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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 Christoph Barthe Judge Guénaël Mettraux Judge Fergal Gaynor, Reserve Judge
Registrar:	Dr. Fidelma Donlon
Filing Participant:	Specialist Counsel for Hashim Thaçi Specialist Counsel for Kadri Veseli Specialist Counsel for Rexhep Selimi Specialist Counsel for Jakup Krasniqi
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Public Redacted Version of Joint Defence Motion Pursuant to Rule 130, with Confidential Annexes 1 and 2

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I. INTRODUCTION

1. Following over 739 hours of witness testimony and the tendering of over 8,000 pieces of evidence, the Specialist Prosecutor's Office ("Prosecution") has failed to establish that an armed conflict existed in Kosovo before the end of May 1998 or following 20 June 1999.

2. Accordingly, pursuant to Rule 130(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("KSC Rules"), the Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi ("Defence") hereby file a motion to dismiss the charges in the Indictment which relate to war crimes allegedly committed outside of this time period.

3. In this motion, the Defence argues that (a) Rule 130(1) permits the Defence to seek the dismissal of the charges identified above; (b) the evidence does not establish the existence of an armed conflict prior to the end of May 1998; and (c) the evidence does not establish the existence of an armed conflict after 20 June 1999. The relevant charges should thus be dismissed at this stage.

4. While the present Motion is confined to an analysis of the evidence on the start- and end-date of the armed conflict, the Defence does not accept that the SPO has presented evidence capable of supporting a conviction beyond reasonable doubt on the Indictment. The Defence submits that no reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the Accused, in relation to any part of the Indictment. The Defence will address the lack of evidence as a whole and the failure of the SPO to prove its case at the appropriate time in its closing submissions.

II. PROCEDURAL HISTORY

5. On 1 October 2024, the Trial Panel ordered the SPO to complete the presentation of its witnesses by 15 April 2025.[1]

6. On 22 January 2025, during a Status Conference, the Defence requested a four-week period in which to draft and file a Motion under Rule 130 of the Rules.[2] On 23 April 2025, the Trial Panel issued an Oral Order in which it indicated that the deadline for filing would be Monday, 2 June 2025, or within 14 days of the Panel's last ruling on admission of evidence - whichever would come later.[3]

7. On 27 March 2025, the SPO's final *viva voce* witness completed their testimony.

8. On 15 April 2025, the SPO announced the closure of its case.[4]

9. On 29 May 2025, the Trial Panel issued its final decision on the admission of evidence tendered by the SPO during its case presentation.[5]

II. APPLICABLE LAW

10. Under Rule 130(1) of the Rules, "immediately after the closing of the Specialist Prosecutor's case, the Defence shall notify the Panel of its intention to file a motion to dismiss any or all of the charges in the Indictment."

[1] Transcript, 1 October 2024, p. 20535, lines 6-11.
[2] Transcript, 22 January 2025, p. 24341, lines 1-7.
[3] Transcript, 23 April 2025, p. 26176, lines 8-14.
[4] F03121, *Prosecution Notice Pursuant to Rule 129*, 15 April 2025, public.
[5] F03216, *Decision on Prosecution Motion for Admission of Obstruction Related Materials*, 29 May 2025, confidential, para. 70.

11. Under Rule 130(3) of the Rules, after the closing of the SPO's case and having heard the Parties, the Panel may dismiss some or all charges in the Indictment, "if there is no evidence capable of supporting a conviction beyond reasonable doubt on the particular charge in question."

12. The test for determining whether the evidence is sufficient to sustain a conviction is whether there is evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the Accused, in relation to the charge in question.[6]

13. In the event that there is no evidence to support a charge, a Rule 130 Motion should be granted.[7] In the event that there is *some* evidence to support a charge, but that evidence is such that taken at its highest, it is insufficient to support a conviction, a Rule 130 Motion should be granted.[8] Where evidence is found to be manifestly unreliable in supporting a charge, that charge should be dismissed.[9]

III. SUBMISSIONS

A. Rule 130 Challenges are Not Limited to Challenges Brought against Counts in Their Entirety

14. Rule 130 is not limited to challenges to counts in their entirety. This is evident from the plain language of the rule, which refers to "charges" as opposed to "counts"; the terms "charge" and "count" are distinct terms which are not interchangeable. This

[6] ICTY, *Prosecutor v Slobodan Milošević*, IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004 ("*Milošević* Judgment of Acquittal"), para. 13(2).
[7] SCSL, *Prosecutor v. Brima, et. al*, SCSL-04-16-T, Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98 ("*Brima* Decision"), 31 March 2006, para. 11; ICTY, *Prosecutor v. Karadžić*, IT-95-5-18-AR98bis.1, Judgement, 11 July 2013 ("*Karadžić* Judgment"), para. 37.
[8] *Brima* Decision, para. 11.
[9] *Ibid*.

interpretation of Rule 130(1) is supported by the development of the no-case-to-answer procedure at the ICTY, which moved from a charges-based approach to a counts-based approach, and by the way the term "charge" has been construed previously in this case in the context of amendments to the indictment, where it is defined as an independent basis for conviction. Further, this interpretation is consistent with the nature and purpose of Rule 130(1) which is to enhance the efficiency of the proceedings and so to give effect to the fundamental right to be tried within a reasonable period of time.

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(i) The plain language of Rule 130 refers to charges as opposed to counts

15. Rule 130(1) provides the Defence an opportunity to challenge, in writing, "any or all of the **charges** in the indictment."[10] It is apparent from the plain language of the rule that Rule 130 challenges are addressed to "charges" as opposed to "counts."

16. Whilst the Specialist Chambers has used the two terms interchangeably, the Defence submits that this approach was incorrect and should not be followed in this case.

17. In *Shala*, Trial Panel I pronounced that, for the purposes of the Rule 130 assessment, evidence should be considered 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."[11] While apparently deeming the terms count and charge to mean one and the same, the Decision contains no further explanation of the issue. It did not need to; the Defence Rule 130 Motion in *Shala* pertained to the entire

[10] Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'), Rule 130(1).
[11] KSC-BC-2020-04/F00652, *Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment*, 15 September 2023, confidential, para. 18.

count of murder, of which there was only one alleged victim.[12] As such, the issue of whether charge has a different meaning to count was not material to the litigation in that case and did not need to be determined by the Panel.

18. In support of its pronouncement, Trial Panel I cited: (i) its own decision in the *Mustafa* case; (ii) Trial Panel II's Decision *Gucati & Haradinaj;* and (iii) the Rule 98 Decision in *Brima* from the SCSL.

19. In *Mustafa,* the Defence Rule 130 motion challenged counts 1-4 in their entirety.[13] Trial Panel I in *Mustafa* relied solely on *Brima* in support of its interpretation of Rule 130. However, as with the *Shala* case, the issue of whether Rule 130 permitted the Court to consider parts of counts was not material to the litigation and was not considered in any detail.

20. Similarly, in *Gucati & Haradinaj,* the indictment contained six counts in relation to a course of conduct from 7 to 25 September 2020 when three tranches of confidential material were leaked. Each count was framed around a distinct criminal prohibition arising out of the above-mentioned course of conduct.[14] In their Rule 130 Motions, both Accused challenged all six counts on the indictment.[15] Consequently, and similarly to the *Shala* and *Mustafa* cases, the Trial Panel was not called upon to determine whether Rule 130 permitted the Court to apply the Rule 130 standard to parts of counts. Nonetheless, the Trial Panel made the same pronouncement as was made in those other cases, that:

[12] *Idem*, para. 7.
[13] KSC-BC-2020-05/F00326, *Decision on the Defence Rule 130(1) motion to dismiss any or all charges of the Indictment,* 23 February 2022, confidential, para. 17.
[14] KSC-BC-2020-07/F00251, *Lesser Redacted Indictment,* public, 4 October 2021.
[15] KSC-BC-2020-07/F00439, *Motion to Dismiss pursuant to Rule 130,* 17 November 2021, confidential, para. 99; KSC-BC-07/F00440, *Defence Motion under Rule 130 'Dismissal of Charges*,'17 November 2021, confidential, para. 176.

> "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**."[16]

21. The Defence submits that the findings previously made in *Shala*, *Mustafa* and *Gucati & Haradinaj* that the evidence was to be examined in relation to each count were correct as it pertained to those cases, because the challenges that were brought were addressed to entire counts of the indictment. However, they were reached without full argument on the meaning of the word "charges" in Rule 130(1) and cannot be relied upon, without more, to dismiss the Defence Motion because they constitute *obiter dicta* and have no precedential value.

22. Moreover, *Brima* does not support the proposition that Rule 130 should be interpreted to require only challenges to entire counts. In *Brima*, the Trial Chamber was applying Rule 98 of the SCSL's RPE, which was transposed from the ICTR's RPE[17], and is worded differently from Rule 130 of the KSC's RPE. Rule 98 read:

> If after the close of the case for the prosecution, there is no evidence capable of supporting a conviction on **one or more counts** of the indictment, the Trial Chamber shall enter a judgment of acquittal on those **counts**.[18]

23. The *Brima* Trial Chamber was explicitly required by Rule 98 to limit itself to the consideration of challenges to counts, as opposed to charges or anything else. Moreover, *Brima* is not authority for an equivalence between the meaning of counts

[16] KSC-BC-2020-07/F00450, *Decision on the Defence Motions to Dismiss the Charges*, 26 November 2021 (relying on ICTY, *Prosecutor v. Brima*).
[17] The ICTR Rules were transposed wholesale to the SCSL, to be applied *mutatis mutandis*, and adopted on 16 January 2002.
[18] SCSL, Rules of Procedure of Evidence, as amended 14 May 2005, cited in *Brima* Decision, para. 6.

and charges in a no case to answer submission; indeed, it does not discuss this issue at all.

24. The significance of the word "count" in the SCSL's Rule 98 becomes clear upon consideration of the practice developed at the ICTY. Prior to December 2004, the wording of the provision in the ICTY's RPE, which was Rule 98*bis*, read:

> (A) An accused may file a motion for the entry of judgement of acquittal on one or more offences charged in the indictment within seven days after the close of the Prosecutor's case and, in any event, prior to the presentation of evidence by the defence pursuant to Rule 85 (A)(ii).
>
> (B) The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or proprio motu if it finds that the evidence is insufficient to sustain a conviction on that or those charges.[19]

25. This iteration of the rule referred expressly to convictions on charges as opposed to counts and allowed the Defence to challenge in writing specific incidents or charges. The Defence did so on multiple occasions. This led to charges (as opposed to whole counts) being dropped from, *inter alia, Kvočka*,[20] *Kunarac*[21], *Kordić* & *Čerkez*,[22] *Brđanin*,[23] *Hadžihasanović & Kubura*,[24] and *Naletilić & Martinović*.[25]

26. On 8 December 2004, Rule 98 was amended:

[19] ICTY, Approved at 30th Session on 28 July 2004, in effect from 12 August 2004: ICTY Rules of Procedure and Evidence, IT/32/Rev. 32 12 August 2004.
[20] ICTY, *Prosecutor v. Kvocka et al*, IT-98-30/1, *Case Information Sheet*, entry on Rule 98*bis*.
[21] ICTY, *Prosecutor v. Kunarac et al*, IT-96-23 & 23/1, *Case Information Sheet, entry on Rule 98bis.*.
[22] ICTY, *Prosecutor v. Kordić & Čerkez*, IT-95-14/2, Decision on Defence Motions for Judgement of Acquittal, 6 April 2000, para. 35.
[23] ICTY, *Prosecutor v. Brđanin*, IT-99-36, *Decision on Motion for Acquittal Pursuant to Rule 98bis*, 28 November 2003, paras. 8-16.
[24] ICTY, *Prosecutor v. Hadžihasanović & Kubura*, IT-01-47, *Decision on Motions for Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence*, 27 September 2004, para. 173.
[25] ICTY, *Prosecutor v. Naletilić*, Case No. IT-98-34-T, *Decision on Motions for Acquittal*, 28 February 2002, para 11.

> "At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any **count** if there is no evidence capable of supporting a conviction."[26]

27. The new wording of the rule was different in two significant respects. First, it required that submissions be made orally, as opposed to in writing. Second, the wording was changed to apply to "count[s]" in place of the previous "charges".

28. Subsequent jurisprudence made it clear that this change in the language of Rule 98*bis* had fundamentally altered the scope of no case to answer submissions. In particular, Rule 98*bis* submissions were heard in the *Prlić* case in January 2008, pursuant to the new rule. The Petković Defence nonetheless made an application for the old rule to be applied to the *Prlić* case, which it submitted provided more adequate protection to rights of the Accused.[27] While the Petković Defence request was rejected, the discussion in the *Prlić* case makes clear that the terms "counts" and "charges" are understood as different by those in the courtroom, and that this was the *quintessential* difference between the pre- and post- 4 December 2004 Rule:

(i) As far as the Defence was concerned, the Trial Chamber's refusal to apply the earlier version of the rule, which would have allowed it to challenge **charges** as opposed to **counts**, was dispositive of is decision not to make Rule 98*bis* submissions.[28]

(ii) The Prosecution submitted - in response to the Defence's suggestion that the Trial Chamber 'read down' the indictment to regard each incident as a separate count, as an alternative to applying the old rule - that, if the

[26] Entered into effect from 17 December 2004: ICTY Rules of Procedure and Evidence, IT/32/Rev. 33 17 December 2004.
[27] ICTY, *Prosecutor v. Prlić et al*, IT-04-74-T, Transcript, 28 January 2008, p. 26919, lines 1-7.
[28] *Idem*, p. 26922, lines 4-16.

