts.¹⁰⁸

(b) Weapons and Equipment

37. The armed conflict in Kosovo during the spring of 1998 was defined by the deployment of increasingly destructive and sophisticated military weapons and equipment by both sides. The weapons, ammunition, and other military equipment smuggled by the KLA from Albania had become a major issue for Serbian forces, who deployed multiple units along the Albanian border in attempts to close KLA supply routes.¹⁰⁹ Far from only limited or sporadic exchanges of light weapons fire,¹¹⁰ the evidence reveals a sustained and intensifying use of heavy arms by the parties—ranging from artillery and mortars to attack helicopters, anti-aircraft guns, and explosive devices—during and before March 1998.¹¹¹

38. The KLA was using rocket-propelled grenades ('RPGs') by September 1997 as demonstrated by its coordinated attacks on 12 police stations.¹¹² The KLA continued to use rockets against Serbian offensives in early 1998, along with lighter weapons.¹¹³ As its ranks swelled in March and April 1998, so did its supply of heavy machine-

¹⁰⁸ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 47, 155-156; TBA_F03214, IT-05-87 1D00018, p.1D00-0415, para.6; 1D00132_ET, p.120983; TBA_F03214, IT-04-84 P01026.E; TBA_F03214, IT-04-84 P01157.E, pp.1-6; TBA_F03214, IT-05-87.1 P00705.E, p.1; TBA_F03214, IT-04-84 P01025.E, pp.3-4; TBA_F03214, IT-03-66 P230.47a, p.1.

¹⁰⁹ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 19, 22; W04752,T.17337-17338; P00476_ET;pp.1032, 1034, 1046; TBA_F03214, IT-04-84 P01157.E, pp.1-2.

¹¹⁰ *Contra* Request, KSC-BC-2020-06/F03256, paras 71-73, 80, 96.

¹¹¹ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 24-25, 750; TBA_F03213, 070905-070944, pp.070910-070913; TBA_F03214, IT-04-84 P01163.E, p.2; TBA_F03178, IT-04-84 P00125-ET, p.3; TBA_F03214, IT-04-84 P01091.E, pp.2-4; P01748_ET, p.U002-3550; TBA_F03214, IT-05-87 1D00018, p.1D00-0418, para.20; 1D00132_ET, pp.120983-120984; P00579_ET.

¹¹² See e.g. W04290, T.24927-24935; P00279_ET, p.1; P00761.2_ET, pp.11-12.

¹¹³ See e.g. W04290, T.24928-24932.

guns, sniper rifles, anti-tank rockets, and artillery.¹¹⁴ Mortars, anti-aircraft guns, and heavy artillery were used during the organized assault on the 52nd Military Police Battalion between 22 and 24 April 1998.¹¹⁵

39. Contrary to Defence assertions,¹¹⁶ evidence related to the first Llapushnik/Lapušnik Gorge battle on 9 May 1998 also shows that heavy weapons were available to the KLA and demonstrates the extent of the damage caused to Serbian forces, including the destruction of a Pinzgauer.¹¹⁷ This is one of many examples showing that the KLA possessed and used heavy weapons well before the end of May 1998.¹¹⁸ Even in non-frontline settings, the use of explosives—such as those detonated to halt the Serbian forces' advance near Prekaz/Prekaze on 5 March;¹¹⁹ the bomb that struck a police vehicle on the Prishtinë/Priština–Gjakovë/Đakovica road on 26 April,¹²⁰ or the explosives placed on the Runik/Rudnik-Turiçec/Turićevac road in

¹¹⁴ See e.g. Agreed Facts, KSC-BC-2020-06/F02573/A01, Fact 3.6; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 30, 41; W02652, T.2931, 2933, T.3088; W03885, T.20150; W04147, T.13853-13854; W04278, T.20466-20467; W04290, T.24940, 24966; W04403, T.25707-25708; W04410, T.16771,16818-16819; W04752, T.17337-17338; W04745, T.25482; W04746, T.5715-5717, T.5948; W04748, T.3414; TBA_F03213, 070905-070944, p.070910; P00473, paras 5-6, 11; P00474, paras 5-6, 10, 16, 18; P00476_ET, pp.1032, 1034, 1046; P00761.7_ET, p.3; P00778, p.6590-6592, 6648; P00793, paras 5, 7-8; P00739.4_ET, pp.13-15; P00794, pp.3299-3303, 3336-3339; P01251, paras 18-20, 25-28; P01264_ET, p.SPOE00128800-SPOE00128681; P01474_ET, pp.3483-3484, 3486, 3583; P01694.7_ET, p.4; P01814, p.SITF00223937; P02027.1_ET, p.2067; TBA_F03213, IT-04-84 P00006, p.0064-9668.

¹¹⁵ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 51-52, 55; TBA_F03214, IT-04-84 P01091.E, pp.1-2.

¹¹⁶ *Contra* Request, KSC-BC-2020-06/F03256, paras 80-81.

¹¹⁷ See e.g. P01015_ET, p.036645; W03879, T.6260; P01264_ET, p.SPOE00128612; P01115.9_ET, p.12; TBA_F0319, SPOE00230829-SPOE00230900-ET Revised 2, p.SPOE00230868; P01804_ET, pp.099498-099499.

¹¹⁸ *Contra* Request, KSC-BC-2020-06/F03256, paras 80, 96. See e.g. TBA_F03214, IT-04-84 P01163.E, p.2; TBA_F03178, IT-04-84 P00125-ET, p.3; TBA_F03214, IT-04-84 P01091.E, pp.3-4; P02816_ET, pp.SITF00437803-SITF00437804; TBA_F03214, IT-05-87 1D00018, pp.1D00-0418, para.20; 1D00132_ET, p.120984; P00579_ET; P01804_ET, pp.099497-099498, 099502-099505. See also TBA_F03214, IT-04-84 P01163.E, p.2; P02816_ET, pp.SITF00437803-SITF00437804.

¹¹⁹ See e.g. P01745_ET, p.U0039094.

¹²⁰ See e.g. TBA_F03214, IT-04-84 P01025.E, p.2.

May¹²¹—reveals the extent to which such devices had become part of the conflict's fabric.

40. For its part, Serbian forces executed operations using a wide array of battlefield-grade weaponry. In attacks on villages such as Prekaz/Prekaze and Qirez/Ćirez, they deployed heavy machine guns, armoured personnel carriers, artillery, and attack helicopters—demonstrating a use of deadly military force against not only armed opponents but also civilians.¹²² In other clashes, such as in Dubravë/Dubrava and Gllogjan/Glodane, rocket launchers were deployed alongside multiple helicopters, illustrating the coordinated and multifaceted nature of Serbian military engagement.¹²³

41. Taken together, these examples reflect an armed conflict characterised by the use of military personnel, weapons, and equipment. This evidence demonstrates that the means and methods of warfare employed by Serbian forces and the KLA were of a military nature, and is more than sufficient to demonstrate the existence of a NIAC by at least March, continuing through April and May 1998. The evidence on these factors again clearly meets the Rule 130 standard.

3. *Casualties and Humanitarian Impact*¹²⁴

42. By early 1998, the numbers of casualties on both sides of the armed conflict began to increase, along with the numbers of civilian casualties. Serbian media reported at

¹²¹ See e.g. P01748_ET, p.U002-3550.

¹²² See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 24-25, 750-751; W04290, T.24934-24935, 24937-24939, 24966; P00270_ET.5; TBA_F03213, 070905-070944, pp.070910-070913; P01745_ET, p.U0039093-U0039095; P01209_ET, pp.697-698, 702; TBA_F03213, IT-04-84 P00006, pp.00649669-00649670; P01747_ET, pp.098253, 098255.

¹²³ See e.g. TBA_F03213, ET U003-4161-U003-4162, pp.1-2.

