Thursday, 15 September 2022

[Closing Statements]

[Open session]

[The accused attended via videolink]

--- Upon commencing at 9.30 a.m.

PRESIDING JUDGE VELDT-FOGLIA: Good morning.

Court Officer, could you please call the case.

THE COURT OFFICER: Good morning, Your Honours. This is KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

First of all, I will call the appearances.

Please, Mr. Prosecutor, could you tell us who is present for the Specialist Prosecutor's Office.

MR. MICHALCZUK: Good morning, Your Honours. And good morning, everyone in and outside of this courtroom. The SPO today is represented by Mr. Jack Smith, the Specialist Prosecutor; Prosecutor Silvia D'Ascoli and Prosecutor Filippo de Minicis; also with us is Julie Mann, our case manager; and I am Cezary Michalczuk, the SPO Prosecutor.

PRESIDING JUDGE VELDT-FOGLIA: Thank you.

Victims' Counsel, you have the floor.

MS. PUES: Thank you. And good morning, Your Honours, and good morning, everybody. The participating victims are today, as yesterday, represented by Jack Provan as Junior Legal Associate; Brechtje Vossenberg as co-counsel; and I am Anni Pues, counsel in

this case.

PRESIDING JUDGE VELDT-FOGLIA: Thank you.

Defence counsel, you have the floor.

MR. VON BONE: Good morning, Your Honour. Defence is represented by myself, Julius von Bone, counsel; my co-counsel, Mr. Betim Shala; Fatmir Pelaj, investigator and interpreter. And joining us via remote is Mr. Mustafa. Thank you very much.

PRESIDING JUDGE VELDT-FOGLIA: Thank you. And for the record, you are appearing before Trial Panel I.

On Tuesday and Wednesday, we heard the closing statements by the Specialist Prosecutor's Office and by the Victims' Counsel and partly by the Defence. Today we will continue with the closing statements of the Defence.

And before we will do that, I would like to say something to you, Defence counsel. Yesterday, we had a record amount of in-court redactions, and I urge you to exercise caution in this regard. If there is information you should refer to that could identify the identity of protected witnesses, please request to go into private session and then we will discuss the issue in private session.

Yes? I see you nodding.

You indicated yesterday that you have one and a half -- you will need one and a half hours, or maybe less, but you will finish in the first session. If for any reason you need more time, please tell the Court.

You have the floor.

MR. VON BONE: Thank you very much, Your Honour. And I have reviewed the documentation that I'm still to speak about, and I think I have managed also to find a possibility to do much more in public session. However, briefly, then sometimes going into private session in order to explain something. I think that will make it easier. Thank you very much.

Having said that, Your Honours, the Defence would like to now discuss the issue of the alleged torture of the seven individuals.

Torture, Your Honour, is found in Article 14(1)(c)(i) of the Law. The war crime of torture is not in any manner defined under the Law of the Specialist Chambers. It is only mentioned next to mutilation and cruel treatment.

In order not to become repetitive, Your Honour, the Defence reiterates its position on the characterisation of the armed conflict as well as the things we have said about the protected persons under Common Article 3 of the Geneva Conventions.

Regarding the protected persons. The Defence position on whether the individuals that were held would fall under the protected persons, it is in this regard the same. To that effect, we pointed out earlier that the individuals are not falling under the protection of the persons that are envisaged under Article 14 of the Geneva Conventions of 1949.

The general position of the Defence regarding this crime is the following.

It is the position of the Defence that Mr. Mustafa did not

commit this crime. It is as simple as that. He was not aware of the fact that these people were, in fact, detained or for what reason they might have been detained. He does not know where they were detained. He has not ordered or instigated these crimes. Mr. Mustafa did, in sum, not commit any torture through the modes of liability as indicated by the SPO.

There is no evidence that proves any omission by him, torture would have been committed against any of these individuals. So no commission by omission.

As previously discussed, he does not even know three of the four individuals that we discussed. The fourth individual, 03594, is someone he knew. However, the Witness 3594 stated that he has never seen Salih Mustafa on the scene. And had 3594 seen Salih Mustafa, he would have said so. That was very clear in his testimony. In his words: "Even if we were my own brother, I would have not defended him."

We discuss, then, the crime of torture. The convention against torture and other cruel, inhuman, or degrading treatment or punishment was enacted in 1984 and entered into force in 1987. The definition of the crime of torture differs in the Convention on Torture from the way it is understood under Common Article 3 of the Geneva Conventions.

The Geneva Conventions and Additional Protocols do not define torture. The ICTY defines torture, for the purpose of humanitarian law, as the following:

"For the crime of torture to be established, whether as a war crime or as a crime against humanity, the following three elements must be met:

"(1) There must be an act or omission inflicting severe pain or suffering, whether physical or mental;

"(2) The act or omission must be intentional; and

"(3) The act or omission must have been carried out with a specific purpose such as to obtain information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person."

It was in paragraph 235 of the Limaj case.

Now, as for cruel treatment, the ICTY applied the following definition.

In the same Limaj case, paragraph 231, it concluded:

"Cruel treatment under Article 3 of the Statute is defined as an intentional act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity, to a person taking no active part in the hostilities."

As to the *mens rea*, it concluded, in the same case, that:

"As regards to *mens rea*, the perpetrator must have acted with direct intent to commit cruel treatment or with indirect intent, i.e., in the knowledge that cruel treatment was a probable consequence of his act or omission."

The Convention Against Torture of 1987 defines it as follows:

"For the purposes of this Convention, the term 'torture' means

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ..."

This is where I stop. It goes further that definition, but for the purpose of this discussion this is the important part.

There is a difference between cruel treatment and torture. It comes in two aspects in this issue. The inflicted pain and, on the other hand, the purpose for which the pain is inflicted. In the definition of the Common Article 3 of the Geneva Conventions, regarding to the ICRC commentary, cruel treatment will inflict serious pain on another person. Even though there is no definition in Common Article 3 of the Geneva Convention with regard to torture and the commentary of the ICRC to Common Article 3 on this subject does not seem to take a clear-cut decision, the Defence is of the opinion that the right determining factor must, for inflicted pain, be severe, so that is severe pain.

The reason is simple. The Defence adheres to the torture convention. In the torture convention, as well as Common Article 3 of the Geneva Conventions, regarding the inflicted pain, is that the perpetrator must inflict severe pain.

With cruel treatment, the inflicted pain must be serious. So there is a different standard regarding the inflicted pain. Criteria regarding the difference between the two types of inflicted pain can be the duration, the frequency, the usage of tools, number of perpetrators, whether it is a single act or whether the infliction of pain is repetitive, whether it takes place in day-time or in

night-time. These factors, at least in some form of combination with each other, would inflict severe pain rather than serious pain on a person.

We have covered some of these factors when we spoke about the cruel treatment yesterday. As you recall, Your Honour, I went through each and every of the individuals I spoke about what, in fact, they had experienced. So in that perspective, we are clear on what the witnesses have testified about.

The second difference is that for torture, the severe physical or mental pain or suffering upon one or more persons must be inflicted for a particular purpose. Such purpose amounts, among others, obtaining information or a confession, punishment, intimidation, or coercion, or for any reason based on discrimination of any kind.

The special purpose, Your Honour. When we look at the SPO's final trial brief, we believe that the SPO envisages the same definition of the crime of torture as it is understood under the common article of the Geneva Conventions. Right after paragraph 307, the SPO final trial brief, the SPO listed the aims for which the infliction of severe pain or suffering. It listed the purposes of obtaining information, punishing, and coercing or intimidation.

Your Honour, the Defence is of the opinion that there is no evidence of a special purpose as envisaged in the definition of torture, be it the definition of the convention, be it the ICC elements of the crime, or be it the standard that was applied by the

ICTY. It is simply absent in this case.

There is no evidence for these purposes. W1679 was, by his own account, accused of something: Being a spy. But no particular aim comes out of the statement regarding the aim. That questions had -- in fact, there were very little questions asked. The questions that he received were general in kind. Who are you? was a question. And why are you here? Or why are you lying? Or tell me why you are here? Statement 4 October, page 867 and 868 of the transcript.

The questions, Your Honour, clearly indicate no particular aim at all. Therefore, we can say there was no special purpose that was aimed by whoever asked the questions.

Witness 03593 was, by his own account, accused of something; namely, being a collaborator. He was asked whether he, that is, 3593, knew some thieves. Statement 20 September 2021, page 409 and 410 of the transcript, as well as page 438.

Now, Your Honour, an accusation does not imply any specific purpose of a perpetrator. It is a simple suspicion or accusation that can be made. One cannot derive from such a comment whether such a statement is aimed for any particular purpose.

And regarding the question whether he knew some thieves does not amount to any special purpose that is enumerated in the title of the paragraph of the SPO's final trial brief. One cannot derive, that is, that this kind of question is aimed for obtaining any relevant information or that it is aimed at punishing, coercing, or intimidating.

W3594 is the next witness, and he, 3594, by his own account, was not accused of anything. In his statement, he speculated himself about the reasons of his arrest and detention. He speculates on it simply because he was never told why he was detained. A close reading of the transcript reveals that he did, in fact, state nothing of any kind of question that was being asked during the conversation - the SPO called this interrogation - during the conversation with the people in the room that he described directly upstairs from the barn where he was kept.

The transcript reads as follows. Question:

"Do you think that *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* -- and you told us that you were also part of a *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* may have had anything to do with your arrest?"

And the answer is:

"I think, I have some suspicion that probably that is one of the reasons why I was imprisoned."

And the question again is:

"Why would the *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* be a possible reason for your arrest? If you could explain us and the Panel. What led you to believe that."

And the witness answered:

"Yes. The reason for that is that *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*

[REDACTED] Pursuant to In-Court Redaction Order F479RED.

[REDACTED] Pursuant to In-Court Redaction Order F479RED. So that was not one of the reasons that was told to me while I was detained in Zllash, but this may as well be one of the reasons why I was sent there."

The statement is on 13 October, page 1169 of the transcript.

During the conversation that W3594 had with the people in the room, he did not specify any question that he was asked. Therefore, based on the testimony of this witness, it cannot be established that he was, in fact, interrogated at all, nor can it be established that any question would have been asked for any special purpose as enumerated in the title of the paragraph of the SPO's final trial brief.

One cannot derive that this kind of question is aimed for obtaining any information or that it is aimed at punishing, coercing, or intimidating.

The next witness, Your Honour, is 4669.

PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, I would like to go into private session for a moment.

MR. VON BONE: Yes.

PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you bring us into private session, please.

[Private session]

[Private session text removed]

[Private session text removed]

[Open session]

THE COURT OFFICER: Your Honours, we are back in public session.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

Defence counsel, you have the floor.

MR. VON BONE: So we are still in private session, Your Honour?

PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

MR. VON BONE: Oh, sorry. Okay. Yes. Then I would ask to go into private session. It's a little bit ...

PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

[Private session]

[Private session text removed]

[Private session text removed]

[Open session]

THE COURT OFFICER: Your Honours, we are back in public session.

PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, we are in public session. You have the floor.

MR. VON BONE: Thank you very much, Your Honour.

Unidentified person 1 has never been identified or heard in court, so we have no evidence regarding whether he was asked any question for a special purpose. The alleged victim of the murder in this case has never been heard in court, so we have no evidence regarding whether he was asked any question for a special purpose. The evidence of 1679 is only about what this alleged murder victim was accused of, not whether any particular question was asked that served any particular purpose.

1679 said only something about of what the victim was accused

of, not what he was questioned about.

And 3594, regarding this person, said he was called a thief.

Then I turn to unidentified person 2. Unidentified person 2 has never been heard in court, so we have no evidence regarding whether he was asked any question for a special purpose. According to hearsay testimony of 1679, he was accused of something, namely, being a spy. Once again -- and this is the only thing that has been told about this person. Once again, an accusation of any kind does not amount to a special purpose that anyone might have had when inflicting pain on this person.

Therefore, it can simply not be established whether for any of the people that have been detained, questions were asked for any special purpose. Therefore, there is no evidence.

As for the accusations that were allegedly made, due to their general nature, no particular purpose can be inferred of these. One can simply not say or imply that the general nature of the questions or accusations serves the purpose to obtain some kind of information or some kind of specific information. If one asks, "Why are you here?" then what specific information is being sought by the perpetrator? Or what has the question, "Are you a thief?" has to do with the armed conflict? Such nexus is only assumed by the SPO, but no evidence to that effect has been produced or displayed.

It can simply not be deducted from any of the questions of people who only speak on and by their own account that any special purpose would have been sought by the perpetrator.

Let me turn then to another topic, Your Honour, and that is the concurrence of offences, "concours d'infractions."

PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, at one point I would like to make, for the record, that the person you have indicated as unidentified person 1 --

MR. VON BONE: Yes.

PRESIDING JUDGE VELDT-FOGLIA: -- yesterday, we have been using his name in court already --

MR. VON BONE: Yes.

PRESIDING JUDGE VELDT-FOGLIA: -- which was Burmak. So not to complicate things, the second name has been --

MR. VON BONE: Yes.

PRESIDING JUDGE VELDT-FOGLIA: -- not been -- should not be named, but this first one you can name in your future submissions this morning.

MR. VON BONE: Thank you very much, Your Honour. We then continue with the concurrence of offences, or "concours d'infractions."

Let me begin to say, Your Honour, that the general principle of criminal law is that the definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted, or convicted.

The Defence first examines concurrence as it relates to the umbrella laws of war crimes under international law as the title of

Article 14 of the Law of the Specialist Chambers reads, addressing the elements that could be invoked when the laws of 14(C)(i) on cruel treatment and torture is applied to different factual scenarios.

Between the two crimes, there are two elements that, if applied in a particular case, could be relied upon to prove one crime but not the other. In such case, there would be no overlap of elements.

First, and most fundamentally, Your Honour, the two crimes of cruel or torture would, by their very nature, be committed through the infliction of severe physical or mental suffering or pain. Thus, the element could be the same given the right factual circumstances.

Second, under the Geneva Convention, Common Article 3, the enumerated crimes must be committed specifically against a civilian population.

Third, where the Prosecution case is based on the same grounds, the same element would be the same. In this case, the ground to inflict pain on detained people.

Fourth, torture requires to produce evidence that at least one of the enumerated purposes was the reason to inflict the pain on the detained people.

In sum, the Defence finds that one may have specific intent required to commit cruel treatment that may also fulfil the same intent requirement for torture while carrying out acts that satisfy the material elements of both crimes.

The protected interests.

I address this topic in relation to the, what I would call,

social interests element. In relation to protecting differing social interests, the elements of the two crimes may overlap when applied in some factual scenarios but not in others.

Under the crimes of cruel treatment and torture, the social interest protected is the prohibition of the infliction of severe pain to the protected class of persons. The class of persons in both cases under the law is limited to the civilian population. Therefore, where the status of the victims and the elements of the crimes are the same, however, the criminal offences of the law - and that is 14(C)(i) - may be said to protect the same social interests.

Salih Mustafa is charged cumulatively with cruel treatment under Count 2 and torture under Count 3. In the instant case, the accused person allegedly participated or ordered infliction of severe pain committing crimes in Zllash. The Prosecution alleges that Mustafa intended to inflict severe pain or suffering upon people that were detained in Zllash.

