

1 Wednesday, 11 February 2026

2 [Open session]

3 [Closing statements]

4 [The accused entered the courtroom]

5 --- Upon commencing at 9.01 a.m.

6 PRESIDING JUDGE SMITH: Mr. Court Officer, please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is the  
8 file number KSC-BC-2020-06, The Specialist Prosecutor versus  
9 Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi. Thank  
10 you, Your Honours.

11 PRESIDING JUDGE SMITH: Good morning and welcome, everyone. I  
12 note that the accused are all present in court today.

13 Today, we will continue hearing the closing statements in this  
14 case. This morning, we will start with the closing statements from  
15 the Defence for Hashim Thaci. Later today, we will hear counsel for  
16 Kadri Veseli's closing statements. We will follow the agenda set out  
17 in the Panel's order on the closing statements, which is filing  
18 F03639.

19 Just as a reminder, today's hearing is scheduled to conclude at  
20 1645, and breaks are scheduled for half an hour at 10.30, resuming at  
21 11.00; one and a half hour for lunch at 1300, resuming at 1430; and  
22 15 minutes at 1530, resuming at 1545.

23 Lastly, since the closing statements are being interpreted, the  
24 Panel reminds the parties and participants to speak at a slow pace to  
25 allow for the interpreters to catch up.

1 This concludes the remarks from the Panel.

2 We will now start with the closing statements of the Defence for  
3 Hashim Thaci. You have been allocated 4.5 hours, which means you are  
4 scheduled to finish by no later than 1530 today.

5 Mr. Misetic, you may proceed.

6 MR. MISETIC: Thank you, Mr. President. Good morning to you, to  
7 our colleagues on the Prosecution, and to everyone in and outside the  
8 courtroom.

9 At the outset, we have hard copies of our PowerPoint  
10 presentation which we would like to distribute to the Panel, CMU, one  
11 copy to the Prosecution, and one copy to Victims' Counsel.

12 PRESIDING JUDGE SMITH: Thank you.

13 MR. MISETIC: With your leave. While that's being distributed,  
14 we will put on the screen a roadmap of our presentation so you know  
15 what's coming and who's coming. I will start with the introduction,  
16 then I will address was there a joint criminal enterprise. I will  
17 address the Prosecution's allegation that Mr. Thaci was a member of  
18 the joint criminal enterprise. I will address the Prosecution's  
19 arguments about Mr. Thaci's alleged command position. I will then  
20 turn the floor over to Ms. Tavakoli who will discuss the Provisional  
21 Government of Kosovo not being a significant contribution to the  
22 alleged JCE. Co-Counsel Ambassador Prosper will then address the  
23 issue of the Specialist Prosecutor's Office attack on Defence  
24 witnesses. I will then return to address law and evidence, and then  
25 finally sentencing, and that will conclude our presentation.

1           Your Honours, let me start by saying this: Hashim Thaci is  
2 innocent. That is your starting position as you commence  
3 deliberations. We know he is innocent at this point in the  
4 proceedings because the law requires you to presume that he is  
5 innocent. Believe it or not, I have heard presidents of  
6 international criminal tribunals give speeches where they get this  
7 wrong. They say, "A finding of not guilty does not mean we said they  
8 were innocent." That kind of thinking misunderstands what the entire  
9 process of international criminal trials is about.

10           You have before you four men whom the law says you must presume  
11 to be innocent. These proceedings have been brought because the  
12 Specialist Prosecutor's Office has come forward and made the claim  
13 that they have evidence that proves beyond any reasonable doubt that  
14 they are guilty. And so, for over five years now, we have been  
15 engaged in a process designed to put the Specialist Prosecutor's  
16 Office to the test, and to see whether they can prove their  
17 allegations.

18           This trial is therefore not an examination of the life of  
19 Hashim Thaci. It is a test of the SPO's claim that Hashim Thaci  
20 should no longer enjoy the presumption of innocence. When you  
21 commence your deliberations, you will start from the position that  
22 Hashim Thaci is innocent, and then you will assess whether the  
23 evidence presented by the Specialist Prosecutor's Office has  
24 convinced you beyond any reasonable doubt that Hashim Thaci is  
25 guilty.

1           If the SPO has not convinced you, if you conclude that there is  
2           at least one reasonable explanation of the evidence other than that  
3           Hashim Thaci is guilty of the charges in the indictment, then you are  
4           required to find that the SPO has failed, and enter a judgment of  
5           acquittal. Hashim Thaci will remain innocent as a matter of law.

6           Slide 5, please.

7           We submit that in your deliberations you will come to the  
8           inevitable conclusion that the SPO cannot meet its high burden of  
9           proof. The totality of evidence demonstrates a consensus of  
10          international witnesses, insider KLA witnesses, and documentary  
11          evidence which establish reasonable doubt about the SPO's  
12          allegations. And so the record is clear, I want to say at the outset  
13          the SPO has made no allegation that any witness in this trial was  
14          interfered with.

15          Let's first look at the international witnesses. You heard from  
16          numerous international witnesses that Hashim Thaci was not suspected  
17          of involvement in war crimes as these events were unfolding. These  
18          international witnesses told you that they were, in fact, informed  
19          about events on the ground through diplomatic, intelligence, and  
20          other sources, as well as their own personal experiences, including  
21          their experiences with Hashim Thaci.

22          You heard this, for example, from the former assistant  
23          United States Secretary of State, James Rubin, who told you that in  
24          late June 1999, he specifically investigated claims made in the  
25          *New York Times* in June 1999 about Mr. Thaci, checked all available

1 intelligence sources, diplomatic sources, the human rights division  
2 in the State Department, and other information available to the  
3 United States Government, and could not find any evidence linking  
4 Mr. Thaci to war crimes.

5 You heard from the former NATO Supreme Allied Commander of  
6 Europe, General Wesley Clark, who told you that he does not believe  
7 it would be just to attribute the misconduct of others to  
8 Hashim Thaci, and that he knows of no evidence that he personally  
9 committed any violent act or ever worked with others to do so.

10 You heard from the UN's Principal Deputy Special Representative  
11 of the Secretary-General, Mr. Jock Covey, who was on the ground, and  
12 who told you that based on his personal observations, Mr. Thaci was  
13 not in a position either to organise the interethnic violence that  
14 engulfed the country during the summer of 1999, or to summarily call  
15 it off, and that he "observed and otherwise knows of Mr. Thaci on  
16 multiple occasions taking great risks by emphatically and repeatedly  
17 denouncing that violence, and by strongly advocating multi-ethnic  
18 tolerance."

19 You heard from experienced and distinguished US diplomats like  
20 Michael Durkee and Shaun Byrnes and Christopher Hill who described  
21 Mr. Thaci's role in the KLA as akin to a foreign minister.  
22 Ambassador Hill told you of his vast experience dealing with  
23 international leaders and personalities across many decades of  
24 diplomatic service, and he formed the view that Mr. Thaci was "not  
25 the type of person to commit violence against others."

1           You heard from an experienced and distinguished British  
2 diplomat, John Duncan, who told you that Mr. Thaci could not have  
3 independently stopped the violence in the summer of 1999.

4           And you heard from the respected professor of international law  
5 Paul Williams, who was a trusted adviser to the Albanian delegation  
6 at Rambouillet and who observed Mr. Thaci's interactions from inside  
7 the delegation and concluded that Mr. Thaci did not have the  
8 authority inside the KLA to make decisions on his own.

9           The SPO tries to dismiss the testimony of these international  
10 witnesses as people who were simply uninformed about the inner  
11 workings of the KLA. For reasons I will discuss later in this  
12 submission, the SPO's claim that international witnesses were  
13 uninformed is peculiar given the centrality of KLA communiqués,  
14 political declarations and media interviews to the SPO's case that  
15 the alleged common criminal purpose was communicated to lower levels  
16 of the KLA through such public documents.

17           Slide 6, please.

18           We heard the SPO on Monday say that the opponent policy was  
19 "openly articulated and actively implemented." All of these public  
20 documents would have been available to Shaun Byrnes and the Defence's  
21 international witnesses and their countries and international  
22 organisations, and would have informed the views of the international  
23 witnesses.

24           Moreover, the evidence of these international witnesses is  
25 strongly reaffirmed by the testimony of senior KLA officials,

1 insiders from whom you heard and who took the same view as the  
2 international witnesses. And they also told you that Hashim Thaci  
3 had nothing to do with any alleged policy to target so-called  
4 opponents, to detain civilians, or to mistreat them. You heard this  
5 from Commander Rrustem Mustafa (Remi). You heard this from the  
6 deputy commander of the KLA, Sokol Bashota. And most importantly,  
7 you heard it from the Chief of the General Staff himself,  
8 Bislim Zyrapi.

9 Slide 7.

10 And on this slide, you see the testimony of Bislim Zyrapi, who  
11 confirmed for you that he was not aware of a General Staff policy to  
12 target collaborators or any involvement of Hashim Thaci in any such  
13 policy:

14 "Q. Were you ever aware of any agreement, spoken or unspoken,  
15 within the General Staff of the Kosovo Liberation Army ... in which  
16 Mr. Thaci was involved to abuse the human rights of either  
17 collaborators or people perceived to be opponents of the KLA?"

18 His answer:

19 "No, I wasn't.

20 "Q. Were you ever aware of any agreement, spoken or unspoken,  
21 to unlawfully intimidate people perceived to be opponents of the KLA  
22 or collaborators or to commit violence against them or to remove them  
23 so that [the] KLA could seize power in Kosovo?"

24 His answer:

25 "No, I wasn't."

1 Slide 8.

2 I will discuss Bislim Zyrapi's evidence, and the SPO's treatment  
3 of his evidence, in a moment and in some detail. But for now, I draw  
4 your attention to the SPO's assertion on Monday where they describe  
5 Zyrapi as "the one General Staff member who did not form part of that  
6 group of trusted persons. He was the only outsider." That's at  
7 transcript 28468.

8 Slide 9, please.

9 This is consistent with paragraphs 1431 and 1432 of the SPO's  
10 final brief wherein the SPO asserts that Zyrapi's past and present  
11 testimony has been "broadly consistent," but tries to dismiss his  
12 exculpatory evidence for Mr. Thaci on the basis that he was allegedly  
13 "not part of the General Staff inner circle to which the Accused  
14 belonged," and was "not fully trusted by all KLA members, including  
15 certain members of the General Staff," and therefore, "such factors  
16 would affect the extent to which the JCE Members would openly discuss  
17 Opponent policy with him."

18 The SPO goes on to assert, in paragraph 1433, that Zyrapi "has  
19 given largely consistent evidence over time, before different courts,  
20 and stood behind those statements."

21 This is consistent with the way the SPO has pleaded its case;  
22 namely, at no time has the SPO identified Zyrapi as a named or even  
23 suspected member of the alleged JCE.

24 In summary, the SPO's position is that Bislim Zyrapi is  
25 generally a credible witness. He was not identified as part of any

1 JCE and is not alleged to be by the SPO. The SPO's case is that  
2 those who were JCE members kept discussions of their criminal purpose  
3 from him. The SPO's position on Zyrapi has significant implications  
4 on the overall credibility of the SPO's case. Why?

5 Slide 10.

6 Because for most of the indictment period, Zyrapi was either the  
7 head of operations of the KLA or the Chief of the General Staff. He  
8 was therefore at the very centre of the KLA's operations. He went  
9 out into the zones and was with Mr. Thaci when Thaci was in the  
10 zones, including near Rahovec in July 1998, in the Shala and Llap  
11 zones in August 1998, and in the Dukagjin zone in September 1998.  
12 You see that on your screen.

13 The SPO final brief argues that all of these visits to the field  
14 by Mr. Thaci and others were for the purpose of conveying and  
15 implementing the common criminal purpose.

16 Slide 11.

17 And yesterday, you heard Mr. Halling cite P00607, a newspaper  
18 interview given by Mr. Zyrapi, which the SPO bar tabled and which was  
19 never shown to Zyrapi by the SPO for comment. The SPO quotes the  
20 newspaper article in support of the claim that Zyrapi had sought the  
21 consent of Thaci and Veseli in order to install men who would  
22 oversee, in the words of the SPO, a "torture operation."

23 Slide 12.

24 We are, of course, prejudiced by the SPO's failure to put this  
25 argument to Zyrapi or anyone else. But how does the SPO reconcile

1 its position that Zyrapi was not a named member of any JCE, not  
2 trusted by the JCE members, with the fact that Zyrapi travelled with  
3 Mr. Thaci to each of these visits, and not only attended but  
4 participated in the discussions? How does it reconcile its position  
5 that it was Zyrapi who installed men operating a torture operation  
6 with its argument that Zyrapi was not in the JCE and not trusted by  
7 the JCE members?

8 Slide 13.

9 How does the SPO reconcile its claim that Thaci implemented the  
10 common criminal purpose in these meetings in the field with  
11 Bislrim Zyrapi present for all of them with its position that  
12 Bislrim Zyrapi was not a named member of the JCE and the so-called JCE  
13 members tried to conceal the common criminal purpose from him? The  
14 SPO does not say. And this is a common problem throughout the SPO  
15 final brief and its closing statements. They simply ignore all of  
16 the trial evidence that discredits their case. The Qirez video is  
17 but one example which I will get to later. Reviewing the SPO final  
18 submissions is like reading a movie review written by someone who  
19 didn't watch the movie.

20 Slide 14.

21 Zyrapi testified that in these visits to the zones, he had heard  
22 complaints about treatment of prisoners within the zones and this was  
23 the reason that he issued orders in November 1998 as Chief of the  
24 General Staff to try to put a stop to any mistreatment of persons.  
25 His testimony is corroborated by the contemporaneous written order

1 which you have in evidence as Exhibit 1D29.

2 The SPO final brief does not challenge Zyrapi's evidence on this  
3 point or that his order 1D29 was made in good faith. Indeed, this  
4 order corroborates the agreed position of the Defence and the SPO  
5 that Bislrim Zyrapi was not a member of the alleged JCE.

6 While we are on the order, you heard Mr. Tieger on Monday  
7 suggesting that the 28 November 1998 order was understood not to  
8 apply to collaborators because they weren't deemed to be civilians.  
9 And that's at transcript page 28400. However, this is not what the  
10 SPO said in its final trial brief.

11 As you see on this slide, in paragraph 871 of the SPO final  
12 brief, the SPO refers to General Staff orders to detain  
13 collaborators, and if you look at the documents cited in the  
14 footnote, 1D29 is one of them.