¹²⁴ This section assesses the humanitarian toll to distinguish from mere civil unrest. It includes evidence of the numbers of casualties (killed or wounded) of the parties to the conflict and civilians; the extent of damage to government or civilian property; the numbers of displaced people; and acts of violence against civilians. See *Boškoski and Tarčulovski* [TJ](#), para.177. See also Confirmation Decision, KSC-BC-2020-06/F00026, paras 88, 133.

the end of February 1998 that 9 Serbian police officers, 18 ethnic Albanians, and 4 Serbs had been killed.¹²⁵

43. Serbian forces' late February and early March 1998 attacks in and around Likoshan/Likošane and Qirez/Ćirez resulted in the deaths of at least 24 people including members of the KLA and Serbian forces, as well as many civilian non-combatants.¹²⁶ Several KLA members were also wounded.¹²⁷

44. The fighting in and around Prekaz/Prekaze on 3-7 March 1998 killed more than 50 Kosovar Albanians, including Adem JASHARI and most of his family.¹²⁸

45. In early March 1998, KLA attacks caused substantial damage to buildings.¹²⁹ Also during March, Serbian forces shelled multiple villages and many houses were destroyed.¹³⁰

46. As a result of the fighting in Gllogjan/Glođane on 24 March, three KLA members were killed and 20 additional people were wounded including local KLA commander Ramush HARADINAJ.¹³¹ The attack on the HARADINAJ compound also resulted in internally displaced people, specifically villagers from Gllogjan/Glođane who fled to other villages, including Isniq/Isnić.¹³²

47. In total, as a result of Serbian forces' operations in Likoshan/Likošane, Qirez/Ćirez, Prekaz/Prekaze, Dubravë/Dubrava, and Gllogjan/Glođane, from 28

¹²⁵ See e.g. TBA_F03213, IT-04-84 P00006, p.0064-9668.

¹²⁶ See e.g. Agreed Facts, KSC-BC-2020-06/F02573/A01, Fact 3.4; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 24, 751; W04290, T.24933-24936; P00270_ET.5; TBA_F03213, 070905-070944, pp.070910-070913; TBA_F03213, IT-04-84 P00006, pp.00649668-00649670.

¹²⁷ See e.g. P00270_ET.5; P01745_ET, p.U003-9093; W04290, T.24934-24935, 25145.

¹²⁸ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 28; TBA_F03213, 070905-070944, p.070910; P02026_ET, pp.17-18.

¹²⁹ See TBA_F03214, ET_U021-3458-U021-3459.

¹³⁰ See e.g. P01747_ET, p.098257.

¹³¹ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 39; P01264_ET, p.SPOE00128589; TBA_F03214, IT-05-87 1D00018, p.1D00-0479, para.53.

¹³² See e.g. P00476_ET, pp.1028, 1032, 1034; TBA_F03213, IT-04-84 P00006, pp.00649678-00649679.

February to 24 March 1998, at least 80 people were killed and many were wounded on both sides.¹³³ Also around this time, the displacement of civilians resulting from the increasing hostilities was noted by Serbian forces.¹³⁴

48. In April 1998, the armed conflict caused dozens of casualties and material losses.¹³⁵ For instance, contrary to the Defence's assertion of only two casualties during an armed clash on 23 April 1998,¹³⁶ evidence shows at least 16 fatalities.¹³⁷ Likewise, in the course of 22 and 26 April 1998 combat operations, a helicopter was shelled and an armoured vehicle destroyed.¹³⁸ The conflict was further underscored by a significant impact on civilians, leading to thousands fleeing the country and many others joining daily public demonstrations.¹³⁹ As reported by UNHCR at the end of April, an estimated 17,500 people were displaced inside Kosovo, with approximately 5,000 fleeing to Montenegro, and around 1,000 to Albania.¹⁴⁰ The number of casualties and level of civilian displacement continued to grow throughout May 1998.¹⁴¹

49. Once more, the evidence on these factors exceeds the Rule 130 standard.

¹³³ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 751; TBA_F03213, IT-04-84 P00006, p.0064-9668; TBA_F03213, ET U003-4161-U003-4162, pp.1-2.

¹³⁴ See e.g. TBA_F03213, IT-04-84 P01143.E, p.3; TBA_F03213, ET U021-3458-U021-3459; TBA_F03213, ET U003-4161-U003-4162, p.3.

¹³⁵ See e.g. TBA_F03214, IT-05-87 1D00018, p.1D00-0479; 1D00132_ET, p.120983; TBA_F03214, IT-04-84 P01091.E, pp.1-2; TBA_F03191, SPOE00230829-SPOE00230900-ET Revised 2, p.SPOE00230868.

¹³⁶ *Contra* Request, KSC-BC-2020-06/F03256, para.88.

¹³⁷ See e.g. TBA_F03214, IT-04-84 P01091.E, p.1; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 54; TBA_F03214, IT-05-87 1D00018, p.1D00-0479, para.54.

¹³⁸ See e.g. TBA_F03214, IT-04-84 P01091.E, p.2; 1D00132_ET, p.120983.

¹³⁹ See e.g. TBA_F03214, IT-05-87 1D00018, p.1D00-0479, para.52; TBA_F03213, IT-04-84 P00006, p.K007-8704; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 50; TBA_F03214, IT-04-84 P01157.E, p.1; P00380, p.K036-4873; TBA_F03214, IT-04-84 P01169.E, p.3; P01201.1_ET, p.1514; P01747_ET, p.098261 (writing in April 1998 '[t]he need for aid is great, because Llausha has been hermetically sealed off for a long time since the start of the war').

¹⁴⁰ See e.g. TBA_F03214, IT-05-87 1D00018, p.1D00-0479, para.52.

¹⁴¹ See e.g. 1D00132_ET, pp.120983-120984; TBA_F03214, IT-04-84 P01163.E, pp.1, 3-4; P00068_ET, p.1; P01264_ET, p.SPOE00128658; TBA_F03214, IT-04-84 P01164.E, p.4; P01203, para.18; P00067_ET, pp.SITF00437786-SITF00437787; TBA_F03214, IT-05-87 1D00018, p.1D00-0418; TBA_F03191, SPOE00230829-SPOE00230900-ET Revised 2, pp.SPOE00230868-SPOE00230869; P01804_ET, pp.099497, 099499, 099503-099505; P02816_ET, pp.SITF00437803- SITF00437804.

4. *Perception and Characterisation of the Armed Conflict*¹⁴²

50. Repeatedly throughout 1997, the KLA presented itself as a party to armed conflict,¹⁴³ waging a war of liberation,¹⁴⁴ and operating under the orders of the Central Staff or General Staff.¹⁴⁵ The KLA viewed Serbia as violating humanitarian law from at least 1997,¹⁴⁶ and the escalation in hostilities by March 1998 was clearly noted by both parties.¹⁴⁷

51. This marked escalation also led to a significant increase in the attention and involvement of the international community. This is demonstrated by, *inter alia*, UNSC Resolution 1160, passed on 31 March, which imposed an arms embargo and called on the Federal Republic of Yugoslavia ('FRY') to find a political solution to the 'issue of Kosovo'.¹⁴⁸ Contrary to Defence submissions,¹⁴⁹ the fact that Resolution 1160 did not explicitly describe the situation as an 'armed conflict' at this stage is neither unusual nor indicative of how the UNSC viewed the matter,¹⁵⁰ considering that it typically avoids making formal legal determinations in such resolutions, as evidenced by

¹⁴² This section assesses how the violence is viewed by insiders and external entities as an armed conflict rather than only civil unrest. It includes evidence of statements by the parties acknowledging the existence of an armed conflict; characterisations by international organisations, media, and other observers; the existence of ceasefire orders and agreements; attempts by international organisations to broker and enforce such agreements; and whether the violence attracted the attention of UNSC and whether any resolutions on the matter have been passed. See *Boškoski and Tarčulovski* [II](#), para.177. See also Confirmation Decision, KSC-BC-2020-06/F00026, paras 88-89, 134.

¹⁴³ See e.g. P00276_ET; P00152_ET; P00277_ET; P00221_ET; P00153_ET.

¹⁴⁴ See e.g. P00281_ET; P00270_ET.2.

¹⁴⁵ See e.g. P00273_ET; P00274_ET; P00277_ET; P00221_ET; P00153_ET; P00152_ET; P00280_ET; P00269_ET.16. See also, Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 228.

¹⁴⁶ See e.g. P00152_ET. See also, P00284_ET.

¹⁴⁷ See e.g. P00155_ET; P00286_ET, p.U016-2146, para.6; TBA_F03214, ET U003-4161-U003-4162.

¹⁴⁸ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 43; TBA_F03213, IT-05-87.1 P01074.