Evidence is submitted by the SPO that the infliction of pain for which the accused was responsible and was perpetrated against civilian population. But the conduct relied upon to prove the two crimes was the same: The physical and mental elements.

The Prosecution's case is based on the accused's objective to inflict pain or suffering on detained people in Zllash. The same acts, the very same acts or omissions serve as the basis for the Prosecution case in both of the two types of crimes in question.

For example, the severe infliction of pain element, which is

required to meet the criteria of cruel treatment, also served to prove that the acts perpetrated by the accused were torture acts; namely, the infliction of pain or suffering with the intent to obtain information, punishing, coercing, or intimidating the people that were allegedly detained at the Zllash detention compound.

With regard, Your Honour, to the *mens rea*. It is the same intent that has served as the basis for both types of crimes in question. Therefore, the elements and the evidence used to prove these elements were the same for the crime of cruel treatment and the crime of torture in the instant case.

The victims held the same status whether they were victims of the cruel treatment acts or of the crimes of torture acts. Thus, in this case the same evidence established that the act of the accused were intended to inflict severe pain to civilians under cruel treatment and equally served as evidence of the torture acts against the same civilians.

Therefore, Your Honour, in the instant case, the social interest protected, that is, the prohibition of the infliction of severe pain or suffering of civilian population, was the same for cruel treatment and the crimes of torture and murder under Article 14(C)(i) of the Law of the Specialist Chambers.

The Defence finds that the element -- excuse me, Your Honour. I say the last sentence again because I made one mistake.

Therefore, in the instant case, the social interest protected, that is, the prohibition of the infliction of severe pain or

suffering of civilian population, was the same for cruel treatment and the crime of torture under Article 14(C)(i) of the Law of the Specialist Chambers.

The Defence finds that the elements of the crimes are the same for both crimes and that the evidence used to prove one crime is also used to prove the other. The evidence produced to prove one charge necessarily involved proof of the other.

The culpable conduct, that is, infliction of severe pain or suffering, relied upon to prove cruel treatment also satisfied the *actus reus* for torture.

The alleged *mens rea* element in relation to both crimes was also the same, that is, the infliction of severe pain or suffering on civilian population.

Finally, the protected social interest in the present case surely is the same. The class of protected persons, that is, the victims of these acts, for which Mustafa was allegedly responsible were civilians. In the factual scenario in the present case, the crimes of cruel treatment and torture overlap. Therefore, there exists a "concours d'infractions idéal" or the concurrence of violations or infractions with regard to the two crimes within the single crime site. That is to say, these offences were the same in the present case.

A single set of actions or conduct fulfils the conditions required to constitute various offences. The Prosecution, Your Honour, used the same elements to prove both types of crimes as

they applied to a single crime site. In the context of the present case, the two crimes in question protected the same social interest. Therefore, the count of cruel treatment is subsumed fully by the count of torture and maybe vice versa. That is to say, they are interchangeable as they are based on the same prohibited conduct.

The Defence, Your Honour, is, therefore, of the view that the circumstances in this case, as discussed above, do not give rise to the commission of more than one single offence. The scenario only allows for a finding of either cruel treatment or torture. Therefore, if one of the crimes is established against the accused person, then he cannot simultaneously be convicted for the other crime. This would be improper as it would amount to convicting the accused person twice for the same offence.

If the Prosecution, Your Honour, if the Prosecution intended to rely on the same elements and evidence to prove both types of crimes, it should have charged in the alternative, or the Prosecution should have distinguished between the individuals, to which individuals the particular conduct amounted in cruel treatment and to which individuals the particular conduct amounted to torture. As such, these cumulative charges are improper and untenable.

Regarding the concurrence of offences. The Defence is of the opinion that there is, in this indictment, based on the facts of the case, a concurrence of offences, a "concours d'infractions." And it is the position of the Defence that one cannot be charged for the same set of facts or, better to say, the same set of acts for two

separate crimes. The alleged infliction of pain to the witness that have been heard in court cannot be qualified two times, in particular, because the acts that were allegedly committed to the four witnesses were one and the same. The acts that were committed can only be either one of two crimes. They cannot be the same. Especially in the case when we look at the torture, we look exactly at the same acts as the acts that fall under cruel treatment.

The acts to each of the four SPO witnesses were committed in one action. If one such action would amount to multiple crimes, there is no distinction that can be made between the two crimes. I take out for a moment the special purpose that is necessary for the torture, then what is left is the beatings, the inflicting of pain, but such beating or infliction of pain cannot be qualified under the two separate crimes of both cruel treatment and torture.

Therefore, it is the position of the Defence that there must be made a choice in qualifying these acts if they were to be established at all.

I finish here where I started. It is a general principle of criminal law that the definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted, or convicted.

The Defence position is that Salih Mustafa cannot be convicted for both the crimes of cruel treatment and torture.

I turn to the murder, Your Honour.

The Prosecutor, Your Honour, claims that for the evidence presented, the victim was killed by members of the BIA unit. However, the Prosecutor has not provided us with any material evidence to prove that the victim was killed or the cause of death of the victim. Likewise, the Prosecution has not provided any evidence to prove the time of death and the place of death.

The only evidence that the Prosecutor has offered for the testimony of the victim's murder are the photos ERN SPOE00209313 until 320 and which the Witness 04676 took at the scene at the time when the victim was exhumed.

At the time when the victim was exhumed, *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*

[REDACTED] Pursuant to In-Court Redaction Order F479RED.

[REDACTED] Pursuant to In-Court Redaction Order F479RED. The witness said, on page 1604 of the court session of November 17, 2021:

[REDACTED] Pursuant to In-Court Redaction Order F479RED.

[REDACTED] Pursuant to In-Court Redaction Order F479RED.

[REDACTED] Pursuant to In-Court Redaction Order F479RED.

The testimony of the witness confirms the fact that when the victim was exhumed, a hole was noted in his body, but none of the persons present had the opportunity to determine the cause of the creation of this hole as well as the fact that the post-mortem examination was never done.

The witness on page 1619 in the court session of 17 November 2021 stated:

"You can see a hole, but no one has been able to say what it was

caused by. But the state of the body of the victim is what you can see here.

"No, there has never been a post-mortem examination of the -- of this corpse, that is."

And on page 1620, this person stated:

"It's a hole. It's a hole which was observed and marked as being suspicious, as being something unusual in the corpse. The corpse had started its decomposing process, so it is very difficult to conclude what this hole, in fact, is."

And the question of the Prosecutor on page 1620 of the same testimony date was:

"Did anyone check whether there were other similar holes on parts of the body? The front, the back, other sides."

And the witness stated:

"No, we didn't continue with controlling the corpse any further, so this was the process of identification of the clothes that the person was wearing, and the description was enough for us to ascertain that's the body of the late victim.

"I have not managed to identify any other sign because, like I said, the corpse was in the process of being decomposed and it's very, very difficult to identify other marks on the corpse in this point in time ."

On page 1627, the witness continued:

"However, in those circumstances, it was difficult to identify whether there was a bullet or not, a shot in the body, because we

were not forensic expert. No pathologist was there and no other type of experts was there in order to identify what the origin of the hole was."

The testimony of the witness also proves the fact that the grave in which the victim was buried was not hidden and it was easy to identify the grave. Thus, the witness in questioning of the Defence declared, on page 1631:

"My initial impression on those two branches put on top of each other was for -- was a means of identification. They are not there to conceal something or to conceal a grave in any shape or form. There are other ways and means of trying to conceal all traces, erase all traces of a burial site. So this is the meaning of those two branches on top of the burial site."

Your Honour, I move to another topic, which is the matter of the SPO's shift in the location where the people were kept.

The matter of the SPO's shift in the location where the people were kept. In the decision of the Panel of 8 September 2022, filing F471, the Panel asked the SPO to clarify which of the specific buildings located in what the SPO calls the ZDC were allegedly used to detain, interrogate, and mistreat individuals during the timeframe of the charges.

The indication that the SPO gave was that it was building 4A where most of the individuals were detained. The SPO says that there were six in this building. Next to the building 4A, what we call the oda, that is, to the right of building 4A, the same six peoples were

held in the basement of the oda.

According to the SPO, six individuals were mistreated in building 4A as well as in the basement of the oda.

As for interrogation and mistreatment, this was on the upstairs part of the oda.

The SPO has shifted its position from one building to three buildings where people were kept. All the SPO witnesses have been interviewed by the SPO about one single building and not with three buildings. The SPO deceived the Defence or misguided the Defence by suddenly changing the location from one location to a couple of others. We will deal with this issue in a chronological order of events.

We begin with the confirmation of the indictment.

The Pre-Trial Judge confirmation of the indictment. When the SPO filed its material for the Pre-Trial Judge for getting the indictment confirmed, even the Pre-Trial Judge assumed it was a single building in which the people were detained. In the decision to confirm the indictment, the Pre-Trial Judge considered, regarding to arbitrary detention, and I quote the paragraph 95 of his decision:

"Regarding the material elements of the crime, the Pre-Trial Judge finds that the supporting material indicates that, on or around 1 April ... at least six detainees, from different locations across Kosovo, were taken into custody by KLA members and subsequently detained at the Zllash Detention Compound. The detainees concerned were kept in a room that was locked with chains

and guarded. Six detainees were kept in custody for 18 days, until around 19 April ... a seventh detainee was in custody for three days."

Regarding the cruel treatment of the people, the Pre-Trial Judge considered, and I quote the relevant paragraphs of the Confirmed Indictment, paragraph 104:

"Regarding the material elements of the crime, the Pre-Trial Judge finds that the supporting material indicates that, between ... 1 April ... and 19 April ... KLA members caused serious physical and psychological injury and suffering upon at least six detainees at the Zllash Detention Compound. The conditions of the detention were wholly inadequate. Detainees were deprived of liberty without due process of law. They were kept in a barn for animals, with hay on the ground, no proper window or natural light. Food and water were insufficient and not provided regularly to, the point when detainees were freed they could not stop eating food. Detainees had to sleep on the ground, in water puddles and in cold conditions. They had no access to toilet or fresh water and had to relieve themselves in a bucket in the barn. Not only was there no medical care, but detainees were beaten up if they asked for a doctor."

Paragraph 105 reads:

"The detainees concerned were beaten almost daily, sometimes twice a day, both in the room where they were kept and in another room situated upstairs.

"From the barn where they were kept, detainees could hear the

other inmates screaming while being beaten upstairs, before they were taken back to the barn."

Lastly, I want to say that the Defence has no position when it comes to the confirmation of the indictment.

The pre-trial brief of the SPO, that's filing F88-A01, given to the Defence on 11 October. In the pre-trial brief of the SPO, the SPO systematically indicated that the witnesses were held in one place and were interrogated upstairs of the same place. Paragraph 30, the SPO stated, in its pre-trial brief:

"The evidence will show that the prisoners were kept on the ground floor of the building," singular, "used by the BIA."

So:

"... were kept on the ground floor of the building," and I say singular, because it is in the singular, not in the plural, "used by the BIA unit as their base. This building," singular again, "formed part of the Zllash detention compound where the crimes alleged in the indictment were committed."

How clear can it be that the SPO only envisaged one building? They stated it in their own pre-trial brief.

But another example we find in paragraph 35. The SPO wrote:

"As noted, he also admitted staying at the house in Zllash where BIA soldiers slept numerous times during the indictment period and where the crimes alleged in the indictment took place."

Another example in paragraph 64. The SPO wrote:

"The detainees were kept in the stable of an old house, a sort

of barn for animals, which was locked with chains. The door was guarded. The place was in poor condition with hay on the ground, no proper window, and no light or air coming in from the outside."

But even the evidence that they produced in the pre-trial brief, citing the very witnesses that we are discussing, will give some examples. Paragraph 69:

"W3593 heard other detainees being beaten on the floor above the stable where he was detained."

Paragraph 71, for example:

"04669 was beaten both in the stable and upstairs. When upstairs, he was once told to take off his clothes on the upper part of his body and was beaten on the back and his shoulders with a rubber police baton by two KLA members in black uniforms."

Three, then we have the witnesses.

1679 was shown a picture of the oda, that is SPOE128388, as early as *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*. The interview of 1671 [sic] is ERN 100807-TR-ET, Part 1, page 6, 7, 9, and 10. He encircled at the time the two-storey house, the oda, on that picture. This is entirely documented in the Official Note of the SPO that runs from ERN 100801 until 100806.

No question was asked about building 4A or building 5 or whether he was kept in any other building than the oda building. In the same interview the SPO, on page 10, with this witness, he was shown another photo. SPOE00128395 is the other photo that was shown to him. It is the photo of the door of the oda.

On page 11 of the same interview of the SPO, he was shown SPOE00128392. He stated about the photo that he had been kept in the basement of it. No question was asked about building 4A or building 5 or whether he was kept in any other building than the oda building. He was also shown a photo of the Defence, DSM00031. Again, the same *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* interview, in the same interview. And that is the interview of 1679, that is ERN 100807-TR-ET, Part 1, page 16. A question was asked regarding this photo. It is the photo of an older man standing in front of the oda.

When shown this photo, he commented:

"This looks similar to the previous one. This is even more similar to the one I remember. It's -- so there was this building which was along the lower ground, and there were two other buildings which were on the higher ground. And this looks more familiar to me. This is very, very familiar to me. I can see here even the stairs, and I think it is a better depiction of the place."

From the very beginning, it has been clear to the Defence that it was the oda that was envisaged by the SPO as well as the SPO witnesses. All of the witnesses had to indicate on a photo where they would have been, and all of them indicated one and the same building.

W3593, on *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*, ERN 06015-TR-ET, Part 2, Revised, page 9, the witness was asked about the photograph, that is ERN SITF00072231. He recognised his signature in that photo and was asked to point out, with his finger, where the stable was. He

answered:

"This is the stable, here. And above it stayed the army and the ones that beat us up."

"Are you sure about that?"

"Yes, 100 per cent."

On *[REDACTED] Pursuant to In-Court Redaction Order F479RED.* another photo was shown to him, ERN SPOE00128388, and it is the one that is similar from the first photo. It just minimised from both sides. The witness commented on the photo:

"We are talking about this door, here."

Question:

"So the door that you marked on the door on page 3; correct?"

"Yes, that is the one. This is where I stayed and this is where I went out from. From this door."

On *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*, the same witness, 3593 again. *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*, ERN 100957-TR-ET, Part 1, another photo was shown to him. That photo is ERN SPOE00128392. And it is the photo again of the oda:

"I was detained here in this house."

"Could you mark this with number 2?"

"I stayed here. I stayed there. I was detained for 18 days."

"Mr. Witness," the question is asked, "are you sure about this? This building that you recognised, is that the one that you were detained?"

"To be honest, when I was taken there my eyes were closed. I was taken there. I was taken there as my eyes were covered, closed. I did not know where they were going to take me."

"So how do you know that it is this building?"

Answer:

"Because I recognised the door. When I was taken there, I had a look at the door and it was like a place where the animals were kept."