15 Slide 16.

16 Zyrapi also confirmed in both his SPO interview and his trial  
17 testimony that the order applied to collaborators as well. And  
18 that's on your screen as well.

19 Slide 17.

20 But even looking at the order, there is nothing to suggest that  
21 it excludes collaborators. I draw your attention to paragraphs 1, 3,  
22 and 4 of the order. Paragraph 1:

23 "... stamp out the negative phenomena and abuse against  
24 persons ..."

25 The same in paragraph 4, referring to:

1 "The arrest, detention, or imprisonment of persons ..."

2 The words there do not say "civilians." When the order wanted  
3 to refer to civilians specifically, it did so expressly as in  
4 paragraph 3.

5 Slide 18.

6 So how does the SPO reconcile its position that Zyrapi, the  
7 Chief of the General Staff, was issuing orders that allegedly were at  
8 counter-purposes to the alleged common criminal purpose of other  
9 members of the General Staff? Why would the JCE members allow him to  
10 obstruct their criminal objective? Again, the SPO does not say.

11 We say that 1D29, issued by someone at the very heart of the  
12 KLA's operations, establishes a reasonable interpretation of the  
13 evidence that there was no JCE involving the General Staff as alleged  
14 by the SPO.

15 Slide 19.

16 Another problem that Zyrapi poses for the SPO concerns the SPO  
17 allegation in its final brief that certain directorates of the  
18 General Staff were instrumental in implementing the common criminal  
19 purpose, including the civil administration directorate, the military  
20 police directorate, and the personnel directorate.

21 However, all of these directorates were subordinated to whom?  
22 To Bislum Zyrapi as the Chief of the General Staff. You see here on  
23 this slide an organigramme of the General Staff which the SPO showed  
24 you on Monday. You see here that these directorates are alleged by  
25 the SPO to have been directly subordinated to Zyrapi. You see here

1 that they are not alleged to have been subordinated to Mr. Thaci.

2 You should also note that the SPO confirmed that in addition to  
3 the accused, those in the black boxes are alleged JCE members, and  
4 those that are not in the black boxes are not alleged to be JCE  
5 members. Zyrapi is one of those not alleged to be a JCE member.

6 Slide 20.

7 The SPO also noted during their closing statement that Zyrapi  
8 was receiving reports from the zones about special warfare. However,  
9 their position is also that Zyrapi was not in the JCE.

10 Slide 21.

11 So how does the SPO reconcile its position that multiple  
12 directorates of the General Staff were implementing a common criminal  
13 purpose even though the person responsible for leading them was not  
14 alleged to have been? And how could he have been unaware of such a  
15 criminal purpose if they were directly subordinated to him?

16 Slide 22.

17 The next issue for the SPO concerns its repeated claim  
18 throughout its final brief that the General Staff made its decisions  
19 collectively through a collective decision-making process. See  
20 paragraphs 64, 103, 113, 471, 480, 481, 504, 512, 515, and 612 of the  
21 SPO brief.

22 Indeed, in paragraph 64, the SPO asserts it relies on the 2006  
23 ICTY statement of Sokol Bashota for the claim that "there was a  
24 collective decision of the General Staff authorising further measures  
25 for collaborators." The SPO's case is that General Staff reached

1 decisions collectively, including in the case of collaborators.

2 Slide 23.

3 The SPO's case also does not allege Zyrapi as Chief of the  
4 General Staff to have been a JCE member himself. In their final  
5 brief, the SPO has clarified further that Zyrapi was allegedly "not  
6 part of the General Staff inner circle to which the Accused  
7 belonged," and was "not fully trusted by all KLA members, including  
8 certain members of the General Staff," and therefore, "such factors  
9 would affect the extent to which the JCE members would openly discuss  
10 opponent policy with him." As noted earlier, this has now also been  
11 confirmed in the closing statement.

12 Putting aside for a moment the lack of credibility of the  
13 Bashota 2006 ICTY statement, which I will address later, the SPO, by  
14 acknowledging that Zyrapi was not a JCE member, necessarily  
15 acknowledges that collective decision-making, even in the case of  
16 collaborator policy, does not automatically put every General Staff  
17 member in the JCE. Otherwise, the SPO would have identified Zyrapi  
18 as a JCE member, especially given he was the chief.

19 Slide 24.

20 If leadership of the General Staff does not automatically make  
21 Zyrapi a JCE member, as the SPO acknowledges, then mere membership in  
22 the General Staff cannot make Hashim Thaci a JCE member either."

23 Slide 25.

24 The SPO stated on Monday, at transcript page 28366, that there  
25 can be no conviction on the sole basis of being a member of the

1 General Staff. We agree.

2 Slide 26.

3 You may be saying to yourself: Well, Mr. Misetic, what about  
4 the documentary evidence? Maybe these international witnesses were  
5 unaware of the smoking gun orders from Thaci to beat and kill  
6 opponents. But there are no such documents implicating Thaci. There  
7 are no General Staff orders in which detention and mistreatment of  
8 so-called opponents is suggested. And the SPO does not claim  
9 otherwise. On the contrary, the only order on the issue of civilian  
10 detention is the one I've mentioned, 1D29, where Zyrapi ordered the  
11 proper treatment of persons.

12 There are no orders in the record from Thaci to perpetrators of  
13 crimes. There are no reports from perpetrators of crimes to Thaci.  
14 There is no credible evidence that Thaci authored communiqués or let  
15 alone that he authored any inflammatory communiqués. There is no  
16 credible evidence that any KLA communiqués significantly contributed  
17 to any of the crimes charged in the indictment. And there is no  
18 credible evidence that he was personally involved in the commission  
19 of war crimes. And I will address this point a bit later in my  
20 submissions.

21 Slide 27.

22 The SPO asks you, the Trial Panel, to thread an incredibly small  
23 eye of a needle. They ask you to find that there is no reasonable  
24 doubt of the existence of a joint criminal enterprise in 1998 and  
25 1999 within the KLA General Staff in which Hashim Thaci was a

1 participant, a JCE which committed war crimes and crimes against  
2 humanity in order to "gain and exercise control over all of Kosovo,"  
3 but also ask you to find that it would not have been evident to  
4 international officials and the NATO countries which intervened  
5 militarily on the side of the KLA.

6 The SPO asks you to make the finding that the JCE would not have  
7 been evident even to the Chief of the General Staff, and it asks you  
8 to make this finding in the absence of any internal documents where  
9 any such plan to target so-called opponents for the purposes of  
10 gaining and exercising control over all of Kosovo was ever suggested,  
11 let alone discussed. There are not even any books, memoirs, or  
12 manuscripts where any such plan is recollected. In the words of  
13 General Clark, the SPO asks you to find that this was quite the  
14 "elaborate deception."

15 Slide 28.

16 The SPO effectively asks you to tell the world that you are  
17 going to rewrite the history of the Kosovo war based almost  
18 exclusively on inference, because there is no direct evidence  
19 supporting their allegation of a common criminal purpose. And they  
20 ask you to draw these inferences after a trial in which the SPO was  
21 too afraid to put its theory to a single witness, whether called by  
22 the SPO or the Defence.

23 The SPO's fear, and I don't use that word loosely, its fear of  
24 putting its case to any witness in this trial is an admission of what  
25 the SPO thinks of its own case, of its own lack of direct evidence to

1 confront witnesses who dispute their case.

2 Slide 29.

3 Until now, the jurisprudence of international courts and  
4 tribunals has found that NATO intervened militarily in Kosovo in 1999  
5 in response to a Serbian JCE that began no later than October 1998.  
6 The SPO is asking you to find, on inference alone, that actually it  
7 was the KLA that had plotted a joint criminal enterprise months and  
8 perhaps years earlier but no later than March 1998.

9 Moreover, the jurisprudence of the ICTY has established that the  
10 Serbian political leader, President Milan Milutinovic, was not  
11 criminally responsible for the events in Kosovo in 1998 and 1999  
12 precisely because he was a political figure who did not have  
13 effective control over FRY forces and therefore did not make a  
14 significant contribution to a JCE. The SPO asks you here to find  
15 that although the Serbian president of an organised and  
16 well-established state was not criminally responsible for massive war  
17 crimes and crimes against humanity due to his lack of effective  
18 control, you should, on inference alone, find that the Kosovo  
19 Albanian political leader of the KLA, a non-state armed group only  
20 months in existence, had effective control and was criminally  
21 responsible. That result would be a perversion of history and a  
22 legal and historical injustice.

23 Slide 30.

24 Your Honours, the SPO's case is not the only reasonable  
25 interpretation of the evidence, which is the standard that must be

1 met in order for you to rewrite the history of Kosovo in this case  
2 and to convict Hashim Thaci. There is ample reasonable doubt for you  
3 to enter a judgment of acquittal on all counts.

4 I will turn now to the section: Was there a JCE?

5 Slide 32, please.

6 At the core of the SPO's case is its central allegation that  
7 there was a common criminal purpose to "gain and exercise control  
8 over all of Kosovo through the commission of war crimes and crimes  
9 against humanity." As I've said, the SPO asks you to find beyond any  
10 reasonable doubt that such a common criminal purpose existed based  
11 purely on evidential inferences. There is no direct evidence that  
12 any such plan ever existed, no evidence of any meetings where any  
13 such purpose was discussed, no documentary evidence of any such  
14 purpose having been agreed or discussed. No witnesses testified to  
15 the existence of any such purpose. Indeed, every witness who had an  
16 opportunity to address the issue denied the SPO's theory. Even  
17 worse, the SPO never put its case to witnesses.

18 The SPO's claim on Monday that it is using direct evidence in  
19 support of its case reflects a fundamental misunderstanding of what  
20 direct evidence is. Direct evidence is evidence that proves a fact  
21 in issue without the need for any intervening inference. What is the  
22 direct evidence of a common criminal purpose which was unknown to  
23 Zyrapi and the international community?

24 Next, the SPO cites no evidence of General Staff meetings where  
25 the common criminal purpose was agreed or discussed, and the SPO

1 makes no claim in its brief that Thaci ever attended a General Staff  
2 meeting where targeting of opponents was discussed.

3 Slide 33.

4 The SPO makes the sweeping claim, at paragraph 75 of its final  
5 trial brief, that "opponents and special warfare were discussed on a  
6 recurring basis at General Staff meetings." But there is no  
7 discussion in the SPO's brief about any such meetings. The SPO  
8 leaves it to the Trial Panel to dig into the footnotes and retrieve  
9 the cited documents in order to discover what meetings the SPO is  
10 talking about and what was discussed in those meetings. And when one  
11 checks those footnotes, one sees why the SPO avoided any substantive  
12 discussion of KLA General Staff meetings.

13 Slide 34.

14 For example, in footnote 283, the SPO is only able to identify  
15 two meetings where it claims opponents and special warfare were  
16 discussed: a meeting on 16 August, and another on 29 December.

17 Slide 35.

18 The August 16 meeting was a meeting where there was a very  
19 specific discussion about the KLA being targeted for takeover by  
20 Tahir Zemaj and FARK. First, the SPO has not established that  
21 Mr. Thaci was even present at this meeting. Indeed, the SPO final  
22 brief makes no claim that Mr. Thaci was present at this meeting on  
23 16 August. And you see the testimony of Bislim Zyrapi there on your  
24 screen, both from his SPO interview and his trial testimony, where he  
25 confirmed that he was present for that meeting but did not have a

1 recollection of Mr. Thaci having attended.

2 The next slide is not for public broadcast, slide 36.

3 Second, the Panel has seen evidence that it was not the KLA that  
4 targeted Tahir Zemaj, but rather Tahir Zemaj and Bujar Bukoshi who  
5 had targeted the KLA to have Bukoshi take over control of the KLA.  
6 There is nothing in the evidence to suggest that there was any  
7 discussion of a broader policy to target so-called opponents in order  
8 to gain and exercise control over all of Kosovo.

9 This next slide may be broadcast for the public, slide 37.

10 The second meeting the SPO cites is a 29 December meeting which  
11 Mr. Thaci did not even attend because he was out of the country, and  
12 the SPO does not allege that he attended the meeting.

13 Accordingly, the SPO in its final trial brief has not been able  
14 to identify a single meeting of the General Staff which it alleges  
15 Mr. Thaci attended and where the topic of opponents or special  
16 warfare were ever discussed.

17 As an aside here, Your Honours, let me remind you that the SPO  
18 on Monday told you that Sokol Bashota's 2006 ICTY statement in which  
19 he is recorded as having said that the General Staff would  
20 collectively issue an order to kill collaborators was not  
21 hypothetical, as Bashota told you it was. I will address Bashota's  
22 2006 statement a bit later, but for now, it is sufficient to point  
23 out that the Prosecution has not identified any such meeting where  
24 any such discussion would have taken place.

25 The only meetings the SPO cites are those two: 16 August,

1 29 December.

2 Slide 38.

3 Your Honours, putting aside for a moment the fact that the SPO  
4 does not even allege Mr. Thaci was present for either meeting, it is  
5 important here to contrast the SPO's claims that opponents and  
6 special warfare were discussed in the meetings of 16 August and  
7 29 December with the SPO's position that Bislim Zyrapi was an  
8 outsider, he was not a member of the JCE, was not trusted by the  
9 alleged JCE members, and that the JCE members would not openly  
10 discuss the so-called opponent policy with him.

11 Slide 39.

12 Zyrapi told you he attended the 16 August meeting at transcript  
13 page 17389. You see that testimony on your screen. If Zyrapi was  
14 present for the discussion, then there is a reasonable inference for  
15 you to draw that there was no discussion about gaining and exercising  
16 control over all of Kosovo through the commission of war crimes and  
17 crimes against humanity in light of the SPO's acknowledgement that  
18 Bislim Zyrapi is not alleged to have been a member of the JCE and  
19 would not have been involved in any such discussions.

20 Moreover, the SPO asked Zyrapi about a discussion at the  
21 16 August meeting concerning the appointment of commanders and  
22 formation of brigades, but never asked him a single question about  
23 whether there was a discussion about targeting opponents at that  
24 meeting. The SPO cannot claim that Zyrapi was not being candid about  
25 that meeting because of a "climate of intimidation in Kosovo" if it

1 never put its case to him about that meeting.