Defence felt there were "too many **charges** in one **count**" it should have raised this matter earlier.[29]

(iii) The Court stated that it was firmly of the view that the new rule would not allow it to consider anything but **counts** and consequently it "will not look at single **charges**."[30]

29. The Defence submits that it is clear from the history of the rule as it developed at the ICTY that the words "charge" and "count" cannot be used interchangeably in the context of half-time submissions. A Rule which permits challenges to "charges" cannot be read as requiring the Defence to challenge counts in their entirety.

30. Rule 130 of the KSC Rules was drafted with knowledge of the debate that had transpired at the ICTY, resulting in the change to bring it into line with other tribunals, e.g., the ICTR and SCSL, both of which referred to "counts" not "charges." Yet, Rule 130 tracks the earlier version of the ICTY Rule not only regarding the reference to "charges" not "counts," but also in requiring written submission (though it also *permits* oral arguments). This reflects a conscious choice by the drafters to adopt an approach that reflects the ICTY's old rule, and not the rule which applied subsequent to 2004, and at other courts. It is therefore implausible to suggest that, despite the plain language of Rule 130, and the additional context of developments before the ICTY, that Rule 130 is intended to apply only to "counts" and not to "charges".

[29] ICTY, *Prosecutor v. Prlić et al,* IT-04-74-T, Transcript, 28 January 2008, p. 26910, line 25. The Defence responded that its challenges to the form of the indictment were made under the old version of the rule, where this particular issue was not material.
[30] *Idem*, p.26881, line 15.

(ii) The interpretation of the word "charge" in the context of Rule 90(2)-(3) further supports the plain language reading of Rule 130

31. The Defence submits that the manner in which the term "charge" was interpreted in the context of Rule 90(2)-(3) litigation before the Specialist Chambers further supports the plain language reading of Rule 130, whereby charges cannot be used interchangeably with counts.

32. Pursuant to Rule 90(2)-(3), where the Prosecution seeks to amend the indictment by adding "new" or "more serious **charges,**" certain procedural requirements must be fulfilled. Those include an examination of the evidence to confirm that it meets the well-grounded suspicion standard, the provision of a detailed evidence outline to ensure proper notice of the charges, and a further initial appearance so that the Accused can read or have read the charges against him. In other words, a request to amend the indictment, to include new charges, triggers certain protections for the rights of the Accused.[31]

33. In the present case, the SPO sought to amend the indictment to include allegations concerning: (i) two new crime sites (Semetishte and Budakove); (i) two new victims to the Gjilane crime site; and (iii) one new incident said to amount to personal participation in the JCE concerning two of the Accused.[32] The Pre-Trial Judge found that both the first and the second categories of amendments amounted to "new charges" noting that the question was whether they carried an additional risk of conviction:

> The First Category also includes the addition of 12 victims that were not previously identified in the Confirmed Indictment. In addition, the two new detention sites are factually distinct from other detention sites in the Confirmed Indictment as evidenced

[31] Rules, Rule 92(1)-(3).
[32] F00635, *Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 23 December 2021, confidential, para. 26.

> by the separate and new entries required in the proposed amended indictment. Accordingly, the Pre-Trial Judge finds that the new allegations carry an additional risk of conviction in and of themselves. Thus, the First Category constitutes a new charge as it introduces a basis for conviction that is factually or legally distinct from any charge already alleged in the Confirmed Indictment…[33]
>
> …the Second Category adds two victims whose alleged abduction and murder are factually distinct from the alleged abduction and cruel treatment and/or torture of the previously pleaded victims. In addition, the Second Category adds the legally distinct crime of murder, which was not previously pleaded in relation to this detention site.[34]

34. Consequently, the procedural regime mandated by Rule 90(2)-(3) providing various protections to the Accused, including a further initial appearance, was triggered for categories one and two.

35. Similarly, in the joinder of cases 10 and 11, the Pre-Trial Judge also found that a proposed amendment by the Prosecution constituted new charges. In that case, the Prosecution sought to amend the indictment to include an allegation under the alternative limb of intimidation – the promise of a gift or other form of benefit. This constituted a new charge because it exposed the Accused to an additional risk of conviction: if the first limb failed, the alternative limb might still succeed.[35]

36. The Defence submits that it emerges from the Rule 90 litigation that the term "charge" is not synonymous with the term "count." Rather, a charge is a criminal allegation that exposes the Accused to an independent risk of conviction. Because it carries this risk, it triggers protections for the Accused, including those set out in Rule 90 and Rule 130. It follows that in the context of Rule 130 litigation; in order to adequately protect the rights of the Accused, it must be permitted to challenge charges – defined as factual allegations that expose the Accused to independent risk of conviction.

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[33] *Idem*, para. 24.
[34] *Idem*, para. 25.
[35] KSC-BC-2023-10/F00161, *Public Redacted Version of Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, public, para. 53.

(iii) Rule 130 Is an Appropriate Tool to Narrow the Temporal Scope of the Armed Conflict

37. The Defence submits that the application of Rule 130 to narrow the temporal scope of the armed conflict, and thus to dismiss certain charges of war crimes against the Accused, is wholly appropriate at this time. As the Prosecution has failed to establish the existence of an armed conflict outside of the end of May 1998 and 20th June 1999, the Prosecution cannot establish charges of war crimes outside this period. Other international tribunals have used no case to answer submissions to narrow the scope of charges. Granting the motion would guarantee the right to trial within a reasonable time, in that it would obviate any need for the Defence to lead evidence on the scope of the armed conflict or the Panel to consider the scope of the armed conflict during deliberations on the trial judgment.

38. ICTY cases have proved illustrative when narrowing the scope of cases during Rule 98 proceedings. In *Brđanin*, the Trial Chamber found that there was no case to answer regarding specific camps and detention facilities. This resulted in a reduction of the scope of the case similar to the temporal reduction which the Defence seeks in this case.

39. Finding that an armed conflict has not been established at certain dates enhance the efficiency of proceedings because it means that the parties (and the Panel) do not need to expend further time addressing alleged war crimes at some locations. Whilst the Defence notes that indictment incidents are charged as war crimes *and* crimes against humanity, efficiency saving would result from the following factors. First, there would be no need to address evidence in the Defence case or submissions as to the issue of armed conflict prior to May 1998 or following June 1999. Second, where incidents are charged as war crimes and crimes against humanity, streamlining

resides in the parties (and the Panel) focusing evidence and submissions on the legal regime applicable to crimes against humanity - not war crimes. This would re-focus the need for evidence and submissions on the nexus to the armed conflict and the protected status of the victims under the Geneva Conventions.

40. The elements of crimes for the same acts charged as war crimes and crimes against humanity are not identical. For instance, torture as a war crime must be shown to have occurred in the context of and in association with the non-international armed conflict.[36] This is not a background requirement; it is an essential element of the offence. The Prosecution must establish the existence of the armed conflict, proving that the perpetrator was aware of the factual circumstances that gave rise to that conflict and that the alleged acts were closely linked thereto.[37] Without making final submissions on the legal elements of crimes at this stage of proceedings, the purpose element of torture as a war crime —requiring that the acts were carried out to obtain a confession or information, to punish, coerce, intimidate, or discriminate—also introduces an additional requirement. Further, the victims must be "protected persons" under the 1949 Geneva Conventions, and the perpetrator must have known of those circumstances that gave rise to protected status.[38]

41. Other international tribunals have interpreted 'no case to answer' motions as a means of strengthening judicial economy and benefitting the efficiency of proceedings.[39] The Accused have a right to be tried within a reasonable time.[40] The Specialist Chambers adjudicates in accordance with international human rights law

[36] F00026/CONF/RED3, *Confidential Lesser Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, confidential ("Confirmation Decision"), para. 33.
[37] *See, e.g.*, ICC, Elements of Crimes, Article 8, War Crimes: Introduction.
[38] *Idem*, Article 8(2)(a)(ii)(3); Confirmation Decision, para. 164.
[39] ICTY, *Prosecutor v. Radoslav Brdanin*, IT-99-36-A, *Decision on Interlocutory Appeal*, 19 March 2004, para. 11.
[40] Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Article 21(4)(d); European Convention on Human Rights, adopted 4 November 1950, Article 6(1).

which sets criminal justice standards as superior to domestic laws by Article 22 of the Constitution of Kosovo.[41] The Rules, including Rule 130, must be interpreted in a manner consistent with this framework[42] and with the right to trial within a reasonable time.

42. Granting the motion will streamline proceedings, giving effect to the right to be tried within a reasonable time and enhancing the efficiency of proceedings. Specifically, determining at this stage that the evidence does not establish the existence of an armed conflict before the end of May 1998 or after 20th June 1999, would remove the need for the Defence to call evidence contradicting this during its case presentation. It would render the trial judgment more efficient, removing the need to consider the existence of an armed conflict and other contextual elements during deliberations. It would aid the efficiency of the final briefs (and judgment), allowing the parties to focus for the relevant periods on the legal standards (and contextual elements) applicable to crimes against humanity. The accumulated benefit would be significant.

43. During the course of this trial, the Trial Panel has urged the Prosecution – on multiple occasions - to streamline its case. In the Trial Preparation Conference, the Prosecution was encouraged to "give full consideration to the need to shorten the estimated length of this case and to use all available procedural instruments at their disposal to ensure that the trial is both fair and also expeditious."[43] At the Specialist Prosecutor's Preparation Conference, the Presiding Judge further noted, "we urge you to continue to consider streamlining your case."[44] As recently as a status conference in January 2025, the Trial Panel encouraged the Prosecution to continue their

[41] Law, Article 3(2)(e).
[42] Rules, Rule 4(1).
[43] Transcript, 18 January 2023, p. 1812, lines 6-10.
[44] Transcript, 15 February 2023, p. 1912, lines 2-3.

streamlining process, even at the end of their case presentation.[45] It is clear that the Panel have taken multiple steps to encourage the Prosecution to make appropriate cuts to the size, scale, and scope of their case.

44. The Prosecution has shown willingness on its own part to tighten the scope of its case. Firstly, it has limited its geographic interests at various points during the trial by amending the Indictment accordingly.[46] The Prosecution has also committed to no longer rely on a series of allegations related to the Accused, which included the removal of a location of interest in the Prosecution's Pre-Trial Brief. A further step to limit the breadth of this case – in this instance temporally – would amount to a natural continuation of prior Prosecution decisions, contributing to a more streamlined and equitable trial process.

45. The volume of evidence admitted in this case already threatens to make the record unmanageable; narrowing is beneficial to *all* parties and participants. The Exhibit List has been described as "by any standards, voluminous."[47] Narrowing the scope of the charges in this case clarifies the legal issues at hand, preventing the trial from becoming unwieldy as the Defence prepares to advance its case.

46. Finally, narrowing the temporal scope of this case protects the Defence's right to adequate time and facilities for the preparation of its case. It has been noted in prior jurisprudence that charges must be pleaded with "sufficient precision" to allow for meaningful Defence preparations.[48] Undertaking an additional narrowing of the scope

[45] Transcript, 22 January 2025, p. 24333, line 23 – p. 24334, line 8.
[46] *See, e.g.*, F00964, *Prosecution Request to Amend the Indictment*, 12 September 2022, confidential.
[47] F03214, *Decision on Prosecution Motion for Admission of Documents (F03114)*, 29 May 2025, confidential, para. 11.
[48] ICTY, *Prosecutor v. Ratko Mladić*, MICT-13-56-A, *Appeal Judgment*, 8 June 2021, para. 36; *Karadžić* Judgment, para. 441; *Prosecutor v. Šainović et al.*, IT-05-87-A, *Appeal Judgement*, 23 January 2014, paras. 213, 225, 262; ICTR, *Prosecutor v. Ngirabatware*, MICT-12-29-A, *Appeal Judgement*, paras. 32, 115; *Prosecutor v. Ndindiliyimana et al.*, ICTR-00-56-A, *Appeal Judgement*, 11 February 2014, para. 171.

of this case would afford the Defence a better opportunity to focus its preparations on the charges which are actually in issue, rather than wasting time and resources on allegations which could and should be dismissed at this time.

B. LAW GOVERNING THE EXISTENCE OF AN ARMED CONFLICT

47. For each of the war crimes charged in the Indictment,[49] the SPO must prove beyond reasonable doubt "the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organised armed groups or between such groups".[50] According to the SPO, at all times relevant to the Indictment (from at least March 1998 through September 1999), a state of armed conflict existed in Kosovo and areas of northern Albania between the KLA and the Republic of Serbia, including units of the Yugoslav Army (VJ), police and other units of the Ministry of Internal Affairs (MUP), and other groups fighting on behalf of the Federal Republic of Yugoslavia and Serbia ("Serbian forces").[51]

48. Article 14(1)(c) of the Law sets forth that in an armed conflict not of an international character ('NIAC'), serious violations of Common Article 3 to the Geneva Conventions constitute war crimes under customary international law. Pursuant to Article 14(2) of the Law, NIACs take place in the territory of a state when there is protracted armed conflict between the organs of authority and organised armed groups or between such groups. The Pre-Trial Judge summarised the two elements for determining the existence of a NIAC as "the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organised armed groups or between such groups".[52] These elements derive from the

[49] F00999/A01, *Amended Indictment*, 30 September 2022, confidential ("Indictment").
[50] Confirmation Decision, para. 84. *See also,* ICTY, *Prosecutor v. Milošević*, IT-98-29/1-A, *Judgement*, 12 November 2009, para. 20.
[51] Indictment, paras. 16-31. *See also* Confirmation Decision, para. 130.
[52] Confirmation Decision, para. 84.