Again, no question was asked about building 4A or building 5 or whether he was kept in any other building than the oda building. The identification of the entire building just by its door has, of course, no probative value. The door, as it is, is not so special that you can recognise the building. It is just like any other door which is not particular in the area at all.

Even though the SPO questioned the witness about it, still, on *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*, it was as follows:

"From your statement, we know that you were initially detained in one location and then detained in another location. Could you tell us, if you remember, of course, in which location you were detained the first time, and then in which location you spent the remainder of your time in Zllash?"

Answer:

"It was nearby, you know, the first one."

And the question on mark number 2:

"They detained me there for about three, four days. I do not remember. This place was nearby this building, and I was beaten up there. I can never forget about this."

"So you were beaten in this photograph?"

"Yes."

3594, then --

PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, may I remind you not to cite the dates of the prior statements. So only the ERN numbers.

MR. VON BONE: Right, Your Honour.

PRESIDING JUDGE VELDT-FOGLIA: Please continue.

MR. VON BONE: 3594, Your Honour, was not shown any photos.

Then I turn to 4669. In his submission regarding the Panel's question, the SPO filed a document, F00471. In that document, page 3, the photograph, SPOE128388, with a blue circle, is shown on the top of that page. However, the witness stated during the testimony that, and I quote:

"Mr. Witness, there's a dark blue circle around the two buildings. Is that the place encircled by yourself?"

Answer:

"The drawing, I do not remember that I have done that. So probably someone else has done that."

He asked first on whether this was the place, and probably they have encircled the place. Transcript 10 November, page 1471.

The witness was shown in his interview by the SPO at the time, that is *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*, SPOE82023-TR-ET, Part 2, page 29 and 30,

the entire photo album. The document bears number ERN SPOE00128386 until 128420.

At the time that he was he shown the album in this interview, he

indicated the photo 00128407. So that is, in fact, a different photo --

PRESIDING JUDGE VELDT-FOGLIA: Defence counsel?

MR. VON BONE: Yes.

PRESIDING JUDGE VELDT-FOGLIA: Sorry to interrupt you, but you have now quoted again a date of a prior statement.

MR. VON BONE: But --

PRESIDING JUDGE VELDT-FOGLIA: Is it possible --

MR. VON BONE: I'm sorry, Your Honour.

PRESIDING JUDGE VELDT-FOGLIA: We cannot keep up at this pace.

MR. VON BONE: Yes, yes.

PRESIDING JUDGE VELDT-FOGLIA: The colleagues are only redacting at the moment because you have mentioned several.

MR. VON BONE: Right. Yes.

PRESIDING JUDGE VELDT-FOGLIA: And I don't know how I can be more clear.

MR. VON BONE: Yes, I'll ask to go into private session, Your Honour.

PRESIDING JUDGE VELDT-FOGLIA: But you can just state it without the date. Is that not possible? You can make reference to a number without a date.

MR. VON BONE: Okay, sorry. Yes. I'll do that then. Sorry. I'm not always sure that when I quote just the ERN number that it would be referring to a prior statement that would indicate something. But I will do that, Your Honour.

PRESIDING JUDGE VELDT-FOGLIA: But if my general request has been from yesterday on not to quote dates --

MR. VON BONE: Yes.

PRESIDING JUDGE VELDT-FOGLIA: -- but just to give the number, then please adhere to my instruction. We have given it a thought.

MR. VON BONE: Yes, Your Honour.

PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

MR. VON BONE: I'm sorry. I apologise, Your Honour.

At the time that he was shown the album in that interview, he indicated photo 128407, 00128407. So that is, in fact, a different photo. Therefore, he was commenting on a different photo, SPOE128407, because there is no indication by the interview which photo he exactly encircled.

At the time he was asked:

"Can the witness encircle two buildings that he believes to recognise and so that we exhibit that page, that photograph?"

It was not recorded which particular photo the witness encircled, and he believes, as the transcript of the hearing indicates, that he did not encircle it himself.

So the Defence position on this issue is that it was not the witness who has encircled this place and, therefore, he did not indicate whether, in fact, that building was the one where he was kept. He said:

"This seems to me the one that one of those in the place. They seem to me that one of those is the place. Understand me, because

this is 20 years ago, and it is difficult for me to know to say with certainty it was this. And also, we were kept inside. We only saw the place when we were brought in and when we left the place."

SPOE082023-TR-ET, Part 2, page 29, 30.

We want to make crystal clear that from the above issues that we have put forward, it was a single building that the SPO envisaged. Now to change a week before the commencement of the oral arguments the entire location in the sense that the SPO puts forward different buildings in their answer to the Panel, we think this is unfair.

The accused has a right to a fair trial. When the Defence is being deceived or misguided in this manner, the Defence must have a chance to hear the witnesses on those issues. That is where they were exactly located. That is, where they were exactly located and with whom they stayed.

Let us not forget that the SPO suddenly comes with the fact that 4669 was detained with two unknown individuals. But by his own account, he saw the alleged murdered person of this indictment.

1679, 3594, and 3593 never mentioned the alleged victim murdered in this case wasn't there for two nights at least.

1679 said that 04669 was there with him the entire time and that for as long as 04669 was detained there. By his own account, 4669 was with the alleged murder victim and the two people that were older than 4669 was himself. So how can that be possible?

W1679 is not telling the truth or 4669 is not telling the truth. They cannot be reconciled, these two witnesses, on the very same

issue.

Now, the SPO says 04669 was in building 5, but 01679 says that he was in the oda building. So with who was 1679 now? And how can it be that the SPO says that 4669 is in another building? 4669 said himself that he was with the alleged murder victim. 03495 says nothing about being with 4669. Does that simply mean that 01679 is not telling the truth about the fact that he was with 04669?

If we take the stories of 1679, of 3594, or 3593, or 4669, we cannot determine who was with who. How can we make, Your Honour, a conclusion based on the facts and the testimony about who was with who and in which building? The SPO tries simply to construe it in a manner that it will fit the case. They do not care about an objective determination that these stories cannot be all true on the same points.

The SPO tries to construe this at the very last moment try to change the amount of buildings in which the people were kept. They simply try to spin the testimony in a manner that it will fit somehow. But that shoe does simply not fit. Can the SPO explain how on earth it is possible that 1679 is already in the barn and sees there the alleged murder victim? The alleged murder victim did arrive much later than 1679 did.

If the SPO had envisaged more buildings, then the Defence would have had the opportunity to interview other people. People who might have used those buildings. At least we would have investigated that. As far as the Defence is concerned, the witnesses that have been

heard should be heard again so that we can make at least a determination of which buildings would have been used by possibly other people.

The Defence would have had that opportunity to look for other people that might have occupied those buildings, if they would have been occupied at all. We did not, but focused on the single building that all the witnesses had focused on. Our investigation would have looked different.

The Defence came up with people that were located on the scene but not necessarily the buildings 4A or 5, simply because we, like the Pre-Trial Judge and the witnesses stated, looked each time to what was indicated by the witnesses. This course of events gives clearly rise to an unfair trial, and the accused has the right to a fair trial as it is enshrined in many laws and treaties.

To suddenly, one week before the end of the trial, change the configuration of buildings in which the people were kept is unfair to the accused and to the Defence and their investigations. We came up with people, like Teuta Hadri, Ibadete Canolli, Selatin Krasniqi, Muhamet Ajeti, those people were there on the ground at the Zllash compound, and these people were working in the oda. Some of them even brought patients in the oda as it was transformed into a place where people could be operated.

But we could have asked other people, for example, Mrs. Humolli, who was there on the scene, or anybody else that could have told us something about other buildings in that place. Obviously, our

position is that the SPO witnesses in this case have not been detained at the compound at all. It was simply impossible, because many more people were staying there as internally displaced people.

But let it be clear, if the Panel would really consider that it is possible for the SPO to change its position, then the Defence wants to hear the SPO witnesses again, and we want to have time to investigate any other person that we can find that was on the scene and possibly can tell us information about the usage of buildings 4A and 5.

It is the Defence position that one cannot change the rules of the game when the game is halfway played. And as for the SPO, it cannot change suddenly its position or change the basic facts from which we had to work from the beginning. And I add that even the Pre-Trial Judge has been misguided, at least it looks like that, by the SPO if we take a look at his decision to confirm the indictment.

His idea about it, and we can see that in the citation of his decision, is that it is one and the same building, not multiple buildings. The SPO has to act in a manner compatible with a fair trial and human rights standards. They may not knowingly make incorrect statements or facts to the Specialist Chambers, and the Defence is of the opinion that they knew very well, as they have presented the case, that the facts as they had presented them initially fundamentally differ from as it is being presented now. Based on the arguments forwarded by -- in this part of our oral arguments, we believe that the indictment as it is confirmed assumes

that it is a single building in which the people were kept and detained.

The identification of Salih Mustafa by the victims.

W3594 and 4669, these two witnesses neither saw Salih Mustafa when they were in Zllash, nor was Salih Mustafa present when they were interviewed or when the Witness 4669 got beaten. From the testimony of 1679, it cannot be proved that on one day of the arrest of the witness, the commander who interrogated the witness introduced himself as Commander Cali as the witness saw Salih Mustafa while -- excuse me. I start again, Your Honour.

From the testimony of 1679, it cannot be proved that on the day of the arrest of the witness, the commander who interrogated the witness introduced himself as Commander Cali as the witness saw Cali while the witness was in Zllash.

I quote even from the document F00417-A02, and that is page 8, it is the iMMO document:

"When asked, the subject says he didn't know who the man from the special unit of the commander were and that he had never seen them before. He learned their nickname from his fellow prisoners, which is also how the men referred to each other. He remembered that there were a lot of men from a special unit in and around the building. They wore black uniforms. The subject indicates that seven or eight of them, including the commander, were involved in the torture at different times."

In the Prosecutor's question on page 868 of the testimony of

this witness, that is, of 4 October:

"Did you hear other soldiers addressing the commander in any other ways?"

The witness states:

"No, just 'commander.' I heard that one of the soldiers say that, 'Commander, we brought this young man here,' and I learned that he was commander."

Next the Prosecutor questioned the witness:

"What did you mean? What did you mean, 'I learned later that he was commander'?

The witness replied by stating:

"Well, I knew that I was taken before a commander, but his name, I didn't know it then. He did not introduce himself. I was just taken before him."

Despite the fact that the Witness 1679 is more than clear that when he got arrested he was sent to the commander, the commander did not introduce himself by his name, the Prosecutor continues with questions about that situation on page 873 of the official transcript of 4 October. The question is:

"So do you know -- once you were taken to this building, to this room, the commander introduced himself as Commander Cali?"

The witness states:

"There, I knew it was that this person was Commander Cali, and I heard his colleagues call him Cali. I knew that this person was Commander Cali."

So the witness with his own answer proves the fact that at no time Commander Cali present in the room introduced himself as Commander Cali.

3593. The testimony of 3593 does not any way prove that the witness has identified Salih Mustafa, or Cali, in the period of time in Zllash. 3593 in his testimony given during the trial hearing stated that he did not identify and had no possibility to identify any person from those who beat him up because his head was covered with a bag; page 410 of the transcript. The witness also states that he did not even see the clothes of the people who beat him up since it was very, very dark and they intended to use batteries.

The witness then testified that none of them had headgear; page 310 of the transcript. The witness considers that the accused is the person who put the revolver to his head, page 411 and 412 of the transcript, as he later realised that the accused is the only one who had a red hat, page 412, even though at that moment he didn't see anything. So he didn't see if the person had a red hat or not, page 413. And also, at the moment he didn't hear that the present persons were called another by names -- by another name. The witness also in no case he heard anyone giving any order or instruction about what to do or that anyone addressed the person who pointed the revolver at his head. That is page 414 of the transcript. The witness stated:

"He was wearing a uniform and he had a red hat. So if I see him today, I would not recognise him. I would not recognise him because he has no interest for me, and I hope that I never see this person in

my entire life."

The witness, in the second case when he was beaten, did not hear that anyone called him by the name or nickname, page 426. The witness testified that during the time they beat him up, both in the first and the second case, in Zllash, he did not hear anyone being addressed as "commander." According to the witness, he was later told by others that the accused was at the location where he was held and that he was the main person there. Page 427 of the transcript.

The witness in the first beating did not hear that anyone gave an order nor did the witness in the second beating hear that any -- the person with the red hat and the baseball hat gave anyone any order. That's page 430 of the transcript.

And on a question of the Presiding Judge:

"Were the soldiers wearing masks in that place in Zllash where you were detained?"

The witness said:

"No."

Further, he was confronted with SPOE00127751 and SPOE127752, and stated:

"I don't deny it. I could have said that. But, again, I'm telling you that I don't think that he had a mask. I wasn't able to look, but I don't think he had a mask."

Presiding Judge of the Panel, further on page 678 of the transcript, asked the witness:

"Yes, but then," and that is at the time that I just cited, that

is the year that I just cited the SPO numbers from, "you said 'I don't know. I don't know who was the supervisor.' My question is why didn't you say then the name you had heard one month after your release?"

The witness on page 679 of the transcript stated:

"Well, my God, I really don't know why I did not mention it. Whether I forgot, because even if you asked me what I said yesterday, I might forget. I was asked 200 times about the same things. But as I said, I learned the identity of the person who was there one month after my release."

Presiding Judge on page 680 of the transcript asked again:

"Maybe you forgot to tell them the truth. Is that what you want to say? And that you didn't tell the truth at that time in that statement."

And the witness stated:

"Yes, yes."

The witness further stated:

"There was no need for me not to tell the truth, but I'm saying again I forgot maybe then and then I remembered that I saw that -- that I verified the identity a month later."

Presiding Judge on page 680 of the transcript asked the witness:

"But you were asked explicitly. You were asked explicitly. And then you said, 'No, I don't remember -- I don't know.' You didn't say, 'I don't remember.' Excuse me. You said, 'I don't know.' Okay. Could it be that you were afraid to tell them the truth?"

The witness stated:

"No, there was no need for me to be afraid of them. There was no reason. And I'm here to tell you the truth. Not to lie."

Lastly, on page 681 of the transcript, the Presiding Judge asked:

"But can you understand that, from the view of the Panel, we are trying to understand why, at a certain moment in time, you say one thing; at another moment in time, you say another thing."

The witness stated:

"That can happen only when one forgets or when he doesn't know or when he or she is mistaken."

The last issue, Your Honour, is the --

PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

MR. VON BONE: No, I understand. I just want to --

PRESIDING JUDGE VELDT-FOGLIA: That's the last issue for now, Defence counsel. It's 11.00 and that's the moment for the break. What are the topics you still have left for the Panel?

MR. VON BONE: The answers to the four questions. The answers to the questions.

PRESIDING JUDGE VELDT-FOGLIA: The answers?

MR. VON BONE: The answers to the questions that the Panel has asked.

PRESIDING JUDGE VELDT-FOGLIA: Okay.

MR. VON BONE: That's all.

PRESIDING JUDGE VELDT-FOGLIA: Okay.

MR. VON BONE: And that's, I think, ten minutes or so.

PRESIDING JUDGE VELDT-FOGLIA: Very well. We --

MR. VON BONE: It's two, three pages each time for --

PRESIDING JUDGE VELDT-FOGLIA: No, no, but we have to respect the break times.