2 Slide 40.

3 Zyrapi was also present for the meeting on 29 December. Indeed,  
4 Exhibit P621 demonstrates that it was Zyrapi himself who convened a  
5 meeting of his directorates on 29 December. And P1408 demonstrates  
6 that Zyrapi himself chaired the meeting, which was attended by  
7 B. Luzha, Adem Grabovci, Fatmir Limaj, Rame Buja, and Sali Veseli.  
8 And you see that evidence on your screens now. There is no evidence  
9 that any of the four accused attended this meeting, and it has not  
10 been disputed by the SPO that Mr. Thaci was out of the country. The  
11 SPO cites to this meeting and in footnote 283 in support of its  
12 contention that opponents and special warfare were discussed on a  
13 recurring basis in General Staff meetings.

14 Slide 41.

15 But how does a meeting that did not involve any of the four  
16 accused and was chaired by Bislir Zyrapi, not trusted by alleged JCE  
17 members, support the SPO's contention that there was a common  
18 criminal purpose involving these four accused? The SPO is silent.

19 The SPO suggested in its re-examination of Zyrapi that there may  
20 have been two meetings on 29 December: one chaired by Zyrapi that  
21 involved a meeting of his directorates, and another of the  
22 General Staff. But this has not been established by the evidence.  
23 Nor has the SPO established who attended such a meeting on  
24 29 December. Moreover, the SPO has not established that Zyrapi did  
25 not attend such a meeting. The SPO never put to Zyrapi that he did

1 not attend such a second meeting.

2 Accordingly, again, this raises the question of how the SPO  
3 could contend that the 29 December meeting was a meeting in  
4 furtherance of the common criminal purpose given that Zyrapi was  
5 likely present at the meeting and was not kept informed about the  
6 common criminal purpose, according to the SPO.

7 Slide 42.

8 And that's it. That's all of the evidence the SPO cites to  
9 allege that opponents and special warfare were ever discussed at  
10 General Staff meetings. There is no assertion by the SPO in its  
11 brief that Hashim Thaci attended a single such meeting.

12 Slide 43.

13 At paragraph 110, footnote 402 of its final brief, the SPO has  
14 laid out what it claims is a list of General Staff meetings.

15 Slide 44.

16 And in footnote 405, it has laid out a list of alleged  
17 Provisional Government of Kosovo meetings.

18 For the record, we dispute that any of these meetings are  
19 official meetings of the provisional government as opposed to  
20 meetings where some members of the provisional government were  
21 present.

22 Despite all of these meetings, they are only able to allege two  
23 meetings where the issue of special war was ever discussed, and those  
24 are the two I've already addressed.

25 Slide 45.

1 Mr. Thaci was out of the country for much of the indictment  
2 period, and there is no evidence that he attended most General Staff  
3 meetings.

4 Slide 46.

5 The SPO, in paragraph 113, tries to circumvent its problem of  
6 Mr. Thaci's absence from Kosovo by arguing that the General Staff  
7 members were consulted by phone or else informed afterwards of the  
8 results of General Staff meetings. But the only example they cite is  
9 the case of the eight Yugoslav Army soldiers, the eight VJ soldiers.

10 We submit that the case of the eight VJ soldiers is the  
11 exception rather than the rule. You can't take the specific case  
12 where Mr. Thaci was involved on the basis of his role, in the words  
13 of Ambassador Hill and Shaun Byrnes, as the foreign minister, and was  
14 pulled into the discussion of the eight VJ soldiers because  
15 high-level American diplomats such as Ambassadors Hill and Walker and  
16 the international community were involved, and then extrapolate from  
17 that one incident that on every decision of the General Staff he was  
18 consulted by phone when he was out of the country. That requires  
19 evidence, and cannot be the only reasonable inference.

20 Moreover, the SPO implicitly acknowledges in its final brief  
21 that just because someone had a role in the release of eight VJ  
22 soldiers does not mean that they were members of a JCE or otherwise  
23 bore criminal responsibility.

24 The next three slides are not for public broadcast.

25 Slide 48.

1           Bislim Zyrapi was directly involved in the incident concerning  
2           the release of the eight VJ soldiers. He was extensively examined  
3           about his involvement by the SPO. That's at transcript page 17520 to  
4           17523. He was involved in the cases of several other detained  
5           persons. The citations are shown on your screen. Yet, the SPO  
6           acknowledges that he was not part of any criminal purpose just  
7           because he was involved in discussions about their release.

8           Slide 49.

9           The same applies to Hashim Thaci. Just because he was consulted  
10          about the release of eight Serbian soldiers because it was an  
11          international incident with diplomatic ramifications does not give  
12          him any more of a criminal role in detentions than it does  
13          Bislim Zyrapi.

14          Slide 50.

15          Furthermore, the fact that other members of the General Staff  
16          chose to ignore Thaci's position that KLA and Serbian soldiers should  
17          be simultaneously released demonstrates that Thaci's views were not  
18          decisive on such issues.

19          The next slide can be publicly broadcast, slide 51.

20          In support of its assertion that absent General Staff members  
21          would be informed about the results of General Staff discussions  
22          after their return, the SPO uses as an example its claims in  
23          paragraphs 114 and 148 that Sylejman Selimi in February 1999 was only  
24          proposed by zone commanders to be the overall commander, and that his  
25          appointment was not approved until the return of the Rambouillet

1 delegation.

2 Slide 52.

3 This claim is refuted by Exhibit 1D250, which establishes that  
4 Sylejman Selimi was publicly declaring himself as the overall  
5 commander of the KLA on 22 February 1999, while the KLA delegation  
6 was still in Rambouillet. You see that evidence on your screens.  
7 Sylejman Selimi was installed by the zone commanders, not simply  
8 proposed by them. You heard that from Bislim Zyrapi as well.

9 While we are on this point, Mr. Quick said on Monday that while  
10 the final decision regarding the Rambouillet Agreement was signed by  
11 other General Staff members, it was not signed by Sylejman Selimi.  
12 That was said at page 28481 to 28482. Notably, the SPO never put its  
13 case to Sylejman Selimi or anyone else that he allegedly did not  
14 consent to the Rambouillet Agreement. Yet again, the SPO was too  
15 afraid of the answer.

16 Slide 53.

17 But as you see from the excerpt of Sylejman Selimi's interview  
18 on the screen, which the SPO admitted into evidence, Selimi confirmed  
19 that Thaci consulted him and Selimi gave him his consent thereafter.  
20 This is the only admitted evidence that directly addresses the issue.

21 Slide 54.

22 And this next slide shows a photo from the meeting in March 1999  
23 when Selimi gave his consent to Thaci. Once again, this is the SPO's  
24 own exhibit.

25 Slide 55.

1 As a final note here, yesterday, while discussing the February  
2 meeting that took place between the zone commanders and several  
3 members of the General Staff, Mr. Halling stated that the Defence was  
4 attempting to brand the meeting as a coup by the zone commanders.  
5 That was at transcript page 28519.

6 The SPO never challenged Remi's acknowledgement of the coup, nor  
7 Zyrapi's acknowledgement of the coup, nor Shaun Byrnes, who was on  
8 the ground in Kosovo, had extensive contacts with the KLA, and was  
9 cross-examined extensively on the coup and confirmed that he was  
10 aware of the coup. In fact, it was not the Defence who call it a  
11 coup but Byrnes who called it a "palace coup" in a code cable which  
12 the Prosecution admitted as Exhibit P1080. To say that there was no  
13 coup, or that there wasn't a reasonable inference that there was a  
14 coup, is yet another unserious argument by the SPO.

15 I would like to spend a few more minutes going over the  
16 testimony of Bislum Zyrapi and how else his evidence affects the  
17 SPO's JCE case.

18 The SPO's admission that Zyrapi is a credible witness and that  
19 it does not allege he was part of any joint criminal enterprise is a  
20 crucial blow to the house of cards that is the SPO's case.

21 Slide 56.

22 He was the Chief of the General Staff. You see his testimony on  
23 your screen where he acknowledged his role as Chief of the  
24 General Staff, and his acknowledgement that the directorates were  
25 subordinated to him. He was at the centre of everything in the

1 General Staff. If there was a JCE in the General Staff, there is  
2 simply no way he would not have known about it. And his order in  
3 1D29 establishes a reasonable inference that he was not in any JCE  
4 and that there was no JCE.

5 The next two slides are not for public broadcast. Slide 57.

6 Zyrapi's evidence is that there was no JCE in the General Staff  
7 and he has been saying this since at least 2005, where he told the  
8 ICTY that, prior to late November 1998, the General Staff had issued  
9 no orders on the issue of detentions and that detentions were a  
10 matter that had been handled by the zone commanders. He told the  
11 ICTY that he had heard complaints about such detentions when he  
12 visited the local commanders in the zones, and that he issued an  
13 order in late November 1998, which you know as 1D29, in order to be  
14 able to take disciplinary measures and for soldiers to know what the  
15 right procedures were. You see his 2005 evidence on your screen.

16 Slide 58.

17 Zyrapi also told the ICTY in 2005 that "until late 1998, it is  
18 an obvious fact that more power laid in the hands of zone commanders  
19 than in the hands of the General Staff."

20 The next slide may be broadcast to the public, slide 59.

21 Before you, he agreed that the February 1999 coup by the zone  
22 commanders actually demonstrates that the zone commanders continued  
23 to have real power well into 1999 and not just until late 1998.

24 Slide 60.

25 Zyrapi has been saying for more than 20 years that there were no

1 General Staff orders concerning detentions prior to his order in late  
2 November 1998. Zyrapi has been saying for more than 20 years it was  
3 the zone commanders who had been detaining people, not the  
4 General Staff. The SPO cannot dismiss his evidence as that of  
5 someone who is now changing his evidence due to a climate of fear in  
6 Kosovo or because of a relationship with Mr. Thaci. He has been  
7 consistent on his evidence over a very long period of time, which the  
8 SPO admits in paragraph 1433 of its brief wherein it says that Zyrapi  
9 "has given largely consistent evidence over time, before different  
10 courts, and stood behind those statements."

11 Slide 61.

12 How could Zyrapi, who was the one issuing many of the orders,  
13 not know if such a policy existed? At paragraph 74 of the SPO's  
14 final brief, you see there on your screens that the SPO says that  
15 Zyrapi, on 28 November 1998, issued an order which "increased  
16 centralised control over arrests and detentions by directing that  
17 they could only be ordered by brigade commanders and higher  
18 superiors, except in critical military situations or when there were  
19 'criminal acts against members of the KLA, individuals or the  
20 civilian authorities.'"

21 So the SPO is telling you that it was Zyrapi who was increasing  
22 centralised control over arrests and detentions but that he was  
23 someone whom the JCE members did not trust to include in the overall  
24 criminal policy and is not even alleged to have been a JCE member.

25 Slide 62.

1           So how does the SPO reconcile the Chief of the General Staff  
2 being outside the criminal purpose but exercising centralised control  
3 over detentions and arrests?

4           Well, in footnote 280, they cite Zyrapi's evidence that the  
5 order was issued as an attempt to address complaints about conduct of  
6 KLA soldiers and that the General Staff "wanted to show the  
7 internationals that we were a disciplined army." And you see both  
8 the SPO's footnote and Zyrapi's testimony here.

9           This is exactly what we say. The General Staff knew it needed  
10 the international community. It wanted to be seen as complying with  
11 international law and standards. Zyrapi issued such orders precisely  
12 for that purpose, among others. This clearly establishes a  
13 reasonable interpretation of the evidence that the General Staff was  
14 attempting to stop mistreatment of persons and not instigate it.

15           Slide 63.

16           If the accused were involved in a common criminal purpose to  
17 commit war crimes and crimes against humanity in order to seize power  
18 in Kosovo, Bislir Zyrapi would have had to have known about it, and  
19 he denies any such purpose existed. The SPO has told you he is a  
20 credible witness. How could any reasonable trier of fact come to any  
21 other conclusion but that Zyrapi's evidence alone establishes  
22 reasonable doubt about the Prosecution's case? And when Zyrapi's  
23 evidence is considered in the context of the parade of international  
24 witnesses who told you essentially that they agree with Zyrapi, what  
25 else needs to be said?

1 Slide 64.

2 How was the common criminal purpose allegedly disseminated to  
3 the lower levels? The SPO has laid out its allegations in its table  
4 of contents, right there. That's how they allege it was disseminated  
5 to lower levels. Through dissemination in public statements,  
6 dissemination in regulatory and training documents, and dissemination  
7 in meetings and reports, and I will allege [sic] each of these in  
8 turn.

9 But you should note here on the SPO's own table of contents, in  
10 a section identifying its arguments about how the common criminal  
11 purpose was transmitted to lower levels, that there is a concession  
12 by the SPO that it has no case that any criminal plan was transmitted  
13 through any written orders.

14 The first alleged means is public statements.

15 Slide 65.

16 And the first means of public statements is communiqués. But  
17 there is yet another fundamental contradiction in the SPO's case. On  
18 the one hand, the SPO says that the KLA had a fully functioning  
19 command system from the General Staff down to the zones, that's at  
20 paragraphs 105 to 109 of their brief; the ability to communicate  
21 between the General Staff and the zones, that's at paragraphs 210,  
22 218, and 219; the ability to issue binding orders from the  
23 General Staff to the zones, that's paragraph 128; and the ability to  
24 instill discipline and punish lower levels for non-compliance, that's  
25 at paragraphs 141 and 285.

1 Next slide.

2 But the SPO says that despite this fully operational system of  
3 command and control, a "core means" by which JCE members communicated  
4 the alleged opponent policy was through communiqués, political  
5 declarations, and other public statements of the JCE members which  
6 the KLA soldiers had to obtain through public media. That's  
7 paragraph 67 of their final brief.

8 Slide 67.

9 The SPO does not explain why the JCE members did not simply  
10 issue orders targeting the so-called opponents. We submit it is  
11 because the SPO case is internally inconsistent, and, in fact, there  
12 was neither command or control nor any credible evidence that the  
13 zones interpreted communiqués as establishing a policy to commit  
14 crimes against people perceived to be obstructing the JCE members'  
15 alleged desire to take control of Kosovo.

16 Slide 68.

17 In paragraph 225 of its final brief, the SPO also says:

18 "Under Thaci's leadership, the Political and Information  
19 Directorates were key in the formulation and dissemination of  
20 internal and external policy, including in relation to the  
21 identification and treatment of Opponents. Through the issuance of  
22 statements, political declarations, and communiqués, the Information  
23 Directorate disseminated the information and propaganda which the  
24 Political Directorate shaped."