Tadić case at the ICTY.[53] In its interlocutory appeals decision, the Tadić Appeals Chamber ('AC') used the term "protracted armed violence", which the Tadić Trial Chamber ('TC') clarified as focusing on two aspects of the conflict: the intensity of the conflict and the organisation of the parties to the conflict.[54] It considered these two aspects as closely related, used to distinguish an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities which are not subject to international humanitarian law.[55] This interpretation of "protracted" as referring to intensity rather than duration has been met with wide acceptance in subsequent cases at the ICTY,[56] ICTR,[57] and ICC.[58]

(i) Protracted Armed Violence: Intensity

49. Whether a conflict has reached the threshold of protracted armed violence to be deemed a NIAC is a factual matter which must be determined based on available evidence on a case-by-case basis.[59]

[53] ICTY, *Prosecutor v Tadić*, IT-94-1, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995 ("*Tadić* Jurisdiction Decision"), para 70.
[54] ICTY, *Prosecutor v Tadić*, *Opinion and Judgement* ("*Tadić* Judgement"), IT-94-1-T, 7 May 1997, para. 562.
[55] *ibid*.
[56] ICTY, *Prosecutor v. Zejnil Delalić et al*., Judgement, IT-96-21-T, 16 November 1998 ("*Delalić* Judgment")para. 184; *Prosecutor v. Aleksovski*, *Judgment*, IT-95-14/1-T, 25 June 1999, para. 43; *Milošević* Judgment of Acquittal, paras. 16-17; *Prosecutor v. Limaj et al.*, IT-03-66-T, *Judgement*, 30 November 2005 ("*Limaj* Judgment") para. 90; *Prosecutor v. Milan Martić*, IT-95-11-T, *Trial Judgment*, 12 June 2007, para. 41; *Prosecutor v. Mrkšić et al*., IT-95-13/1-T, *Trial Judgement,* 27 September 2007 ("*Mrkšić* Judgment"), para. 407; *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Judgement, 3 April 2008 ("*Haradinaj* Judgment"), para. 49.
[57] ICTR, *Prosecutor v. Georges Anderson Nderubumwe Rutaganda,* ICTR-96-3-T, Judgement and Sentence, 6 December 1999, ("*Rutaganda* Judgment"), para. 93.
[58] ICC, *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, *Decision on the Confirmation of Charges*, 29 January 2007, para. 233.
[59] ICTY, *Prosecutor v. Boškoski and Tarčulovski,* IT-04-82-T, *Trial Judgement*, 10 July 2008 ("*Boškoski* Judgment"), para. 175; *Mrkšić* Judgement, para. 407; *Rutaganda* Judgement, para. 93.

50. The *Boškoski* TC— in an approach confirmed by the AC[60] and adopted at the ICC[61] —elaborated on the factors to assess the intensity of a NIAC.[62] These factors are:

> the seriousness of attacks and whether there has been an increase in armed clashes, the spread of clashes over territory and over a period of time, any increase in the number of government forces and mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed; [...] the number of civilians forced to flee from the combat zones; the type of weapons used, in particular the use of heavy weapons, and other military equipment, such as tanks and other heavy vehicles; the blocking or besieging of towns and the heavy shelling of these towns; the extent of destruction and the number of casualties caused by shelling or fighting; the quantity of troops and units deployed; existence and change of front lines between the parties; the occupation of territory, and towns and villages; the deployment of government forces to the crisis area; the closure of roads; cease fire orders and agreements, and the attempt of representatives from international organisations to broker and enforce cease fire agreements.[63]

(ii) Organisation of parties to the conflict

51. The parties to the conflict as per Article 14(2) of the Law include 'organs of authority' and 'organised armed groups'. The TC in *Boskoski* found that 'organs of authority' includes governmental authorities, such as a state's regular armed forces, police units, national guards or other authorities similar in nature such as armed groups and militias incorporated in armed forces.[64] As demonstrated above, the nature and degree of force employed by a State against armed groups further inform the assessment of whether the intensity threshold is satisfied. Organised armed groups on the other hand imply a level of organisation but they do not necessarily need to be as organised as the armed forces of a State.[65]

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[60] ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, *Appeal Judgement*, 19 May 2010, para. 21.
[61] ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, *Judgment pursuant to Article 74 of the Statute*, 14 March 2012, paras. 537–538. *See also* ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, *Judgment Pursuant to Article 74 of the Rome Statute*, 21 March 2016, para. 141; *Prosecutor v. Al Hassan*, ICC-01/12-01/18-2594-Red, *Public Redacted Version of Trial Judgment*, 26 June 2024, paras. 1264-1269.
[62] *Boškoski* Judgment, para. 177.
[63] *Ibid*.
[64] *Idem*, para. 195.
[65] *Limaj* Judgment, para. 89; *Boškoski* Judgment, paras. 195, 197.

52. No central authority is tasked with determining that a situation reaches the level of an armed conflict. Nevertheless, the International Committee of the Red Cross ('ICRC') makes its own independent determination of whether such a conflict exists, based on the mandate set forth in its Statute to "work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare and development thereof."[66] Identification of the existence of an armed conflict would undoubtedly constitute the first step to the ICRC fulfilling its mandate. Generally, the ICRC informs third parties of its classification and makes it known publicly.[67] While not dispositive of the point, the SPO has presented no evidence regarding this persuasive indication on the existence of a NIAC.

53. The evidence before this Trial Panel does not rise to the level of the protracted armed violence test. For the purposes of Rule 130, the Defence submits that - based on the lack of evidence presented - there is no case to answer regarding the existence of a NIAC prior to the end of May 1998 and after 20 June 1999. As such, there can be no liability for war crimes in Counts 3, 5, 7 and 9 in the Indictment, for any underlying crimes that occurred before this date. These submissions relate solely to the standard set forth in Rule 130 in relation to protracted armed violence and do not prejudice the Defence's ability to make further submissions on any part of the alleged armed conflict at the close of the case. For the purposes of these submissions pursuant to Rule 130, and without prejudice to future submissions on this point, the Defence does not address the organisation element of the armed conflict test. The absence of the requisite intensity is sufficient to warrant dismissal under Rule 130.

[66] *Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement*, International Red Cross & Red Crescent Movement, adopted by the 25th International Conference of the Red Cross, Geneva, 1986, as amended 1995 & 2006, Article 5(2)(g).
[67] ICRC, How is the Term "Armed Conflict" Defined in International Humanitarian Law? (Opinion Paper, March 2008), p. 8(6).

C. THERE IS NO EVIDENCE CAPABLE OF SUPPORTING A CONVICTION FOR WAR CRIMES FOR ACTS ALLEGED TO HAVE COMMENCED BEFORE THE END OF MAY 1998

54. According to the SPO, a NIAC existed in Kosovo in 1998/99 between "the KLA" and forces of the FRY and Republic of Serbia, including units of the Yugoslav Army ("VJ"), police and other units of the Ministry of Internal Affairs ("MUP"), and other groups fighting on behalf of the FRY and Serbia (collectively, "Serbian forces").[68]

55. The SPO alleges that the armed conflict between the KLA and Serbian forces intensified in early 1998, reaching the requisite threshold by March.[69] The events in this case must be considered in the wider context of the situation in Kosovo, including a deteriorating situation in the preceding years, and the widespread arrests and removal of rights of Kosovo Albanians.[70] It must also be considered through the lens of the international community and in particular the Security Council, which did not view the events in early 1998 as an armed conflict, but rather "violence and terrorism".[71]

56. The section below summarises some of the major events that occurred during the Indictment period and in the first half of 1998, selected on the basis of the frequency on which they feature in the admitted evidence. A summary of other incidents featured in the evidence is also provided. Taken together, the analyses below demonstrate that the SPO has not adduced any evidence to show that a non-international armed conflict existed in Kosovo before the end of May 1998.

[68] Confirmation Decision, para. 130, citing Indictment, para. 18.
[69] Indictment, paras. 16, 18, 20.
[70] *See*, *Limaj* Judgment, para. 47.
[71] IT-05-87.1 P01074, p. K0356952.

(i) Prekaz attack

57. From 5-7 March 1998, a police operation carried out by Serb forces targeted the village of Prekaz. Before 5 March, Serb police forces were stationed at the Munitions Factory in Skenderaj.[72] On the morning of 5 March, the police forces fired on the homes of the Lushtaku family, located between the Munitions Factory and the Jashari compound.[73] Eyewitness accounts depict gunfire and shooting in the streets, with infantry in camouflage uniforms, as well as mortars, machine-guns, rocket propelled grenades and tanks being fired by the Serb forces.[74] One eyewitness recalled seeing around 60 armoured vehicles surrounding her house.[75] Multiple sources also confirmed that members of the police force did not identify themselves and failed to warn the villagers of Prekaz of the operation.[76]

58. As members of the Lushtaku family fled their homes, the focus of the Serb operation turned to the compound belonging to Shaban Jashari and his family.[77] According to evidence from Serb authorities, the operation targeted Jashari's compound as "terrorists" had barricaded themselves there and fired at the police with machine-guns, hand launchers, automatic and sniper rifled and carbines and threw hand grenades.[78] The attack on the Jashari compound, also targeting the homes of other members of the Jashari family, consisted of shelling that went on for hours.[79] Subsequently, several days of sporadic fighting between Serb forces and the

[72] IT-04-84 P00006, p. 00649671; 070905-070944, p. 070913. The documents cited in Section C have been admitted into evidence by the Trial Panel from the bar table, but have not yet been assigned exhibit numbers.
[73] IT-04-84 P00006, p. 00649671; 070905-070944, p. 070913; P02027.1_ET, p. 2064.
[74] IT-04-84 P00006, p. 00649671.
[75] *Idem*, p. 00649676.
[76] IT-04-84 P00006, p. 00649671.
[77] P01747_ET, p. 098253; IT-04-84 P00006, p. 00649672.
[78] IT-04-84 P00006, p. 00649672; 070905-070944, p. 070913.
[79] 070905-070944, p. 070913.

inhabitants of the Jashari compound unraveled.[80] Evidence indicated that the inhabitants were unprepared for the Serb offensive and the compound was quickly surrounded preventing help from the outside,[81] leaving the Jashari compound to be defended primarily by Jashari himself and his family members, including his sons, nephews, and brother.[82]

59. The casualties on the Kosovo Albanian side resulting from the operation numbered 59 individuals, including women and 10 children.[83] A few sources suggest that Jashari's entire family that happened to be in the house was killed in the attack, save for an eleven-year-old girl.[84]

60. The evidence suggests that the one-sided operation carried out by Serb forces was a deliberate and planned assault to "eliminate the suspects and their families",[85] involving the use of extensive arsenal, artillery shelling, and the deployment of military and police forces in camouflage.[86] In contrast, the Jashari family barricaded themselves inside the compound and mostly responded with rifle fire and hand grenades.[87] The Serb authorities portrayed the attack as a clash with the "terrorist gang of Adem Jashari".[88] Serb police reported that over "20 terrorists" were killed in the clash and claimed that police had no way of knowing that some of Jashari's family members had remained in the "terrorist base" after being warned to come out,[89] in

[80] P01747_ET, p. 098253; U015-8743-U015-8935-ET Revised 2, p. U015-8796; SITF00243005-SITF00243010-ET, p. 8; Transcript, 10 February 2025, p. 24938.
[81] P01747_ET, p. 098253; SITF00243011-SITF00243017-ET, p. 2; U015-8743-U015-8935-ET Revised 2, pp. U015-8796.
[82] P01747_ET, p. 098253; U015-8743-U015-8935-ET Revised 2, pp. U015-8798.
[83] P01747_ET, p. 098253; Transcript, 4 April 2023, p.2274; P00794, p. 3338.
[84] IT-04-84 P00006, p. 00649672; 070905-070944, p. 070913; [REDACTED]; P01747_ET, p. 098253.
[85] 070905-070944, p. 070913.
[86] 070905-070944, p. 070913; SITF00243005-SITF00243010-ET, p. 8; P02027.1_ET, p. 2064.
[87] IT-04-84 P00006, p. 00649672
[88] *Ibid*; 070905-070944, p. 070913.
[89] IT-04-84 P00006, p. 00649672.

direct contrast with the position that the operation was designed to eliminate the Jashari family.

61. While the number of casualties vary slightly from source to source, the evidence before this Trial Panel shows the Serbian forces killed many individuals, including women and 10 children, a conclusion that aligns generally with the findings of other chambers of which the Trial Panel took judicial notice.[90]

62. The evidence before this Trial Panel, coupled with the adjudicated facts of which judicial notice was taken, demonstrate that the operation in Prekaz involved a significant number of personnel deployed by the Serbian side, equipped with heavy armament, and which occasioned a significant number of casualties on the Kosovo Albanian side, including many civilian deaths, in Prekaz and the surrounding villages. The evidence also indicates that the operation was localised and primarily targeting a family, that the Serbian forces faced limited opposition, and that the attack did not engender the long-term deployment of Serbian forces in the area in order to seize definite control of the territory in question. As outlined below, the minimal opposition that was faced by the Serb forces in this instance would define the majority of confrontations until the summer of 1998.

63. Notably, while the Prekaz attack differed from previous confrontations in terms of magnitude and consequences, nothing indicates that any other attacks of similar scale occurred in its immediate aftermath. There is also no indication that the Prekaz attack resulted in the hostilities intensifying in different parts of Kosovo; to the contrary, the period immediately following the attack was devoid of any significant military confrontations.[91]

[90] F01534/A01, *Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts*, 17 May 2023, ("Decision on SPO Adjudicated Facts"), p. 8.
[91] *See, Haradinaj* Judgment, paras. 93, 99.

64. For these reasons, one geographically confined and asymmetrical confrontation, that nonetheless was distinct in terms of magnitude from previous such confrontations, does not, without more, suffice to establish that the intensity of the hostilities in Kosovo rose past the *Tadić* threshold. Thus, there is no evidence before this Panel to show that by 7 March 1998 an armed conflict existed on the territory of Kosovo. While other chambers have identified the Prekaz attack as a marking a shift in the intensity of the hostilities,[92] the evidence presented in this case instead suggests that such a shift did not catalyse until well after the events in Prekaz, as described below.