MR. VON BONE: Of course.

PRESIDING JUDGE VELDT-FOGLIA: Only in case of necessity we will do it more. But we have still a whole day in front of us.

So what we will do now is we will adjourn the hearing for half an hour, we come back at 11.30, and we proceed.

MR. VON BONE: Thank you very much, Your Honour.

--- Recess taken at 11.02 a.m.

--- On resuming at 11.31 a.m.

PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

Defence counsel, before I give you the floor, I do a quick round to see what the composition of the courtroom is.

Specialist Prosecutor's Office.

MR. MICHALCZUK: Your Honours, the composition is almost the same. Right now, Mr. Jack Smith is not with us, but I hope he will join us in a moment.

PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Thank you.

MR. MICHALCZUK: Thank you.

PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel, I see that you are in the same composition.

MS. PUES: Yes, we are, Your Honours.

PRESIDING JUDGE VELDT-FOGLIA: Very well. And that goes also for the Defence team.

And I see that the Specialist Prosecutor has arrived, for the record.

And we have Mr. Mustafa on videolink. Very well.

Defence counsel, you have the floor to continue.

MR. VON BONE: Thank you very much, Your Honour, members of the Panel. We get now to the answers to the questions that the Panel asked in the filing 471.

The first question of the Panel was: Is the Panel bound to apply any subsequent more lenient sentencing range for the crime provided in Kosovo law or does the wording "shall take into account" suggest that the Panel should only be guided by such subsequent more sentencing range, if any?

The Defence submits that the Panel is duty bound to apply any more lenient sentencing for the crime provided in Kosovo law. The wording "shall," even in the context "shall take into account," simply means that it is imperative to do so. Otherwise, the wording would have been "can take into account." So "shall take into account" has an imperative character. "Taking into account" is something that can be surpassed by saying "we can" or "we cannot take into account." "Shall" means that there is an obligation to do so.

The Kosovo Specialist Chambers is a national court. It is not an international court or a court which was established by a multilateral organisation. It is not founded on a multilateral

institution instituting this court. It is a chambers that are within the Kosovo law. The Assembly of the Republic of Kosovo based on Article 65(1) of the Constitution of Kosovo has approved the Law of the Specialist Chambers.

The Specialist Chambers operates within the justice system of Kosovo. Therefore, it is logic that when a Kosovo court adjudicates cases, they cannot set aside the laws as applied in Kosovo.

Then the answer to question 2, Your Honour.

Article 44(2)(b) refers to any subsequent more lenient sentencing range for the crime provided in Kosovo law. And the question is: In case a crime of which the accused is adjudged guilty is not provided in Kosovo law but only in customary international law, what other body of applicable law, if any, should the Panel consider to determine if there is a subsequent more lenient sentencing range for such crime?

The Defence, Your Honour, submits that the Panel should apply the law of the land which was in place during the period of the indictment. As the law of the land had not yet been replaced by any Kosovo law, this means that the law of the land was the criminal code of the Federal Socialist Republic of Yugoslavia.

In addition to the criminal code of SFRY of Kosovo in 1977, the criminal law of the Socialist Autonomous Province of Kosovo of 1977 was in effect during the period of the indictment. Whether this was still in effect is irrelevant as this law applies the one of the SFRY, the Socialist Federal Republic of Yugoslavia code for its

application of punishment.

In the determination of punishment, Article 6 of this law discusses the purposes of sentence. The first paragraph of this article provides the following text:

"The objective of the punishment shall be achieved by the execution of sentences as stipulated by the criminal law of the SFRY."

The Defence submits that the guidelines regarding sentencing are in the Yugoslavia criminal code under paragraph 1. Having said all this, the Defence stipulates that at the time of the indictment the crime of arbitrary detention did not exist in Kosovo law, and Kosovo, that is in brackets, which was at the time the SFRY law.

If a crime is not prescribed by law, one cannot get into any punishment.

The concept of *nulla poena sine lege*, no punishment without a law prohibiting an act, is of course of importance in this context. It is a general principle of criminal law.

The law of the land at the time that the acts were allegedly committed was that of the Criminal Code of the Socialist Federal Republic of Yugoslavia of Kosovo in 1977. Article 142 describes criminal acts against humanity and international law. It speaks of illegal arrest and detention, and it gives punishment of not less than five years or by death penalty.

One wonders whether the civilian population, as envisaged by Article 142, is the civilian population of the enemy, in this case

the occupying power of Serbia, just as Article 14 of the Geneva Convention prescribes, which we have discussed today earlier. None of the civilians that are in this case detained were Serbs.

The people that were detained in this case were from Kosovo. In fact, they were from the Socialist Federal Republic of Yugoslavia. The alleged crimes took place in nowadays Kosovo territory or Yugoslav territory and, therefore, the civilians in question were simply staying in their home country. But the article, obviously, tries to protect civilian population from the enemy. The Geneva Convention, in general, were and are tailored for both armed conflicts of an international character and armed conflicts of a non-international character. These conventions imply two or more parties to a conflict.

The Common Article 3 of the Geneva Convention is directed towards a party of that conflict that prohibits action of a certain kind to the civilian population of the enemy. As discussed earlier, as SFRY was in conflict at the time with NATO, the civilians in this case were not protected as they were nationals.

And in addition to that, I would like to add that in maybe two occasions, that is 4669 and 1679, were at least people who had been in training. One had even completed, as he said, the training. That is 4669. So as to the status of these two, one can wonder whether these were actually part of -- are protected under Article 3 of the common -- Common Article 3 of the Geneva Convention.

Then I turn to the answer of question 3.

The question is: Based on Article 44(2)(c) of the Law, in what circumstance the punishment of an act or omission which was criminal according to the general principles of international law recognised by civilised nations would be prejudiced by the application of paragraph 2(a) and (b) of Article 44 of the Law.

The Defence submits that the Panel -- that by no means the Article 44(2) provides an option for the Court to choose and to pick from. It is not that the paragraph (2)(a), (b), or (c) could just randomly pick one that the Court just might think appropriate. Such interpretation would amount to a random pick, and an accused must have certainty about how and what basis a case, and with it its punishment, is adjudicated.

The Kosovo Specialist Chambers is a national court. A national court of Kosovo. The Specialist Chambers are not, for example, like the ICTY, an *ad hoc* court which has concurrent jurisdiction. The ICTY cannot be compared to the KSC. The KSC law is a national law, albeit it's *lex specialis*. Therefore, Kosovo law is not just a choice for the Specialist Chambers but a compulsory legal instrument.

We can view this even in Article 44 of the Law. Article 44 of the Law, paragraph 2, prescribes first that paragraph (a) is to be applied. Subparagraph (b) and (c) are connected. This can be read in the plain text of it. The last word in subparagraph (2) is the word "and" which indicates that both (b) and (c) would need to be applied together or in conjunction with each other.

Even so, if subparagraph (a) and (b) are applied in conjunction

with each other, then still the *lex mitior* is to be applied as it is enshrined in Article 15 of the International Covenant on Civil and Political Rights prescribed in Article 15, and I quote:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

Thus it has enshrined the *lex mitior* principle.

The Defence is of the opinion that Article 44(2) and (a) stand, therefore, on itself. Subparagraph (b) and (c) are to be applied in conjunction with each other. It is written in the plain text. As the Kosovo Specialist Chambers is a national court, it follows logically that the subparagraph (a) stands on itself. And, therefore, it follows from the logic that the principle that the Kosovo national law has primacy for the punishment of certain acts according to general principles of law.

It is, therefore, that the Defence position that Article 44(2)(c) is not an article that stands alone and by itself but it must be applied in combination with subparagraph (b).

I come, Your Honour, to the fourth question.

The Defence is of the opinion that, based on Article 44(2)(b) of

the Law, the Panel is bound by this article and should apply it in the case of weighing the punishment, as well as to take into account the range of more lenient punishment, as well as to implement Article 38 of the criminal law of Yugoslavia of 1976 and all its paragraphs, i.e., that is from paragraph 1 until 6.

Notwithstanding the content of the provision of Article 44(2)(b) of the Law, the Panel is also bound to implement Article 41(1) until (3) of the Socialist Federal Republic of Yugoslavia, that is, weighing of the punishment, general rules on weighing of punishment; next also Article 42(1)(i) and (ii), reduction of punishment of the SFRY code; Article 43(1) until (3), that is, the mode of reduction of punishment of SFRY code; and, lastly, Article 48(1) to (6), the culmination of criminal offences of the SFRY code.

Your Honour, a last observation of the Defence as for the oral arguments is on the punishment.

The SPO seeks 35 years' imprisonment of Salih Mustafa.

The Defence seeks an acquittal of all the charges of Mr. Mustafa. He has never committed any crime at all. Instead, he has put his life on the line for many people while serving the ultimate goal of all the people of Kosovo, and that is to obtain independence for a people that have longed for their self-determination for a very long time.

Mr. Mustafa has endured, under very difficult conditions, his detention. He has, during that detention, never violated any of the orders that were set by the Panel. The contact with his family has

been extremely difficult, but he patiently endured *[REDACTED] Pursuant to In-Court Redaction Order F479RED.*

[REDACTED] Pursuant to In-Court Redaction Order F479RED.

[REDACTED] Pursuant to In-Court Redaction Order F479RED. However, he has never violated any order

that was set out.

Mr. Mustafa feels sorry for the victims, but he is not responsible for their pain or suffering.

Mr. Mustafa denies that he has committed any of the charges, and that is his right as well. The consequence of such position naturally leads that he bears no responsibility for whatever the victims have experienced. To deny the position of an accused would equally deny him of a fundamental right as well. The presumption of innocence would have no value at all if inferences are drawn from the position that an accused takes.

Mr. Mustafa has been detained since September 2020. Mr. Mustafa is a father and a husband. As the Defence asks for an acquittal of all of the charges, Mr. Mustafa must be released as soon as that is possible.

I wish to stress that the Defence, and I say that to the Prosecutor's office, we have never ever implied or inferred that victims that have testified in this case fabricated any of their stories as the SPO stated in their statement. We did not do so, we do not do so, we would not do so. So, therefore, that is wrong to imply that or to say that.

Just the position of the Defence is fundamentally different, Your Honour, and we may differ of the opinions regarding the crime

site or the alleged crime site, the place where the things took place, and whether Mr. Mustafa would have had anything to do with the place where people might have been detained or have suffered any injuries that they might have suffered.

So that is to say that in that case, I think the Prosecution is wrong to say that.

Adjudicating cases like the current one is certainly not an easy task. Justice, of course, cannot be based on emotion or sentiment or compassion of any kind. Experiences, as painful as they might be, and translated and voiced in testimonies might blur the vision to adjudicate facts. But ultimately, the Court must not judge upon probability or compassion. Justice means that without a shred of a doubt that is beyond any - any - reasonable doubt, charges must be proved. And, therefore, the evidence is to be tested. Tested by the Prosecution, by the Defence, and by the Panel, and it must be tested and scrutinised sharply, detached from emotion and sentiment. Such scrutiny and testing is the task of each of us in a court case. In addition, there must, of course, be an application of the law and a "conviction intime" that the accused has indeed committed these charges without any doubt. Only then we believe that justice is served.

Your Honour, we wish to conclude with this our oral arguments. We thank the Panel, and all other participants, court officers, translators, and everybody for their time and working in this case, and of course the Panel for their attention to our arguments. And we

thank you very much.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

Let us see what we do with the planning now.

I look at the Specialist Prosecutor's Office. We will now hear the responses by, first, the SPO, and then the Victims' Counsel, to the points made in the closing statements of the Defence.

Mr. Prosecutor, are you ready to start right away?

MR. MICHALCZUK: Yes, Your Honours, we're ready to start right away. Right now.

PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I give you the floor. And for now, we will continue until 1.00, and then we will, in principle, break for our lunch period.

You have the floor.

MR. MICHALCZUK: Thank you, Your Honours, for the opportunity to offer a short rebuttal.

As an initial matter, in assessing the credibility of any witness, whether they be called by the Defence or the Prosecution, a critical consideration is the motivation of the witnesses. What was the witness's motivation when testifying.

With respect to the vast majority of Defence witnesses, this issue can be resolved by the Court by asking a very simple question: If telling the truth to this Court meant disclosing something that would be against the interests of Salih Mustafa, would they do it?

For Brahim Mehmetaj, Bimi, the accused's loyal deputy, if upholding this obligation to tell the truth before a court he does

not believe in meant he had to admit something that would be unhelpful for the accused, would he still do it?

If Selatin Krasniqi and Muhamet Ajeti, Shyti, soldiers who served under the accused, knew that if they told the truth it could heard the accused's defence, would they still do it?

The evidence in this case, Your Honours, leaves no doubt. They would and did do and say whatever was necessary to help their friend and wartime comrade, the accused. The motivations of the Defence witnesses, who are the accused's former comrades, is in stark contrast to that of the victims in this case whose only interest in seeing that those responsible for their torture are finally, after 23 years, held to account.

Remember, Your Honours, what was required of the victims to testify here against a Kosovo Liberation Army commander.

This significant difference in motivation and credibility between the victims and the accused's former wartime comrades is most striking when we look at the issue of whether there were, in fact, prisoners held at the Zllash detention compound or not. Victims told you their personal stories, stories of unimaginably brutal things done to them at this compound. Even frightened and highly uncooperative witnesses like W03594 admitted that they were held at this compound with several other detainees.

Defence witnesses adamantly denied that any prisoners were held at this compound.

Clearly either these victims or these Defence witnesses have not

told you, Your Honours, the truth. Someone has lied. Someone who has no respect for the obligation to tell the truth before this Court.

Not only did each victim very credibly tell their individual story of their detention at this compound, their stories were also corroborated by one another and independent evidence, like the prisoners list, that would literally be impossible if their stories of detention and torture were fabricated out of thin air.

On the other hand, we have former comrades of the accused, like Mr. Selatin Krasniqi, who conveniently left the stable where victims were tortured out of his initial drawing of the compound. Who conveniently never saw Muhamet Ajeti there, even though Mr. Ajeti himself admitted being there. Who conveniently failed to mention that the accused was among the KLA leaders, despite knowing that the latter was his BIA commander. And who incredibly claimed that he did not know what unit of the Kosovo Liberation Army he was in until 17 April, towards the end of the indictment period.

I can quote Selatin Krasniqi's testimony in this court of 21 April 2022. It's on page 3594.

So, Your Honours, it is now up to you to make the determination whom to believe.

Your Honours, before I move on, this morning the Defence made allegations against the SPO, claiming, without merit, that the SPO has, for the first time, changed its position during the course of this case about the prisoners and the place where they were held at

the Zllash detention compound, and by doing so the SPO, in essence, misled not only the Defence but also the honourable Trial Panel and earlier also the Pre-Trial Judge.

Your Honours, nothing is further from the truth, however. On this question, the SPO witnesses consistently testified about the place of their detention both during their pre-trial statements given to the SPO but also in this Court during their in-court testimonies. The Defence has had access to all those statements, and the Defence has also heard the testimonies all the time throughout the proceedings. They had access to the SPO statements for months.