25 I will address the SPO's claims concerning Mr. Thaci's alleged

1 leadership of the political and information directorates a bit later,  
2 but for now, let me highlight yet another contradiction in the SPO's  
3 case.

4 Slide 69.

5 On the one hand, their case is you should discount the evidence  
6 provided to you by multiple high-level international officials, some  
7 called by the SPO such as Shaun Byrnes, and others called by the  
8 Defence such as James Rubin, Christopher Hill, General Wesley Clark,  
9 James Jock Covey, John Duncan, Paul Williams, and Michael Durkee,  
10 because all of these internationals did not have information  
11 available to them that you have available to you.

12 But their case against Mr. Thaci hinges in part on statements,  
13 declarations, and communiqués that were, by definition, in the public  
14 domain and readily available to the international media, diplomatic  
15 and intelligence communities. The internationals were well aware at  
16 the time of all of these, and they did not see an incitement to crime  
17 or a common criminal purpose.

18 Slide 70.

19 And what about Mr. Zyrapi, the insider, the Chief of the  
20 General Staff who was not aware of the common criminal purpose and  
21 from whom the other JCE members concealed the common criminal  
22 purpose, according to the SPO? If the communiqués and public  
23 statements were the means through which a criminal policy was  
24 transmitted, how does the SPO explain why Zyrapi didn't get the  
25 message? Did he not read communiqués and political declarations?

1 Why would the SPO say that other members had to make efforts to  
2 conceal the common criminal purpose from Zyrapi while at the same  
3 time those same JCE members were broadcasting the common criminal  
4 purpose in the media?

5 None of this, Your Honours, makes any sense, let alone  
6 constitutes proof beyond reasonable doubt.

7 How is it that the SPO can argue that both the internationals  
8 and the Chief of the General Staff didn't know about the common  
9 criminal purpose but the lower-level KLA personnel were able to  
10 receive the criminal message?

11 Slide 71.

12 Ask yourselves this question: Did it take 20 years for the  
13 international community to discover the insightful propaganda of the  
14 *génocidaires* in Rwanda? Did it take 20 years for the international  
15 community to discover the nationalist propaganda of the Bosnian Serbs  
16 and the Milosevic regime? Of course not. The inflammatory rhetoric  
17 in Rwanda and Serbia and Bosnia was self-evident and immediately  
18 reported. And had the KLA's communications been inciting crimes in  
19 Kosovo, the international witnesses from whom you heard would have  
20 known about it.

21 The SPO's case is that by the time Mr. Thaci was in Rambouillet,  
22 a persecutory KLA campaign of war crimes and crimes against humanity  
23 had been unfolding for 11 months. Yet Professor Paul Williams told  
24 you that no one in the Contact Group ever mentioned to Thaci that he  
25 needed to do something. Instead, Williams told you it was Thaci and

1 the Albanian delegation pushing for the ICTY to be allowed to  
2 investigate war crimes by all sides, including the KLA.

3 Slide 72.

4 The next point. The SPO has failed to prove that communiqués  
5 furthered a JCE policy. What is the evidence the SPO cites to  
6 establish any causal link between communiqués and any charged crimes  
7 committed in the zones?

8 Slide 73.

9 The SPO must prove that communiqués were a significant  
10 contribution to the commission of the charged crimes, not simply to  
11 the common purpose as the SPO claims throughout its brief, and  
12 therefore the temporal link between the communiqués and charged  
13 crimes must be sufficiently significant.

14 Slide 74.

15 The SPO first relies on the evidence of Commander Remi to  
16 support the allegation that the communiqués amounted to a significant  
17 contribution to the charged crimes. First, it should be noted that  
18 the SPO case is that Remi was communicating directly with the  
19 General Staff. You see there at paragraphs 354, 356, and 362 where  
20 the SPO makes these allegations.

21 Indeed, the SPO expressly states at paragraph 362 that "Mustafa  
22 and the Llap Zone Command maintained close contact with and reported  
23 to the [General Staff], both in person and via satellite phone."

24 Slide 75.

25 This raises the obvious question: Then why didn't the JCE

1 members communicate the criminal plan to Remi in person or through  
2 satellite phone or otherwise through its "close contacts"? Why would  
3 Remi need to read about a policy in communiqués? Why wouldn't he be  
4 receiving direct orders from the General Staff, or be asking the  
5 General Staff if he should set up detention centres?

6 The reason that the SPO has to say that the General Staff  
7 communicated the common criminal purpose through communiqués to the  
8 zones, including the Llap zone, despite "close contact in person and  
9 via satellite phones," is because the SPO has no evidence of any  
10 direct orders or communications from the General Staff conveying the  
11 alleged common criminal purpose.

12 One reasonable inference on the evidence on the SPO's own case  
13 is that if the General Staff members had a criminal plan that they  
14 wanted Remi to implement, they would have communicated that plan to  
15 him directly, and there is to credible evidence that they did.

16 Slide 76.

17 The SPO notes that Remi claimed that "communiqués were part of  
18 my military rationale."

19 Slide 77.

20 But Remi was speaking about Communiqué 54. Remi confirmed this  
21 at trial at pages 5848 to 5849, and at 5861.

22 Communiqué 54 was issued in late September 1998. The  
23 Prosecution's case, as charged in the indictment, is that detentions  
24 in Remi's zone began on or around 2 August and lasted until  
25 mid-September. The communiqué Remi mentioned seeing after the

1 September offensive was published after his zone had been detaining  
2 people for seven weeks. The communiqué could not have amounted to a  
3 significant contribution to the detentions because they post-date  
4 them. In fact, the last of the detainees in Remi's zone were  
5 released shortly after the publication of Communiqué 54. That's at  
6 transcript page 5726 to 5727.

7 Slide 78.

8 And Remi acknowledged that he had set up detention sites well  
9 before he allegedly saw the communiqué. That's at transcript page  
10 5849.

11 Slide 79.

12 The SPO misquotes Remi at paragraph 67 of its final brief where  
13 it cites to Remi's testimony in support of the claim that  
14 "communiqués were understood by KLA commanders as communicating KLA  
15 policy and authorising measures against Opponents." Remi did not say  
16 that. As you see on your screen, Remi said that he was made aware  
17 during his own trial of a document that was circulating that said  
18 that those who were working against the KLA should be prevented from  
19 doing so, but that he did not recall seeing something specific from  
20 the General Staff in relation to the matter while he was zone  
21 commander. That's at transcript page 5558.

22 Slide 80.

23 Next, the SPO claims that the common criminal purpose was  
24 furthered because KLA officials failed to properly define the term  
25 "collaborator" for subordinate units. But the fact that KLA

1 officials in propaganda statements and political rhetoric may have  
2 used the term "collaborator" in a colloquial matter rather than using  
3 a legal definition is irrelevant unless the SPO can prove that the  
4 General Staff members were intending to address subordinate units,  
5 either in the form of orders or through communiqués.

6 We know that the SPO has effectively conceded that there are no  
7 internal KLA orders from the General Staff where the issue of  
8 collaborators is addressed.

9 And as I've just mentioned, there is no credible evidence that  
10 the General Staff intended to communicate to the zones through  
11 communiqués. Accordingly, the colloquial use of the term  
12 "collaborator" in propaganda statements is not evidence of a  
13 significant contribution to the commission of crimes.

14 I'll turn next to the issue of regulatory and training  
15 documents.

16 Slide 81.

17 The SPO further claims, in paragraph 71, that regulatory  
18 documents, such as the Provisional Rules of Organising Internal Army  
19 Life, were adopted by the General Staff in July 1998 and embedded the  
20 requirement that the KLA military police be "merciless toward the  
21 enemy and all those who obstruct the liberation war."

22 The SPO's only cite in support of the allegation that these  
23 rules, which were admitted as P8, were approved at a General Staff  
24 meeting on 4 July 1998 is Jakup Krasniqi's book. However, there are  
25 no minutes of a General Staff meeting approving such rules on

1 4 July 1998 in the record, and the SPO does not establish that P8 is,  
2 indeed, the regulation that was allegedly approved at this meeting of  
3 4 July 1998. Furthermore, there is no evidence that Mr. Thaci ever  
4 attended any such meeting or that he was even in Kosovo in early  
5 July.

6 On the other hand, Zyrapi, a witness whom the SPO deem credible,  
7 when shown the provisional rules known as Exhibit P8, stated that the  
8 rules were drafted at the end of 1998 as part of the restructuring  
9 and were translated from documents from Western armies. Zyrapi  
10 explained that these rules were mainly aspirational and were not  
11 implemented on the ground.

12 Slide 82.

13 Indeed, P8 contains regulations which contain an oath that  
14 swears allegiance to Celiku. There is reasonable doubt as to whether  
15 the General Staff would have approved regulations for distribution  
16 across Kosovo that contain an oath to Celiku alone.

17 Slide 83.

18 The SPO also claims that shortly after a General Staff visit to  
19 the Llap zone, the KLA Public Information Service, led at the  
20 General Staff level by Thaci, issued a booklet on special warfare.  
21 And that's at SPO's final brief at paragraph 72.

22 First, there was no KLA Public Information Service, and the SPO  
23 cites to no evidence of what this alleged entity was or how Thaci led  
24 it.

25 Second, the SPO misrepresents the evidence. The booklet bears

1 the title of the Llap Zone Information Service on the last page. It  
2 was never issued by a public information service at the General Staff  
3 level.

4 In addition, as explained in our final brief at paragraphs 157  
5 and 300 to 304, the evidence does not support the SPO's claim that  
6 special warfare was discussed during the General Staff visit to Llap  
7 in October 1998. The SPO does not show, much less prove, that the  
8 October 1998 General Staff visit to Llap led to the issuance of this  
9 booklet.

10 Contrary to the SPO's claims in footnote 276, when shown the  
11 booklet, Rrustem Mustafa did not recall it, so he couldn't have  
12 confirmed the authenticity of it. That's at transcript page 5651 to  
13 5652.

14 Turning to the third means of transmission of the common  
15 criminal purpose, meetings and reports.

16 On Monday, Mr. Tieger said:

17 "Sokol Bashota noted in his ICTY interview that collective  
18 decision-making applied to decisions about collaborators."

19 That's at transcript 28371.

20 Slide 84.

21 However, there was no reference to Bashota's testimony before  
22 this Court. Bashota discussed a series of meetings of the  
23 General Staff during his testimony and noted that while meetings of  
24 the General Staff were held and were taken based on a majority of the  
25 people present at any meeting, and they had a horizontal structure in

1 the sense that they were not giving orders to each other, he also  
2 noted that not all members of the General Staff participated in every  
3 decision, decisions could be taken in the absence of people, and each  
4 member had their own duties and responsibilities.

5 Importantly, Bashota agreed with the explicit propositions that  
6 the following were not collegial decisions: issuance of communiqués,  
7 treatment of collaborators, issuance of regulations, creation of  
8 detention centres, media interviews given by KLA members, the  
9 Holbrooke-Milosevic Agreement, the FARK Agreement, who should attend  
10 the Rambouillet conference, the appointment of Adem Demaci, and the  
11 role of Sokol Dobruna.

12 Upon being shown various orders signed by Zyrapi, Bashota  
13 confirmed that all such decisions had been issued on his own, without  
14 consulting the General Staff, i.e., not collective decisions.  
15 Bashota ultimately agreed with the proposition that there were major  
16 decisions being taken on behalf of the KLA that did not involve a  
17 collective or collegial decision-making process.

18 Slide 85.

19 The SPO next says that the common criminal purpose was conveyed  
20 on General Staff visits to Shala and Llap in August 1998 and to  
21 Dukagjin in September 1998. We have addressed these claims in  
22 paragraphs 146 to 155 of our final brief. And I've already mentioned  
23 that Bislim Zyrapi was present and participated in every one of these  
24 visits and, on the SPO's case, was not a participant in discussions  
25 about the common criminal purpose. There is therefore a reasonable

1 inference that these meetings did not transmit any criminal purpose  
2 to the zones.

3 I want to raise an issue here about military objectives. The  
4 SPO claims that the fact that multiple KLA zones set up detention  
5 facilities means that the only reasonable inference you can draw is  
6 that they were set up by the General Staff. But this is not true.

7 This argument fails to take into account two fundamental points.  
8 Slide 86.

9 First, the ICRC has explained that detention by states and  
10 non-state armed groups, such as the KLA, is a reality in every  
11 conflict. It is an expected part of warfare. It is the norm, not  
12 the exception. The ICRC states that IHL is built on the assumption  
13 that all sides - all sides - will detain. It would have been unusual  
14 if the zone commanders did not set up their own detention facilities.  
15 They did not need to get the idea to do so from the General Staff.

16 Slide 87.

17 And these are the ICRC guidelines where it says that it may take  
18 time for non-state actors to set up systems of due process.

19 The reason that all sides in armed conflict detain is because it  
20 is a military byproduct of war. You will capture the other side's  
21 combatants, you will need to discipline your own forces and detain  
22 them, and you will need to detain those directly participating in  
23 hostilities.

24 The SPO here has stated that it does not dispute that the KLA  
25 had a right to lawfully detain.

1 Slide 88.

2 The SPO therefore has to demonstrate that even if it could prove  
3 that there were communications between the General Staff and the  
4 zones about special warfare and collaborators, those discussions were  
5 not in pursuit of legitimate military objectives, but rather were in  
6 pursuit of a political objective of the JCE members seizing power in  
7 Kosovo.

8 Remember, if you were to conclude that abuses occurred as a  
9 result of a KLA policy to advance its military objectives, or as a  
10 result of personal grievances on the part of KLA individual members,  
11 then you must reject the JCE mode of liability because that is not  
12 what has been charged. Their case is that all of the alleged victims  
13 were detained and abused because they were an impediment to the JCE  
14 members' political objective of gaining and exercising control over  
15 all of Kosovo. That is not the only reasonable inference you can  
16 draw on the evidence, and you therefore must reject the JCE charges  
17 in this case.

18 This leads to our next point. The SPO has failed to prove that  
19 there was an intent to seize control of Kosovo.

20 Slide 89.

21 There is no evidence that the LPK had a goal to seize control of  
22 Kosovo for itself. The LPK statute here, which you see on your  
23 screen, made clear that its objective was, first, the liberation and  
24 creation of an independent state of Kosovo; and, second, to create a  
25 new, free, and democratic society, in line with the will of the

1 people.