¹⁴⁹ Request, KSC-BC-2020-06/F03256, paras 55, 95.

¹⁵⁰ *Contra* Request, KSC-BC-2020-06/F03256, para.55.

Resolutions 1203, 1239, and 1244—none of which expressly reference an armed conflict.¹⁵¹

52. Similarly, numerous other international bodies and non-governmental organisations acknowledged the conflict's higher level of intensity by March 1998, releasing statements, recommending courses of action, and/or taking action to address the growing violence¹⁵²—with some expressly determining the existence of a NIAC from that point.¹⁵³

53. Tellingly, already by 9 March 1998, the ICTY was being asked to investigate incidents of violence in Kosovo which might fall within its jurisdiction.¹⁵⁴ The following day, due to the 'exceptional circumstance' created by the escalating violence, the ICTY Prosecutor issued an extraordinary statement in which she confirmed the ICTY's jurisdiction.¹⁵⁵

54. Throughout April and May 1998, the international community continued to raise concerns about the hostilities, appealed for restraint, and issued recommendations to ensure effective monitoring of the situation in Kosovo.¹⁵⁶ In May 1998, the Humanitarian Law Center ('HLC') issued a report in which it stated that both 'Serb and Albanian' sources had noted an 'upsurge in violence in the first five months of

¹⁵¹ It is also noted that Resolution 1160 urged the ICTY to gather information 'related to the violence in Kosovo that may fall within its jurisdiction' and recalled that the FRY authorities were obliged to cooperate with it. TBA_F03213, IT-05-87.1 P01074, para.17.

¹⁵² See e.g. TBA_F03214, IT-05-87 1D00018, pp.1D00-0374-1D00-0375, 1D00-0399-1D00-0400, 1D00-0414-1D00-0417, 1D00-0441-1D00-0442, 1D00-0448, 1D00-0454-1D00-0455, 1D00-0458-1D00-0459, 1D00-0462, 1D00-0479, 1D00-0511.

¹⁵³ W04408, T.7288-7289.

¹⁵⁴ See e.g. TBA_F03214, IT-05-87 1D00018, p.1D00-0454. See also TBA_F03213, IT-05-87.1 P01074, para.17.

¹⁵⁵ See e.g. TBA_F03214, IT-05-87 1D00018, p.1D00-0462. On 7 July 1998, the ICTY Prosecutor reiterated that the nature and scale of the fighting in Kosovo had risen to the level of an armed conflict under international law. Although this statement was made in July, it was characterised as a *reiteration* of the Prosecutor's earlier statement on jurisdiction.

¹⁵⁶ See e.g. TBA_F03214, IT-05-87 1D00018, pp.1D00-0402, 1D00-0414-1D00-0419, 1D00-0448, 1D00-0452, 1D00-0480.

1998.’¹⁵⁷ On the basis of the ‘intensity and frequency of the clashes’ from February to May 1998, the HLC found that ‘Kosovo has entered a state of armed conflict as identified by international humanitarian law.’¹⁵⁸

55. Taking all of the above factors together, the evidence shows that the situation in Kosovo was viewed by the parties and international community as an armed conflict which had attracted the attention of the UNSC—all of which demonstrate the existence of a NIAC starting from at least March and continuing throughout April and May 1998. The supporting evidence again well exceeds the Rule 130 standard.

B. THE NIAC CONTINUED FROM 20 JUNE 1999 THROUGH SEPTEMBER 1999

56. As noted above, a NIAC concludes not merely with a decrease in intensity, but only upon the achievement of a peaceful settlement.¹⁵⁹ International tribunals have been clear that the temporal scope of a NIAC is broad, and extends well beyond the cessation of active hostilities.¹⁶⁰ As put by the ICTY Trial Chamber in *Gotovina et al.*:

Once the law of armed conflict has become applicable, one should not lightly conclude that its applicability ceases. Otherwise, the participants in an armed conflict may find themselves in a revolving door between applicability and non-applicability, leading to a considerable degree of legal uncertainty and confusion.¹⁶¹

57. Accordingly, oscillating levels of intensity, breaks in hostilities, or ceasefire and withdrawal agreements are not determinative of a conflict’s end.¹⁶² Relying solely on

¹⁵⁷ TBA_F03213, IT-04-84 P00006, p.00649668.

¹⁵⁸ TBA_F03213, IT-04-84 P00006, p.006496785.

¹⁵⁹ See paras 12-13 above.

¹⁶⁰ See e.g. *Tadić* [Decision](#), paras 67, 69-70 (noting, *inter alia*, that the ‘temporal frame of reference for internal armed conflicts is [...] broad’, citing Common Article 3 of the Geneva Conventions and Additional Protocol II); ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, [Trial Judgement](#), 21 May 1999, paras 182-183 (noting, *inter alia*, that ‘[t]he expression “at any time whatsoever” [in Additional Protocol II] means that the temporal factor does not assume a narrow interpretation’). *Contra* Request, KSC-BC-2020-06/F03256, para.113 (suggesting that the language in Common Article 3 of the Geneva Conventions or Additional Protocol II is ‘imprecise’ and uninformative).

¹⁶¹ *Gotovina* [TJ](#), para.1694.

¹⁶² See e.g. *Haradinaj et al.* 2008 [Judgement](#), para.100 (‘[...] since according to the *Tadić* test an internal armed conflict continues until a peaceful settlement is achieved, and since there is no evidence of such a settlement during the indictment period, there is no need for the Trial Chamber to explore the

such acts could lead to a premature end of the applicability of humanitarian law.¹⁶³ Rather, the operative standard is that of a 'peaceful settlement', marked by the effective and lasting cessation of armed confrontations without a real risk of resumption.¹⁶⁴

58. As outlined below, the period of 20 June to September 1999 was characterised by hostile and provocative acts by the KLA and Serb forces (in particular, paramilitary forces); non-compliance by the Serbian authorities and KLA with international agreements and obligations; ongoing and incomplete deployment of KFOR; and the reality that the NIAC parties still existed and had the necessary means at their disposal to wage war. Contrary to Defence assertions, through at least September 1999 (when the KLA ceased to exist as such), the resumption of broader hostilities in Kosovo was a real risk and ongoing concern among both the parties to the conflict and the international entities seeking to enforce peace. Un-tendered evidence cited in the Pre-Trial Brief changes nothing in this respect, as other admitted materials demonstrate the same factual points.¹⁶⁵

oscillating intensity of the armed conflict in the remainder of the indictment period'); *Al Hassan Judgment*, paras 1266-1267; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08, [Judgment pursuant to Article 74 of the Statute](#), 21 March 2016, paras 140-141; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, [Judgment](#), 8 July 2019 ('*Ntaganda Judgment*'), para.721; ICRC [Commentary](#), paras 523-528.

¹⁶³ ICRC [Commentary](#), para.524. See e.g. *Boškoski and Tarčulovski* [II](#), paras 233, 294 (finding armed conflict continued beyond a framework agreement for a general, unconditional, and open-ended ceasefire). The Defence acknowledges that the ceasefire agreements relevant to this case cannot on their own end the armed conflict. See Request, KSC-BC-2020-06/F03256, paras 120, 132.

¹⁶⁴ See para.12 above.