Our position regarding this issue was further made clear in our submissions. First of all, in the Prosecution pre-trial brief, we indicated that all the victims were held at the place we called the Zllash detention compound, and we never made any indication as to the specific or one specific buildings where they were held.

Later on, in our final trial brief, we also made it abundantly clear where the victims were held at the Zllash detention compound. And, finally, we clarified our position in reply to Your Honours' decision regarding the specific buildings within the Zllash detention compound where the victims were held, and also the Defence counsel has got a copy of that filing. It should be also clear for him what the issue is right now all about.

Your Honours, a specific argument was mentioned in relation to 4669, but this witness testified in this court about the building where he was held. He stated the same in his SPO statement several

months before the trial.

So we believe, Your Honours, that the SPO has not changed its position when it comes to the buildings where the victims in this case were held, and this is not simply sincere on the part of the Defence counsel to claim otherwise.

Your Honours, let's turn to the Defence alibi, very briefly. In fact, it is not an alibi at all. If the testimony were that the accused was in another country, say in Albania, in Montenegro, in Serbia, in Switzerland perhaps, and therefore could not have committed the crimes he has been charged with, this is an alibi. This is an alibi.

Here, the Defence witnesses merely corroborated that the accused was either in or around Zllash for the entire period of the indictment. When the accused was away, he had access to a car, and the furthest distance that any Defence witness has the accused from the Zllash detention compound during the period of April 1st through 18th of 1999 is the village of Barileve, which is located 31 kilometres from Zllash. Just 31 kilometres.

Your Honours, having access to cars allowed the accused to cover the distance within a short period of time.

Your Honours, with respect to the distance from Zllash to Barileve. This is true that no witness testified to any specific distance between these two locations, but the also Court can take the judicial notice of facts, which are common knowledge, under Article 37(4) of the Law. Barileve, according to Google Maps, is

indeed 31 kilometres by road from Zllash, and the same roads existed also in 1999.

So in sum, Your Honours, concerning the alibi, this is not the alibi that the Defence presented in any way, shape or form, even if any portion of the testimony of the Defence witnesses is believed.

Your Honours, I would give the floor to my colleague, Prosecutor de Minicis, to elaborate on another point that requires the SPO's rebuttal.

PRESIDING JUDGE VELDT-FOGLIA: Thank you.

Mr. Prosecutor, you have the floor.

MR. DE MINICIS: Good morning.

Your Honours, yesterday Defence counsel cited to a testimony of W04600 and showed photographs and diagrams to argue that this witness could not have seen the accused on the balcony of the house in the compound when he delivered the murder victim.

I would ask Your Honours' permission to request to put on the screen Exhibit REG00-013.

PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please proceed.

MR. DE MINICIS: Thanks.

Your Honours, this is a picture marked by Defence Witness Selatin Krasniqi showing the ZDC from an aerial view.

Essentially, Defence counsel argued that from the compound's gate, marked with number 9, 4600 could not have seen Salih Mustafa in the building that used to occupy the space marked by numbers 2 to 5.

In these pictures, this building could not be seen because by the time the picture was taken, the building had been demolished.

This is because, speculates Defence counsel, and this is only speculation, his line of sight would have been obstructed by building 7. And this challenge can be found at pages 64 to 67 of yesterday's provisional transcript, Your Honours.

However, the account provided by Defence counsel was both misleading and incomplete. The truth is, in fact, very simple. 4600 brought the victim to the Zllash detention compound, he entered the yard, and he had a clear line of sight to the building where the accused, Salih Mustafa, was standing on the balcony.

I'll illustrate. Defence counsel read extensively from W04600's testimony on this point but left out a key part. In his description, W04600 said, and I refer Your Honours to page 728 of his testimony on 23 September 2021:

"We stopped at the gate, in front of the gate, and a soldier opened the gate. We entered the yard."

That W04600 entered the gate is further corroborated by a detail in an exhibit that we also showed at trial - that would be, I give it for Your Honours' references, REG00-004 - where the witness explained that there are two arrows next to the gate, one outside which depicts the space in front of the gate and the second arrow depicted going inside. And that's why he put the arrow there. And that would be at page 731 of his 23 September 2021 testimony.

The witness, Your Honours, also explained that after delivering

the prisoner, he remained at the Zllash detention compound a few more minutes and had a brief conversation with Cali. The witness specified that Cali could see him from where he was standing. And this would be at page 730 of the same day of the testimony.

Now, Your Honours, if you look at the picture on the screen, at the compound, you can see that from inside the yard, from several places you have a clear line of sight to the building that is marked -- that used to be where numbers 2 to 5 are now. There was no difficulty for the witness from inside the yard to see Salih Mustafa on the balcony of that building, particularly since the building was, as testified by 4600 himself, at page 733, uphill. Uphill from the entrance of the compound. So 4600 would be looking up at the building and the balcony.

I just want to underscore, Your Honours, that when 4600 testified, Defence counsel did not challenge this witness on this evidence.

Defence counsel's assertion that the witness could not have seen Mustafa on the balcony is, Your Honours, simply incorrect. His testimony about delivering the murder victim to the Zllash detention compound and seeing Mustafa there is clear, credible, and substantially corroborated.

4600 very accurately described the distance of the place where Salih Mustafa greeted him from the balcony to where he stood, 4600, in the yard. At page 729 of the transcript 23 September 2021, 4600 estimated this distance to be between 20 and 30 metres. That is

remarkably accurate according to the very measurements offered in evidence by the Defence.

If I could ask to have, please, on the screen DSM00388. This is a 3D rendering of the compound shown yesterday by the Defence.

And, Your Honours, I believe that these distances are based off of another exhibit, which would be DSM00035. There's no need to show it now, but I just -- I believe the distances are the same and it's based off of that.

Now, Your Honours can see that the distance estimated on the right part of the photograph from the bottom part of the compound to the top end is 41 metres. The bottom part, Your Honours, I invite you then to compare the picture, is pretty much where the gate was as far as distance goes.

So from inside the yard, having entered the yard, and seeing Mustafa on the compound of what is indicated there to be the family house, an estimate of 30 metres is, Your Honours, I submit, very accurate.

4600's description of the house also matches how Salih Mustafa himself described the house in the compound where BIA was staying, and he was staying, in his SPO interview. Now, 4600, and this would be page 732 of his testimony on 23 September, testified that Mustafa was standing on a balcony that connected three or four rooms.

In describing the building where he slept at the Zllash detention compound, Mustafa stated that there were three doors and some sort of a terrace. You will find this, Your Honours, at

069404-TR-ET, Part 8, pages 3 and 4.

Now, if we can just - and I'm coming to an end, Your Honours - take a brief look at the building which is now named as a family house in the exhibit now here on the screen. The Defence offered a closer rendering of that building.

And if we could please have on the screen DSM00393, Your Honours.

Now this, Your Honours, would be what the Defence in the previous exhibit has labelled as the family house. This is where the Prosecution submits Salih Mustafa was standing when 4600 delivered the prisoner to the compound and when Salih Mustafa saw him and they had a conversation. They greeted each other.

Now, I would like to ask the Court Officer if we can have this exhibit next to the exhibit with ERN REG00-005, which is the sketch of the house done by 4600.

PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor -- oh, yes.

MR. DE MINICIS: Thank you, Your Honours.

Your Honours, it's exactly the same building.

Your Honours, unlike what Defence counsel submitted, W04600 did not make this up. If he were making it up, he would have made the encounter more direct and clear. For example, by putting Salih Mustafa at the gate itself. But he did not do that. He did not embellish his evidence. He said what happened. And ask yourselves what possible interest would he have to invent seeing Salih Mustafa at the compound? What would be his motivation in that

regard?

He had no reason, Your Honours, to make that evidence up.

4600 describes seeing Salih Mustafa there on that day as he delivered the murder victim for one reason and one reason only, because that is what happened.

And, Your Honours, this concludes my submissions on this point.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

MR. MICHALCZUK: Your Honours, we have some further remarks, and my colleague, Silvia D'Ascoli, will continue.

PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

Whenever you are ready, Madam Prosecutor, you have the floor.

MS. D'ASCOLI: Thank you very much, Your Honours.

Your Honours, I will turn to the Defence counsel's legal challenge to arbitrary detention within the jurisdiction of this Court.

Well, Your Honours, the issue is settled. The Appeals Chamber in Case 04 and in Case 06 confirmed that the Kosovo Specialist Chambers have jurisdiction over arbitrary detention as a war crime committed in a non-international armed conflict pursuant to Article 14(1)(c) of the Law. I can provide the references, of course. These are for Case 04 IA-002-F-00010 paragraph 47 of, of course, KSC-BC-2020/04.

And for Case 06, KSC-BC-2020/06, the references to the filing is IA-009-F-00030, paragraphs 86 to 89, 94 to 102, 106 to 111.

So, in sum, and very briefly, whether arbitrary detention is a

crime falling within the jurisdiction of the KSC or not is no longer a live issue before the Court.

Now, I will also address the characterisation of the armed conflict.

So with regard to that, with regard to what type of armed conflict was ongoing in April 1999, the Prosecution's pleading of a non-international armed conflict was clear from the outset. The charges in the four counts of the indictment were all brought under Article 14(1)(c) of the Law.

Now, leaving aside the fact that any challenge to the characterisation of the armed conflict or the charges is a jurisdictional challenge, and the Defence should have raised this as a preliminary motion under Rule 97, there are, in any case, a number of points that we can make and that Your Honours should consider when assessing the arguments put forward by the Defence in that regard.

First, the alleged crimes are all serious violations of Common Article 3, and Common Article 3 applies under customary international law to both non-international armed conflict and international armed conflict without any exceptions or limitations. Common Article 3 is the minimum yardstick of protections which is applicable regardless of the nature of the conflict.

I can also provide references for that. Your Honours might want to consider the ICTY Appeals Chamber jurisprudence in the Appeals Chamber decision in the Karadzic case dated 9 July 2009, case number IT-95-5/18-AR72.5, and the relevant paragraph is paragraph 26.

So even if the qualification of the conflict could be raised at this stage, which it cannot, and even if the Defence provided sufficient indicia of only an international armed conflict, which the Defence did not, even in that case, the crimes charged are still crimes, still crimes falling within the jurisdiction of the Court.

Second. The crimes charged all have equivalents under Article 14. Under Article 14(1)(a)(i), (ii), (iii), and (iv), and these are considered grave breaches of the Geneva Conventions applicable in international armed conflict.

The KSC Appeals Chamber has confirmed that arbitrary detention as well as other specific violations as enumerated in those decisions that I've cited of the violations of the Common Article 3 fall within the jurisdictions of the KSC. And the references are the same those to the Appeals Chamber jurisprudence that I have provided earlier within case 4 and case 06.

Third, the Prosecution has, in any case, proven a non-international armed conflict. And for this, I would refer Your Honours to the final trial brief of the Specialist Prosecutor's Office, paragraphs 261 to 278.

The Defence does not raise any arguments in support of the fact that only an international armed conflict existed in April 1999.

And, finally, yes, as of 24 March 1999 and, therefore, in April 1999, there was an international armed conflict. Yes, there was an international armed conflict ongoing in Kosovo between the NATO forces and Serbian forces. The SPO never claimed otherwise.

However, what the Defence does not consider is that an international armed conflict and a non-international armed conflict can co-exist, can happen in parallel, and that is exactly the case of the Kosovo context. That is exactly the case that we have in April 1999. And this as well was confirmed and found by the jurisprudence of the ICTY. And I would refer Your Honours in particular to the ICTY findings in the same Djordjevic case referred to by the Defence. However, this time by the Appeals Chamber.

In the Appeals Chamber's judgement in Prosecutor versus Djordjevic, IT-05-87/1-A, the appeals judgement of 27 January 2014, paragraph 521, the Appeals Chamber recalled that an internal armed conflict may exist alongside an international armed conflict and was satisfied that the Trial Chamber's findings demonstrated that the Trial Chamber considered the conflict between the KLA and Serb forces to be an internal armed conflict existing alongside to an international armed conflict between NATO and Serb forces.

In relation to that, I would also refer Your Honours to the ICRC Commentary on the First Geneva Convention dated 2016. In particular, to paragraphs 402 to 405, commenting on Article 3. These paragraphs summarise the differentiated approach which has been widely accepted as the comment, including by the ICRC, to the involvement of foreign states in a non-international armed conflict, including the possibility of an international armed conflict and an internal, a non-international armed conflict existing in parallel.

Further, I would also refer Your Honours to Kosovo case law, to

the Supreme Court of Kosovo in the case Prosecutor versus Latif Gashi et al, case number AP-KZ-139/2004, decision of 13 July 2005, page 10, and to another case of the Kosovo Supreme Court, Prosecutor versus Kolasinac, case number AP-KZ-230/2003, decision of 5 August 2004, at page 21.

Now moving to a different topic.

Defence counsel suggested that BIA did not exercise control over the Zllash detention compound. The Prosecution has presented evidence, substantial evidence establishing the BIA's control. You heard evidence of BIA members detaining the victims in several buildings at the compound; the accused's command over BIA and its members, which was discussed during the SPO closing statements; W04600's evidence that the compound was guarded by a BIA member, Shyti, when he delivered the murder victim; and, for example, Fatmir Sopi's testimony indicating that the whole Zllash detention compound, as referred to by the Prosecution, was a proper military establishment guarded by BIA.

And I can refer Your Honours to paragraph 169 of the Prosecution final trial brief.

And you will also recall, Your Honours, that the Zllash detention compound was given to the KLA by the family of Defence Witness Selatin Krasniqi and that that happened in the presence of Mr. Salih Mustafa.

Now, did the accused know what was happening at the Zllash detention compound? Of course he did. He participated in the

beatings, and he knew everything else that was happening within the compound. Defence counsel himself emphasised how small that compound was. He said a quarter of a football field. And we know it was an isolated location.

The detentions -- the beatings also were not a secret at the compound and were done openly. They were done outside. They were done in the courtyard, as we heard from witness evidence. And in this regard, Your Honours will recall the evidence of Witness W04669 who said the murder victim was beaten outside in the open space in the yard of the Zllash detention compound.

To give again the reference, this was at transcript pages 1434 to 1435.

We know from the evidence we heard in this courtroom that victims also testified to the screams of the victims to what they could hear. These screams could be heard in other buildings. So, of course, the accused, who was the commander of BIA, we know was there at the compound and participated in detentions and beatings, yes, of course he knew.

Now, two other points, more evidentiary, to address before I close.

First, the Defence yesterday claimed, for the first time in closing submissions, that the SPO showed only one single photo to its witnesses when asking Prosecution witnesses to identify the buildings where they were detained. And the Defence argued that this was suggestive, that this was leading. For example, I refer to page 73

of the temporary transcript of yesterday.

Well, this is a matter that, first of all, should have been raised at trial where it could have been fully addressed. It could have been fully explored also in cross-examination. If the Defence counsel had raised it at trial, also the SPO would have provided evidence from its interviews, from the transcripts of those interviews with the witnesses that, in fact, it showed to them the whole set of photos. It didn't show to them one photo as the Defence counsel claims. The entire booklet was shown to them, and from that booklet they indicated, they selected the photos that were resembling that were -- those of the buildings that they recognised were the buildings where they were detained, where they were brought at the Zllash detention compound.