2 There is no suggestion in the LPK statute that the LPK's  
3 objective was to seize power for itself or its members.

4 Slide 90.

5 In support of its claim that the JCE members had a goal to seize  
6 power for themselves, the SPO cites to Political Declaration No. 8 at  
7 paragraph 10 of its brief, where the SPO takes a sentence out of  
8 context that says: "Kosovo will be ours or it will be turned to  
9 ashes." But the rest of text goes on to make clear that "Kosovo will  
10 be ours" refers to the people of Kosovo generally and not to the  
11 alleged JCE members. The statement says: "Kosovo will be ours or it  
12 will be turned to ashes. We are convinced that death is nobler than  
13 life under slavery." "Life under slavery" here clearly refers to the  
14 people of Kosovo and not to the alleged JCE members. And then  
15 Political Declaration No. 8 concludes by saying: "Our war is for  
16 freedom and for a better future and real democracy." Real democracy  
17 would be incompatible with a unilateral seizure of power by the  
18 alleged JCE members.

19 And, again, it is unclear how the SPO reconciles its claim that  
20 the international witnesses and Bislim Zyrapi were all uninformed  
21 about the criminal plan of the JCE members, but then relies on a  
22 public political declaration as evidence of criminal intent. The  
23 fact that the international witnesses and Zyrapi did not read this  
24 declaration in the same way that the SPO spins it is itself  
25 reasonable doubt about the SPO's interpretation.

1 Slide 91.

2 In paragraph 27, the SPO claims that the deployment of  
3 "relatively senior LPK volunteers" in March 1998 "increased the  
4 authority of Thaci and other LPK affiliated KLA [General Staff]  
5 members."

6 The SPO does not cite any evidence to establish that these were  
7 "relatively senior" people in the LPK or how the SPO arrived at a  
8 definition of that term.

9 In addition, we are once again faced with another contradiction  
10 in the SPO's case. How does the SPO reconcile its claim that Thaci  
11 derived his authority from other LPK-affiliated General Staff members  
12 on the one hand with its position, on the other, that it was Thaci  
13 who brought in and deployed Zyrapi and other military officers to  
14 professionalise the KLA?

15 Zyrapi came into Kosovo with Thaci, and there is zero evidence  
16 that he had anything but a good relationship with Thaci. He never  
17 suggested otherwise in his testimony.

18 Slide 92.

19 In paragraphs 188 and 190 of the SPO brief, the SPO itself says  
20 that the:

21 "Accused's role in and authority over operational matters is  
22 illustrated by their installation, appointment, and oversight of  
23 Zyrapi - an experienced military officer - who had operational roles  
24 in the General Staff and Ministry of Defence during the Indictment  
25 period."

1 That's paragraph 188.

2 They go on to say in paragraph 190 that:

3 "... Thaci also gave Zyrapi the order to prepare professional  
4 officers and post them to the war zones."

5 Slide 93.

6 How does the SPO explain its position that it was Mr. Thaci and  
7 the other accused who installed an experienced military officer,  
8 someone who was former JNA and was not part of the LPK, to run the  
9 operations of the KLA and ultimately to become the chief of the  
10 General Staff, while also arguing that the accused excluded him from  
11 the alleged common criminal purpose in pursuit of LPK goals? You  
12 would be more than reasonable to conclude that a reasonable inference  
13 is that the accused supported Bislum Zyrapi's ascent to a leadership  
14 position in the General Staff because there was no common criminal  
15 purpose, and to conclude that there is a reasonable inference that  
16 Hashim Thaci would not have encouraged the deployment of professional  
17 officers not affiliated with the LPK if he were, in fact, attempting  
18 to make a significant contribution to the alleged common criminal  
19 purpose.

20 Also, Zyrapi made clear in his testimony, at pages 17784 to  
21 17786, that every Albanian former military officer who made himself  
22 available to the KLA was accepted into the KLA. There is no evidence  
23 that any former military officers were excluded. Accordingly, this  
24 claim that the accused were placing ideologically LPK-aligned people  
25 in places of authority as a litmus test is contradicted by Zyrapi's

1 evidence.

2 Moreover, the SPO in paragraph 405 says:

3 "Throughout early 1999, the General Staff exhibited increasing  
4 distrust of former professional soldiers and those viewed as LDK or  
5 FARK-affiliated."

6 But the General Staff was led by Zyrapi, himself a professional  
7 soldier. How does the SPO place collective blame on the  
8 "General Staff" exhibiting distrust when Zyrapi was in charge of the  
9 General Staff?

10 Also, the SPO says it was Thaci who "gave Zyrapi the order to  
11 prepare professional officers and post them to the war zones." On  
12 what evidentiary basis does the SPO suggest that Thaci became  
13 distrustful of professional officers that he himself allegedly  
14 deployed and posted, especially at a time in early 1999 when Thaci  
15 himself was not even in the country.

16 Slide 95.

17 I think I can do this.

18 The SPO next relies on certain public statements as evidence of  
19 an intent to seize power in Kosovo. The SPO claims in paragraph 13  
20 of the SPO brief that by the start of the indictment period, the KLA  
21 leadership was making clear demands to be recognised as the "only  
22 legitimate authority representing the Albanian people."

23 Slide 96.

24 It relies on Communiqué 44, which purports to have been sent  
25 from Prishtine on 2 March 1998 by the "Central Staff," but the SPO

1 has not established who in the KLA leadership allegedly prepared the  
2 statement. There is no evidence of any connection to Hashim Thaci.  
3 Mr. Thaci was not in Kosovo at the time this was purportedly sent.

4 Slide 97.

5 At paragraph 16, the SPO says:

6 "All political parties [were] to cease their independent  
7 activity and pledge absolute allegiance to the KLA."

8 The SPO cites to Political Declaration No. 3 of 10 June 1998,  
9 which if you read it you will see that the SPO has grossly  
10 misrepresented the document. Nothing in here supports the SPO  
11 assertion.

12 Again, the SPO did not put these public statements to any  
13 witness to see if anyone interpreted this as claiming that the KLA  
14 was demanding a pledge of absolute allegiance to the KLA.

15 Mr. President, this is convenient for a break.

16 PRESIDING JUDGE SMITH: We'll take our half-hour morning break  
17 now. Please be back in your seats at 11.00.

18 We're adjourned until 11.00.

19 --- Recess taken at 10.28 a.m.

20 --- On resuming at 11.00 a.m.

21 PRESIDING JUDGE SMITH: When you're ready, you may proceed,  
22 Mr. Misetic.

23 MR. MISETIC: Thank you, Mr. President.

24 And just for the benefit of the interpreters, I am behind, so  
25 I'm going to be skipping portions of my prepared remarks, and I will

1 identify the slide that I'm going to start speaking about next. So,  
2 thank you.

3 And we will start at slide 101.

4 The SPO next contends that the intent to seize power across all  
5 of Kosovo is evidenced by the work of certain directorates of the  
6 General Staff beginning in November 1998, including the civil  
7 administration directorate, the information directorate, the  
8 personnel directorate, and the military police directorate. But  
9 these directorates reported to Zyrapi.

10 Again, this is the organigramme of the General Staff which the  
11 SPO created and showed you on Monday. You see there that, on the  
12 SPO's case, all of these directorates reported to Zyrapi.

13 Now taking a look at the civil administration directorate, slide  
14 102.

15 The SPO relies heavily on its allegation that the directorate  
16 for civil administration, headed by Rame Buja, was a tool through  
17 which the objective to gain and exercise control over all of Kosovo  
18 was implemented. As you saw in the organigramme, Rame Buja was  
19 subordinated to Zyrapi in November 1998, including the civil  
20 administration directorate. The SPO does not allege that the  
21 directorate was subordinated to Hashim Thaci.

22 How could the public relations and civil administration  
23 directorate have been implementing the common criminal purpose while  
24 subordinated to Zyrapi who was not involved in a JCE, according to  
25 the SPO?

1 Slide 103.

2 Just as importantly, why didn't the SPO ask Zyrapi a single  
3 question about the work of the civil administration directorate, why  
4 it was formed, what its tasks were, and whether he has reason to  
5 believe it was operating as a vehicle for the accused in this case to  
6 seize power in Kosovo?

7 The SPO never put its case to Zyrapi for obvious reasons.  
8 Zyrapi would have rejected the SPO's claim that the civil  
9 administration directorate was used to implement the alleged common  
10 criminal purpose.

11 Slide 104.

12 We know this because we have Zyrapi's ICTY testimony in  
13 evidence, P1356, wherein, on page 5942, Zyrapi told the ICTY that a  
14 directorate of civil administration is part of the "ordinary  
15 structure" of a General Staff that would exist anywhere.

16 Had the SPO put its case to Zyrapi on this issue, the  
17 Trial Panel would have seen Zyrapi's reaction to the SPO's claim,  
18 raised on Monday, that "Thaci used the PGoK as a cloak for plans that  
19 had already been put in place through the civil directorate." Given  
20 Zyrapi's ICTY testimony, you may reasonably infer that Zyrapi would  
21 have denied that the civil administration directorate under his  
22 direct command was being used for such a purpose.

23 Slide 105.

24 Accordingly, one reasonable interpretation of the evidence is  
25 that a directorate for civil administration was established because

1 the trained military officers of the KLA, such as Bislim Zyrapi,  
2 believed this was a normal part of establishing a General Staff, and  
3 not because of some common criminal purpose made by the accused  
4 behind Zyrapi's back.

5 We will skip ahead to slide 111, please. For the interpreters,  
6 that's page 53 of my remarks.

7 Next, the SPO claims that the PGoK was a structure through which  
8 a plan to seize control of Kosovo was implemented.

9 As you know, the provisional government was not created as part  
10 of a plan to seize control of Kosovo, but rather as part of an  
11 agreement at Rambouillet with President Rugova of the LDK and  
12 Professor Qosja of the LBD. It was, in effect, intended to be a  
13 government of national unity, with President Rugova remaining  
14 president, and the KLA appointing the prime minister of the  
15 government, and the LDK and LBD each receiving a deputy  
16 prime minister post. The three parties were to split ministerial  
17 posts equally.

18 At the outset, let us correct a few misrepresentations made by  
19 the SPO in this section of their brief. In paragraph 143, they  
20 write:

21 "Around the same time," meaning the summer of 1998, "the  
22 General Staff, having consistently and vehemently rejected the  
23 elected LDK government, initiated steps geared towards the creation  
24 of a new government."

25 First, it is important to note that this is factually and

1     legally incorrect. There was no "elected LDK government." There was  
2     no election, and there was no LDK government. The LDK was a  
3     political party and itself a non-state group, and the so-called  
4     elections it held were non-state elections. The Bukoshi government  
5     was not even in Kosovo but was an exile so-called government. The  
6     LDK had no more of a legal claim to authority than did the KLA or any  
7     other group.

8             Second, in support of the assertion that the KLA "initiated  
9     steps geared toward the creation of a new government," the SPO cites  
10    to Political Declaration No. 7. But it is clear that  
11    Political Declaration No. 7 is addressing the issue of the creation  
12    of new institutions within the scope of the negotiations to be held  
13    with Serbia and mediated by Ambassador Hill. The declaration did not  
14    assert that the KLA was creating a new government of its own, to the  
15    exclusion of the LDK.

16            Slide 112.

17            Next, at paragraph 160, the SPO write:

18            "... PGoK appointments included limited LBD members in  
19    ministerial posts and assigned one deputy post to the LDK, with that  
20    post remaining vacant."

21            First, the post assigned to the LDK in the provisional  
22    government was the deputy prime minister post.

23            Second, when the SPO writes there were "limited LBD members in  
24    ministerial posts," they fail to disclose that five ministerial posts  
25    were assigned to the LBD.

1           In its announcement of the formation of the PGoK, which is  
2 Exhibit 1D70, the PGoK made clear why even more LDK posts had not  
3 been filled as envisaged in the Rambouillet Agreement:

4           "Even though the deadline was postponed several times, the LDK  
5 still did not send its proposals as foreseen in the agreement."

6           Accordingly, if the LDK did not have the same number of  
7 ministerial posts in the PGoK as did the KLA and LBD, that is because  
8 the LDK chose not to nominate anyone to fill its quota of posts.

9           The fact that the LDK did not participate in the PGoK was based  
10 exclusively on the decision of the LDK to boycott the PGoK because  
11 they no longer wanted equal power-sharing in the PGoK, but rather  
12 wanted to have more representation than the KLA and LBD, even though  
13 that was contrary to the agreement reached at Rambouillet. We  
14 explain all of this in paragraph 64 of the Thaci final brief.

15           The SPO, in its final brief, now argues, for the first time in  
16 this trial, that the LDK had good reason to boycott the PGoK  
17 allegedly because of KLA threats. All of this is SPO spin because no  
18 witness or document says that this was the reason they boycotted it.  
19 And this last-minute SPO theory was something they never put to any  
20 Prosecution or Defence witness.

21           The fact is Secretary of State Albright and Prime Minister Blair  
22 were calling on the LDK to participate in the PGoK and they continued  
23 to refuse. There is no evidence that the LDK told anyone at the  
24 time, including the United States and United Kingdom, that they  
25 refused to join because of alleged KLA threats.

1 Slide 113.

2 But the key point here is that Mr. Thaci was being meaningfully  
3 inclusive of the LDK throughout the spring and summer of 1999. Thaci  
4 repeatedly and consistently called on the LDK to honour the agreement  
5 reached at Rambouillet and to join the PGoK, including by taking up  
6 the post of deputy prime minister. You can read that at paragraph 25  
7 of the Thaci final brief.

8 Furthermore, Mr. Thaci publicly confirmed that the objective of  
9 the PGoK was not to "gain and exercise control over Kosovo for the  
10 alleged JCE members," but for the PGoK to govern only until the first  
11 free democratic elections could be held. And that's an interview of  
12 Mr. Thaci's which is in evidence at P813.24. And you see that on  
13 your screens.

14 Indeed, it is widely accepted that during and after Rambouillet,  
15 Mr. Thaci was someone who wanted to remain in the good graces of  
16 Secretary Albright specifically and the United States generally. The  
17 idea that he would want to do anything other than have the PGoK act  
18 as a transitional government until free and democratic elections  
19 could be scheduled would be wildly inconsistent with his ambition to  
20 remain close to the United States, and is indeed refuted by the fact  
21 that he actually did participate in Kosovo's subsequent democratic  
22 elections and he conceded when he lost elections.