(ii) Operation on Haradinaj Compound

65. On 24 March 1998, Serb police forces carried out an operation in the neighboring villages of Gllogjan and Dubrava.[93] Prior to this, Serb forces had set up a military facility in the only house in Dubrava belonging to a non-Albanian family, situated 100 meters from the house belonging to Eljmi Haradinaj in Gllogjan.[94] Clashes and gunfire erupted after Serb police conducted a patrol check on two men;[95] however, the evidence remains inconclusive as to whether the violence was triggered by an attempt to flee involving gunfire at the police, or by the patrol officers themselves firing at the men for failing to stop.[96] A statement released by the Serbian Ministry of Affairs

[92] ICTY, *Limaj* Judgment, para. 52; *Prosecutor v Đorđević*, IT-05-87/1-T, Public Judgment With Confidential Annex Volume I of II, 23 February 2011 ("*Đorđević* Judgment"), para. 272; *Milošević* Judgment of Acquittal, para. 26. While the *Milutinović* Trial Chamber refrained from making characterisations on the incident in light of the paucity of evidence on the issue, it laid out the evidence it received related to the type of military equipment used, the number of casualties and the duration of the fighting, which aligns with the findings reached by other chambers and the evidence led in the present case (ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement Volume 2 of 4, 26 February 2009 ("*Milutinović* Judgment Vol. 2"), paras. 857-860).
[93] IT-05-87 1D00018, p. 1D00-0479; IT-04-84 P00006, p. 00649477; [REDACTED].
[94] IT-04-84 P00006, p. 00649677-00649678.
[95] IT-05-87 1D00018, p. 1D00-0479; IT-04-84 P00006, p. 00649478.
[96] IT-04-84 P00006, p. 00649478.

claimed the patrolmen were attacked by armed terrorists, resulting in the death of one patrolman and three more injured.[97]

66. The clash progressed as Serb police reinforcements arrived from Decani to the house where the Serb police had set up their facility.[98] The Serb police opened fire on the Haradinaj house, prompting return fire from within.[99] Once the inhabitants fled from the Haradinaj house, Serb police forces entered and allegedly found rocket propelled grenades, hand launchers, pistols and large quantities of ammunition.[100] Evidence indicates that in the afternoon of 24 March, around fifteen police officers searched the home of Faze and Rexhep Haradinaj, which was subsequently targeted with shellfire.[101]

67. Testimonial accounts describe the movements of Serb forces in Gllogjan. Witnesses saw three helicopters heading for Gllogjan, firing from above, and police surrounding the village. [102] Further witness accounts from children fleeing from their school in the neighboring village of Gramaçel recalled a column of police vehicles, including armored personnel carriers, Pinzguaers and trucks, entering the village of Gllogjan.[103] One witness statement characterised the operation as being carried out by Serb forces and that the village of Gllogjan was being defended and fortified by armed local fighters.[104]

68. In contrast, a Serb report corroborated the presence of three helicopters but described their "guidance and action" as "very weak".[105] This same report indicated

[97] *Ibid*.
[98] *Ibid*.
[99] *Ibid*.
[100] IT-04-84 P00006, p. 00649478; ET U003-4161-U003-4162, p. 1.
[101] IT-04-84 P00006, p. 00649481.
[102] *Idem*, p. 00649479; P01593, p. U0029298.
[103] IT-04-84 P00006, p. 00649479.
[104] P01593, p. U0029297.
[105] ET U003-4161-U003-4162, p. 1.

that around 40 policemen blocked the area of the villages of Dubrava and Gramaçel, and that around 40-50 terrorists were present.[106]

69. In total, three people were killed, another 20 wounded, and 14 individuals were arrested by Serb forces.[107] The fatalities included Gazmend Mehmetaj, Agron Mehmetaj, and Him Haradinaj, who died as a result of helicopter gunfire.[108]

70. The Trial Panel also took judicial notice of adjudicated facts from the *Haradinaj* retrial judgment in relation to the attack on the Haradinaj compound in Gllogjan. In particular, the Trial Panel took judicial notice of (i) there being an exchange of fire between the Serbian police and KLA members on 24 March 1998 which started in the vicinity of the Haradinaj compound and later shifted to the village of Gllogjan; (ii) Ramush Haradinaj was injured and taken to Lahi Brahimaj's house in Jabllanice; and (iii) the attacks on the Ahmeti family, the Jashari family, and the Haradinaj family motivated many to join the KLA.[109]

71. Thus, the next confrontation of any size between the KLA and the Serb forces after the Prekaz attack was defined by a minimal number of casualties, was geographically isolated and temporally limited to one day of armed clashes, and started as a law enforcement operation carried out by the Serb forces which progressed with the increased deployment of law enforcement officers, as opposed to regular armed forces. The evidence also indicates that the clashes, even with the involvement of helicopters, were carried out solely through the use of light weaponry.

72. No evidence has been adduced that heavy armament was used during the actual confrontations, despite indications of its presence in the area. No evidence has been

[106] *Ibid*.
[107] IT-05-87 1D00018, P. 1D00-0479; IT-04-84 P00006, p. 00649477.
[108] IT-04-84 P00006, p. 00649479.
[109] Decision on SPO Adjudicated Facts, pp. 9-10; F01536/A01, *ANNEX 1 to Decision on Defence Motion for Judicial Notice of Adjudicated Facts*, 18 May 2023, p. 5.

adduced either as to whether the confrontations were sustained consistently throughout the day of the attacks or if the clashes were confined to sporadic exchanges of fire. Nor does the evidence indicate the spread of clashes throughout the villages concerned, and no inference can be drawn that the confrontations engulfed the entire territory, or at least significant parts thereof, of the villages described.

73. For these reasons, the evidence led in relation to the next significant operation after the events in Drenica does not suffice to establish that the hostilities crossed the requisite level of intensity at that stage. Thus, there is no evidence before this Panel to show that by 24 March 1998 an armed conflict existed on the territory of Kosovo. A law enforcement operation that resulted in minimal casualties and with a paucity of evidence on whether any heavy armament was used and on whether the clashes were continuous and/or widespread does not demonstrate a shift in the nature of hostilities significant enough to trigger the application of international humanitarian law.

(iii) Ambush on Pristina/Peja road

74. On 26 April 1998, the KLA launched an ambush on a Serb military convoy on the main road between Pristina and Peja.[110] This attack, described as the first one in which the KLA was the aggressor, took place between the villages of Gjergjicë and Balinca.[111]

75. Regarding the weaponry and methods used in the attack, the available evidence offers little insight into how the operation was conducted.[112] Although the KLA reportedly suffered no casualties, Serb forces reportedly incurred both material and human losses.[113] However, that evidence does not specify the nature or extent of these

[110] SPOE00230829-SPOE00230900-ET Revised 2, p. SPOE00230868.
[111] *Ibid*.
[112] *Ibid*.
[113]; SPOE00230829-SPOE00230900-ET Revised 2, p. SPOE00230868.

losses.[114] Instead, a VJ report describes an attack carried out on 26 April 1998 against a MUP vehicle driving on the Pristina-Gjakovë road, yet states that there were no casualties.[115]

76. Therefore, the Trial Panel has before it little to no evidence on the "first attack" initiated by the KLA, beyond it being characterised by limited, if any, casualties. The evidence presented by the SPO in respect of this incident contains no reference to the type of weapons used or the extent of destruction. For these reasons, there is insufficient evidence to support the contention that by late April 1998, the intensity of the hostilities crossed the applicable threshold. Thus, there is no evidence before this Panel to show that by 26 April 1998 an armed conflict existed on the territory of Kosovo.

(iv) Serb attack on Gjergjicë

77. According to relevant evidence, on 8 May 1998, Serb forces launched an attack against Gjergjicë.[116] The attack began with the use of heavy weaponry fired from elevated positions, prompting the KLA to return fire from the Gjergjicë Hills, approximately 200-300 meters from Serb positions.[117] The fighting continued for several hours until the Serb forces began to retreat.[118] During their withdrawal, they reportedly opened fire on houses in the nearby village of Negroc, causing the clashes to spill over into Llapushnik the following day.[119]

[114] *Ibid*.
[115] IT-04-84 P01025.E, p. 2.
[116] P01804_ET, p. 099497; [REDACTED].
[117] P01804_ET, p. 099497.
[118] *Idem*, p. 099498.
[119] P01804_ET, p. 099498; Transcript, 23 April 2024, p.14767; P01114.1_ET, pp. 3567; [REDACTED]; P02027.1_ET, p. 2091; P02027.2_ET, p. 2147.

78. On 9 May, the Serb forces continued their offensive into Llapushnik, shooting against strategic points defended by a few KLA soldiers.[120] All houses along the main road were reportedly damaged by bullets and burned down.[121] A clash took place between the KLA and Serb forces ultimately leading to the collapse of the Serb frontline and their subsequent retreat.[122] Despite withdrawing, Serb forces reportedly continued sporadic gunfire throughout the night.[123]

79. With regard to casualties, the evidence suggests Serb forces suffered losses during the retreat, including killed and wounded police officers, seized ammunition, and the destruction of a Pinzgauer vehicle.[124] On the KLA side, reports indicate one fatality and two or three wounded soldiers.[125]

80. As for manpower and firepower, sources indicate that the KLA resisted with little more than small arms,[126] and that fighters from Drenicë took part.[127] [REDACTED].[128] Comparatively, the Serb forces launched their attack with military resources including heavy weaponry and a range of vehicles and tanks coming from Quka and Prishtinë.[129] [REDACTED].[130]

81. The Prosecution has failed to establish the number and type of casualties on each side. While the evidence refers to "heavy" losses on the part of the Serb forces, no information exists to quantify such losses. The evidence indicates that direct confrontations between the KLA and the Serb forces during this incident were limited

[120] P01804_ET, p. 099498.
[121] *Idem*, p. 099499.
[122] *Ibid*.
[123] P01804_ET, p. 099499.
[124] P01804_ET, p. 099499; SPOE00230829-SPOE00230900-ET Revised 2, p. SPOE00230868; [REDACTED]; [REDACTED].
[125] SPOE00230829-SPOE00230900-ET Revised 2; p. SPOE00230868.
[126] P02027.2_ET, p. 2147.
[127] SPOE00230829-SPOE00230900-ET Revised 2, p. SPOE00230868.
[128] [REDACTED].
[129] SPOE00230829-SPOE00230900-ET Revised 2, p. SPOE00230868-SPOE00230869.
[130] [REDACTED].

in duration and intensity, which is reinforced by the evidence on the asymmetry of military resources between combatants. While the evidence on this incident is replete with hyperbole as to how the "will of the KLA triumphed over the technical capacities and the greater strength of the Serb forces", such assertions cannot act as a substitute for precise evidence on the manner in which the events unfolded. The criteria relevant to the intensity element have not been met. There is no evidence before this Panel to show that by 9 May 1998 an armed conflict existed on the territory of Kosovo.

(v) Clashes in and around Ratkoc

82. On 12 May 1998, fighting occurred between the KLA and Serb forces in the outskirts of Ratkoc, on the road towards the villages of Branjak and Bratonin.[131] [REDACTED].[132] [REDACTED].[133] [REDACTED].[134] [REDACTED].[135] [REDACTED].[136] [REDACTED].[137]

83. [REDACTED].[138] [REDACTED],[139] a figure not corroborated by other evidence. [REDACTED].[140]

84. [REDACTED].[141] [REDACTED].[142]

85. The evidence related to this incident similarly documents an asymmetry of means and number of personnel available to the two sides. The indications regarding

[131] [REDACTED]; [REDACTED]; Transcript, 30 October 2023, p.9130.
[132] [REDACTED]; [REDACTED].
[133] [REDACTED].
[134] [REDACTED].
[135] [REDACTED].
[136] [REDACTED].
[137] [REDACTED].
[138] [REDACTED]; [REDACTED].
[139] [REDACTED].
[140] [REDACTED].
[141] [REDACTED].
[142] [REDACTED].

the limited number of casualties; the limited extent, if any, of direct confrontations between the Serb forces and the KLA; and the localised and sporadic nature of the clashes, taken at its highest, does not demonstrate the intensity of the hostilities crossed the applicable threshold for an armed conflict by 12 May 1998.

(vi) Additional events

86. The evidence refers to other incidents that occurred in the spring of 1998 which are relevant to the gradual intensification of the hostilities up until the summer of 1998. Nevertheless, there is a lack of specificity inherent to this evidence. There are however several indications which demonstrate the remoteness, the relatively minor number of casualties, and the inconsequent impact of these incidents on the security situation as a whole. For these reasons, the evidence on these incidents, even in combination with the events outlined above, does not demonstrate that the hostilities have crossed the relevant threshold of protracted armed violence.