¹⁶⁵ *Contra* Request, KSC-BC-2020-06/F03256, paras 112, 123-128. The relevant finding of the Pre-Trial Judge in this regard relates to Serbian forces violating their agreements 'on some occasions during the summer of 1999', specifically reports of Serbian tanks on the ground; four armed Serbian policemen arrested after they entered Kosovo from Serbia; reports of Serb paramilitary and MUP units' presence in Kosovo); and a unit of six MUP men and 15 VJ soldiers found to have set up a vehicle checkpoint at the FRY/Kosovo border in mid-September 1999 (see Request, KSC-BC-2020-06/F03256, para.124 citing Confirmation Decision, KSC-BC-2020-06/F00026, para.134, fn.297). For comparable and additional evidence of relevant Serbian violations see Section III.B.4 below. The assertion of the SPO that '[u]ntil at least September 1999, the redeployment of FRY forces and resumption of hostilities in Kosovo was a real concern among the parties to the conflict' relies only upon evidence that was admitted (SITF00194648-00194652, para.12, *admitted as* P02532; SITF00194668-00194672, paras 11-12, *admitted in*

1. Context and Agreements

59. As noted above,¹⁶⁶ parts of a conflict should not be assessed in isolation, and determining when a peaceful settlement had been achieved requires consideration not only of the events of summer 1999, but also of the conflict's prior evolution and the parties' previous conduct.¹⁶⁷

60. In this instance, over the course of the NIAC, the parties had failed to comply with UNSC resolutions demanding, *inter alia*, an end to hostilities in Kosovo.¹⁶⁸ Further, the October 1998 agreement the Serbian authorities reached with international representatives,¹⁶⁹ and the related unilateral KLA ceasefire declaration,¹⁷⁰ were not respected, and—despite the demands made in UNSC Resolution 1203¹⁷¹—the resulting 'ceasefire' periods were used as an opportunity for the parties to regroup, rearm, regain control over territory, and launch further attacks.¹⁷² Likewise,

TBA_F03213; SITF00194707-00194710, paras 1, 3, *admitted as* P02533; SITF00194887-00194891, paras 2-4, 13, *admitted as* P02534; SITF00194869-00194873, para.6 *admitted as* P02535). The assertion of the SPO that 'both the KLA and FRY forces continued hostile and provocative acts through at least September 1999' relies primarily upon evidence that was tendered as such or elicited through witness testimony (087342-087360, paras 26, 42-43, 56, *admitted as* P02517; 101610-101634, paras 15, 29, 34, 36, 42-43, 58-59, 64, 80-81, 85, *admitted as* P01968; 013312-013334, paras 34, 48-49, *admitted through* live testimony of that witness at W02161, T.10624-10625, 10627, 10629; 075552-075578, paras 75-76, 79-80 *admitted through* live testimony of that witness at W04408, T.7335-7341; SITF00194648-00194652, para.11 *admitted as* P02532; SITF00194668-00194672, para.14b, *admitted in* TBA_F03213; SITF00194887-00194891, paras 2-4, 13, *admitted as* P02534). While 103821-103844, paras 19, 21, 25-28, 32-33, 53, 55-57, 71 and SITF00194783-00194786, para.14 were not tendered, for comparable and additional evidence of on the issue *see* Section III.B.4 below.

¹⁶⁶ See paras 15, 57 above.

¹⁶⁷ ICRC Commentary, paras 526 ('the historical pattern of the conflict may be an alternation between cessation and resumption of armed confrontations. In such cases, it is not yet possible to conclude that a situation has stabilized, and a longer period of observation will be necessary. In the meantime, humanitarian law will continue to apply.'), 527 ('[a]n assessment based on the factual circumstances therefore needs to take into account the often-fluctuating nature of conflicts to avoid prematurely concluding that a non-international armed conflict has come to an end').

¹⁶⁸ See e.g. P00750; Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Fact 89. See also 1D00078, p.1 (noting the multiple UNSC Resolutions not fully complied with).

¹⁶⁹ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 95-101.

¹⁷⁰ See e.g. P00189_ET, p.U015-8863; P00296_ET.

¹⁷¹ IT-05-87 1D00018, pp.1D00-0410-1D00-0411.

¹⁷² See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 110-117.

international efforts to broker peace agreements between the parties, in particular at Rambouillet, failed,¹⁷³ leading to a resumption of intense hostilities, which were ongoing when the Military Technical Agreement ('MTA') was signed by KFOR and the Governments of the FRY and the Republic of Serbia on 9 June 1999.¹⁷⁴ The MTA had the *goal* of 'establish[ing] a durable cessation of hostilities' through a phased withdrawal and refraining from 'any hostile or provocative acts'.¹⁷⁵

61. Also on 9 June 1999, the KLA General Staff and Provisional Government of Kosovo ('PGoK') proclaimed a unilateral ceasefire, which would only become effective when, *inter alia*, all military actions of the Serbian forces ceased.¹⁷⁶ On 10 June 1999, UNSC Resolution 1244—noting previous non-compliance with UNSC resolutions and that the situation in the region continued to constitute a threat to international peace and security—outlined the principles required for a 'solution to the Kosovo crisis', including: (i) the 'immediate and verifiable end of violence and repression in Kosovo'; (ii) complete withdrawal of Serbian forces (including paramilitary forces); (iii) deployment of an effective international security presence to, *inter alia*, 'deter[] renewed hostilities, maintaining and where necessary enforcing a ceasefire'; and (iv) KLA demilitarisation.¹⁷⁷

62. On 21 June 1999, KFOR and **Hashim THAÇI** signed a demilitarisation undertaking providing for a ceasefire by the KLA, its disengagement from conflict zones, and subsequent demilitarisation ('Undertaking').¹⁷⁸ By its very terms, the Undertaking indicated an understanding by KFOR and the KLA of the reality, or at a minimum the real risk, of continued hostilities.¹⁷⁹ To establish a durable cessation of

¹⁷³ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts.

¹⁷⁴ See e.g. TBA_F03213, IT-05-87 6D00611-E; Agreed Facts, KSC-BC-2020-06/F02573/A01, Fact JD1.

¹⁷⁵ TBA_F03213, IT-05-87 6D00611-E, p.6D09-0141.

¹⁷⁶ See e.g. P00525.

¹⁷⁷ 1D00078, pp.1-4, 6-7.

¹⁷⁸ P01444, para.1.

¹⁷⁹ P01444, paras 4, 6, 9-10.

hostilities and provide for the support and authorisation of KFOR,¹⁸⁰ the KLA agreed to a *phased* de-escalation, demilitarisation, and transformation process, to be completed within 90 days.¹⁸¹

63. Equally, the withdrawal of Serbian forces cannot be equated with a peaceful settlement,¹⁸² and was the result of KFOR's active and necessary enforcement of the MTA. Pursuant to UNSC Resolution 1244, KFOR had the mandate and authority to prevent the return of Serbian forces.¹⁸³ As such, the Defence's claim that international deployment followed the end of hostilities misstates the facts and premise for KFOR's presence.¹⁸⁴ The continued requirement for KFOR to deter and, if necessary, repel the return of Serbian forces starkly illustrates the risk of a resumption of hostilities during this period.¹⁸⁵

64. In this light and, in particular considering past non-compliance, it is clear that attaining a peaceful settlement was, at a minimum, dependent on: (i) withdrawal of Serbian forces, including paramilitary forces; (ii) deployment of KFOR; (iii) cessation of hostile and provocative acts; and (iv) demilitarisation of the KLA. The necessity of these conditions being realised in full before a peaceful settlement could be achieved was underlined by the fact that—despite previous efforts—the Serbian authorities and KLA never directly reached any agreement with one another. Although the

¹⁸⁰ P01444, para.6.

¹⁸¹ P01444, paras 14, 22-23 (including with, *inter alia*, four, seven, and 90 day deadlines).

¹⁸² *Contra* Request, KSC-BC-2020-06/F03256, paras 129-130, 134-148.

¹⁸³ P02517, para.10; P02518, paras 5-8; P02515, paras 9-10, 30; 1D00078, pp.0361-6805-0361-6806.

¹⁸⁴ Request, KSC-BC-2020-06/F03256, paras 149-155.

¹⁸⁵ See e.g. 1D00114 (reporting in early September 1999 that 'Kosovo's security situation is still fragile, despite the presence of over 40,000 NATO-led peacekeeping troops'); TBA_F03214, 020751-020753, p.020751 (letter from US Senator Bob Doyle on 17 August 1999, appealing to the KLA to comply with the international forces as 'only the [NATO] alliance can provide the security essential to building a genuine and sustainable peace, and only the [NATO] alliance can serve as a bulwark against further aggression from Belgrade'). See similarly *Ntaganda*, [Judgment](#), paras 717, 720 (noting the exercise of control over territory, or prevention of such control, can be a determinative factor in assessing the intensity of an armed conflict in the absence of active hostilities); *Al Hassan* [Judgment](#), para.1267.

agreements summarised above created a pathway to a peaceful settlement, until September 1999, the agreed, necessary conditions for peace were not met.