23 Slide 114.

24 Let's look at what evidence the SPO cites to support its claim  
25 that Hashim Thaci was a member of the alleged JCE. And let's first,

1 in that context, look at the question of whether the SPO has proven  
2 that Hashim Thaci made a significant contribution to the alleged JCE.

3 The first way the SPO alleges that Hashim Thaci significantly  
4 contributed to the JCE was by allegedly formulating and implementing  
5 plans, policies, rules, structures, and reporting. The SPO argues  
6 that Thaci was a leading figure of the LPK, KLA, and PGoK, and as  
7 such, Thaci was directly involved in the formulation, approval,  
8 dissemination, implementation of plans, policies, and practices in  
9 furtherance of the common purpose.

10 Let's break this allegation down.

11 Slide 115.

12 The issue of whether Thaci was a leading figure. The SPO has  
13 failed to establish beyond reasonable doubt that Thaci was the  
14 "leader" of either a political directorate or information directorate  
15 prior to November 1998, when he became the head of the political  
16 directorate only. While there is evidence that Mr. Thaci was  
17 involved in public relations and media prior to November 1998, the  
18 SPO cites no credible evidence that he was the "leader" or "head" of  
19 any directorate of the KLA, whether political or information, and no  
20 evidence that Mr. Thaci controlled or supervised what others in the  
21 KLA were saying or publishing in the media.

22 On Monday, you once again heard the claim that Mr. Thaci was  
23 "head of the information directorate until November 1998." Once  
24 again, no evidence was cited.

25 Slide --

1 THE INTERPRETER: The speaker is kindly asked to slow down while  
2 reading so that we could complete our interpretation. Thank you.

3 MR. MISETIC: Apologies. I'm surprised it took this long.

4 Slide 116.

5 Thaci did not control KLA public communications.

6 The SPO alleges, at paragraph 68 of its brief, that the  
7 General Staff information directorate, including Thaci personally,  
8 had significant control over public communications, including, for  
9 example, making decisions on what to inform the public of, exercising  
10 control over interviews given by KLA commanders, and staging  
11 supportive public statements.

12 But you heard evidence from Witness Maluku that even when Thaci  
13 urged him not to speak to the media, he continued to do so anyway.  
14 Maluku's evidence alone establishes a reasonable inference that Thaci  
15 could not control what KLA soldiers in the field would or would not  
16 say. And you see his testimony on this slide.

17 The SPO next contends that Thaci's political directorate played  
18 a central role in KLA operations and in the treatment of opponents.

19 Slide 117.

20 Let me start here by briefly addressing an argument raised by  
21 Mr. Halling, claiming that Sokol Bashota's testimony that Mr. Thaci  
22 was not a founder of the Central Staff is "uncorroborated." This is  
23 not true. The SPO apparently simply ignored our brief in which we  
24 cited the 2002 interview of Nait Hasani, wherein he confirmed the  
25 exact same founders of the Central Staff as Sokol Bashota. Mr. Thaci

1 was not among them. See 1D223.

2 Nor did Mr. Thaci claim to the SPO that he was a founder of the  
3 Central Staff or General Staff as opposed to one of the founders of  
4 the KLA as a movement. There is, at the very least, reasonable doubt  
5 about this issue.

6 At paragraph 224, the SPO claims that Hashim Thaci headed the  
7 political directorate by at least June 1998.

8 Slide 118, please.

9 But Bislim Zyrapic told you that Hashim Thaci dealt with media  
10 and public relations and foreign affairs prior to November 1998, not  
11 the political directorate. There is no evidence of any functioning  
12 political directorate before then. Recall the evidence of  
13 Ambassador Hill, that he spent the entire summer looking for a KLA  
14 interlocutor and couldn't find one, culminating with him telling a  
15 Washington DC audience in September 1998 that if you want to bring  
16 the KLA to the negotiating table, you'd better have a big table.  
17 That's transcript page 27677.

18 The SPO, once again, never challenged him by showing him  
19 evidence of a functioning political directorate in control of KLA  
20 policy at the time headed by Hashim Thaci.

21 As for the SPO's reliance on Nuhi Bytyqi's book claiming that  
22 Thaci was claiming to be the head of the political directorate in  
23 late October 1998 - see Monday's transcript at 28473 - this is yet  
24 another claim that the SPO never put to the witness. We encourage  
25 you instead to review the video of Thaci's first public appearance,

1 recorded in late October but broadcast in late November, where Thaci  
2 is not identified as having any such title. See P1256.

3 The witness himself, on cross-examination, testified in court  
4 that Mr. Thaci was not the head of the political directorate until  
5 November 1998. That's at transcript page 16783. The SPO did not  
6 challenge his evidence in redirect by referencing his book.

7 Slide 119.

8 Zyrapi then told you that, beginning in November 1998, Thaci led  
9 the political directorate, and he was not involved in military  
10 matters. And you see his evidence there on this slide. We know that  
11 Bislime Zyrapi led KLA operations since at least July 1998, first as  
12 head of the operations directorate and then as the Chief of the  
13 General Staff. Zyrapi told you that Thaci did not have a role in KLA  
14 military operations, let alone that he played a central role in such  
15 operations. The SPO has told you that Zyrapi is a credible witness.  
16 The SPO did not challenge Zyrapi's evidence on this point over three  
17 weeks of his testimony.

18 You should not give any weight to any SPO claim that Zyrapi was  
19 not being candid out of loyalty to Mr. Thaci or fear of a supposed  
20 climate of intimidation in Kosovo, where the SPO was too afraid to  
21 put its case to him to give him a fair opportunity to comment. It is  
22 not fair to the witness, and it is not fair to the accused.

23 You should credit Zyrapi's evidence as establishing reasonable  
24 doubt about the SPO's claims.

25 Next, the SPO cites no evidence in support of its claim that

1 Thaci was a leading figure in the LPK, no citation for that is  
2 provided at all, and the claim is disputed as unsubstantiated.

3 Slide 120.

4 The SPO claims that Thaci oversaw the dissemination of public  
5 information, ensuring that it espoused the KLA General Staff's  
6 strategy as it developed.

7 There is no credible information that Hashim Thaci oversaw the  
8 dissemination of public information. In particular, the SPO has  
9 failed to establish beyond reasonable doubt that Hashim Thaci had any  
10 involvement at all in the preparation of communiqués and political  
11 declarations. No witness testified to that effect. None of the  
12 numerous books, manuscripts, notes, newspaper articles, and the like  
13 in the record contain even hearsay recollection by someone that  
14 Hashim Thaci authored communiqués and political declarations.

15 In fact, in paragraph 1477, footnote 6234, the SPO is only able  
16 to cite two pieces of evidence in support of their claim that  
17 Hashim Thaci had a role in the preparation of communiqués.

18 Slide 121.

19 The first is Rexhep Selimi's SPO interview, wherein he claimed  
20 that Hashim Thaci had some connection to Communiqué 59. Selimi's  
21 claims cannot be believed for numerous reasons, all of which we have  
22 outlined in paragraphs 236 to 241 of the Thaci final brief. In his  
23 SPO interview, Selimi told the SPO that he has no knowledge - no  
24 personal knowledge - of who drafted any of the KLA communiqués and  
25 could only make assumptions. Moreover, his claims about

1     Communiqué 59 are uncorroborated, and Mr. Thaci did not have any  
2     opportunity to challenge Mr. Selimi's testimony under  
3     cross-examination. Pursuant to Rule 140, the Trial Panel should  
4     therefore not use his evidence against Mr. Thaci. Finally, we note  
5     that Mr. Selimi himself, in his final brief at paragraph 614, has  
6     acknowledged that he has no knowledge of who drafted communiqués and  
7     that he was only speculating in his SPO interview.

8             Slide 122.

9             The second and last piece of evidence relied on by the SPO to  
10     prove that Mr. Thaci allegedly had a role in the drafting and  
11     dissemination of communiqués is an excerpt from a book written by  
12     Nuhi Bytyqi, in which Bytyqi writes that, in late October 1998,  
13     Mr. Thaci had asked Bytyqi to write a bulletin to international media  
14     and report that Thaci had met with Byrnes, from which the SPO cites  
15     to an information note that was published by the information  
16     directorate on 1 November reporting on the KLA's meeting with  
17     Shaun Byrnes. And that is Exhibit P303, the last page.

18            You see that information note now on this slide. The document  
19     is entitled "Information Note," not "communiqué" or "political  
20     declaration." It is a very factual report to media about the  
21     substance of the KLA's meeting with an international official. There  
22     is nothing related to so-called opponents or special warfare in the  
23     information note. And this document in no way supports the SPO's  
24     contention that Mr. Thaci was involved in drafting communiqués  
25     generally or ones that discussed collaborators or special warfare

1 specifically.

2 That's it. The SPO cites no other evidence that Mr. Thaci had  
3 any role in the drafting and dissemination of communiqués and  
4 political declarations.

5 Moreover, even if the SPO could show a connection between  
6 Mr. Thaci and communiqués and political declarations, the SPO has  
7 failed to show that these communiqués and political declarations were  
8 a significant contribution to any of the crimes charged in this case.  
9 And I will address the legal issue there later in my submissions.

10 Yesterday, Mr. Halling appeared to suggest that Mr. Thaci was  
11 somehow connected to a purported military police communiqué  
12 concerning Messrs Desku and Kastrati. That allegation is not made in  
13 their brief. The only specific communiqués to which the SPO connects  
14 Mr. Thaci are the ones identified in the footnote I have just  
15 discussed.

16 Slide 123.

17 Next, the SPO alleges that Thaci framed opponents as threats and  
18 warned that they would face punitive measures. That's paragraph 484.  
19 But footnote 211, which supposedly supports that, is a reference to a  
20 section on Mr. Krasniqi. It is unclear to us how this section  
21 supports the claim that Mr. Thaci threatened opponents, and we  
22 therefore have no material ability to respond to the claim and  
23 reserve all rights.

24 Slide 124.

25 Thaci participated in strategic General Staff visits to

1 operational zones to formalise command, instruct commanders on  
2 special warfare, and align them with the targeting policy, ensuring  
3 field-level execution of the common plan, so says the SPO.

4 This is quite a bombastic claim that requires you to once again  
5 dig into the footnotes to assess what this is about. And this is  
6 about the trips of the General Staff, including Hashim Thaci and  
7 Bislrim Zyrapi, to Shala, Llap, and Dukagjin zones, which I have  
8 already discussed. The SPO has failed to meet its burden of proving  
9 that there was discussion of special warfare in these meetings with  
10 the zones for the purported purpose of "aligning them with the  
11 targeting policy."

12 Once again, it is unclear how the SPO can both admit that  
13 Bislrim Zyrapi is not a JCE member and that JCE members would not  
14 openly discuss opponent policy with him, and then also argue that he  
15 was one of the people who attended each of the meetings in the zone  
16 where "alignment with the targeting policy" and "field-level  
17 execution of the common plan" were ensured. If Zyrapi's presence at  
18 these meetings didn't make him a JCE member, then they don't make  
19 Thaci a JCE member either.

20 Slide 125.

21 Thaci actively promoted the achievement of the common purpose  
22 through his executive authority as prime minister of the PGoK.  
23 That's paragraph 485. But nothing cited in this footnote supports  
24 the assertion. This is yet another example of why I encourage you to  
25 go through the footnotes yourselves before you accept anything that

1 the Prosecution argues in its brief.

2 The next significant contribution allegedly made by Hashim Thaci  
3 is participating in, facilitating, encouraging crimes in furtherance  
4 of the common purpose. And the first allegation is that Thaci  
5 ordered KLA members to assist him in the commission of crimes.

6 And for this section, I need to go into private session,  
7 Mr. President.

8 PRESIDING JUDGE SMITH: Private session, please,  
9 Mr. Court Officer.

10 [Private session]

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25 [Open session]

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

2 Thank you.

3 PRESIDING JUDGE SMITH: You may go ahead.

4 MR. MISETIC: Thank you.

5 Turning now to the Qirez incident.

6 If we could please have slide 145.

7 It is undisputed that the parliamentary delegation in Qirez was  
8 detained for approximately 48 hours. For the reasons explained on  
9 this slide, detention of 48 hours cannot, in itself, violate  
10 fundamental international law.

11 Slide 146.

12 The evidence in the record shows that the detention was not part  
13 of a widespread or systemic attack against a civilian population. On  
14 the contrary, the KLA had military reasons to stop the delegation and  
15 question its members. You can see the references to that relevant  
16 evidence on this slide.

17 If there is a reasonable doubt that the purpose of the stop was  
18 motivated by military objectives, such as a fear that the delegation  
19 had come unannounced to encourage surrender in a moment when Qirez  
20 was under attack, then this stop was not intended to further the  
21 alleged common criminal purpose of gaining and exercising control  
22 over all of Kosovo, and falls outside the scope of the SPO's JCE  
23 allegation. It does not matter if the KLA's intent to pursue a  
24 military objective lacked sufficient probable cause because the  
25 improper pursuit of an intended military objective does not mean that

1 the objective was a political one as described by the SPO's common  
2 criminal purpose.

3 The next slide is not for public broadcast. Slide 147.

4 The KLA's objective concerns are also reflected in  
5 contemporaneous documents, which you can see on this slide. At the  
6 23 September 1998 press conference, and later in cross-examination,  
7 Gjergj Dedaj confirmed that the KLA was concerned by the delegation's  
8 failure to inform it of its arrival.

9 Slide 148. And this can be public.

10 The KLA allowed the delegation to enter Qirez and speak to the  
11 people, just as it had previously allowed other parliamentary  
12 delegations in other areas.

13 If the detention, indeed, were part of an organised attack  
14 against opponents, the KLA would not have permitted such visits or  
15 public speeches. And if there is a reasonable interpretation of the  
16 evidence that the stop was in pursuit of a military objective to stop  
17 the parliamentarians from encouraging disarmament in the middle of  
18 hostilities, then this stop falls outside of the JCE's common  
19 criminal purpose.

20 Moreover, the SPO on Monday tried to suggest that a communiqué  
21 issued on 18 September was somehow connected to the Qirez incident.  
22 However, the KLA did not know there would be a visit to Qirez two  
23 days later, and initially allowed the delegation in and to speak to  
24 the people. The 18 September communiqué could not have significantly  
25 contributed to the Qirez event.

1 Slide 149.

2 The KLA had not taken any actions against LDK representatives in  
3 Qirez before 20 September 1998. Again, it is implausible that the  
4 [REDACTED] pursuant to Post-Session Redaction Order F3678.