87. According to a Serb report, on 22 April 1998, the KLA carried out an attack with infantry weapons from Suka e Vogelj aimed at a Serb military police battalion.[143] Reportedly, tens of bullets fired and Serb authorities responded by firing shots from an anti-aircraft gun and a howitzer.[144] There were no reported casualties or damage to equipment.[145] Following the initial assault, Serb authorities reported renewed KLA fire originating from Suka e Vogelj.[146] Serb forces responded with a counteroffensive, resulting in seven casualties on the KLA side.[147]

[143] IT-04-84 P01091.E, p. 1.
[144] *Ibid.*
[145] *Ibid.*
[146] *Ibid.*
[147] *Ibid.*

88. According to evidence originating from Serb authorities, a battalion of the military police carried out an operation "against terrorists" on 23 April 1998 in Koshare.[148] An attempt by Albanians to cross the border into Kosovo led to a clash with security organs from the Koshare border post.[149] The aftermath of the clash left two Albanians dead and two taken prisoner by Serb forces.[150] There were no reported casualties among the Serb authorities.[151] Numerous weapons and military equipment were reportedly seized, although the authorities had not managed to inventory them beforehand.[152]

89. According to Serb reports, on 24 April 1998, the KLA opened fire at Serb forces in Gjakove using automatic weapons and mortars.[153] The KLA reportedly fired seven shells, one of which fell close to the factory supplying water to the Gjakove sector.[154] Serb forces reported an attack, through the firing of ten shells, by the KLA against a Russian helicopter carrying critical material to Serb units.[155]

90. According to evidence originating from Serb authorities, on the evening of 25 April 1998, the KLA launched an infantry attack from the direction of the village of Zhdrellë towards a Serb military police battalion.[156] The attack was repelled, after which the KLA ceased firing. There were no reported casualties or damage to equipment.[157]

91. [REDACTED].[158] [REDACTED].[159]

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[148] *Ibid.*
[149] *Ibid.*
[150] *Ibid.*
[151] *Ibid.*
[152] *Ibid.*
[153] IT-04-84 P01091.E, p. 1; IT-04-84 P01023.E, p. 2.
[154] *Ibid.*
[155] IT-04-84 P01091.E, p. 1; IT-04-84 P01023.E, p. 2.
[156] *Ibid*.
[157] *Ibid*.
[158] [REDACTED].
[159] [REDACTED].

92. According to a report originating from the Serb authorities, on 5 May 1998, operations continued in the village of Ponoshec between the KLA and Serb police forces.[160] The report identified 100 - 200 armed persons in various surrounding villages.[161] Serb forces carried out operations through the use of howitzer artillery battalions.[162] There were no reported casualties or material damage.[163]

93. According to a Serb report dated 14 May 1998, the security of the Pejë-Gjakovë road was compromised frequently as a result of "terrorist attacks",[164] although no specific details of such attacks was provided.

94. The evidence suggests that these confrontations resulted in little-to-no casualties or damage to either side; they were defined mostly by unilateral actions that did not incur opposition from the other side. Even where counterattacks were recorded, actions were limited to brief crossfires which did not result in extended confrontations, for which no reinforcements appear to have been deployed. Additionally, evidence on these incidents is frequently silent on the precise type of weaponry used, the number and type of military personnel involved, and the extent of destruction occasioned. While the Trial Panel took judicial notice of adjudicated facts related to these incidents,[165] none of those facts provide the requisite particularity to demonstrate that the intensity of the fighting had reached the requisite threshold for an armed conflict. [REDACTED].[166]

[160] IT-04-84 P01035.E, p. 1.
[161] *Ibid*.
[162] *Ibid*
[163] *Idem*, p. 2.
[164] ET U021-6731-U021-6732, p. 1.
[165] Decision on SPO Adjudicated Facts, pp. 11-13;
[166] 1D00132, pp. 120982-120983.

95. Regarding other factors relevant to the existence of an armed conflict that are not related to the actual conduct of hostilities, while the Security Council adopted Resolution 1160 on 31 March 1998,[167] it nonetheless refrained from categorising the situation in Kosovo as an armed conflict, referring instead to "violence and terrorism in Kosovo".[168] This contrasts sharply with Resolution 1199, adopted on 23 September 1998,[169] which referred to reports of increasing violations of international humanitarian law[170] and noted "the communication by the Prosecutor of the International Tribunal for the Former Yugoslavia to the Contact Group on 7 July 1998, expressing the view that the situation in Kosovo represents an armed conflict within the terms of the mandate of the Tribunal".[171] The SPO has not led any evidence on the situation in Kosovo attracting the attention of other international or regional plenary bodies, or on the efforts of international actors to broker ceasefire agreements during the spring of 1998.

96. In conclusion, the existence of an armed conflict requires that at least a significant number of indicative factors, including the seriousness of attacks, the increase and spread of clashes over territory and time, and the use of heavy weapons.[172] Nevertheless, the evidence adduced relevant to the conduct of hostilities in the spring of 1998, demonstrates a handful of isolated incidents in which the KLA was severely outnumbered and surpassed by the Serb forces in terms of the military equipment and armament available.

97. Clashes were confined to specific geographical areas, and no evidence has been led to the effect that these resulted in a uniform intensification of hostilities in the adjacent areas. The evidence also alludes to other incidents of fighting occurring in

[167] IT-05-87.1 P01074.
[168] *Idem*, p. K0356952.
[169] P00750.
[170] *Idem*, p. K0356956.
[171] P00750, p. K0356955.
[172] *Ibid*.

other areas, yet the evidence led in relation to these incidents lacks the specificity to establish that the hostilities as a whole reached the threshold of intensity. Therefore, the evidence does not demonstrate that a significant number of the factors that indicate the existence of an armed conflict have been met throughout the contested period. Hence, the SPO has failed to adduce evidence in support of the contention that the hostilities amounted to protracted armed violence in the spring of 1998.

(vii) Shift in intensity – end of May 1998

98. The evidence suggests, at least for the purposes of analysis under Rule 130, that the hostilities entered a novel stage by the end of May 1998, with direct and extended confrontations between the Serb forces and the KLA increasing.

99. The geographical spread of the hostilities also expanded from that period onwards, with confrontations gradually moving away from isolated attacks on individual villages to large areas being engulfed by fighting, with a constant shift of control lines.[173] The number of casualties and civilians displaced significantly increased in that period, and so did the number of personnel deployed.

100. On 29 May 1998, the Serb forces launched an attack on the Llapushnik gorge from both sides, after the KLA gained control of the area on 9 May 1998.[174] According to testimonial accounts, the operation was launched as armored personnel carriers and tanks left their checkpoint at Komoran and were headed towards the gorge.[175] Serb forces also deployed five grenade launchers on the other side of the gorge, as well as infantry units in the lower grassland area.[176] Simultaneously, Serb forces started shelling the village of Llapushnik and its neighborhoods, including Vukofc and

[173] *See, e.g.,* [REDACTED].
[174] P01804_ET, p. 099504; SPOE00230829-SPOE00230900-ET, p. SPOE00230868; [REDACTED]; P02006.1_ET, p. 18.
[175] P01804_ET, p. 099504.
[176] *Ibid*.

Poterk, from 2 kilometers away.[177] Serb forces set fire to many houses in the Vukofc neighborhood.[178] KLA soldiers responded with snipers, aiming at Serb police officers.[179] By nightfall, the Serb officers withdrew back to their base in Komoran.[180]

101. With regard to casualties, available evidence indicates that KLA sniper fire resulted in six Serb policemen being killed or wounded.[181] A civilian in the nearby village of Nekovc was also killed by a shell launched from a Serb grenade launcher.[182] Within the KLA ranks, eight soldiers were reported killed or injured due to hostile fire.[183]

102. In terms of weaponry and military capability, the evidence indicates that Serb forces deployed a significant arsenal, consisting of armored personnel carriers, tanks, grenade launchers, and infantry units.[184] In contrast, sources suggest that the KLA operated under significant limitations.[185] As a result, their response primarily relied on sniper fire and support from armed volunteers from nearby villages.[186] Despite these limitations, the evidence suggests that the KLA succeeded in maintaining control of the Llapushnik gorge and they were not forced to move positions[187] until the end of July 1998, when the Serbian forces attacked with hundreds of tanks, truck-mounted artillery and armored vehicles.[188]

[177] *Idem*, p. 099505.
[178] SPOE00230829 SPOE00230900 ET Revised, p. SPOE00230867.
[179] P01804_ET, p. 099505.
[180] [REDACTED]; P02006.1_ET, p. 18.
[181] P01804_ET, p. 099505.
[182] P01804_ET, p. 099505.
[183] *Ibid*.
[184] *Idem*, p. 099504.
[185] SPOE00230829 SPOE00230900 ET Revised, p. SPOE00230867.
[186] P01804_ET, p. 099505.
[187] P01745, p. U003-9102.
[188] SPOE00230829-SPOE00230900 ET Revised 2, p. SPOE00230869.

103. On 31 May 1998, Serb forces launched an attack against Poklek i Ri, a village next to the city of Drenas.[189] Evidence indicates that Serb police forces went from house to house and gathered the men and women of the village.[190] A testimonial account recalled seeing police shoot five civilians from behind.[191] During the attack, Serb forces deployed around 300 policemen with artillery, as well as armoured personnel carriers and jeeps.[192] According to testimonial evidence, twenty-eight houses were burned and many were looted.[193]

104. According to available evidence, in June 1998, the KLA captured the coal mine in Belacevac (also known as Bardh i Madh)[194] and abducted several Serbian mine workers, effectively bringing all production to a halt.[195] The Belacevac mine was considered strategically vital as it powered two powerplants supplying Kosovo, large parts of Serbia and Macedonia.[196] Following the capture of the mine by the KLA, Serbian forces launched a series of attacks.[197] Serb forces deployed thousands of special police units and troops, backed by artillery, tanks, and other heavy armour.[198] Heavy armoured personnel carriers opened fire at trenches and checkpoints held by "lightly armed" KLA soldiers.[199] Witness testimony identified that the ratio of forces between the KLA and Serbs was not favourable for the former as Serb forces had an "extraordinary potential of weapons".[200] Serb forces also launched attacks on the

[189] 070905-070944, p. 070915.
[190] *Idem*, p. 070916.
[191] *Ibid*.
[192] 070905-070944, p. 070916.
[193] *Ibid*.
[194] Transcript, 4 June 2024, p.16660.
[195] P01274, p. U0088014.
[196] *Ibid.*
[197] *Idem*, p. U0088012.
[198] *Ibid*.
[199] *Ibid*.
[200] Transcript, 4 June 2024, p.16661.

neighbouring village of Llapushnik, with smoke seen spiraling up from burning houses in the nearby villages of Hade and Negroc.[201] [REDACTED].[202]

105. Regarding casualties and the aftermath of the attack, according to Serb reports, an 8-year-old Albanian boy had been killed and a man wounded.[203] More than 8,000 people were reportedly forced to flee their homes in Belacevac and take refuge in nearby woods.[204] W04752 alleged that the KLA incurred a lot of injuries following the attacks.[205] Evidence also broadly indicates that Serb forces sustained significant losses, though the specifics remain unclear.[206]

106. The Trial Panel also took judicial notice of several adjudicated facts indicative of the rise in intensity of the confrontations after the end of May 1998, including that in June or by July 1998 the KLA held up to 50 per cent of the territory of Kosovo, that the KLA managed to control three main roads by June 1998 which cut off the supply for the Serbian forces, and there were frequent attacks by the KLA on the police and army, exemplified by attacks against the police station in Suhareke in June 1998 and on the police station in Runik on 12-13 June 1998.[207] The Trial Panel also took judicial notice of armed clashes between the KLA and Serbian forces taking place in the Drenica region that resulted in displacement of some 40,000 people, and to several operations being carried out by the Serb forces in the municipalities of Decan and Gjakove with a view to restoring communication lines.[208]

107. The evidence concerning the period after the end of May 1998 demonstrates an increase in the quantity of Serb and KLA forces deployed to the frontlines and their

[201] P01274, p. U0088012.
[202] [REDACTED].
[203] P01274, p. U0088012.
[204] P01274, p. U0088012.
[205] P01355.2_ET, p. 26.
[206] SPOE00230829-SPOE00230900-ET Revised, p. SPOE00230876.
[207] Decision on SPO Adjudicated Facts, p. 15.
[208] *Ibid*.

military equipment, as well as an increase in the number of casualties and of displaced persons and the extent of destruction. In contrast, the evidence concerning events predating the end of May 1998 details sporadic incidents that occurred at various intervals from one another and at specific locations, and which did not involve the same number of personnel deployed or the type of arsenal used. Witnesses have testified that there were no Serbian offensives/attacks in their region up until summer 1998,[209] or if they were, that they were not a daily occurrence, but rather that they happened every fortnight or once a month.[210]

108. The engagement of the KLA in the hostilities during that period was also almost exclusively limited to attacks of opportunity, [REDACTED].[211] Hence, the SPO has not adduced evidence capable of supporting a conviction to demonstrate that the hostilities reached the requisite threshold of intensity prior to the end of May 1998.

109. The summer of 1998 saw increased direct confrontations between the KLA and the Serb forces as opposed to mere attacks of opportunity, which increasingly led to further intensification of the hostilities, as demonstrated by the evidence on the fighting in Rahovec and the summer offensive in general. The evidence has described this transition as a "a significant new phase of the fighting", referring in particular to the KLA overtaking Rahovec as "their first city" on 20 July 1998.[212] The frequency of these clashes also escalated, with one witness testifying that the beginning of June 1998 marked the beginning of daily fighting, shooting/shelling in his area.[213]

[209] *See e.g.*, in relation to Malishevë, [REDACTED]; in relation to Denje, [REDACTED]; in relation to Krojmir, Transcript, 24 April 2024, p.14797; in relation to Has region, Transcript, 18 November 2024, p.22305.
[210] S*ee e.g.*, in relation to Krojmir/Llapushnik area, Transcript, 23 April 2024, pp.14768-14769.
[211] [REDACTED].
[212] 1D00170, p. DHT04056.
[213] Transcript, 21 October 2024, pp.20740-20741.