So as it stands, this is a matter that the Court should set aside as it was not taken up during the trial. But in any case, those interviews are available to the Panel. Those interviews were available to the Defence during the whole duration of the proceedings. And, actually, the Defence has cited to some of those interviews this morning as well, although selectively reading from them.

I will just give some ERNs for the record where it is indicated that a whole set of photos read by ERN number from the beginning to the end, which was indicated, actually a range of 35 pages, was the one shown to the witnesses. ERN, for example, 100807-TR-ET, Part 1, which is one SPO interview with one witness; or, 100957-TR-ET,

Part 1; and 082023-TR-ET, Part 2.

And my colleague, Mr. Michalczuk, has already pointed out and already addressed the fact that the identification of those buildings was also actually made in court during trial in the presence of the Defence counsel, so I will not continue and I will not address this matter more extensively.

Now, the second point I also wanted to clarify. Yesterday, Defence referred to the statements, SPO interview and Defence statement, of Mr. Adem Shehu. He cited from those statements and transcripts. This was, for example, at page 101 of yesterday's temporary transcript. However, Mr. Shehu was not a witness in this case. He never came to testify in court and nor were his statements tendered into evidence in other ways.

In any case, going to the substance of the Defence arguments with regard to Mr. Shehu and his role in the training of the new cadets, I would refer Your Honours to the cross-examination of Mr. Halimi, where the witness was confronted with the fact that in his Defence statement he had said that Mr. Shehu was the principal trainer and that he also participated in the training.

The ERN of the Defence statement of Mr. Halimi is DSM00539 to 00550, at page 9, and the relevant excerpts from Mr. Halimi's testimony in court are transcript pages 3793 to 3797 on 20 April 2022.

More in general on the issue of training, the SPO position is that Defence witness Musli Halimi called by the Defence to discredit

W01679 and W04669 actually corroborated them in many aspects, corroborated their evidences in really many aspects, and these are set forth in the SPO final trial brief. And I would refer Your Honours to paragraph 54 and footnotes to that paragraph.

In conclusion, Your Honours, the burden of proof in this case rests on the Prosecution. It's always on the Prosecution, and there's no question about that. Clearly, the Defence has no burden whatsoever.

However, in this case the Defence has offered a Defence case, has put forth evidence and arguments that the Court can consider. And in considering that evidence, in considering those arguments, the Court should also consider what the Defence contested and what the Defence did not contest.

Defence counsel spent a lot of time talking about the Prosecution witnesses and their description of their detention, their torture, the buildings. We should consider, though, the points that he did not address, that had no answer for. For example, the accused's admissions about his presence in Zllash, at the Zllash detention compound, his admissions regarding his role, his commanding role, that he was the headquarters, as we heard, and the victims' ability to place Mr. Mustafa at the compound when he admitted being there, including their identification of other BIA soldiers at the Zllash detention compound.

The elements also that the Defence did not address, for example, include the prisoner list, the notation in that list for Cali. And,

again, to give a brief example that came up this morning. In relation to the prisoners list, for example, the Defence counsel insinuated that there was no proof, no record of whether the murder victim was taken or was present at the Zllash detention compound before or after W1679.

Well, a document, this list of prisoners, offers an answer to that. An answer that is, not coincidentally, consistent with the evidence that W01679 gave here in court.

So these are just a few pieces of evidence that have not been answered. And because, in the SPO's submissions, we say that the reason is because there is no answer.

In conclusion, Your Honours, the Prosecution has met its burden, as we discussed, has proven beyond a reasonable doubt that the accused is guilty of the crimes charged in the indictment, and the record that we have about it has been set forward during closing statements and in the SPO final trial brief.

That concludes my remarks, Your Honours, and I thank you for your attention.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

Yes, Victims' Counsel, I turn to you. Do you need some time for preparation to take into account what has already been answered, and if you would agree on it, by the SPO, or can you start right away?

MS. PUES: Your Honours, I will be prepared to start right away. I've taken notes and will reduce my rebuttal or responses to the Defence presentation this morning to those points that have not been

addressed yet. So thank you. And I don't think --

PRESIDING JUDGE VELDT-FOGLIA: And could --

MS. PUES: -- sorry, that I will need longer than 20 minutes so that we should be able to conclude nicely for the break at 1.00.

PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you. Thank you very much, Victims' Counsel. You have the floor.

MS. PUES: Thank you, Your Honours.

Let me start with one aspect that we heard right at the end of the Defence closing statement, and that is that for the first time in this case, the accused, through his counsel's declaration, acknowledged the existence of victims and their suffering. That is noted. We also heard that he feels sorry for them, and this, I thought, is worth me actually actively taking note of here.

We have heard a series of arguments that referred to legal interpretations of the law as well as those of an evidentiary nature, and I will only respond to some legal arguments here in all brevity.

The Prosecution has already pointed out that we, indeed, must take as a starting point a non-international armed conflict, pointed to the Appeals Chamber judgement in Djordjevic, so that there is not much else to add from my side. And we safely find ourselves legally in a situation in which we are considering the law of non-international armed conflict as our guidance on what constitutes war crimes and what doesn't.

And, yes, we also already have within the Kosovo Specialist Chambers decisions on the inclusion of the crime of arbitrary

detention as a war crime.

Just in all brevity, a few remarks, though, on the legal arguments on the interpretation that the Defence has put forward to rebut those because, from my perspective, and I think I've made that clear in my closing remarks yesterday, on how important it is from a victim's perspective to also have the crime of arbitrary detention acknowledged as a serious violation of rights.

The Defence counsel, for example, proposed that arbitrary detention, because it wasn't explicitly listed at Article 14(1)(c), wasn't included. Now, we've got this little word "including" in the wording of Article 14(1)(c), clearly indicating those acts listed explicitly aren't -- or that that list isn't exhaustive.

We also at some point heard Defence counsel, in passing, refer to the principle of legality. Yet, Kosovo law incorporates international customary law. This is crystal clear. The reference is throughout the law of the Kosovo Specialist Chambers. Article 12 in particular makes that clear. And to go even further, even if one thinks very strictly in terms of civil law terms where usually one would expect a written law, a clear codification, *nulla poena sine lege scripta* would be the principle referred to.

The inclusion of customary law, on the one hand, makes clear that this isn't applicable within Kosovo. But also even further, the constitution itself wouldn't require any clearly written prohibition there when it states in Article 3(1) of the Prosecution that no one will -- shall be charged or punished for any act which did not

constitute a penal offence under law at the time it was committed except if these constituted genocide, war crimes, or crimes against humanity.

And, equally, arbitrary detention is actually a very grave violation of international humanitarian law. Let me again just briefly pick out a few points why.

Who is protected under Common Article 3 of all four Geneva Conventions? And Common Article 3 is the one thread that runs through in international humanitarian law, forms the baseline, not just of all armed conflict, but is the one yardstick that we have when we come to the regulation of non-international armed conflicts because, initially, international humanitarian law didn't even envisage that internal or non-international armed conflicts could happen.

Now, it refers to those persons not taking actively part in hostilities. This is basically the notion which indicates who is protected and who is protected most, because, obviously, in non -- in international armed conflicts we often have those who are otherwise in their life civilians taking up arms.

Here, every single victim was protected, was not participating in any hostilities and was a civilian. Defence counsel suggested that perhaps because some had undergone training of the KLA, this would mean that they might have forfeited their protection. This is wrong, legally.

Only if we have active participation in hostilities, which was

not the case here. They didn't pick up arms, one was in a training facility, which isn't active participation; and one was trying to join the KLA, but was arrested instead. So that is crystal clear as well, that all of those fall under Common Article 3 and their protection.

And from there we shall see that what it does is it tries, Common Article 3, and, therefore, all those prohibitions that are included and those serious prohibitions that then amount to war crimes, is it tries to protect human dignity. And, again, I would like to refer to my reference to the Universal Declaration of Human Rights. The protection against arbitrary detention is a core protection that already at the point when the Universal Declaration of Human Rights was first formulated was included and can be found ever since in all big instruments of international human rights law, not least Article 9 of the ICCPR, the International Covenant of Civil and Political Rights.

Now, one might ask, okay, what's the relationship, then, between international humanitarian law and international human rights law? International human rights law doesn't stop to apply the moment an armed conflict starts. International humanitarian law, though, might serve as a *lex specialis* when we do have specific provisions that would help regulate the armed conflict.

The protection against arbitrary detention doesn't cease to exist. It's at the very core of human rights law, and none of the few baseline regulations of non-international armed conflict would

suggest anything else. And this is what makes it so serious.

Therefore, I'm presenting these arguments here just in addition to what has been said already because I do think it is important to highlight that.

We've also heard, to turn to another aspect, some presentation on the question whether the crime or the charge of cruel treatment was subsumed under torture, or whether they stand -- and this is our position, echoing what has been -- or how the indictment has been framed, whether they stand next to one another.

Here's when we have active acts of torture. And I don't even want to go near the suggestion that the interrogations, combined with the beatings, weren't torture. They were textbook examples of torture, some of them. If someone is questioned, "Why are you here," and being beaten, and being burned, and being mock executed, "Who are the thieves," those kind of things, that is torture. What else would be torture?

But we additionally have moments that are cruel treatment that weren't consumed. If you then, after this beating, after the interrogation, with broken limbs, with open wounds, thrown back into a cold, damp barn, and you are left there without any medical attention, for example, whatsoever, that is cruel. And that is cruel without at that specific point being an act of torture.

So we've got distinct moments and not just one charge of torture here, but we've got distinct cruel treatment that sits alongside and needs to be reflected as a specific charge in the judgement.

With that, let me turn to one more aspect, more of an evidentiary nature.

The Defence now seems to suggest where for a long time the narrative, as I had understood the Defence case, was that there were no victims, that nothing had happened, that now the suggestion is this might have happened but might have happened in another location.

And, again, only very, very briefly, here I would like to offer or to say that we need to address the evidence, of course, wholistically and see all those different bits. And it isn't required that every witness can in full identify where the location specifically was. But what is remarkable is that, for example, with regard to Witness 3953, he did have a sack over his head when he was brought. But when he was released, he was very well able to describe which way he took.

And let me briefly refer only to his testimony on page 608, 609 of the transcript, where he describes how it was first only just a kind of path, not a good road. And then the good path came later, and how they had to go through a meadow. Precisely, when we remember the aerial photograph that we saw throughout the trial, precisely the kind of path that you then had to take to actually get to the road that would eventually lead him to Prishtine.

Equally, he offered at a slightly later stage within that same passage some personal explanation. And I'm not going into detail here because I don't want to go into private session. But Your Honours will, when revisiting the transcript on page 609,

identify why he knew this area very well. And he offered a clear description on that.

Equally, another striking point -- and they are only small elements, but they add up to one bigger picture. Witness 1679, yes, he didn't describe very much on what this location was like. But what he did very poignantly do was pinpoint that it was 20 minutes, 20 minutes that it took to walk from the school in Zllash to the location. And that is in his transcript -- I can provide that reference later, if it's necessary, but that was in his testimony in court. And these 20 minutes were actually exactly the same 20 minutes that the Defence themselves presented as how long it took to walk up that way to the location in Zllash.

Combine that with finding identity cards or other records that clearly link the location, the compound to where the murder victim was held, all this viewed together makes one clear picture of that it was there at this location in Zllash where things happened.

And with that, one very, very last point on who actually was there.

Yes, not every victim was able to provide the whole list of people, and not every victim was describing precisely the same group of people present, but this is exactly what happens with memory. With memory, for everybody 20 years on it's never totally precise, and any criminal lawyer knows we've got to distill the objective core of what happened from so many different subjective truths.

Each and every one of us has their own truth on a specific

event. And the objective core is the intersection, is where it all overlaps. And we have, combined with those subjective truths, some objective elements, such as the list of prisoners, and together, they make one clear authentic account.

And then combining that with the effects of trauma, of memories that aren't always as linear in some of the witnesses makes clear that, overall, we've got a very consistent and actually a very strong case. And picking out or seeing only some very small parts of long testimonies is selective and doesn't present that, overall, all victims very authentically -- or all witnesses who were direct victims in this case very authentically presented what happened to them and that this happened in Zllash at the compound in question.

I actually just see that my reference to Witness 1679's testimony, only to be complete, can actually be found on page 980 of the transcript in lines 1 to 8. Just for Your Honours.

And with that, I shall close those remarks that I have on the Defence case in response, and thank you very much for your attention.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

It's now almost 1.00. For planning purposes, Defence counsel, after the break, how much time do you think that you will need for your comments to the responses of the SPO and the Victims' Counsel?

MR. VON BONE: I think maybe half an hour, maximum.

PRESIDING JUDGE VELDT-FOGLIA: Very well.

We proceed with the planning as set out in our order for the agenda, and for now we will have a lunch break until 2.30.

The hearing is adjourned.

--- Luncheon recess taken at 1.01 p.m.

--- On resuming at 2.31 p.m.

PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

And for this afternoon, we will start with the comments of the Defence to the responses of the Specialist Prosecutor's Office and the Victims' Counsel. Then we will have questions of the Panel, if any. And then we will have the closing statements by the Victims' Counsel and Defence counsel on reparations, if any.

Depending on how this afternoon will proceed, we will close the case today or tomorrow.

But for now, Defence counsel, you have the floor.

MR. VON BONE: Thank you very much, Your Honour.

Your Honour, obviously, to make a general comment, and that is that if we did not address any particular issue, that does not mean that it would be in *confesso*, so to speak. There are only so many topics that you can discuss and that you can argue, but it doesn't mean that if you did not mention one particular topic in particular, that that would be unchallenged or whatsoever.

Obviously, in a criminal case, it is important to determine the truth and, therefore, we believe that in order to do that, we try to, obviously, select the topics as much as possible and to make it as clear as possible. And I think we did that, Your Honour.

The first thing that I would like to address is what the SPO said about the motivation of witnesses. And in particular, the

motivation of Defence witnesses.

I really don't know, Your Honour, but it always is some kind of inference or assumption that when there is a Defence witness, for some reason, they are not credible because they were people from KLA or maybe from BIA, or even if they were not, they might have some particular reason or motivation to say something in favour of Mr. Mustafa.

And if we take our Defence witnesses, Your Honour, I think that these were simple people that lived the conflict as they have experienced it, and that is what they testified about. And I've never heard occurring any time of their testimony that the SPO, for example, went for a motion of perjury or any other thing that would, in fact, challenge a particular thing that a witness would have stated.

It was interesting, in one instance I recall, that when the SPO actually -- well, we called it stole, but it's not in that broad terms, but I mean when the SPO took away Fatmir Humolli as a Defence witness, made him a Prosecution witness, and during that time of questions, in fact, they started to challenge the credibility of Mr. Humolli who was at that time their own witness. So do I not know why. It is probably because the witness stated something that was not fitting the case of the Prosecution, but whatever.

I think the witnesses have testified about the place of the detention, indeed. That is what the SPO witnesses, indeed, did. And the place of detention is a central point in our case that we believe

that that is not the Zllash detention location as it is being presented by the Prosecution. That is the issue that we are having with this entire case. And I believe that also the shift of the Prosecution demonstrates that again.