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16 [REDACTED] pursuant to Post-Session Redaction Order F3678.

17 [REDACTED] pursuant to Post-Session Redaction Order F3678.

18 [REDACTED] pursuant to Post-Session Redaction Order F3678.

19 consistently testified the delegation was neither mistreated nor  
20 threatened in Qirez.

21 Slide 153. These are not for public broadcast.

22 The SPO did not prove beyond any reasonable doubt that the  
23 members of the delegation were seriously abused in Baice. On the  
24 contrary, Dedaj testified that there was just a small altercation  
25 during which no one suffered injuries requiring medical attention.

1 Dedaj's courtroom testimony on this point is corroborated by multiple  
2 sources of contemporaneous evidence, and no contemporaneous evidence  
3 from 1998 contradicts him.

4 The next slide can be broadcast to the public. Slide 154.

5 For example, Dedaj stated that the delegation was treated  
6 correctly when he was speaking at the press conference on  
7 23 September 1998 and at a subsequent PLK meeting. You can see the  
8 relevant contemporaneous documents that corroborate Dedaj's trial  
9 testimony on this point on this slide.

10 Slide 155.

11 Another contemporaneous piece of evidence that confirms that  
12 members of the delegation were not seriously abused is the video of  
13 Dedaj's press conference on 23 September. This video shows several  
14 members of the delegation and confirms they had no visible injuries  
15 hours after their release. Crucially, the SPO was apparently not  
16 aware of the press conference video before the Defence opening  
17 statement, which means the SPO brought these charges without looking  
18 at contemporaneous video to assess the credibility of Dedaj's 2014  
19 EULEX statement.

20 Slide 156.

21 Unable to dispute the truth, as captured on contemporaneous  
22 video, the SPO at trial tried to spin the video by claiming it showed  
23 Dedaj's bruising. We have the relevant part of the SPO's examination  
24 here on this slide.

25 Slide 157.



1 its case is evident when the Panel recalls that in the SPO pre-trial  
2 brief at paragraph 468, the SPO alleged that Dedaj "was left severely  
3 traumatised by the detention; he still suffers from pain in his right  
4 arm and hand as a result," relying on Dedaj's 2014 EULEX interview in  
5 support of that claim.

6 The next slide is not for public broadcast.

7 Now, however, in its final brief, in paragraph 945, describing  
8 the "victim impact" of the events at Qirez, the SPO continues to cite  
9 to Dedaj's 2014 EULEX interview, P680, at page 034260, but now it has  
10 changed the allegation to a claim that Dedaj suffers "chronic pain  
11 and hearing loss," injuries that would not be apparent to the naked  
12 eye and therefore not refutable by the Qirez video, and has  
13 completely dropped the claim that Dedaj still suffers, or ever  
14 suffered, pain in his right arm and hand as a result of the events at  
15 Qirez, as he had falsely claimed in his 2014 EULEX interview. The  
16 only reason that the SPO dropped this allegation that it made in its  
17 pre-trial brief is because the SPO recognises that the Qirez video  
18 discredits Dedaj's 2014 EULEX statement.

19 The next slide can be broadcast to the public.

20 In summary, the contemporaneous evidence shows that the  
21 delegation was not seriously abused in either Qirez or Baice, and  
22 there is no contemporaneous evidence from 1998 which shows that they  
23 were. At the same time, this evidence discredits Dedaj's previous  
24 statements, as well as statements of certain others of the  
25 delegation, and creates, at the very least, reasonable doubt about

1 their contents.

2 The SPO, on the other hand, attempts to discredit Dedaj's  
3 admissions in court that his 2014 EULEX statement was substantially  
4 fabricated, arguing that either he was too afraid to tell the truth  
5 in court, or else suggesting that he was interfered with, although  
6 they have made no charges that any witness in this case was  
7 interfered with.

8 But the problem for the SPO is that Dedaj's courtroom  
9 recantation of his 2014 EULEX statement is corroborated by  
10 contemporaneous evidence, including the Qirez video, which, as I've  
11 mentioned, the SPO tacitly has now acknowledged. He was not beaten  
12 badly on his arm as he claimed to EULEX in 2014 and which the SPO now  
13 acknowledges. His courtroom recantation is corroborated and raises  
14 reasonable doubt about the veracity of his 2014 EULEX evidence.

15 Importantly, because these reasonable doubts stem from the  
16 contemporaneous documents and video, they cannot be explained away by  
17 the witness's alleged fear, as the SPO alleges in its final brief.

18 Slide 162.

19 In fact, the SPO's assertion that the witness has changed their  
20 testimony because of fear is not logical. The SPO essentially claims  
21 that Dedaj, as well as others, were not afraid to speak against  
22 Hashim Thaci between 2001 and 2014, when Hashim Thaci was actually in  
23 power in Kosovo and they were his political opponents, but suddenly  
24 became afraid more than a decade later, even though Hashim Thaci does  
25 not have any political function in Kosovo and is being detained in

1 The Hague.

2 It is much more plausible that these witnesses made false  
3 statements when they thought they could politically benefit from  
4 them, but were not willing to defend these false statements once  
5 cross-examined in this case.

6 Slide 163.

7 Even if there was any mistreatment in Baice, the SPO has not  
8 shown it was directed by Hashim Thaci. On the contrary, the  
9 contemporaneous evidence again shows that Sabit Geci was blamed by  
10 the delegation. This is reflected in diplomatic cables of the  
11 United States where it's noted that Geci is blamed, with no mention  
12 of Thaci. I also note it is highly implausible that Rugova and other  
13 LDK leaders, with whom Shaun Byrnes had frequent contacts, would not  
14 have said anything implicating Thaci to Byrnes and others as Thaci  
15 was being named leader of the Kosovo Albanian delegation in  
16 Rambouillet if the story was true.

17 Slide 164.

18 Finally, two additional points. First, for the reasons  
19 explained on this slide, which are addressed in more detail in  
20 paragraph 375 of our final brief, the SPO's torture narrative is  
21 unsupported.

22 Slide 165.

23 And, second, the SPO failed to prove beyond reasonable doubt  
24 that Sabit Geci threatened to kill Agim Krasniqi. On the contrary,  
25 Agim Krasniqi's own 2014 statement does not mention any such threats.

1           And, finally, now I turn to the topic of the two detained  
2 so-called Serb journalists.

3           The next two slides are not for public broadcast.

4           Slide 166.

5           There is a reasonable inference that the two Serb "journalists"  
6 were combatants and viewed as potential combatants. They were not  
7 detained because they "opposed the common criminal purpose to take  
8 over Kosovo."

9           The Trial Panel is familiar with the evidence that at least one  
10 of these two so-called journalists was a known Serb paramilitary from  
11 the Croatian and Bosnian wars, and an arms smuggler, as well as a  
12 suspected war criminal. That does not seem to be disputed in the  
13 case.

14           If these two were, in fact, detained in pursuit of KLA military  
15 objectives, because they were suspicious or acting suspiciously, and  
16 because they had entered a combat zone without media credentials,  
17 then their detention was in pursuit of military objectives and not in  
18 pursuit of opponents opposed to the alleged JCE members gaining and  
19 exercising control all over Kosovo. If so, then this allegation  
20 cannot be used in support of the JCE allegations in this case.

21           The next slide may be broadcast to the public. Slide 167.

22           Moreover, there is more than a reasonable inference here that  
23 Mr. Thaci was not involved in questioning either individual. Neither  
24 so-called journalist identified Thaci as having questioned them, and  
25 Radosevic, under questioning by the Trial Panel, stated that he was

1 questioned by someone speaking Serbian who was not using an  
2 interpreter. The SPO in its submissions on Monday simply ignores  
3 that evidence. Mr. Thaci does not speak Serbian, and therefore there  
4 is reasonable doubt as to whether he was involved in questioning  
5 these individuals. And this is discussed more fully in  
6 paragraphs 379 to 383 of our final brief.

7 It is not unusual that these individuals were not brought before  
8 a judge. They were detained in October 1998, immediately after the  
9 Serbian summer offensive had decimated the KLA and just as a  
10 cease-fire was about to take hold.

11 Slide 168.

12 The KLA was in no position to focus on creating institutions of  
13 due process in the summer and fall of 1998. It was only after the  
14 October cease-fire that the KLA was able, in November 1998, to  
15 commence a restructuring, including by creating institutions of due  
16 process.

17 The April 2023 ICRC guidelines discussed in paragraph 606 of our  
18 final brief address this very dilemma of non-state armed groups and  
19 due process, and the ICRC has determined that while, of course,  
20 certain conditions of detention must be respected by the detaining  
21 party within the limits of their capabilities, the ICRC notes that  
22 "it may take time and resources to define and implement effective  
23 review procedures." That is exactly what happened here. The KLA's  
24 ability to afford due process must be assessed in the circumstances  
25 in which it found itself and not against due process standards in

1 established states.

2 Accordingly, there is reasonable doubt about the SPO's  
3 allegation that through the case of the two so-called Serb  
4 journalists, Mr. Thaci made a significant contribution to the crimes  
5 charged.

6 Briefly, I will address the allegation as it relates to  
7 Uke Bytyqi.

8 The SPO also makes certain allegations concerning the cases of  
9 Uke Bytyqi and Avdyl Rama. In the interests of time, I direct the  
10 Panel to our discussion of these cases at paragraphs 346 to 352 of  
11 the Thaci final brief.

12 Slide 169.

13 The SPO claims that Mr. Thaci encouraged KLA members to "fight"  
14 against anyone who did not recognise the General Staff or respect  
15 Thaci's own orders as his KLA subordinates received, understood, and  
16 implemented his message. This allegation is based on the KLA  
17 General Staff's trip to Dukagjin in early September 1998 and is  
18 addressed in paragraphs 141 to 145 of the Thaci final brief. And in  
19 the interest of time, I will not repeat our refutation of this  
20 argument here.

21 In summary, the incident involving Tahir Zemaj was provoked by  
22 Tahir Zemaj and Bukoshi's efforts to target the KLA for takeover by  
23 FARK across Kosovo and in particular in the Dukagjin zone, and to  
24 have the Dukagjin zone support Rugova as its negotiator in talks with  
25 Ambassador Hill rather than support Adem Demaci as had been the

1 choice of the General Staff. The General Staff members, including  
2 Bislrim Zyrapi, came to Dukagjin to prevent Zemaj and Bukoshi from  
3 executing that takeover, and Mr. Thaci did not use or encourage  
4 violence against anyone.

5 Again, it bears emphasising that Bislrim Zyrapi was present.

6 Skipping to slides 171 for the interpreters.

7 Next, the SPO argues that Thaci made a significant contribution  
8 to the JCE by failing to prevent, investigate, and punish. The SPO  
9 alleges that criminal activity was ordered or approved directly by  
10 Thaci or through the General Staff, but the SPO cites no evidence to  
11 support this assertion. Instead, the SPO cites to the testimony of  
12 W04748, who did not claim that Hashim Thaci issued or approved orders  
13 for criminal activity. They then also cite to the Qirez incident,  
14 but it does not support the claim for the reasons I've already  
15 stated.

16 Skipping ahead to 173, and this may be public.

17 The SPO alleges that Thaci used his power as prime minister to  
18 appoint his co-accused and named JCE members to senior positions in  
19 the provisional government.

20 First, there is no proof beyond reasonable doubt that  
21 Hashim Thaci appointed anyone to the PGoK as opposed to announcing  
22 the composition of the PGoK pursuant to a collective decision or a  
23 decision made by others.

24 Second, the SPO has failed to allege, let alone prove, that  
25 Hashim Thaci knew that any members of the provisional government had

1 committed crimes.

2 Slide 174.

3 At paragraph 456, the SPO says that KFOR did not receive any  
4 referrals from KLA leadership to investigate crimes committed by KLA  
5 members despite having the capacity to do so, nor any indication that  
6 the KLA took disciplinary measures against those responsible.

7 First, whether the KLA leadership made such referrals and took  
8 disciplinary measures is irrelevant to an assessment of Mr. Thaci's  
9 significant contribution. What is relevant is Mr. Thaci's personal  
10 actions. There is no proof beyond reasonable doubt that Thaci had  
11 knowledge of specific crimes committed by KLA members who were his  
12 subordinates and which KFOR and UNMIK did not know about.

13 Indeed, Paul Williams - slide 175 - told you that he does not  
14 recall anyone in the international community saying that Mr. Thaci  
15 and the KLA needed to do more to investigate and prosecute crimes,  
16 and he himself, as the Kosovo Albanian legal adviser, never told  
17 Mr. Thaci that he had an obligation to investigate and punish.

18 Next, the SPO claims that Mr. Thaci contributed to the common  
19 criminal purpose through the dissemination of information to promote  
20 the common purpose and engender fear, distrust, and hatred.

21 At paragraph 492, the SPO alleges Thaci used the dissemination  
22 of information through public statements and the media as a mechanism  
23 to promote the common purpose to those KLA members who were to  
24 implement it.

25 Slide 176.

1 But the SPO has not done the exercise of showing how these  
2 alleged public statements or speeches contributed to the charged  
3 crimes, that there was a link or nexus between the dissemination of  
4 information in question and the charged crimes. The Trial Panel is  
5 required to consider this, as we can see in past JCE cases where  
6 judges looked to the effect and impact of the accused's public  
7 statements and speeches. And I refer you to the cases cited on this  
8 slide.

9 Slide 178.

10 Again, Political Declaration No. 7 and its language about a  
11 "merciless blow" and "special warfare."

12 There is no evidence as to who authored this text. The SPO has  
13 no credible evidence linking Hashim Thaci to the preparation or  
14 dissemination of any communiqués or political declarations, including  
15 this one. Even if they did, what is the causal nexus to any charged  
16 crime? What evidence have you seen that someone in the KLA actually  
17 read this political declaration and was inspired to commit one of the  
18 crimes charged in the indictment?

19 Slide 179.

20 The SPO alleges that Thaci maintained the drumbeat that special  
21 warfare and opponents' activity required preventative and punitive  
22 measures. And here they cite Mr. Thaci's November 1998 first  
23 television appearance. He doesn't say anything in the appearance  
24 inciteful to crime. There is no established causal nexus to any  
25 crime. And his public appearance is shortly after the establishment

1 of a military court to handle collaborators and Zyrapi's 1D29 to  
2 treat civilians properly, which, as I mentioned, the SPO itself says  
3 came at a time when the KLA wanted to be seen internationally as  
4 complying with international law. There is no causal nexus and no  
5 furtherance of any policy.