110. For these reasons, while a reasonable trier of fact could conclude beyond reasonable doubt that the intensity of the hostilities has reached the relevant threshold of protracted armed violence within the meaning of Rule 130 after the end of May 1998, the SPO has not adduced sufficient evidence to extend that conclusion to the period predating the end of May 1998. Indeed, several other chambers determined that the armed violence in Kosovo increased significantly from June 1998 onwards, exemplifying with continuous clashes between the KLA and the Serb forces that resulted in numerous people being displaced and several casualties, and with the constant emergence of new control lines.[214] It is for these reasons that the end of May 1998 was selected by other Trial Chambers as the start date of the armed conflict.[215]

D. THERE IS NO EVIDENCE CAPABLE OF SUPPORTING A CONVICTION FOR WAR CRIMES FOR ANY ACTS ALLEGED TO HAVE COMMENCED AFTER 20 JUNE 1999

111. For each of the war crimes charged in the Indictment, the SPO must prove beyond reasonable doubt "the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organised armed groups or between such groups".[216]

112. The SPO position is that this armed conflict continued "through September 1999."[217] The SPO evidence, by contrast, demonstrates that by 20 June 1999, the threshold for an armed conflict could no longer be met. Much of the evidence relied upon in the SPO's Pre-Trial Brief to extend the conflict into September 1999 was not tendered or admitted at trial. The little evidence that was admitted does not support

[214] *Đorđević* Judgment, paras 1533-1534; *Limaj* Judgment, paras 149-157; *Milutinović* Judgment Vol. 2, paras. 798-801, 920.
[215] *Đorđević* Judgment, para. 1536; *Limaj* Judgment, para. 171; see also *Milutinović* Judgment Vol. 2, para. 820.
[216] Confirmation Decision, para. 84.
[217] F00709/A01, *Corrected Version of Prosecution Pre-Trial Brief*, 24 February 2022, confidential ("SPO PTB"), paras. 698-699; Indictment, para. 16

its position. There is, in fact, no evidence capable of supporting a finding beyond reasonable doubt that the accused can be liable for war crimes for any alleged crimes that began after 20 June 1999.

113. The international law governing NIACs provides no substantive guidance as to how and when a NIAC ends. Common Article 3 of the 1949 Geneva Conventions, provides only that its provisions are applicable "at any time and in any place whatsoever" during a NIAC.[218] The guarantees arising from Additional Protocol II ("APII") are similarly imprecise, applying "at any time and any place whatsoever".[219] In the absence of statutory guidance, commentators have focused on the criteria giving rise to a NIAC, being the intensity and organisation thresholds in Common Article 3 and APII.[220] Namely, a NIAC will have ended when "the intensity of the hostilities or the organisation of the non-State actor factually eroded to such an extent that the threshold is no longer met".[221]

114. It is clear, as a matter of law and of fact, that the conflict in Kosovo between the KLA and the Serbian forces had ended by 20 June 1999. It was clear to the UN Security Council, which adopted UNSC Resolution 1244 on 10 June 1999 mandating the deployment of an international civil and security presence in Kosovo to deter **renewed** hostilities; that civil and security presence was not mandated to operate in an armed conflict, and did not operate with reference to an IHL framework.

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[218] ICRC, Geneva Conventions of 12 August 1949, Common Art. 3(1),.
[219] ICRC, Additional Protocol II to the Geneva Conventions of 12 August 1949, 8 June 1977, art 4(2).
[220] *See, Tadić* Jurisdiction Decision, paras. 69-70, requiring protracted armed violence between governmental authorities and organised armed groups. *See also Tadić* Judgment, para. 562; *Delalić* Judgment, para. 184; *Limaj* Judgment , para. 84; *Mrkšić* Judgment, para. 407.
[221] *See,* M. Milanovic, 'The End of Application of International Humanitarian Law', (2014) 96(893) *International Review of the Red Cross* 163 ("Milanovic"), p. 180. *See also* N. Derejko, 'A Forever War? Rethinking the Temporal Scope of Non-International Armed Conflict', (2021) 26(2) *Journal of Conflict and Security Law* 347, p. 359; R. Bartels, 'From *Jus in Bello* to *Just Post Bellum*: When Do Non-International Armed Conflicts End?', in C. Stahn, J.S. Easterday and J. Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations*, (OUP, 2014), p. 303.

115. It was clear to UNMIK, which issued Regulations 2000/66 and 2006/50 defining the armed conflict as ending on 20 June 1999.[222] It was clear to the Special Representative of the Secretary-General ("SRSG") for UNMIK, who referenced the armed conflict being over in a report written on 12 July 1999.[223]

116. It was clear to the ICTY Judges who assessed the evidence and repeatedly concluded that the armed conflict had ended by 20 June 1999.[224]

117. It was clear to their Kosovan counterparts, including judges of the Supreme Court of Kosovo, who presided over cases in Kosovo local courts and found that the conflict had ended in June 1999.[225]

118. It was clear to the Special Prosecutor's Office of Kosovo, which formulated charges of war crimes on the basis that "the war officially ended on 11 June 1999."[226]

119. It was clear to the Kosovo Parliament when, for example, it defined the armed conflict as ending on 20 June 1999 in the Kosovo Veterans Law.[227]

120. This unanimity existed well before the charges were formulated by the SPO in the present case. The testimony of 253 SPO witnesses, and review of over 8,000 documents has only further reinforced the factual impossibility of any violence

[222] 1D00254 and 1D00255.
[223] 1D00209, para. 88.
[224] *Milutinović* Judgment Vol. 2, para. 1217; *Đorđević* Judgment, paras. 1579-1580; *Prosecutor v. Haradinaj et al.*, IT-04-84*bis*-T, Public Judgment, 29 November 2012, fn. 2039.
[225] Supreme Court of Kosovo, *Prosecutor v Kolašinać,* AP–KZ 230/2003, Decision, 5 August 2004, p. 21; Supreme Court of Kosovo, *Prosecutor v Latif Gashi et al.*, AP-KZ 139/2004, Decision, 21 July 2005, pp. 10-11; District Court of Pristina, *Prosecutor v NK et al.*, P. 425/11, Decision, 2 May 2012, para. 27; Supreme Court of Kosovo, *Prosecutor v FG*, Pml.Kzz 157/2014, Judgment, 2 October 2014, p. 8; Basic Court of Mitrovicë, *Prosecutor v O.I. et al.*, P 98/14, Judgment, 30 March 2016, paras. 228-245; Basic Court of Prishtine, *Prosecutor v Radivojević*, PKR 955/13, Judgment, 12 February 2014, p. 14; Supreme Court of Kosovo, *D.S. v. The Inheritors of H.Ç.*, GSK-KPA-A-129/13, Kosovo Property Agency (KPA) Appeals Panel, Judgment, 3 June 2015, p. 6.
[226] *See, e.g.*, 1D00193, p. SITF00314848: [REDACTED] The same item later notes (p. SITF00314852): [REDACTED].
[227] 1D00106, Article 3(1).

committed in Kosovo after 20 June 1999 meeting the criteria of "intensity" or "organisation". This impossibility arises from a sequence of events triggered by the signing of the Military Technical Agreement ("MTA" or "Kumanovo Agreement")[228] on 9 June 1999 between KFOR and the FRY, which provided for an immediate ceasefire and complete withdrawal of the Serbian forces from Kosovo.

121. The MTA was followed by: (i) the withdrawal of the Serbian forces by 20 June 1999; (ii) the deployment of an international security presence (KFOR) and an international civil presence (UNMIK) which was not mandated to operate in an armed conflict; and (iii) the demobilisation and demilitarisation of the KLA. This sequence was described by **W02135**, the KFOR Commander ("COMKFOR"), as "almost choreography" with some of the steps being politically driven "at the international level".[229] There was no scope for an armed conflict between "the KLA" and "the Serbian forces" to resume after 20 June 1999. In reality, it did not.

122. The SPO evidence therefore demonstrates, in a manner entirely consistent with the conclusions of the UN Security Council, UNMIK, international observers, the ICTY, the Kosovan Parliament, Kosovan Special Prosecutor, and in Kosovan courts that the conflict was over, as a matter of fact and law, by 20 June 1999. As such, there is no evidence capable of supporting a finding beyond reasonable doubt that the accused can be liable for war crimes for any acts alleged to have commenced after 20 June 1999.

(i) The SPO's Position on the End of the Conflict is Not Supported by the Evidence

[228] P02527.
[229] P02516, pp. 121576-121577.

123. The Pre-Trial Judge found that the NIAC continued **until 16 September 1999**.[230] Similarly, the SPO Pre-Trial Brief states that the armed conflict existed "from at least March 1998 **through September 1999**".[231] Both the Pre-Trial Judge's finding and the SPO's pre-trial position rely on a very small body of evidence. Neither was based on an evaluation of this limited evidence as against the established criteria for the existence of an armed conflict. Importantly, much of the evidence relied upon by both the SPO and the Pre-Trial Judge was not ultimately tendered or admitted.

124. For example, concluding that the NIAC stretched into September, the Pre-Trial Judge relied on his finding that "[i]n the course of June 1999, Serbian forces prepared the retreat and began redeploying some of their units outside of Kosovo". The evidence cited in support of this finding was not admitted.[232] The Pre-Trial Judge then relied on his finding that "Serbian forces" were found to be violating their agreements "on some occasions during the summer of 1999". None of the evidence cited in support of this finding was admitted.[233]

125. All the evidence cited by the Pre-Trial Judge in the Confirmation Decision was then relied upon by the SPO in its Pre-Trial Brief. In claiming that the NIAC extended into September, the SPO states that following the withdrawal of the FRY forces on 20 June 1999, (i) "both the KLA and FRY forces continued hostile and provocative acts through at least September 1999"; and that (ii) "until 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."[234] Putting aside the evidence that was neither tendered nor admitted at trial, the only remaining evidence cited in the SPO

[230] Confirmation Decision, paras. 86, 136-137.
[231] SPO PTB, paras. 698-699; Indictment, para. 16.
[232] Confirmation Decision, para. 134, fn. 296 citing: "IT-05-87.1 P01369.E, pp. 149 (03081497) (8 June 1999: drafting documents to prepare the retreat), 151-154 (03081499-03081502)".
[233] Confirmation Decision, para. 134, fn. 297, citing [REDACTED].
[233] SPO PTB, para. 699. *See also* Confirmation Decision, paras. 134-135.
[234] *Ibid*.

Pre-Trial Brief for the first proposition – that both the KLA and FRY forces continued hostile and provocative acts through at least September 1999 – is selected paragraphs from the statements of **W02135** and **W02183**, and three [REDACTED] ("[REDACTED]").

126. The evidence of **W02135** and **W02183** refers to incidents of violence in Kosovo after 20 June 1999. It does not, however, support the proposition that "the KLA and FRY forces" continued hostile acts. To the contrary, **W02183** is clear that "once the JNA and Serb police were gone, there was no other structured organisation in Kosovo aside from the KLA", and he places the JNA leaving Pristina "a few days" after UNMIK's arrival.[235] **W02135's** cited evidence[236] says nothing whatsoever about hostile acts by the "FRY forces", but in any event concerns June and July 1999, and not August or September. Crucially, in [REDACTED], **W02135** stated [REDACTED][237] As such, the evidence cited by the SPO **does not** support the proposition that "the KLA and FRY forces" continued hostile acts "through at least September 1999".

127. As for [REDACTED], these documents were never put to witnesses in court, but were tendered through bar table motions, over Defence objections, on the basis that they display no indication of authorship or sources.[238] They were provided to the SPO by [REDACTED], but their provenance, authorship, and reliability is unknown. Many read like Serbian post-conflict propaganda. [REDACTED]

128. These [REDACTED] are the **only evidence** relied on in the SPO Pre-Trial Brief in support of the second proposition that "until at least September 1999, the redeployment of FRY forces and the resumption of hostilities in Kosovo was a real

[235] P01968, paras. 15, 58. *See also* Transcript, 21 January 2025, pp. 24131-24133.
[236] P02517, paras 26 42-43, 56.
[237] 1D00213, p. SPOE00000095, para. 5(a).
[238] *See, e.g.*, F03144/A01, *Annex 1 to Joint Defence Response to the Prosecution Motion for Admission of International Reports*, 24 April 2025, confidential, items 67, 70, 73, 84, 119.

concern among the parties to the conflict." The evidence presented at trial does not demonstrate that the redeployment of FRY forces was a "real concern" to the KLA, nor that the resumption of hostilities was a "real concern" to the parties to the conflict. No KLA witness ever testified that they had a "real concern" that the FRY forces would march back in, nor did any FRY witnesses cite this as a realistic proposition.

129. International witnesses echoed these views. **W02135** considered the possibility of a Serb re-invasion of Kosovo as "not zero" but "quite a remote possibility", explaining that: "**[o]f course we'd considered that possibility, but it seemed to me extremely unlikely.** For one thing, it wouldn't have made military sense to withdraw, to allow your enemy to occupy the ground, and then to have to fight your way back. I have no doubt that, having withdrawn, the next thing the Serb General Staff would have done was to examine the option should they be ordered to go back in. But that was very far from saying that it was a real possibility. Planning is one thing, execution is very much another."[239]

130. The evidence does not demonstrate a "real concern" about the FRY forces re-entering and the conflict resuming, from anyone. Even if the SPO could prove that KFOR was concerned about FRY forces resuming the armed conflict, it has not presented any evidence that KFOR was concerned about the FRY engaging with the KLA, as opposed to the FRY engaging with KFOR. In context, any theoretical concern expressed by KFOR was related to the possibility of KFOR having to engage in fighting with FRY forces in what would have amounted to a resumption of the international armed conflict with NATO countries. The SPO has not, however, presented any evidence of KFOR being concerned about a resumption of the NIAC between FRY and the KLA. Rather, the situation was one of a lasting cessation of

[239] P02516, p. 121595; 1D00214, p. SPOE00212681.

hostilities where the risk of resumption, according to the KFOR Commander, was "extremely unlikely".