So I think in that perspective, an accused must be able to know what exactly he is being charged of, but not only then, of course, the *locus delecti* is a central point in any kind of criminal case. So that does not make any kind of difference for the case that we have here at hand.

Now, we have stated our position on the shift of the locations that the Prosecutor did and I did that in length, I believe. I did that. I think I have indicated a number of points in the pre-trial brief, at the moment that the indictment needed to be confirmed, and so on, so do I not want to dwell on that point. It is for us clear that there was a shift in the buildings that we have seen in the Prosecution's case.

The issue of the alibi. Basically, the Prosecution assertion is the Defence alibi is not an alibi because he wasn't in a foreign country, or the Defence witnesses say he was either in or around Zllash, or he had access to a car, or we can even look it up in Google Maps. Roughly, these kind of things were being put forward.

However, Your Honour, I think it is really a misconception of the situation at the time. Mr. Mustafa, I think there is only one occasion where we hear somebody speaking about that he went via car, I think it was from Barileve up to Rimanishte, and then they went

either on foot further or something to that effect.

But in any event, it cannot be said that he had all the time access to a car. That simply cannot be concluded out of the evidence.

I recall, for example, that Mr. Humolli at some point stated that he went from Prishtine all the way on foot to Barileve and then they parted ways, and then Mr. Humolli went further on to Llapashtice, and that is where it ended. So I cannot go along with the assertion or the assumption that, oh, it's only 31 kilometres away, and, therefore, it is easily accessible.

We heard testimony in court by people who said how difficult the conditions were. People were expelled from their homes. Obviously, the situation in and around Prishtine, Barileve, Zllash, and so on, is an entirely different one than the one that we might experience now. And then the Prosecutor said: Well, the roads are still the same, or they are still there. But I think that he did not take into account the roadblocks that some of the witnesses spoke about, or the entire difficult situation, the amount of internally displaced people that were on the move. All these kind of factors, Serbian forces that are having barracks here and there. We saw in testimony generalities that there was this difficult crossing in Barileve where people had to go at some point be able to get over the road on particular circumstances.

So it is just to paint the picture in general that the circumstances of time can simply not add up to say that, well, you

know, Mr. Mustafa cannot say he was in Switzerland or the other countries that the Prosecutor mentioned and, therefore, he has no alibi. In fact, an alibi simply means that you are somewhere else. You don't have to be in another country to raise an alibi defence or to have people come forward and say: I saw this man on this place, in that place.

And I think that the witnesses have, of the Defence, demonstrated clearly that many times he was in Butovc, Prishtine, operating in urban areas, Barileve. These kind of areas where they testified about that they saw him at some particular point. So that is to the Defence alibi, what I would like to say about that.

Yes, then I would address the issue that was raised by Mr. Prosecutor de Minicis regarding the issue of Mr. 4600, the location where he was when he saw Mr. Mustafa at the Zllash detention location.

And, Your Honour, in this regard, I would like to say that I do not speculate about the buildings obstructing the view of a person. I do not speculate. I just say what the witness said. And in order to say that, I would like to quote the witness in this regard. 23 September 2021, and the page number is 732. And maybe, for the reference, it is useful to ask --

PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

MR. VON BONE: No problem, Your Honour.

To ask the Court Officer to put up on the screen the document. I think the document is 072909, yes, which was discussed in that

court session at the time.

Your Honour, I think I need to ask to go into private session.

PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you bring us into private session.

[Private session]

[Private session text removed]

[Open session]

THE COURT OFFICER: Your Honours, we're in open session.

PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

MR. VON BONE: Thank you very much, Your Honour.

So I'm discussing the Witness 4600's statement of 23 September 2021, and the exchange goes as follows on page 732. The question is:

"And where is the place in the sketch where Commander Cali greeted you from?"

And the answer is:

"From this part here."

And then the question is:

"Thank you very much. And can you, so -- and you were standing. Can you also mark with the same pen the place where you were standing when the exchange happened?"

The answer is:

"Yes, we were here at the gate."

Okay. Thank you very much, Your Honour. Until this moment, that leaves that quotation. So do I believe that it is clear what the witness indicated.

And then the Prosecutor said, and that is in the transcript on page 61, the raw transcript, line 11:

"... Defence counsel did not challenge this witness on this evidence."

Your Honour, we did not challenge this. Whether we challenged this or not is completely irrelevant. The witness simply stated

where he was standing when the exchange took place, so there is not much to challenge. He marked it and he said it, as I just quoted, Your Honour.

Then there is the issue that the type of armed conflict. And, Your Honour, the position of the Defence is as follows.

This is not a jurisdiction issue. It is an issue of qualifying a crime under Article 14(1)(c)(i). There is no possibility to put the arbitrary detention in this box because this article simply does not provide this crime in the paragraph on or subparagraph that is mentioned in the indictment. So it is not at all a jurisdictional issue.

However, it would be possible, probably, under Article 15 of the Law, and that would be the code of the Socialist Federal Republic of Yugoslavia code, which can also be -- which is listed under Article 15 of the Law of the Kosovo Specialist Chambers. It is under "Other Crimes under Kosovo Law."

So the characterisation of the armed conflict is not a jurisdictional issue because Article 14(1)(b) provides the legal basis of an act committed under international armed conflict, but the SPO simply charged under Article 14(1)(c) and not under Article 14(1)(b) of the Law.

So whatever the Appeals Chamber might have said about it, this is not at all a jurisdictional issue but simply to qualify a crime under the law.

Then, Your Honour, armed conflict of an international character

or not of an international character, and the co-existence of international and non-international armed conflict.

Your Honour, this is a merely theoretical approach by the SPO. The fact of the matter is that the territory of the conflict is on that of the Socialist Federal Republic of Yugoslavia without any distinction. There is a clear distinction between the two when the belligerent parties are of separate countries at the time of the indictment, which is what is the case, and it is fought on the territory of the SFRY. The moment that foreign armed forces become part of the theatre of operations, so to speak, then we can not qualify this anymore as a non-international armed conflict.

And, yes, indeed, there is, of course, the situation in the case in 1998 that there is an armed conflict of a non-international character, and that is exactly what we are trying to say, from 24 March onwards that ceased to exist and, basically, at that moment, it was an international armed conflict. And the case law of the ICTY largely is only about 1998 of the cases and not about 1999 and certainly not about April 1999. Certainly not Djordjevic.

Then, Your Honour, is something that there is -- yes, I would call it a little bit framing. We see that a person with the name of Muhamet Ajeti is constantly being referred to as Shyti, but he never said his name was Shyti. He said it was Shyt, that was the name. And if somebody else calls him Shyti, that that is not from him. But it is not his personal thing, that he acknowledged that or so on. If somebody else says that, that's okay. And if it is in the log of

Mr. Mustafa, I believe it says "Shyti AAK" and not "Shyti."

So constantly moving on that this is -- this Muhamet Ajeti is Shyti, it has not been established by anybody at all, not even Witness 4600, that the person, Muhamet Ajeti, is the one who is in fact Shyti. There is no evidence for that.

And, by the way, it was asked to the witness Muhamet Ajeti whether he had received anyone, for example, on the compound at any time, and he had not. He said he did not.

So, once again, the identification of 4600 of the person who he handed the person over to, the alleged murder victim, that person was never identified by him. He was only given a name and that's it. We don't know anything else about that person, so we cannot just paste that on him. There is probably expressions in many countries that you say, well, you know, if you are having this or that name very frequently, a name coming forward or being used, then that does not mean that that is that particular person that is meant at that time, Your Honour.

Then the issue of the showing of the entire photo map. I have not seen in the materials that an entire photo map would be given to the witnesses from which they could all choose or pick any kind of thing. We do not see in the transcripts that they say, "Well, the witness went through this picture and he said this about it or that about it." No, we do not see that. We see at some point only that they comment on one particular picture and, therefore, that, I believe, is what was probably shown to them.

I do not need to raise that in court at all at that moment. I'm just not going to do the work of the Prosecution. I just analyse what witnesses say. And just for the sake of the argument, even if they would have done that, if you go through their entire photo book as we know it, there is actually very few buildings on it. There is always the same building coming forward to that.

So in that perspective, what the Defence said stands as it is. The witnesses had no choice. And, as we said before, many of the witnesses, and I explained that, I think, to too much great extent even, that they only described the inside of a barn, never any particulars about the outside of a building, let alone that they would have had the choice to make a decision among those.

I'm almost going through it, Your Honour. Adem Shehu. It is, I think, not in discussion that this gentleman arrived late March. Even if Adem Shehu is not heard himself, we heard that by Sopi, Musli Halimi, and other ones. And if that would have been the date, 28 March, then I think the entire, what I said, the timeline of Witness 1679 would not simply be able to fit and, by the way, is also in contrast with the list of prisoners in which is indicated a different date as far as him is concerned.

There's the statement of Mr. Mustafa. He said, I think, in his statement that he was there maybe two times or so and that was it. And, obviously, he was there during the evacuation. It's also a very stark contrast to hear that a great amount of people say that he is very busy to evacuate the wounded from the compound at the time, and

at the same time this man would have had a kind of a double agenda, knowing that there was people in very bad conditions and just leaving him there. I mean, that is simply not reconcilable with the statements of, for example, Teuta Hadri, Fatmir Humolli, and Ibadete at the moment that they speak about the evacuation.

I state further that, for example, Kaplan Parduzi and Nuredin Ibishi were the witnesses who stated that he took them from - what was the name of that place in the middle of nowhere in Kosovo where I went - Orllan. Orllan, it was. All the way in a very difficult route, all the way up to Potok. A very extremely difficult trip to make. And that is also another example of how difficult the conditions were.

Mr. Parduzi and Ibishi, they were both shot at the time. It took two days to get to Potok, just to give an indication the difficulties at the time.

So thinking that -- that Barileve is 31 kilometres and you have a car is, I believe, not a fair qualification and description of the difficulties that the people had at the time.

Then, Your Honour, lastly, and then I am almost through it. That is addressing the issues put forward by learned counsel, the Victims' Counsel, that Article 14(1)(c) indicates acts and that list isn't exhaustive. That's page 75 on line 4.

Well, Your Honour, we cannot have a situation in which we say, well, it's due to the fact that this list is not exhaustive and, therefore, we can put arbitrary detention in the box of this

particular article, paragraph, and subparagraph. We cannot simply do that, because it would simply go beyond the scope of that particular article, so we simply need to see whether arbitrary detention fits into that particular article that is envisaged or not. It's as simple as that as far as the Defence is concerned.

And then about what counsel for the victims forwarded is that it amounts to torture and cruel treatment. And, obviously, I gave all the indications for all the witnesses about how they were treated and what kind of suffering they had and all the examples, I listed them one by one, but I did not get any clear indication for what particular special purpose this now was done. And that I also did not hear in the Victims' Counsel's observations regarding this.

But I believe that Victims' Counsel more stressed the types of sufferings that the victims underwent. And whether that amounts to cruel treatment or torture or both, I miss in that part the special purpose. And I think we, as the Defence, have clearly indicated that that is a necessity in order to prove the crime of torture.

Your Honour, these were the observations. I have finished my observation, and I thank you very much for your attention.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

We will now proceed with the questions of the Panel, if any.

I was already aware that there were no questions, but it's possible that some came up after the last remarks of the Defence.

Very well. Then we can proceed with the Victims' Counsel's closing statements on reparations.

Victims' Counsel, you have the floor.

MS. PUES: Thank you, Your Honours.

We have extensively discussed the responsibility of the accused now for the crimes that have occurred, and in this statement now I will turn to discussing the reparations claims in the context of the current case.

What I will do is that after some preliminary remarks, I will briefly summarise the proceedings pertaining to reparations to set the scene for the legal arguments that I advance. We'll then discuss the legal facts of the Defence's lack of engagement with the reparations case to date. And, lastly, provide some observations on the enforcement of the victims' rights to reparations.

For the benefit of the public, and to remain in open session, I will refrain from discussing any individual information. This has been done extensively in written submissions, and, therefore, I don't think I need to duplicate any of that.

Now, the right to reparation is a core right for victims of crime, specifically for those of gross human rights violations and serious violations of humanitarian law. This right to reparations is firmly embedded in international law, reflected in domestic orders, and guaranteed specifically in the Law of the Kosovo Specialist Chambers.

It applies to the direct and the indirect victims of the crimes the accused is charged with: The war crimes of arbitrary detention, cruel treatment, torture, and murder are all amongst the most serious

crimes.

But what kind of reparations do the victims seek? And the concept of reparations is broad. It can contain a variety of measures: Acknowledgement of victims' suffering, it could be a public apology, for example, it could also entail collective reparations. But reparations can also be of an individual nature and include the right to compensation for individual harm done.

And victims in this case are, firstly, hoping to see that their suffering is acknowledged in the verdict and that justice is being done. This is an important aspect for them.

At this point, I also want to take the opportunity to emphasise that all victims in this case realise that many, many people have suffered during the war in Kosovo. Large-scale atrocities were at the heart of the war. Serbian forces persecuted Kosovo Albanians. Sexual violence and ethnic cleansing were rife. And this bigger picture must not be forgotten. This is really important for us. And, indeed, victims are painfully aware of the atrocities committed that were left unaccounted for to this day. And they sincerely hope that justice will be done for those many victims who have not had the chance to see their plight addressed.

Yet, the obstacles in responding to this multitude of crimes committed do not take away from the rights of victims in this case. They have been wronged and they seek acknowledgement of this before this Court. This Court is, indeed, the last hope for the participating victims in this case to see justice served for crimes

committed.

Although we know from other tribunals that collective reparations are a possibility when victims can be identified as a group, victims in this case seek individual reparations as the crimes committed targeted them individually and harmed them individually. We have outlined this harm extensively in our written submissions. And although this harm is irreparable and will not bring back any lost lives, it is, nevertheless, significant to have suffering acknowledged and receive compensation.

With that, a brief summary of core arguments made.

From the opening statement onwards, we've made the victims' position clear, that reparations claims should be decided in the context of this trial, and Your Honours, the Panel, in response, reviewed the option to refer reparations claims to the courts in Kosovo. Three experts were appointed and submitted very extensive reports on the question of reparations in the local courts in Kosovo. Neither at this point, nor at any later stage, did the Defence enter in meaningful engagement with the points made or facts presented. Based on these reports, Your Honours then rightly decided to adjudicate reparations claims in this trial. You were, Your Honours, very transparent from the beginning in issuing decisions that outlined the different phases of the proceedings and allowed the Defence at every corner of the way to adjust their strategy, to make arguments, and prepare their response to any reparations claims.

The accused and the Defence have been aware of this claim from

the start, the right is provided for in Article 22 of the Law, and we have made our position clear.

Once the Panel had decided to conduct reparations proceedings as part of this trial, clearly the more effective approach, in our view, we suggested that the Panel order medical expert reports to reveal the extent of the harm done to direct victims. This resulted then in a very detailed report to the Court regarding some of the claims. We also suggested to hear an economic expert calculate loss and damages. The request was granted, an expert report received, and that showed how large the accumulated damage to victims economically was.