2. *Statements by Parties to the Armed Conflict*

65. The NIAC parties' statements confirm that no peaceful settlement had been achieved by 20 June 1999.¹⁸⁶ Throughout the summer of 1999, KLA and PGoK leadership—including **Hashim THAÇI** and **Jakup KRASNIQI**—resisted UNMIK's authority as well as the demilitarisation process. They warned that the KLA would rearm if necessary and claimed that Serbs were continuing to smuggle weapons into Kosovo.¹⁸⁷ The KLA continued to represent themselves as a military force into September 1999,¹⁸⁸ and did not effectively demilitarise until then.¹⁸⁹ Their defiant rhetoric not only illustrated a continued perception of threat from Serbian forces, but also reflected that the KLA had not demilitarised, and might not.¹⁹⁰

66. This perception was echoed in repeated statements, including:

- i. On 29 June 1999, when KFOR implored the KLA to control its forces and comply with its demilitarisation obligations, KLA Chief of Staff Agim

¹⁸⁶ ICRC [Commentary](#), para.495 (indicating that public declarations of a party may be relevant to a determination of whether a situation has sufficiently stabilised to consider that a NIAC has ended).

¹⁸⁷ See e.g. TBA_F03214, 018316-018316-ET; TBA_F03214, 020564-020565.

¹⁸⁸ In one instance a KLA commander evicted the Mother Teresa organization from their building for the 'military needs of the 113 Brigade'. TBA_F03213, SITF00174171-00174174, para.6; KFOR was even concerned that the KLA was planning to establish a military headquarters in the Glllogoc/Glogovac area. TBA_F03213, SITF00194779-00194782, para.1.

¹⁸⁹ See e.g. TBA_F03213, SITF00194779-00194782, para.1. One KLA commander was so bold as to threaten KFOR with military force in the last days before the 20 September 1999 demilitarisation deadline if he did not get his way. TBA_F03213, SITF00225518-SITF00225518-ET. See also TBA_F03213, SPOE00217108-SPOE00217508, pp.SPOE00217126-SPOE00217127.

¹⁹⁰ See e.g. P00755, pp.SITF00172747-SITF00172749; TBA_F03213, SITF00424577-00424728, p.SITF00424699; TBA_F03213, SITF00194668-00194672, p.SITF00194671-SITF00194672; TBA_F03213, SITF00224471-00224478-ET Revised, p.SITF00224472; TBA_F03213, SITF40000234-40000238, para.12; P00529; TBA_F03213, SPOE00217519-SPOE00217918, pp.SPOE00217631-SPOE00217632.

ÇEKU maintained that KLA officers should still carry weapons due to the 'large presence of FRY paramilitary forces'.¹⁹¹

- ii. On 5 July 1999, Agim ÇEKU demanded that KFOR arrest Serb paramilitary forces still present in Kosovo and address the ongoing confrontations in Mitrovicë/Kosovska Mitrovica, threatening that the KLA would 'move units in to deal with it. We are an army and I will not allow this situation to continue'.¹⁹²
- iii. Also on 5 July 1999, **Jakup KRASNIQI** was reported saying that the KLA could take up arms again 'if the UN administration failed to lead Kosovo toward independence', insisting that 'either the UN administration works toward independence or there will be conflict'.¹⁹³
- iv. On 27 July 1999, as both sides continued to provoke tensions in the area,¹⁹⁴ ÇEKU reiterated his concern over the Serb paramilitaries and noted the KLA was forced to act against 'criminal groups' in Mitrovicë/Kosovska Mitrovica.¹⁹⁵
- v. On 28 July 1999, **Hashim THAÇI** reported to a Swedish diplomat that Serbian paramilitaries remained active in several areas across Kosovo.¹⁹⁶
- vi. On 17 September 1999, **Hashim THAÇI** gave a press conference at the United Nations where he said that the Serbian authorities had failed to

¹⁹¹ See e.g. 1D00212, para.14(e).

¹⁹² See e.g. TBA_F03213, SPOE00217108-SPOE00217508, pp.SPOE00217159-SPOE00217160; P02531, paras 10-11; P02518, para.4.

¹⁹³ See e.g. TBA_F03214, 020564-020565. This article also reports on Hashim THAÇI's comments regarding UNMIK authority and the KLA compliance with the Undertaking. THAÇI is reported as stating that 'it is not quite clear yet who has what authority' and that '[w]e turned in some weapons today, but will see how things go', adding that the agreement with NATO did not stipulate that KLA members were no longer allowed to carry arms.

¹⁹⁴ See e.g. TBA_F03213, SPOE00217519-SPOE00217918, pp.SPOE00217626-SPOE00217627.

¹⁹⁵ See e.g. P02524, paras 17, 19.

¹⁹⁶ See e.g. P00528.

respect their international obligations and that the PGoK had repeatedly denounced the entry into Kosovo of Serbian paramilitary groups, police, and military forces.¹⁹⁷

- vii. On 18 September 1999, days before the KLA's scheduled demilitarisation, **Hashim THAÇI** celebrated 'this significant day on which [the KLA's] liberation mission ends and its future mission begins', announcing that 'although the majority of the Serbian forces have left, the final status of Kosova has not been decided yet'.¹⁹⁸

67. Serbian leadership similarly framed the situation as an ongoing conflict. For example, following attacks on Serb religious sites in July 1999, Slobodan MILOŠEVIĆ openly indicated that he would redeploy MUP and VJ elements to Kosovo to protect FRY interests and the Serb population from ongoing violence.¹⁹⁹

3. *The Parties Maintained the Means for Waging War*²⁰⁰

68. Between 20 June and September 1999, the KLA failed in its obligations to fully comply with KFOR, disarm, and demobilise, thereby demonstrating that no peaceful settlement had been achieved.²⁰¹ KFOR noted that the KLA continued to 'flex[] its muscles' and demonstrated a 'policy of partial compliance with demilitarisation procedures' in a deliberate effort to 'consolidate their gains, maintain caches of

¹⁹⁷ See e.g. TBA_F03214, 102289-102291.

¹⁹⁸ P00533, pp.020823-020824. During the same speech THAÇI also noted ongoing actions of Serbian paramilitaries in several areas across Kosovo.

¹⁹⁹ See e.g. TBA_F03213, SPOE00217519-SPOE00217918, pp.SPOE00217706, SPOE00211711; TBA_F03213, SITF00194668-00194672, p.SITF00194671; P02532, para.12; P02518, para.5.

²⁰⁰ ICRC [Commentary](#), para.489 (whether NIAC parties control territory and maintain the means to – and do – recruit, train, and arm forces are relevant factors in assessing whether a NIAC has ended).

²⁰¹ See e.g. TBA_F03213, SPOE00217108-SPOE00217508, p.SPOE00217352; P01968, paras 47-48; W02161, T.10591, 10594-10595. See also ICRC [Commentary](#), para.495 (indicating that effective implementation of a peace agreement or ceasefire, disarmament, demobilisation, and/or reintegration programmes are relevant factors in assessing determination of whether a situation has sufficiently stabilised to consider that a NIAC has ended).

weapons and expand their influence'.²⁰² Indeed, the deployment of KFOR and other international forces, which was ongoing and phased throughout the summer of 1999,²⁰³ was impeded by blockades against KFOR troops in certain areas,²⁰⁴ such as Rahovec/Orahovac in September 1999,²⁰⁵ as well as KLA threats directed at KFOR.²⁰⁶ The KLA established illegal bases in KFOR controlled areas,²⁰⁷ occupied former MUP buildings,²⁰⁸ set up illegal checkpoints,²⁰⁹ and illegitimately claimed to act under KFOR authorisation.²¹⁰ Certain evictions and building takeovers were expressly indicated as being 'mobilisations' for the 'military needs' of the KLA.²¹¹

²⁰² See e.g. TBA_F03213, SPOE00217108-SPOE00217508, pp.SPOE00217153, SPOE00217155-SPOE00217156. See also TBA_F03213, SITF40000234-40000238, para.12; P01968, paras 39-40; W02183, T.23856, 23877; W02161, T.10881-10882; P00755, p.SITF00172749.

²⁰³ See e.g. P02515, paras 12, 29-30, 49-51; P02529, p.SPOE00000717; P01968, para.41; P01973, p.SPOE00209742.

²⁰⁴ See e.g. P02079.13_ET, p.28; TBA_F03213, SITF00172939-00172940, p.2; TBA_F03212, SITF00225447-SITF00225447-ET. See also P00006, p.SITF00249806.