131. As such, even the admitted evidence cited by both the Pre-Trial Judge and SPO in extending the NIAC until **mid-September**, does not support this conclusion. There is no evidence capable of supporting a finding beyond reasonable doubt that the Serbian forces and KLA met the requirement of "intensity" to establish an armed conflict after 20 June 1999. The date of mid-September was reached without any analysis of the *Boškoski* factors, or indeed any consideration of the evidence as against the intensity or organisation requirements, beyond general findings that the KLA generally met the "organisation" criteria at an unspecified time. In reality, as set out below, the *Boškoski* factors describe a situation that is entirely divorced from that which existed in Kosovo after 20 June 1999.

(ii) The Armed Conflict Had Ended by 20 June 1999

132. The evidence heard by the Trial Panel demonstrates that by 20 June 1999 the intensity of any armed conflict had factually eroded to such an extent that the threshold for an armed conflict was no longer met. The Kumanovo Agreement was signed on 9 June 1999 between KFOR and the FRY, and provided for an immediate ceasefire and complete withdrawal of FRY forces from Kosovo by 20 June 1999.[240] Although a ceasefire or agreement may not be sufficient on its own to determine the end of an armed conflict, it is manifestly relevant to this assessment.[241] This is

[240] P02527, Article II(2): "the FRY agrees to a phased withdrawal of all FRY forces from Kosovo to locations in Serbia outside Kosovo". *See also* Article II(2)(e): "By EIF [Entry into Force] +11 days, all FRY Forces in Kosovo will have completed their withdrawal from Kosovo (depicted on map at Appendix A to the Agreement) to locations in Serbia outside Kosovo, and not within the 5 km GSZ".
[241] *Boškoski* Judgment, para. 176; ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (2017), para. 490. *See also*, Milanovic, pp. 180-181: "In some cases it will be relatively easy to determine the exact moment when the conflict ended, especially when there is a peace agreement (as long as the agreement is, in fact, observed)".

particularly so when, as the evidence demonstrates, the view of the warring parties and of those entering Kosovo following the ceasefire was that the hostilities ended with the signing of this agreement.[242]

133. Importantly, the SPO presented **no evidence** of fighting or hostilities between the parties to the NIAC – the KLA and Serbian forces – after 20 June 1999. This lack of engagement is a direct result of the sequence of events which followed the signing of the agreement on 9 June, and which reinforced the legal and factual impossibility of any subsequent "armed conflict" classification in the weeks and months that followed. After 20 June 1999, there was no scope for the armed conflict between "the KLA" and "the Serbian forces" to resume. One party had left the country, the other was in the process of demobilising, and an international administration had assumed control of the territory. Any violence which continued was not between "the KLA" and "the Serbian forces".[243] The NIAC as it existed prior to 10 June 1999 was in no position to restart.

(iii) The Withdrawal of Serbian forces

134. The Kumanovo Agreement provided for the complete withdrawal of all FRY troops in Kosovo by 20 June 1999.[244] An Adjudicated Fact from *Milutinović* states that "[a] report signed by the VJ 3rd Army Commander, Pavković, the Commander of the VJ's Air Force, Smiljanić, and Obrad Stevanović for the Serbian MUP, was sent on 20

[242] **From the KLA perspective**: Transcript, 6 November 2024, pp. 22132-22137; Transcript, 16 November 2023, pp. 10329-10331; Transcript, 11 February 2025, p. 25080; Transcript, 27 August 2024, pp. 19066-19068; Transcript, 25 March 2025, pp. 25873-25874; P00911.19_ET, p. 13; P01097.7_ET, p. 27. **From the FRY perspective**: [REDACTED]. **From the perspective of international observers**: Transcript, 7 September 2023, pp. 7551-7552; Transcript, 5 December 2023, p. 10574; P00743.4, p. 076687; Transcript, 20 January 2025 (W02183 Testimony), pp. 23917-23919; Transcript, 25 March 2024, p. 13632.
[243] Confirmation Decision, para. 130, citing Indictment, para. 18
[244] P02527, Article II(2)(e).

June 1999 to the KFOR commander, Lieutenant General Michael Jackson, confirming the withdrawal of forces from Kosovo."[245]

135. A UNSC Report dated 12 July 1999, states that "[f]ollowing the deployment in Kosovo on 12 June 1999 of the international security presence known as KFOR, the Yugoslav Army and the Serbian security forces began their withdrawal from the province in accordance with the schedule established by the [Kumanovo Agreement]. This withdrawal was completed by 20 June 1999".[246]

136. Contemporaneous documents bear this out. Kosovapress articles from 10 June 1999 report that "[t]oday the withdrawal of Serbian forces from Kosovo has begun, under the terms of the Military-Technical Agreement",[247] and "[a]fter the fighting which took place in the last few days and after the signing of the agreement for the withdrawal of the Serbian forces from Kosovo today the situation in the Karadak Operational Zone is calmer".[248]

137. The same day, on 10 June 1999, [REDACTED][249]

138. Later that same day, [REDACTED][250]

139. On 11 June, Kosovapress reported that, "[a]ccording to observers from Nos. 1, 2 and 3 Companies of 163 Brigade in the Nerodime Operational Zone, much movement on the part of the Serbian forces was observed", and "[b]efore they withdrew the

[245] Decision on SPO Adjudicated Facts, no. 139, citing *Milutinović* Judgment Vol. 2, para. 1216.
[246] P02563, p. SPOE00000756, para. 4.
[247] P00814_ET.28, p. SPOE00055581.
[248] P00814_ET.28, p. SPOE00055584.
[249] [REDACTED]
[250] [REDACTED]

Serbian forces laid mines in the villages of the Karadak Operational Zone [...]".[251] RFK News Reports from 12 and 13 June 1999, report:[252]

> (RFK): Last night too withdrawals of Serbian troops from their bases and their deployment locations in Kosovo were seen. […]
> (RFK): The Serbian terrorist forces have withdrawn tanks and anti-aircraft guns from the village of Godanc/ Godance/ in the Shtime/ Štimlje municipality.
> (RFK): The Serbian military and police forces, in the course of their withdrawal, set fire to many houses [...].
> (RFK): Yesterday's reckoning concerning the withdrawal of the enemy forces towards Serbia was, according to the KLA observers of the Llap Operational Zone, as follows: 600 lorries, 140 buses, 100 Praga /lorry-mounted artillery pieces/, 175 Pinzgauers / larger vehicle similar to Land Rover/, 18 armoured personnel carriers, 50 armoured cars, 11 artillery pieces and 21 rocket launchers. During this withdrawal the Serbian forces taunted the KLA units in the village of Llapashtica/Lapaštica, but they nonetheless restrained themselves [...].

140. Kosovapress articles from 13 June similarly cited the figures for withdrawal of Serbian forces reported by the Llap Operational Zone and noted that "[i]n the convoys of Serb civilians withdrawing from Kosovo criminals from Peja/Peć and Istog/Istok. have also been seen".[253] Further Kosovapress articles from 13 June report on the "[w]ithdrawal of the Serbian forces from the Drenica/Drenica area", "[c]riminals are fleeing with the Serbian forces and the Serbs are burning their own houses", and in Gjakova/Djakovica, "[t]he KLA is keeping to its promise not to attack the Serbian forces during their withdrawal. The Serbian forces are surrounded by 137 "Gjakova" Brigade of the KLA's Dukagjin Operational Zone."[254]

141. An OSCE Activity Report for 16-17 June 1999 reports on a meeting with COMKFOR, (W02135), "who stated that he was satisfied with the way in which the withdrawal of MUP and VJ forces from Zone 1 had proceeded; that substantial withdrawal from Zone 2 had already occurred, prior to the 18 June deadline; and that

[251] P00814_ET.28, pp. SPOE00055587, SPOE00055592.
[252] P00515_ET.67, pp. 008891-008892.
[253] P00814_ET.30, p. SPOE00055603.
[254] P00814_ET.30, pp. SPOE00055603, SPOE00055606, SPOE00055607.

he expected the withdrawal to continue on schedule". W02135 then reported to the UN Secretary-General in July 1999:

> [t]he cessation of violence and repression as a result of FRY Forces' occupation of Kosovo was achieved with the deployment of KFOR and concurrent withdrawal of FRY Forces. KFOR's rapid deployment filled any security vacuum and prevented KLA harassment of the withdrawing FRY Forces. With the exception of limited damaged equipment and abandoned supplies, which will be recovered to FRY in due course, FRY Forces met the final timelines required of them in the MTA. There have been a few isolated incursions by small numbers of VJ personnel into the Ground Safety Zone (GSZ) and Kosovo. In addition, there is some evidence of very small numbers of MUP remaining in Kosovo to report on KFOR activity. Otherwise, FRY Forces are fully compliant."[255]

142. This documentary evidence is supported by the testimony of witnesses from all sides. The international observers confirmed that the FRY forces withdrew. **W02183** testified that at the time of UNMIK's arrival, the JNA was still present in Prishtinë. After they left the city a few days later, there was a "total breakdown of essential services and commercial/industrial activity, and an even more serious breakdown in law and order".[256] **W02540**, a member of German KFOR, entered three or four days after the signing of the Kumanovo Agreement on 9 June 1999.[257] He testified that "for a few days" there were still former Yugoslav Army forces present,[258] and on his first day he was caught in a shootout between the Yugoslav army and the KLA when he was evacuating three Serbian posts. He did not witness any shooting apart from on his first day.[259] **W04868**, a member of American KFOR based in and around Gjilan from June 1999, confirmed that the Serbs withdrew from Gjilan around 12-14 June, and he did not see any organised Serbian military in the area after the VJ left on 20 June.[260] **W02475** who worked for civil society, testified that: [REDACTED]."[261]

[255] [REDACTED]
[256] Transcript, 21 January 2025, p. 24131, referring to P01968, para. 15.
[257] Transcript, 21 May 2024, p. 15546.
[258] *Idem*, p. 15548.
[259] *Idem*, pp. 15545-15548.
[260] Transcript, 19 August 2024, pp. 18609, 18695-18696.
[261] P01047, para. 16.

143. KLA members also witnessed the withdrawal. **W04737**, former [REDACTED], said that the Serb forces withdrew from Prizren on 15 June 1999.[262] **W04403,** former assistant deputy commander of the Dukagjin Operational Zone, testified that the Serb military and police forces withdrew as per the plan included in the Kumanovo Agreement. Around 16 or 17 June, **W04403** went to Gjakove, and he did not notice any Serb military or police forces present there.[263] **W01453** testified that it is quite possible that all the Serb forces had withdrawn from Kosovo by 20 June 1999.[264]

144. This KLA evidence was corroborated by those in the Serbian forces, including those who withdrew and others who demobilised. **[**REDACTED**]** was working for [REDACTED] , and was part of the Serbian forces that withdrew on 12 June 1999.[265] [REDACTED], in the Yugoslav reserve forces in the [REDACTED] until 12 June 1999, on which date the unit was disbanded following the Kumanovo Agreement.[266] He confirmed that, on 12 June 1999, the Yugoslav Army left his home village, and on 13 June 1999, KFOR arrived.[267]

145. **[REDACTED]** testified that he was a military reservist for the Yugoslav army in [REDACTED]. On 12 June 1999, their major said that, as the Kumanovo Agreement had been signed they would be withdrawing, and as of 12 June 1999, they were no longer reservists. His unit was disbanded that day.[268] [REDACTED] gave evidence that [REDACTED] served in the Serbian reserve police forces and was deployed in [REDACTED] when he was demobilised.[269] Former FRY soldiers like [REDACTED]**,** **W00025** and [REDACTED], described the process of demobilisation and the return (or

[262] [REDACTED].
[263] Transcript, 25 March 2025, p. 25874.
[264] Transcript, 6 November 2024, p. 22135.
[265] [REDACTED]
[266] [REDACTED].
[267] [REDACTED].
[268] [REDACTED]
[269] [REDACTED]

attempted return) of weapons and uniforms which occurred in the days immediately after 10 June 1999.[270] Once the Serbian forces left Kosovo the evidence of these witnesses is clear: "there was nothing else, no responsibilities".[271]

146. Unsurprisingly, the evidence then demonstrates hostilities between "the KLA" and "the Serbian forces" did not continue after the Serbian withdrawal on 20 June 1999. The *Boškoski* factors which indicate the existence of an armed conflict were no longer present, as demonstrated by the following exchange with **W01453,** the Zone Commander for the Nerodime Operational Zone:[272]

> Q. And would you agree with me that beginning on or around 21 June 1999 and continuing all the way into September, the KLA was demilitarising gradually until it completely demilitarised in September?
> A. Yes. Following a meeting that the zone commanders had with the chief of staff and the commander of KFOR forces, Mr. Jackson, as well as other KFOR officers, we were notified that we would continue with the demilitarisation of the Kosovo Liberation Army up until September.
> Q. Yes. Now, at this time, so after 10 June 1999, were any towns in Kosovo, to your knowledge, being besieged by attack by anyone?
> A. No, there weren't any attacks. However, there were problems once the civilian population re-entered Kosovo, but there weren't any military attacks.
> Q. Okay. Was any military party to the conflict blocking supply routes after 10 June 1999?
> A. I do not remember any blocking.
> Q. Were roads being closed after 10 June 1999 as a result of any military hostilities taking place?
> A. I do not know about this. I don't think there was any after the 10th.
> Q. Are you familiar with any armed clashes that took place between the KLA and Serbian forces after 10 June 1999? [...]
> A. No, I do not recall any clashes of this sort.
> Q. Were heavy weapons such as tanks or other heavy vehicles being used in conflict after 10 June 1999 to your knowledge?
> A. No, they were taken under control by KFOR.
> Q. Are you familiar with the KLA or Serbian forces firing from heavy weapons after 10 June 1999?
> A. I do not recall any such thing.
> Q. Are you aware of any civilian casualties from conflict after 10 June 1999?
> A. I have no knowledge of that because it was no longer part of our responsibilities because -- following 1244 Resolution and KFOR forces entering Kosovo and them taking responsibility as well as UNMIK.