It indicated how if someone is unable to work, either in their old job or not able to develop a professional life because of the harm done, this damage accumulates massively over the years. The report used calculation methods commonly used in various European legal civil orders to measure economic harm.

As indicated by the expert, and is standard with these types of calculations, we must recognise that there's a large degree of hypothetical considerations that, of course, influence the level of economic loss and is compounded by other factors such as age or education. Therefore, we also, in addition, presented facts and legal arguments based on international case law to support specific claims for reparations. And our position is that all participating victims are eligible to receive reparations. In light of that, we note throughout the proceedings that it has been established that all indirect victims had a direct relationship to a direct victim in this

case.

Actually, only on Monday this week the Appeals Chamber of the International Criminal Court released its judgement in the Ntaganda case on reparations which is very instructive on the criteria for eligibility of indirect victims. An indirect victim is entitled to reparations if a direct victim was important to a claimant, and the Appeals Chamber states that it is critical in this context whether a special bond of affection or dependence connecting the applicant with the direct victim exists, which captures the essence of interpersonal relations, the destruction of which is conducive to an injury on the part of indirect victims.

All indirect victims have testified about their special and close relationship to the murdered victim and qualify for the award of reparations.

Amongst other arguments made, we argued that Your Honours will have to decide the reparations claim based on the standard that is more probable than not that the victims suffered the harm that we outlined. And then in a further consolidated submission, we explained the foundations for the individual amounts of reparations requested. It was proposed that the Trial Panel should base its assessment of the claims, should it find the accused guilty, of course, this is always the assumption on which all of this rests, on three pillars: The findings on the injuries as presented throughout, including expert reports, as one pillar; the international case law is the second one; and, thirdly, Kosovo legislation, specifically Law

04-L054 on the status and rights of martyrs, invalids, veterans, members of the KLA, civilian victims or their families.

This law provides guidance as to what those injured throughout the war may be entitled to. Now, I realise this doesn't fit neatly. But together, viewing all three pillars, it provides with the legal framework or provides a good approach to determine what proportionate reparations are, considering the gravity of the violations and the harm suffered. And victims ask for nothing more but also nothing less.

These submissions were part of the reparations proceedings combined with the ongoing trial against the accused here and conducted without any prejudice to the innocence or guilt of the accused. The Trial Panel made it clear in its decisions 4 February 2022 on reparations that these proceedings fall within the scope of Article 6(1) of the European Convention on Human Rights, with the victims and the accused being parties to those proceedings.

And this is where we are at the current juncture. We have detailed submissions on behalf of participating victims to substantiate the reparations claims. We have expert reports that help to factually determine the extent of the harm done. And from the Defence, we have nothing.

The Defence chose not to engage in the reparations proceedings at all so far. Actually, in my view, this is a pattern of ignoring victims that ran nearly through the entirety of this trial. Only today it was actually the first time that we heard an acknowledgement

of the victims from the accused.

The pattern started with the accused's absence during my opening statement as Victims' Counsel, continued with the accused's absence throughout the testimony of victims in this case. Whereas, it shall be pointed out, he keenly participated during the trial days when his old companions were appearing.

Although the accused did apologise for his initial behaviour to me as counsel, the counsel in front of me, it is a reoccurring pattern that we can observe and that signals, in my view, total disregard for victims.

Well, the accused and the Defence may choose to do so. This is their right. They presented their case concerning the criminal charges, aiming to show the innocence of the accused. Failure to engage with victims' accounts in this context is a strategy, and if to what -- and to what extent it's an effective strategy, that remains to be seen. But where it matters from the perspective of the claim to reparations is that silence and non-engagement in adversarial reparations proceedings running throughout this trial must have some legal consequences.

Let me be clear in setting out the omissions of the Defence, a party to reparations claims made here. The Defence did not comment on any experts appointed. It did not comment on any expert reports issued. It did not submit anything in response to our consolidated reparations submission or any of our previous submissions on reparations. Nothing.

When the Trial Panel issued its decision appointing a financial expert, setting out further procedural steps with regard to reparations, a decision from 1 January 2022, provided in paragraph 11, that the Defence had seven days to respond to the reparations request. Again, the Defence did not.

Having said that, we may, of course, deduce from the Defence strategy that the accused, as he is actively disputing any criminal responsibility, he also disputes any claim to reparations. While we can say that in principle regarding the question whether reparations is owed at all, the same cannot be said for other specific aspects of the claims made. This means submissions on points such as the eligibility of all victims to reparations claims, as well as those facts which determine the scope of the claim made, are not disputed by the opposing party. And should the Trial Panel come to the conclusion that the evidence before it shows that the accused is criminally responsible, this may mean that the accused fully trusts in you, the Panel, to draw the correct conclusions from any of the reports made and to adjudicate correctly on the victims' claims.

The right to a fair and adversarial trial in Article 6(1) of the European Convention requires only for any proceedings that the opportunity of parties exists and to have knowledge and to comment on all evidence adduced and any observations filed. The Defence did have full knowledge of all evidence and all submissions made. It was all there. Every opportunity was given along the way to file observations and offer its own legal perspective. However, it chose

not to do so.

From a Defence perspective, it is a choice they may have made consciously. It is for each party to a dispute alone to decide whether a document produced by the other party or evidence given by witnesses calls for comments. Litigants' confidence in the workings of justice is based on the knowledge that they have had the opportunity to express their views. That they have not done so within the deadlines provided by the rules is an active choice and one that needs to be respected. But it's not without consequence.

Just briefly here on the legal framework that the Kosovo Specialist Chambers provides in Rules 75, 76, and Rule 9 of the Rules of Procedure and Evidence.

Yes, routine matters, those that aren't complex in any way, may be argued and decided orally. In the reverse, though, this suggests that matters of complexity shall be dealt with in writing. And the reparations proceedings are, undoubtedly, complex. Following this understanding, the reparations proceedings have been conducted in writing in compliance with Your Honours' decisions throughout the course of this trial.

Rule 76 obliges parties, the Defence in this case, to respond to a motion on reparations within ten days of the motion submitted. Victims' Counsel will then have had -- or we would have had the chance to respond within a further five days. Any applications of extensions of time limits should have been filed then sufficiently in advance to enable the Panel to rule on the application before the

expiry of any relevant time limit.

Now, of course, mistakes can happen. We're all humans. Deadlines can be missed. No doubt about that. But in this case, Rule 9, paragraph (5), for example, provides Your Honours with discretion to accept submissions after the expiry of a deadline. Should the Defence, though, now choose to make substantial submissions as to the scope of reparations provided after ignoring reparations proceedings for the entirety of the trial, in our view, this would be wrong.

The Defence has shown no good cause, not claimed any mistakes, not raised any difficulties that could have prevented it from engaging any earlier. Simply accepting this form of non-compliance with the rules would undermine the legal framework of the Kosovo Specialist Chambers and, as I will explain further, would even violate standards of fairness owed to victims in this case.

It's actually a general principle of law that parties to legal proceedings must adhere to timeframes and deadlines for submissions provided in a procedural framework of a court. This principle is a backbone, actually, of a good legal order. Parties must comply with deadlines for filings unless good reason as to why they were hindered from making a submission in good time is shown. Otherwise, it's actually impossible to conduct proceedings in an efficient, effective, and fair manner. Any arguments presented after the deadline for submission has passed without any reason as to why a delayed submission should be accepted should, in our view, be

time-barred.

The right to fairness extends to victims as parties to the reparations proceedings. If a party to proceedings doesn't engage, it does not allow us to engage in a fair and balanced discussions of any objections that may be offered now. Any doubts, for example, in the choice of experts, working methods, or whatever.

As I've said before, we haven't had any substantiated arguments to date. Should the Defence choose today to finally engage with the reparations case, any arguments would have to be made from our side in response in a very ad hoc manner. It would be unfair to victims as claimants in this case, and, actually, a breach of Article 6(1) of the European Convention. Even in view of the time the Panel has scheduled for some responses, we wouldn't have the chance to consider arguments made, for example, through consulting with experts, say, on any aspects of Kosovo law or other points raised that may have to be discussed with clients.

Let me sum up. Facts and circumstances that support the reparations claim and as presented by us stand uncontested, apart from the question of the principle whether reparations are owed at all. They should be treated as such. Victims should, therefore, be awarded the reparations claimed to provide compensation for the physical harm, the mental harm, and the material harm that has been suffered by the direct victims and the harm that was suffered by the indirect victims as consequences of the crimes for which the accused is liable.

And now one last aspect on the enforcement of reparations claims.

It is the accused's legal obligation to pay reparations, if ordered. Yet, as is so often in these cases, it may be extremely difficult to enforce any reparations order against the accused, which would leave the victims with an order on paper but no tangible result that could make a difference to their situation.

At the International Criminal Court, this problem is counterbalanced through a creation of a Trust Fund for Victims, but no similar fund exists before this Court -- in this Court.

During my opening statement in this case, I seized the opportunity and called on the Government of Kosovo and the international community to ensure that victims will be able to realise their right to reparations. The Trial Panel took, actually, the laudable step to write, twice, to the Government of Kosovo, which was rather unprecedented in nature. Your Honours requested information on the possibilities provided to ensure that reparations will be paid to victims. The answers, though, left ambiguities and stood in some contrast to what experts had stated as to the applicability of the law.

The Victim Compensation Fund seems the only fund for compensation of crime victims. It remains unclear if the victims in this case could draw on compensation from that fund. It also remains unclear whether that compensation would at all be sufficient to satisfy the claims made here. However, we will be ready to apply on

behalf of victims and put the framework to a test should enforcement against the accused fail.

At this point, we ask, and, again, because it's the lack of other platforms that could exist, we ask the government, and specifically the Ministry of Justice, to ensure that sufficient funds will be made available, whether within the framework of the Victim Compensation Fund or beyond. Victim support is needed.

It would be an important signal of goodwill if victims were not put through the lengthy procedure of firstly attempting to enforce the reparations claims against the accused before having to rely on a highly discretionary procedure within the Ministry of Justice.

Let me also emphasise states have responsibilities to victims of serious human rights violations. Although Kosovo is not a state party to many of the international humanitarians covenants that constitute the core of international human rights law, the obligations contained therein are nevertheless implemented through Article 22 of the Constitution of Kosovo. Article 22(8) explicitly incorporates the guarantees, for example, of the Convention Against Torture. This means that rights and obligations contained in the convention are directly applicable and have, in case of conflict, priority over other domestic laws.

The Convention Against Torture does not only enshrine the prohibition of torture. It also provides for the victims' rights to reparations and puts onus on states to ensure that victims receive reparations. Article 14 of the Convention Against Torture is clear.

Each party, each state "shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation ..."

And:

"In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

It could not be said any clearer. A right to enforceable compensation is enshrined in international human rights law and takes precedent over any other domestic compensation provisions. The Convention Against Torture obliges states to deliver. The Republic of Kosovo must ensure that victims receive redress. Whichever the legal framework will be, we are ready to provide assistance to victims and to support them to ensure this is done, once Your Honours will have delivered your judgement and, hopefully, will grant the reparations order we seek.

We expect the government to show the willingness and cooperation to help victims realise their claims, and we would urge Your Honours, as a Kosovo court, to emphasise that a responsibility lies on the state in its own order.

In closing, we ask the Panel to order that the accused pay compensation to the participating victims individually; and to order the forfeiture of any property, proceeds, and any assets used or deriving from the commission of the crime, as far as they may exist, so that they may be sold or shared between victims.

With that, the only thing that remains is to thank Your Honours

for the extensive engagement with victims' positions and the Prosecution for their efforts to bring this case, and many, many others within the Kosovo Specialist Chambers who work on behalf of victims.

Thank you very much.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

We now turn to the Defence counsel.

Defence counsel, you have the floor for the closing statements on reparations.

MR. VON BONE: Thank you very much, Your Honour.

Mr. Mustafa has, from the beginning on, denied the charges, and it is the Defence position that he should be acquitted. Mr. Mustafa, therefore, will not give any substantial response, or the Defence will not give any substantial response to the Victims' Counsel.

It implies, with the position of Mr. Mustafa, that when he has taken the position that he did not commit any of these charges, that there are no reparations to be made to the victims. That's, basically, what is the consequence of the position that we have taken in this case. So that's our standpoint.

I have no further issues that I need to bring up. Thank you.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

I look at my colleagues, if there are questions for Victims' Counsel on this. No. Thank you very much.

We will have now first a break of half an hour. A little bit earlier than we had foreseen. And then we come back to -- I think it

will be to finalise, for now, but we first take a break.

The hearing is adjourned.

--- Recess taken at 3.39 p.m.

--- On resuming at 4.10 p.m.

PRESIDING JUDGE VELDT-FOGLIA: Okay. For the last time, I see that we are in the same composition, for the record.

And Mr. Mustafa is joining us by ...

Very well. We've completed the closing statements on all issues. At this juncture, I want to address the accused and ask him if he confirms his position, that he does not want to exercise his right under Rule 135(4) of the Rules to speak last.

Mr. Mustafa, can you confirm that you do not want to address the Panel and speak last, as previously indicated through your Defence counsel?

THE ACCUSED: [via videolink] [Interpretation] Yes, Your Honour. I confirm this. I am not going to exercise this right, because I am sure that I have stated everything in my opening speech addressed to the Panel.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Mustafa. Now it's on record that you don't exercise your right to speak last.

Do the parties and the Victims' Counsel have any other matter to raise with the Panel?

MR. MICHALCZUK: Your Honours, nothing from the Prosecution.

PRESIDING JUDGE VELDT-FOGLIA: Very well.

MS. PUES: Your Honours, there's one question I have.

Obviously, I'm aware of the rules that provide for the timelines for the deliberation, and I absolutely understand that it's nothing you can give a clear answer to yet.

However, I do know that there are people out there who wait anxiously for decisions, and I will somehow need to manage expectations and provide answers as to what is to be expected in terms of when possibly, just a rough timeframe, any verdict may be made.

I understand -- I know what the rules are, that the general rule is 90 days, and could be extended, and I also understand that anything you say would be very provisional. But because I have a role in which I will need to provide information to those participating, and I anticipate questions that will be asked, if there is any form of answer that you could provide, I would be very grateful for that. Thank you.

PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

Defence counsel, is there something you want to raise?

MR. VON BONE: No, Your Honour. We have nothing to raise from the side of the Defence.

PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

I will get back to your answer in a while.

Before closing the case, I remind the parties and the Victims' Counsel that, pursuant to Rule 136, at this stage, no submissions may be made or evidence may be submitted, unless exceptional circumstances and good cause exists. This, of course,

does not include matters that must be regularly reviewed, like the detention.

On behalf of the Panel, I thank the parties and the Victims' Counsel for their contribution. I also thank the interpreters, the stenographers, the audio-visual technicians, and security personnel, and, more generally, all Registry staff in and outside the courtroom for their invaluable assistance throughout this trial.

In due course - and I am getting now also to you, Victims' Counsel - the Panel will issue a public Scheduling Order sufficiently in advance of the date for rendering of the judgement, and everything that is important to this matter is provided for in the Rules of Procedure and Evidence. So this is my answer to you.

Very well.

The case is closed. And the hearing is adjourned.

--- Whereupon the hearing adjourned at 4.15 p.m.