²⁰⁵ See e.g. TBA_F03213, SPOE00060130-00060135, p.SPOE00060132; P02563, p.SPOE0000781; P00743.2, p.SITF00001657.

²⁰⁶ See e.g. TBA_F03213, SITF00225518-SITF00225518-ET (on 16 September 1999, Pashtrik Liaison Officer to KFOR and former 124 Brigade Commander, Skender HOXHA demanded the release of Brigade 126 ZKZ officer Nexhmedin BERISHA, threatening to remove BERISHA from prison by force if necessary); TBA_F03213, SPOE00217108-SPOE00217508, p.SPOE00217127 (on 30 August 1999, KLA 162 Brigade Commander voiced concerns about KFOR escorting alleged Kosovo-Serb war criminals in convoys out of Kosovo and threatened KFOR with violence if this continued); TBA_F03213, SITF00424577-00424728, p.SITF00424699 (on 28 June 1999, Fatmir LIMAJ complained that KFOR did not understand the Undertaking and did not take the KLA seriously, treating them 'like criminals'); TBA_F03213, SITF00224471-00224478-ET Revised, p.SITF00224472 (in early August 1999, **Hashim THAÇI** threatened Russian KFOR troops after they had temporarily detained Agim ÇEKU for failure to identify himself; '[t]his kind of behaviour can only be understood as provocation'). See also TBA_F03213, SITF00225511-SITF00225511-ET (German KFOR daily situation reports concerning KLA's refusal to comply with KFOR in August to September 1999).

²⁰⁷ See e.g. TBA_F03213, SPOE00217519-SPOE00217918, p.SPOE00217628; TBA_F03213, SITF00262027-00262031, para.13; TBA_F03213, SITF40000248-40000251, para.14; TBA_F03213, SITF00189036-SITF00189040-ET, p.SITF00189037.

²⁰⁸ See e.g. TBA_F03213, SPOE00209620-00209634, p.SPOE00209628; P00379, p.K022-5107; P01518, p.105928; P01522; P01510.2_ET, pp.8-13; TBA_F03213, SITF00189036-SITF00189040-ET, p.SITF00189037.

²⁰⁹ See e.g. TBA_F03213, SITF00425303-00425304, p.SITF00425339; TBA_F03213, SITF40000248-40000251, para.12; P01984, p.012761.

²¹⁰ See e.g. TBA_F03214, SPOE00000053-00000056, p.SPOE00000055.

²¹¹ See e.g. TBA_F03213, SITF00174171-00174174, para.6; P02797_ET.

69. The KLA also continued to stockpile weaponry and maintain numerous illegal weapons caches, including some with heavy arms.²¹² This persisted despite KFOR operations to stop such activities including, for example, a 9 August 1999 raid of an illegal military base in Gjilan/Gnjilane which functioned as a barracks, training location, detention site, and storage facility for illegal weapons.²¹³ Other KFOR raids and weapon seizures occurred in locations such as Dukagjin,²¹⁴ Gjakovë/Đakovica,²¹⁵ Kamenicë/Kamenica,²¹⁶ Malishevë/Mališevo,²¹⁷ Mijavic,²¹⁸ Nashec/Našec,²¹⁹ Novobërdë/Novo Brdo,²²⁰ Pejë/Peć,²²¹ Ponoshec/Ponoševac,²²² Prishtinë/Priština,²²³

²¹² See e.g. TBA_F03213, SITF00425303-00425404, pp.SITF00425340, SITF00425344 (reporting that KLA are 'covertly keeping weapons' and 'reported to continue to acquire weapons to store in Decane', adding weight to other reports of illegal KLA weapons caches); TBA_F03213, SITF40006115-40006119, para.5(a); TBA_F03213, SITF40001886-40001888, p.SITF40001887; TBA_F03213, SPOE00217108-SPOE00217508, pp.SPOE00217169-SPOE00217170, SPOE00217352; P01509.2_ET, pp.45-46; 1D00237; TBA_F03213, SITF00265876-00265880, p.SITF00265879. See also TBA_F03213, SITF00225477-SITF00225477-ET, TBA_F03213, SITF00225498-SITF00225498-ET, TBA_F03213, SITF00225507-SITF00225507-ET; TBA_F03213, SITF00225505-SITF00225505-ET; TBA_F03213, SITF00225513-SITF00225514-ET (German KFOR daily situation reports concerning illegal arms caches discovered by KFOR in September 1999); TBA_F03213, 027409-027485, pp.027443-027445, 027455-027457, 027474-027476 (Dutch KFOR Intelligence Summaries covering September 1999 and reporting on KFOR confiscating weapons from the KLA and arresting PU members for illegally collecting taxes and physical violence. 'THAÇI talks to the people as if the KPC is a regular army and has all kinds of authorisations like normal army and police which is not the case').

²¹³ See e.g. P01510.2_ET, pp.28-33, 38; W04868, T.18593, 18596-18597; P01510.2, p.46; P01538, p.SITF00385941. See also P01539_ET (KLA Karadak Zone Military Police report informing the General Staff and Ministry of Public Order about the raid). From early July 1999, OSCE observers noted the increased presence of KLA in Gjilan/Gnjilane, coinciding with a surge in killings, abductions, harassment, shootings, arson, and grenade and mortar attacks. P00743.2, pp.SITF00001571-SITF00001572.

²¹⁴ See e.g. TBA_F03213, SPOE00217519-SPOE00217918, p.SPOE00217629.

²¹⁵ See e.g. P00743.2, p.SITF00001718; W02161, T.10647-10648; P02526, pp.SPOE00217544-SPOE00217545; TBA_F03213, SITF00171694-SITF00171694-ET.

²¹⁶ See e.g. P01518, p.105928.

²¹⁷ See e.g. P01510.1_ET, pp.39-43; P01509.2_ET, pp.17-18; P01510.2_ET, p.26.

²¹⁸ See e.g. TBA_F03213, SITF40000248-40000251, paras 12, 14.

²¹⁹ See e.g. P01984, p.012761; P00458.3_ET, pp.5-8.

²²⁰ See e.g. P01518, p.105928; P01522, pp.105996-106003, p.106011; P01510.2_ET, pp.8-13.

²²¹ See e.g. TBA_F03214, SPOE00000610-00000621, p.SPOE00000618.

²²² See e.g. P02523; TBA_F03213, SITF40000243-40000247, paras 13-15; P00379, p.K022-5107.

²²³ See e.g. P01985, p.SPOE00000599; TBA_F03213, SPOE00000168-00000175, p.SPOE00000170; TBA_F03214, SPOE00000610-00000621, p.SPOE00000620; TBA_F03213, SITF40000234-40000238, para.17.

Prizren,²²⁴ and Rahovec/Orahovac.²²⁵ When KLA members were tipped off about impending raids, they swiftly 'cleared' the premises before KFOR troops arrived.²²⁶

70. As outlined below, throughout this time, Serb forces maintained an active presence at the border, with Serb paramilitary members, as well as VJ and MUP personnel, making incursions into Kosovo. Additionally, Serbian forces continued to gather intelligence by intercepting KLA radio and satellite phone communications.²²⁷

4. *Non-Compliance with International Obligations Extended to Hostile and Provocative Acts*

71. Intelligence and other reports indicated that Serbian forces sought to re-enter Kosovo.²²⁸ From early July, Serbian units manned checkpoints on both sides of the border,²²⁹ positioned tanks within firing range,²³⁰ and fired on civilians.²³¹ Active-duty MUP and VJ personnel were found inside Kosovo, some in civilian attire,²³² prompting

²²⁴ See e.g. 4D00061, p.SPOE00305418; TBA_F03213, SITF00225509-SITF00225509-ET; TBA_F03213, SITF00189059-SITF00189080-ET, pp.3-8, 20-21; TBA_F03214, SPOE00000308-00000310, p.SPOE00000309-SPOE00000310 (noting the KFOR raid of the KLA detention site at a Prizren school, and reports that the KLA 'is rearming/delivering weapons to carry out hostile attacks against KFOR and Serb community' in Pejë/Pec).

²²⁵ See e.g. TBA_F03213, SITF00189143-SITF00189144-ET Revised; TBA_F03213, SITF00189145-SITF00189146-ET; P01984, p.012761.