[270] [REDACTED].
[271] *Ibid*; P02512.1_ET, pp. 15-16; [REDACTED].
[272] Transcript, 6 November 2024, pp. 22135-22137.

> Q. Were there any civilians being forced to flee from combat zones after 10 June 1999?
> A. Civilians, they did not have to flee. But if they wanted to move, of course they could move around.
> Q. Are you familiar with any UN Security Council resolutions following 10 June 1999 expressing any concern about an ongoing armed conflict in Kosovo after 10 June 1999?
> A. No, I do not remember it.

147. Importantly, any incidents of violence allegedly carried out by purported "Serb paramilitaries" or by former VJ soldiers would only be relevant to an assessment of the temporal scope of the NIAC if the SPO could demonstrate that the small numbers of Serb assailants who allegedly returned to Kosovo met the requisite level of organisation, and that their violence met the threshold level of intensity; meaning, that these alleged Serb assailants engaging in isolated incursions in small numbers had a command structure, could carry out operations in an organised manner, had the requisite level of recruitment and logistics, and possessed a standard of discipline and could implement the basic obligations of Common Article 3.[273]

148. Following the withdrawal of the FRY forces on 20 June 1999, there is no evidence that the unidentified Serb assailants come anywhere near this level of organisation, nor has the SPO made any attempt to establish or explain how they allegedly meet the requisite organisation threshold. Individual acts of violence after 20 June 1999 do not extend the NIAC, because they cannot meet the indicators of intensity or organisation. This is because, in reality, after 20 June 1999, the former belligerent parties did not again clash.

(iv) The Entry of the Internationals

149. As such, the SPO evidence demonstrates that, by 20 June 1999, one of the warring parties had withdrawn from the territory. This removed any possibility that the hostilities could resume between "the KLA" and "the Serbian forces". The NIAC, as

[273] *Boškoski* Judgment, paras 199-203.

defined by the SPO, was over. There was, of course, an additional aspect of the situation in Kosovo which further reinforces 20 June 1999 as the end of the armed conflict; the entry of UNMIK and KFOR. The entry of their personnel was contingent on the end of the armed conflict, and their mandate pursuant to Security Council Resolution 1244 was incompatible with one. Importantly, their presence and supervision of both the FRY withdrawal and KLA disarmament meant that the peaceful settlement was indeed sustainable and sustained.

150. Other UN missions have been established to deploy into situations of ongoing armed conflicts. The Security Council resolutions creating them refer to this situation of armed conflict and, for example, call on the "parties to the conflict" to create the conditions necessary for the "end of the conflict".[274] When UN missions are deployed into an active armed conflict, they operate within the applicable IHL framework, and the conduct of their personnel is regulated by the UN Secretary General's Bulletin on "*Observance by United Nations forces of international humanitarian law*".[275]

151. UNMIK was not created to be deployed into an ongoing armed conflict. Security Council Resolution 1244 authorised KFOR to take measures necessary to maintain the peace, while UNMIK was authorised to take measures to restore civilian order and government. This situation "no longer required an application of rules of armed conflict, but of civilian control authorized by the UN and supported by a military

[274] *See, e.g.*, UNSC, Resolution 2779(2025), S/RES/2779, 8 May 2025, para. 5: "*Demands* that all parties to the conflict respect their obligations under international law, including international humanitarian law as well as international human rights law as applicable, *and demands* all parties to the conflict and other armed actors to immediately end the fighting"; UNSC, Resolution 2149(2014), S/RES/2149, 10 April 2014, paras 7, 13: "Calls upon all parties to armed conflict in the CAR", and "Welcomes the Secretary-General's call for the revitalization and […] to lay the ground for an end to the conflict"; UNSC, Resolution 743(1992), S/RES/743(1992), 21 February 1992, para. 5: "the Force should be an interim arrangement to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis".

[275] UNSG, Secretary-General's Bulletin, Observance by United Nations forces of international humanitarian law, ST/SGB/1999/13, 6 August 1999.

peace-keeping force."[276] As such, Resolution 1244 makes no reference to an ongoing conflict, or "parties to the conflict", nor calls for steps to be taken for it to end. Rather, UNMIK's mandate was "deterring renewed hostilities" and "ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces".[277]

152. UNMIK was, and has always been considered, a post-conflict mission. UN reports and documents consistently recognise the armed conflict as having ended by "20 June 1999", and refer to UNMIK in post-conflict terms, as having been created to "help the people in Kosovo to rebuild their lives and heal the wounds of conflict",[278] and dealing with "a broad variety of urgent needs in the aftermath of the Kosovo conflict".[279] The UNMIK budget in 1999 similarly reflects activities to be conducted in a country having emerged from conflict, with no expenditure for engaging in ongoing hostilities or guiding the warring parties towards a ceasefire. UNMIK did not have a mandate to descend into an ongoing conflict or indeed become a party to it. **W02183**, the legal adviser to UNMIK's interim SRSG confirmed this, linking UNMIK's deployment to the end of the conflict and testifying that "[o]therwise, we wouldn't have gone there".[280] This is not a legal or jurisdictional technicality that can now be re-written by the SPO of the Kosovo Specialist Chambers, 26 years after the fact.

153. Importantly, in order to maintain the peace, UNMIK also supervised the FRY withdrawal and the KLA demobilisation. UNMIK's mandate to secure and administer the territory gave it the absolute authority to do so. **W02161** explained that "Kosovo

[276] J.A. Burger, 'International humanitarian law and the Kosovo crisis: Lessons learned or to be learned', (2000) 82(837) *RICRMARS* 129, p. 138; *See also* C. Greenwood, 'The applicability of international humanitarian law and the law of neutrality to the Kosovo campaign' (2002) 78(1) *International Law Studies* 35, pp. 56-60.
[277] 1D00078, para. 9(a).
[278] P02563, p. SPOE00000777, para. 117.
[279] P02563, p. SPOE00000778, para. 123.
[280] Transcript, 20 January 2025, p. 23920.

was put under UN administration, no longer having a functioning government".[281] According to **W02183**, UNMIK was the first time that the UN had been given an executive mandate which was an enormous responsibility for the SRSG who was not just an administrator, but now *de facto* the executive administrator of a territory.[282] **W02153** agreed that "the result of the UNSCR 1244 was that the entity responsible for governing Kosovo was the UN".[283]

154. That the UN had absolute authority was also recognised by the KLA. **W04765** explained that "[a]fter 12 June, the KLA did not have any jurisdiction in the territory of Kosovo. Apart from the fact that they were restricted to their areas, locations where they were stationed, they had no right to take any steps or action because this was under the responsibility of KFOR and UNMIK."[284] Hundreds of millions of euros were spent to ensure that the conflict, now over, remained over and that there was, in law and in fact, a lasting cessation of hostilities with no real risk of resumption.

155. To say that, in fact, UNMIK was operating in an armed conflict, would require a complete and retroactive reinvention of the mandate and scope of a decades-long UN mission. It would also greatly devalue the success of all those who entered Kosovo under the auspices of KFOR and UNMIK, immediately after a period of intense conflict, and at great personal risk, in order to keep the peace.

(v) The Demobilisation of the KLA

156. The SPO position that the conflict continued "through September" is further undermined by one party having left the territory, and the other being in the process of demobilising. A NIAC will be over when the intensity of the hostilities **or the**

[281] Transcript, 5 December 2023, p. 10582.
[282] Transcript, 20 January 2025, p. 23887.
[283] Transcript, 19 July 2023, p. 6117.
[284] Transcript, 16 November 2023, p. 10331.

organisation of the non-State actor has factually eroded to such an extent that the threshold is no longer met.[285] On 21 June 1999, an "Undertaking of Demilitarisation and Transformation by the UCK" was signed by both Hashim Thaçi on behalf of the KLA and COMKFOR (**W02153**). The Undertaking provided for "a ceasefire by the UCK, their disengagement from the zones of conflict, subsequent demilitarisation and reintegration into civil society, in accordance with the terms of the UNSCR 1244", with COMKFOR supervising implementation.[286] The KLA agreed to a timetable, including that "[w]ithin 90 days all automatic small arms weapons will be stored in the registered weapons storage sites".[287]

157. [REDACTED] shows the phases of KLA demilitarisation.[288] 'K Day' denotes the day the agreement was signed, being 21 June 1999. After 'K+7' (28 June), the KLA committed that KLA members would only wear KLA uniforms and carry weapons inside assembly areas, being an area where you contain forces who are being demobilised.[289] Minutes of a [REDACTED], report that **W02183** [REDACTED].[290] [REDACTED] was also shown to **W01453**, who testified that it was in fact implemented by the KLA.[291]

158. The internationals agreed. At a [REDACTED], **W02135** told KLA Commander Agim Çeku and KLA Zone Commanders that [REDACTED].[292] This was reflected in a report from **W02135** to the [REDACTED], that [REDACTED]."[293]

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[285] *See above,* para 50. *See* also, fn. 221.
[286] P01444, para. 1.
[287] P01444, para. 23(f)(4).
[288] 1D00211.
[289] [REDACTED]; 1D00211, p. SPOE00000734. *See also* Transcript, 6 November 2024, p. 22140, where W01453 noted this provision "meant to gather soldiers at a specific location which they were not supposed to leave or operate outside those points."
[290] P01987, para. 3(a).
[291] Transcript, 6 November 2024, pp. 22138-22140: "A. Yes, I recall this, because I also had three bodyguards and my personal weapon. […] The other soldiers were not allowed to leave the assembly points or to go around in uniform or armed. This is a point that we did implement at the time."
[292] 1D00212, para. 9; [REDACTED].
[293] 1D00213, pp. SPOE00000095- SPOE00000096; [REDACTED].

159. **W03881** served as part of the German KFOR contingent in Kosovo from 14 June to 3 August 1999 and accordingly testified as to his own first-hand experiences on the ground. He stated that KFOR entered between 11 and 14 June 1999, and that the KLA disbanded relatively quickly. Within the first weeks, KFOR was able to consolidate its position, and the KLA was disarmed by the end of June.[294] At the end of June 1999, **W03881** drove to Pristina from Prizren and didn't see any checkpoints: "if there had been checkpoints of the KLA we would have disbanded them". He also said the demilitarisation took place without major problems.[295] In a diary entry on 30 June 1999, he said "the KLA has moved into Assembly areas on schedule and is sticking to the agreements. The KFOR leadership also seems to see it that way".[296]

(vi) Conclusion

160. The FRY agreed to a cessation of hostilities with KFOR on 9 June 1999 and left Kosovo by 20 June 1999, in a process which was supervised by, and met with the approval of, the international civilian administration. The hostilities between the FRY and the KLA never re-ignited inside Kosovo, let alone re-ignited at any level of intensity. There is no evidence that any acts of violence that post-dated 20 June 1999 were committed by, or against, Serbian forces who met the organisational requirement of party to an armed conflict.

161. UNMIK defined the armed conflict as ending on 20 June 1999 in Regulations 2000/66 and 2006/50,[297] which remain in force in Kosovo unless repealed.[298] Not only have these regulations **not** been repealed, but the date of 20 June 1999 has been

[294] Transcript, 22 May 2024, p. 15706.
[295] *Idem*, pp. 15657-15659; P01191.4_ET, pp. 8-13.
[296] *Idem*, p. 15659; P01194_ET, p. 071229.
[297] 1D00254 and 1D00255.
[298] 1D00079, Section 4.

affirmed by the Kosovan Parliament,[299] and forms the basis of the temporal scope of war crimes prosecutions before Kosovan courts.[300]

162. When considered against these facts and overwhelming evidence, the SPO's position that the armed conflict did not end by 20 June 1999 but continued through September 1999 amounts to a revision of history. A finding that the conflict was still ongoing in mid-September 1999 would be such an historical outlier as to impact the credibility of the KSC. It will also give rise to a violation of the accused persons' constitutional rights to equality before the law, guaranteed by Article 24 of the Constitution of Kosovo, arising from the failure of a KSC Trial Panel to treat them in accordance with established caselaw.

163. The evidence heard in this case does not support any finding that the conflict extended until September 1999, nor does it support the SPO's position that until this date "the redeployment of FRY forces and the resumption of hostilities in Kosovo was a real concern among the parties to the conflict".[301] This was not the case, nor have the witnesses in this trial said that it was. The conflict in Kosovo was over by 20 June 1999, and there is no evidence capable of supporting a conviction for war crimes for any acts alleged to have commenced thereafter.

IV. RELIEF REQUESTED

164. For these reasons, the Defence requests the Trial Panel take notice of the Defence arguments narrowing the scope of the armed conflict in Kosovo and dismiss the war crimes charges outside of the above-delineated time period, as listed in Annex 1.

[299] 1D00106, Article 3(1)(1.8).
[300] *See,* fn. 225 above.
[301] SPO PTB, paras. 698-699.

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Respectfully submitted on 12 June 2025

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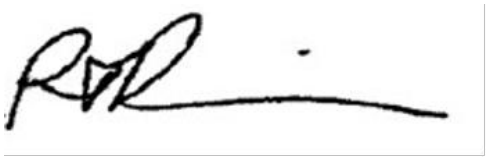

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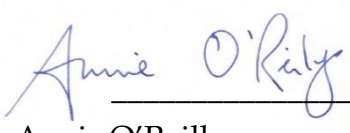

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