²²⁶ See e.g. TBA_F03214, SITF00243171-SITF00243282-ET Revised, p.SITF00243216.

²²⁷ See e.g. TBA_F03141, 095974-095975-ET Revised; TBA_F03141, 095970-095972-ET Revised; TBA_F03141, 095966-095969; TBA_F03141/095966-095969-ET Revised; TBA_F03141, 095964-095965.

²²⁸ See e.g. P02518, paras 5-6; P02515, para.41.

²²⁹ See e.g. TBA_F03214, SPOE00000480-00000483, p.SPOE00000482; TBA_F03213, SPOE00217519-SPOE00217918, p.SPOE00217708. See also TBA_F03213, SPOE00217108-SPOE00217508, p.SPOE00217134.

²³⁰ See e.g. TBA_F03213, SPOE00217519-SPOE00217918, pp.SPOE00217710-SPOE00217711.

²³¹ See e.g. TBA_F03214, SITF00243171-SITF00243282-ET Revised, p.SITF00243198. See also TBA_F03214, SITF00243171-SITF00243282-ET Revised, p.SITF00243172 (KLA reporting on the presence of Serb snipers on 20 June 1999).

²³² See e.g. TBA_F03213, SPOE00203360-00203365, p.SPOE00203362; TBA_F03213, SITF40000196-40000199, p.SITF40000197; TBA_F03213, SPOE00043524-00043527, p.SPOE00043525; TBA_F03214, SPOE00000480-00000483; P01528; P01518, p.105928; P01509.2_ET, pp.47-49; TBA_F03213, SITF40000248-40000251, para.12; P02049.2_ET, pp.3-4, 7-8. See also P00755, p.2; TBA_F03213, SPOE00217519-SPOE00217918, p.SPOE00211711; TBA_F03114, SPOE00000449-00000460, p.SPOE00000454.

UNMIK and KFOR to initiate measures against the 'large number of MUP forces' still operating in the territory.²³³

72. Serb paramilitary groups also operated in Kosovo on behalf of the FRY and Serbia.²³⁴ The MTA and Undertaking explicitly treated these as part of Serbian forces.²³⁵ The KLA and Kosovar Albanians frequently raised concerns about their presence.²³⁶ Hashim THAÇI, Agim ÇEKU and others indicated that paramilitary incursions remained a problem,²³⁷ and KLA units actively investigated and reported on Serb paramilitary activity.²³⁸

73. Provocations of Serbian forces and threats made by the KLA fuelled concerns that Serbian forces would, acting under the pretext of protecting the Serb population and defending FRY sovereignty, return to Kosovo.²³⁹ The continuous Serb military presence in and around Kosovo exacerbated the ongoing tensions surrounding the KLA's demilitarisation,²⁴⁰ as the KLA threatened to deploy to fight the Serbian

²³³ TBA_F03213, SPOE00203360-00203365, p.SPOE00203362.

²³⁴ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 748-749. The Defence suggestion that the formal withdrawal of other Serbian forces would have automatically severed paramilitary groups from the notion of 'Serbian forces' or otherwise affected their organisational characteristics is unsubstantiated and unavailing. *Contra* Request, KSC-BC-2020-06/F03256, para.147. In this regard, see also 1D00233; 1D00236; TBA_F03213, SITF40006150-40006155, para.5.o(2).

²³⁵ See e.g. TBA_F03213, IT-05-87 6D00611-E, para.3(c); P01444, para.5(b). See e.g. Agreed Facts, KSC-BC-2020-06/F02573/A01, Facts 3.2-3.3.

²³⁶ See e.g. P02525, paras 12, 18; P02518, para.4; 1D00212, para.14(e); P02531, paras 10d, 10g; P02524, para.19; 1D00212.2, pp.SPOE00215017-SPOE00215023; 1D00065; 1D00257; TBA_F03213, SITF00011489-00011494, pp.SITF00011490-00011491; TBA_F03213, SITF40006876-40006879, paras 4, 6; P02533, paras 1, 3; 1D00238; TBA_F03213, SPOE00217108-SPOE00217508, p.SPOE00217125; TBA_F03012, SITF00194707-00194710; P02533, paras 1, 3.

²³⁷ See e.g. TBA_F03214, 102289-102291; P00533, p.020824; P02525, para.12. See also P00748, p.SITF40008439-SITF40008441; TBA_F03213, SITF00194775-00194778, paras 1, 5.

²³⁸ See e.g. P02274_ET (KLA Llap Operational Zone military police report on the presence of several Serb paramilitaries belonging to 'Arkan' units in Prishtinë/Priština in mid-July 1999); P02313_ET, p.SITF00244855 (KLA Llap Operational Zone military police report on the arrest of a Serb paramilitary member, who was apprehended in early August 1999 with military uniforms, munitions, and a list of other suspected paramilitary members).

²³⁹ See e.g. P02532, para.12; P02533, paras 1, 3; P02534, para.3; TBA_F03114, SITF00194668-00194672, p.SITF00194671; P02518, paras 6-7.

²⁴⁰ See e.g. P02518, para.4; P02531, paras 10-11; TBA_F03213, SPOE00217108-SPOE00217508, pp.SPOE00217159-SPOE00217160.

incursions unless KFOR provided enough security at the border.²⁴¹ By late August 1999, tensions had escalated to the point that Serbia was reportedly preparing for military reinvasion, prompting KFOR to prepare defensive operations.²⁴²

74. The omnipresent illegal policing function of the KLA represented a continual and provocative violation of the demilitarisation obligations.²⁴³ Misconduct against Serbs and others ranged from illegal questioning²⁴⁴ and evictions,²⁴⁵ to kidnapping²⁴⁶ and murder.²⁴⁷ Contrary to the Defence's assertions, W02135 discussing the KLA's

²⁴¹ See e.g. TBA_F03214, SITF00243171-SITF00243282-ET Revised, pp.SITF00243198, SITF00243211.

²⁴² See e.g. P02535, paras 6, 15; TBA_F03213, SITF00194775-00194778, paras 1, 5; TBA_F03213, SPOE00060130-00060135, p.SPOE00060131-SPOE00060132; P02518, paras 5-8. *Contra* Request, KSC-BC-2020-06/F03256, para.130. Defence references to witnesses like W04868, who was less concerned about the Serbs coming back to his area, overlook that: (i) W04868 exclusively operated within one part of Kosovo; (ii) he did not know about the broader situation as concerns the Serbian army's possible return; and (iii) W04868 acknowledged that his superior, General Peterson was concerned 'that the Serbs would launch a massive attack'. P01511, para.8. *Contra* Request, KSC-BC-2020-06/F03256, para.142. W02135 also discussed the unlikelihood of the Serbs coming back for military strategy reasons (see Request, KSC-BC-2020-06/F03256, para.129), but he also indicated that the VJ essentially communicated that they would be back and that KFOR's presence was essential to prevent this. P02517, para.10; P02518, para.5.

²⁴³ See e.g. TBA_F03213, 067952-067955, pp.067953-067955 ('[t]he disconnect is that although the public pronouncements their leaders make to the International Community is totally opposite to the directives and guidance they either tacitly or openly give to their subordinates. Thus, thugs have been empowered to intimidate, confiscate, threaten, destroy and probably murder or eliminate anyone or anything which stands in their way to total power'); P00755 ('Thaci is neither willing to accept responsibility for anything that takes place in the UCK's name nor to take a duty upon him to show leadership to organize a joint Kosovo Albanian approach to establishing a stable administration. He tried to make clear that the UCK had a right to run Kosovo and to quickly deliver it into independence. He knows that he is in opposition to UNSCR 1244 but clearly wants to test out how far he can go in pushing UNMIK and KFOR to accept UCK *faits accomplis*'); P02517, para.56; TBA_F03213, SITF00357762-00357763, p.SITF00357763; TBA_F03213, SITF00225445-SITF00225445-ET Revised; TBA_F03213, SITF00189054-SITF00189056-ET; TBA_F03213, SITF00172939-00172940, para.5(c); TBA_F03213, SPOE00209620-00209634, p.SPOE00209626; TBA_F03214, SITF00243171-SITF00243282-ET Revised, pp.SITF00243174, SITF00243184, SITF00243186, SITF00243188, SITF00243190-SITF00243191, SITF00243200, SITF00243204, SITF00243225, SITF00243255. See also TBA_F03213, SITF00225423-SITF00225423-ET; TBA_F03213, SITF00225459-SITF00225459-ET; TBA_F03213, SITF00225461-SITF00225461-ET. See also P01509.2_ET, pp.30-31; P01968, paras 34, 58-59; W02161, T.10591, 10594-10595, 10599-10600, 10636, 10648-10649; P00743.2, pp.SITF00001598, SITF00001726; TBA_F03213, SPOE00300173-SPOE00300174-ET; TBA_F03213, SITF00384695-00384696, para.3.

²⁴⁴ See e.g. TBA_F03213, SITF00384776-00384777.

²⁴⁵ See e.g. TBA_F03213, SITF00388804-00388808, pp.SITF00388804-SITF00388805.

²⁴⁶ See e.g. TBA_F03213, SITF00384717-00384719, p.SITF00384717; TBA_F03213, SITF00388137-00388141, p.SITF00388139.

²⁴⁷ See e.g. TBA_F03213, SITF00267526-00267530, pp.SITF00267528-SITF00267529.

‘broad’ compliance with demilitarisation does not give full context to his evidence.²⁴⁸ W02135 also explained that ‘local level problems’²⁴⁹ with the KLA, including illegal policing, kidnapping, and murder, were extensive, serious, and never addressed in any depth by the KLA leadership.²⁵⁰ Indeed, both sides engaged in acts of intimidation and violence that extended well into September 1999.²⁵¹

75. Attacks using artillery, mortars, grenades, and automatic weapons continued from mid-July through September 1999.²⁵² The KLA launched operations targeting alleged Serb war criminals²⁵³ and shelled Serb religious sites and symbols,²⁵⁴ while Serb forces and paramilitaries conducted retaliatory attacks against ethnic Albanians in border areas.²⁵⁵ Specific examples of cross-border and internal hostilities included:

- i. The UK Ministry of Defence assessed that a 5 August 1999 RPG attack ‘may be the first instance of the Serbs taking the fight back to the UCK’.²⁵⁶
- ii. On 10 August 1999, several mortars were fired into the Serb village of Gorazhdec/Goraždevac, targeting the Serb Red Cross installation which,

²⁴⁸ See Request, KSC-BC-2020-06, F03256, para.158.

²⁴⁹ See Request, KSC-BC-2020-06, F03256, para.158, citing 1D00212, p.SPOE00215019.

²⁵⁰ See e.g. P02517, paras 26, 42-46, 49-51, 56-58, 61; P02518, para.10. See also P00755, p.3.

²⁵¹ See e.g. TBA_F03213, SITF00231805-SITF00231807-ET_F03213, p.SITF00231806; TBA_F03213, SITF40006150-40006155, para.5(d); W02161, T. 10591-10593, 10599-10600, 10606-10607, 10616-10618, 10636, 10657-10659; W04868, T.18765-18767, 18587-18590; P01509.2_ET, pp.9-10, 14-17; P01510.1_ET, p.34; P01510.2_ET, p.20; W02183, T.24143-24145, 24152-24155; P01968, paras 57, 60, 63-64; P01969, paras 30-32; P00743.2, pp.SITF00001572, SITF00001581-SITF00001582, SITF00001585; W04408, T.7335-7341; P00379, pp.K022-5103-K022-5104, K022-5106-K022-5107, K022-5111; P02523; TBA_F03213, SITF40000234-40000238, para.17; P01984, p.012761. See also TBA_F03214, SPOE00000610-00000621; P01535_ET; P01529; P00458.3_ET, pp.5-8; P01712.1_ET, pp.8, 13; P02874.2_ET, pp.14, 16. See also TBA_F03213, SITF00171694-SITF00171694-ET; 1D00237, p.SPOE00217944.

²⁵² See e.g. TBA_F03213, SITF00231805-SITF00231807-ET_F03213, p.SITF00231806; P02533, pp.SITF00194708, SITF00194710; P02534, p.SITF00194888; W04868, T.18765-18766; P01518, pp.105924-105936.

²⁵³ See e.g. TBA_F03213, SPOE00217519-SPOE00217918, p.SPOE00217627. See also P01984, p.012761; 1D00237, p.SPOE00217944.

²⁵⁴ See e.g. P02533, pp.SITF00194708, SITF00194710; P02534, p.SITF00194888, para.3.

²⁵⁵ See e.g. P02534, p.SITF00194890, para.13; P02533, p.SITF00194710, para.12; P00743.2, p.SITF00001706.

²⁵⁶ See e.g. TBA_F03213, SITF00194683-00194687, pp.SITF00194684, SITF00194686.

according to the KLA, was used to hide Serb paramilitaries.²⁵⁷ On that same day, a group including uniformed Serb soldiers, maltreated and threatened a couple in Merdar/Merdare.²⁵⁸

- iii. On 14 August 1999, the KLA threatened to 'liberate' Mitrovicë/Kosovska Mitrovica from Serbian paramilitaries and police operating freely there.²⁵⁹
- iv. At the end of August 1999 in the Karadak region, there were reports of Serbian police harassing ethnic Albanians along the Kosovo-Serbia border.²⁶⁰ In Mitrovicë/Kosovska Mitrovica, there were IED attacks against both Serbs and ethnic Albanians,²⁶¹ and explosives caused damage to a local KLA headquarters.²⁶²
- v. In early September 1999 in Gjilan/Gnjilane, three Serbs shot at a bus carrying ethnic Albanians and then exchanged fire with KFOR, which found Serb military uniforms and weapons at the scene, including heavy weapons.²⁶³
- vi. In September 1999, Cërnicë/Cernica and Donja Budriga were struck by mortar fire, with the latter attack killing two elderly Serb civilians and seriously injuring four.²⁶⁴ The Serb majority village of Dobrotin/Dobratin was shelled with anti-tank guns, after which ethnic Albanians were beaten at roadblocks set up around the village.²⁶⁵

²⁵⁷ See e.g. P02533, p.SITF00194708.

²⁵⁸ See e.g. P02246_ET, p.21.

²⁵⁹ See e.g. TBA_F03214, 018318-018318-ET. See also P02533, p.SITF00194710.

²⁶⁰ See e.g. TBA_F03213, SPOE00217108-SPOE00217508, pp.SPOE00217125-SPOE00217126.

²⁶¹ See e.g. TBA_F03213, SPOE00217108-SPOE00217508, p.SPOE00217125.

²⁶² See e.g. TBA_F03213, SPOE00217108-SPOE00217508, p.SPOE00217166.

²⁶³ See e.g. TBA_F03213, SITF00388137-00388141, p.SITF00388137.

²⁶⁴ See e.g. TBA_F03213, 045401-045404, p.045402; TBA_F03213, SITF00388137-00388141, p.SITF00388137.

²⁶⁵ See e.g. TBA_F03213, SITF00388137-00388141, p.SITF00388139.

- vii. Until 20 September 1999, a blockade of Rahovec/Orahovac existed, complete with checkpoints manned by KLA soldiers.²⁶⁶

76. The evidence shows that there was no peaceful settlement until late September 1999. The parties to the conflict reflected this through their statements and their actions. The evidence also shows that there was no lasting cessation of armed confrontations, due to the hostilities that persisted along with continuous violations of the parties' international obligations. In light of all of the above, there was a real risk that broader armed hostilities between Serbian forces and the KLA could resume at any moment. For all these reasons, no peaceful settlement was reached—and the NIAC therefore continued—until the KLA fully demobilised on 20 September 1999. The Rule 130 standard is fully met.

IV. CLASSIFICATION

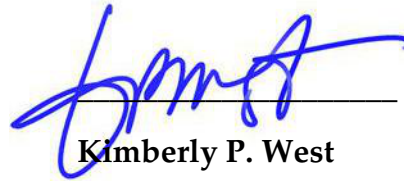
77. This filing and its annex are confidential pursuant to Rule 82(4). The SPO has no objection to reclassifying both as 'public'.

V. CONCLUSION

78. For the foregoing reasons, the Panel should reject the Request.

²⁶⁶ See e.g. TBA_F03213, 045401-045404, p.045402.

Word Count: 15,585



Kimberly P. West

Specialist Prosecutor

Monday, 7 July 2025

At The Hague, the Netherlands.