6 Next, at paragraph 494, the SPO alleges that Mr. Thaci, as  
7 prime minister, continued to use his authority to equate domestic  
8 political dissent with actionable hostility, directing organisational  
9 resources towards continued promulgation of the common purpose. The  
10 sole evidence in support of this claim is in footnote 2037; namely,  
11 that Thaci and Veseli visited *KosovaPress* on 12 May 1999 and  
12 expressed appreciation for its work. And a week later, *KosovaPress*  
13 said its criticisms of certain political plans had the support of the  
14 KLA General Staff, the PGoK, and the Government of Albania.

15 As we say in paragraphs 253 to 255, the video of the visit does  
16 not reflect any evidence of Thaci praising *KosovaPress*. In any  
17 event, the SPO case is that because Hashim Thaci expressed  
18 appreciation for the work of *KosovaPress* in the middle of Serbia's  
19 ethnic cleansing of Kosovo, and in the middle of the NATO bombing  
20 campaign, this Trial Panel should use that as a basis to enter a  
21 finding that "Thaci continued to use his authority to equate domestic  
22 political dissent with actionable hostility."

23 Respectfully, this is not a serious argument.

24 Slide 181.

25 At paragraph 495, the SPO claims that Thaci personally made

1 public statements designed to engender fear, distrust, and hatred of  
2 opponents. Multiple media outlets published a communiqué allegedly  
3 authored by Thaci containing dangerous falsehoods designed to  
4 eliminate an opponent.

5 Again, they're relying on Mr. Selimi's SPO interview, which is  
6 not credible, and it concerns Communiqué 59, and it's not credible  
7 for reasons we've already stated.

8 They also rely on two newspaper interviews of Mr. Thaci's given  
9 in January and May 1999. There is nothing in those interviews to  
10 suggest that Mr. Thaci wanted crimes to be committed against  
11 civilians, nor did any in the international community, which was  
12 closely scrutinising Mr. Thaci in the very time period of these  
13 interviews. Moreover, there is absolutely no evidence in the record  
14 of anyone in the KLA even reading these interviews, let alone  
15 evidence that a perpetrator of one of the crimes charged in the  
16 indictment read it and was inspired by it. There can therefore be no  
17 finding of a significant contribution to any charged crime.

18 At paragraph 496, the SPO alleges "KLA members understood that  
19 political declarations and communiqués Thaci and others promulgated  
20 functioned as instructions, including on matters concerning  
21 detainees."

22 Here, the SPO only cites Remi's orders granting amnesty to  
23 detainees in which he claimed to be relying, among other things, on  
24 KLA communiqués. But as we pointed out on cross-examination of Remi  
25 - and you see that cross-examination on this slide - there are no

1 such KLA communiqués calling on zone commanders to issue amnesties,  
2 and the SPO has never identified any such communiqués.

3 If the SPO cannot point to any communiqués calling for Remi to  
4 issue an amnesty, then the SPO cannot make the case that "KLA members  
5 understood political declarations and communiqués Thaci and others  
6 promulgated functioned as instructions."

7 And, again, the SPO has no credible evidence that Thaci was  
8 involved in issuing a single communiqué or political declaration.

9 Slide 182.

10 At paragraph 497, the SPO claims that Thaci directed  
11 international messaging that denied, downplayed, or coded the  
12 targeting policy, while General Staff statements and communiqués  
13 continued to propagate the policy internally.

14 This raises a lot of questions. How could the General Staff  
15 statements and communiqués propagate the policy internally? They  
16 were public. How could the internationals not see the "targeting of  
17 opponents for crimes" but the KLA internally could? And how come  
18 Zyrapi didn't crack the code and understand that the KLA was being  
19 asked through the communiqués to target opponents for crimes?

20 The next three slides are not for public broadcast. Slide 183.

21 At paragraph 498, the SPO says Thaci withheld information  
22 available to him about victims in an effort to hinder the  
23 investigation efforts of their families.

24 The SPO has not established that Thaci had any information that  
25 the family did not have.

1           Finally, we note that Hashim Thaci's meetings with family  
2           occurred after the indictment period and are also outside the  
3           temporal jurisdiction of this Court and the temporal scope of the  
4           indictment. And, therefore, none of Mr. Thaci's statements after the  
5           indictment period can be used against him as part of an *actus reus* of  
6           any crime charged in the indictment.

7           Slide 184.

8           We note when the Defence objected to SPO questioning of family  
9           meetings with Mr. Thaci outside the indictment period based on this  
10          Court's lack of jurisdiction, the SPO proffered that it was not  
11          attempting to elicit that testimony in order to prove the *actus reus*  
12          of any crime, including enforced disappearance, but rather to prove  
13          his *mens rea* for crimes committed within the indictment period. The  
14          Trial Panel allowed the SPO to proceed based on the SPO's proffer.  
15          We object to lack of notice of the SPO's attempt to use that evidence  
16          of meetings that occurred outside the temporal scope of the  
17          indictment and temporal jurisdiction of this Court and charge them as  
18          an *actus reus* of significant contribution to a JCE.

19          Slide 185.

20          At paragraph 499, the SPO claims that Thaci's meeting with  
21          Human Rights Watch in November 1998 "internally legitimised and  
22          externally deflected from crimes of KLA members, advancing the common  
23          purpose."

24          On the contrary, as we explain in paragraphs 271 to 277 of our  
25          final brief, there is a reasonable interpretation of the evidence

1 that Thaci relayed that information from the meeting with  
2 Human Rights Watch and Fred Abrahams and a military court was set up.  
3 In the same month, Zyrapi issued orders to try to stop any abuse of  
4 civilians, which the SPO itself admits was an effort "to show the  
5 internationals that we were a disciplined army." That's SPO footnote  
6 280.

7 It is reasonable to infer that Mr. Thaci passed along what he  
8 learned from Fred Abrahams, and it resulted in the General Staff  
9 attempting to improve its compliance with international law.

10 The next slide may be broadcast to the public.

11 During its closing arguments on 9 February, the SPO referred to  
12 this meeting with Mr. Abrahams and asserted that it constituted an  
13 example of Mr. Thaci's own words and conduct demonstrating the "thin  
14 veneer of pretence" employed by JCE members to disguise the targeting  
15 of opponents and resulting crimes.

16 I will just quickly note here that this is a misrepresentation.  
17 Nothing in the cited transcript of the testimony of Mr. Abrahams  
18 supports the argument that Mr. Thaci was identified as speaking those  
19 words. And, in fact, Judge Barthe specifically asked Mr. Abrahams  
20 that question, and he said he could not be sure who was speaking in  
21 the meeting. And you see that testimony in slide 187 and 188.

22 We'll skip ahead to slide 191.

23 In paragraph 501 -- this is, for the interpreters, at page 100  
24 of my remarks.

25 In paragraph 501, the SPO claims that Thaci was leading the

1 "Personnel Council." At the outset, we note that there is no  
2 allegation in the indictment or the SPO pre-trial brief alleging that  
3 Hashim Thaci had any role in the KLA in relation to personnel  
4 generally, or a Personnel Council specifically, and we therefore  
5 object to the lack of notice and the denial of Mr. Thaci's right to  
6 be heard and to respond to this allegation. We would have, for  
7 example, explored this topic with Mr. Zyrapi had the SPO given any  
8 notice to Mr. Thaci that he was going to be linked to a Personnel  
9 Council.

10 Slide 192.

11 They cite no evidence that the Personnel Council ever functioned  
12 or that Hashim Thaci ever participated. The Personnel Council was  
13 discussed at a January 1999 meeting when Mr. Thaci was out of the  
14 country, and there is no evidence that anyone ever communicated with  
15 Mr. Thaci about personnel decisions while he was out of the country.

16 The SPO organigramme - this is slide 193 - put the personnel  
17 directorate subordinate to Zyrapi. And at paragraphs 172 to 184, the  
18 SPO alleges that through the personnel directorate, "the  
19 General Staff approved, confirmed, appointed, and promoted trusted  
20 persons who had demonstrated their loyalty and commitment to the  
21 common criminal purpose, and demoted and replaced and removed those  
22 who had not."

23 Slide 194.

24 How could the personnel department have been implementing the  
25 common criminal purpose if it was subordinated to Zyrapi, who the SPO

1 says in paragraph 1432 was not in the same inner circle of the  
2 General Staff as the accused, not trusted by KLA members, including  
3 the General Staff, and was not someone that the opponent policy would  
4 be discussed with.

5 They say, for example, in paragraph 176, that Halitjaha, through  
6 the personnel directorate, "participated in a battalion training  
7 course in February and March 1999, together with Bislum Zyrapi and  
8 Sali Veseli, where he lectured, *inter alia*, about special warfare."  
9 If Bislum Zyrapi was not part of the JCE and was not aware of the  
10 common criminal purpose, then what exactly is the SPO suggesting  
11 about this training course?

12 How could Zyrapi - slide 195 - a former JNA officer with no  
13 connection to the LPK, be responsible for ensuring loyalty and  
14 commitment to the common purpose through the personnel department?

15 Skipping ahead to slide 197 on page 103, and this slide is not  
16 for public broadcast.

17 The SPO then again cites to the Tahir Zmaj incident as proof of  
18 Thaci's alleged ability to enforce General Staff decisions to replace  
19 Zmaj with Haradinaj. But as noted in our final trial brief, which  
20 you see in the top excerpt on this slide, the testimony was that  
21 Ramush Haradinaj had voluntarily given up his post to Zmaj, and  
22 ultimately it was Haradinaj's decision as to whether he would reclaim  
23 it, not Hashim Thaci's. And Haradinaj did reclaim it.

24 Haradinaj was nobody's subordinate. If I may use a sports  
25 analogy, Ramush Haradinaj was like a free-agent football player who

1 was free to sign with any team, and he ultimately chose to sign with  
2 the team from the General Staff.

3 Slide 198.

4 W01493 directly refuted the SPO's argument. He made clear that  
5 neither Mr. Thaci nor anyone in the General Staff had the authority  
6 to make the final decision over whether Zemaj would be replaced, and  
7 that it was ultimately Haradinaj who had the power to make the final  
8 decision. And you see that testimony on this slide.

9 The next slide may be broadcast to the public, and we're  
10 skipping to slide 200.

11 There is an allegation that Mr. Thaci and the General Staff  
12 collectively ensured that logistical support was available for the  
13 needs of KLA subordinates, including to run detention centres.  
14 That's paragraph 504.

15 They cite to Zyrapi's SPO interview where he said the  
16 General Staff provided logistical support to establish detention  
17 centres, but this appears to be after the restructuring.

18 More importantly, there is no evidence cited that Hashim Thaci  
19 personally provided any logistical support. Zyrapi was actually  
20 providing logistical support but is not in the JCE, while Thaci was  
21 not involved in providing the logistical support and he is.

22 Thaci provided weapons -- and this is the allegation: Thaci  
23 provided weapons and said they were "only for those who supported the  
24 General Staff - and, implicitly, the common purpose - and those who  
25 did not were criminals."

1           There is no evidence that anyone thought they were being  
2           supplied weapons in order to ensure that Thaci, Selimi, Veseli, and  
3           Krasniqi, and others, could take control of Kosovo for themselves.  
4           Nor is there any evidence that Thaci was aware that weapons would be  
5           used to support the alleged common criminal purpose.

6           Next, they say Mr. Thaci made a significant contribution by  
7           coordinating and liaising between JCE members and tools.

8           I will say this briefly. In this section -- I call it the guilt  
9           by association section. They say he visited, for example,  
10          Lahi Brahimaj at Jabllanice with no further comment. There's no  
11          allegation that Mr. Thaci knew of any crimes at Jabllanice. And I  
12          note that Ramush Haradinaj was the zone commander where Jabllanice is  
13          located and is not alleged to be a JCE member.

14          Next, the SPO alleges that in order to ensure the furthering of  
15          the common criminal purpose, Thaci visited sites where crimes of KLA  
16          members were being committed. He met with senior officials in Likoc,  
17          Drenica, Malisheve, et cetera, demonstrating his hands-on control  
18          over who would implement policy in the field.

19          In the interest of time, I will simply say that the SPO cites no  
20          evidence that Thaci had any discussions with anyone at these  
21          locations about collaborators, detainees, or the need to target  
22          so-called opponents.

23          They cite no evidence that Mr. Thaci controlled anyone in any of  
24          these places, or that he had any discussion with anyone about the  
25          alleged common criminal purpose. Need I mention again, Zyrapi was

1 present for many of these meetings?

2 And I will switch now briefly to address the next topic of  
3 Mr. Thaci's command position.

4 We reiterate our position as stated in our brief that the SPO  
5 has failed to prove any of the elements of command responsibility  
6 that would make Mr. Thaci responsible under that mode of liability.  
7 We only wish to highlight some additional points arising out of the  
8 SPO brief and closing statement.

9 Slide 204.

10 On Monday, you heard Mr. Tieger discuss the case of the  
11 Belacevac miners. I will summarise my remarks here to say that the  
12 SPO in its brief, you see at slide 205, in its brief, says that  
13 Mr. Thaci -- or alleges that Mr. Thaci and Mr. Veseli were at  
14 Belacevac on 17 June 1998. The SPO then goes on, at paragraph 20 --  
15 sorry, it's slide -- oh, the same slide.

16 In the same brief, at footnote 1653, the SPO cites the evidence  
17 of the disappearance of the miners. All newspaper articles would say  
18 that didn't occur until 22 June. So it's not clear to us what the  
19 SPO is suggesting about Mr. Thaci and Mr. Veseli allegedly being  
20 present five days before any disappearance took place.

21 And the SPO then went on to discuss a meeting between Thaci and  
22 Veseli with an international in the aftermath of the Rahovec attack.  
23 Again, I will summarise by saying the SPO again simply chooses to  
24 ignore the trial testimony of the witness Mr. Kickert. The witness  
25 said he could not recall whether there was a discussion about the

1 Geneva Conventions. And, moreover, the contemporaneous memo he wrote  
2 about that meeting contains no reference to any discussion about  
3 detentions or the Geneva Conventions.

4 Finally, we go to slide 209.

5 Mr. Thaci's role as prime minister of the provisional  
6 government.

7 Slide 210.

8 We'd note simply for the record that there is no allegation by  
9 the SPO in its brief that there is evidence of Rexhep Selimi  
10 reporting to Mr. Thaci or receiving orders from Mr. Thaci as minister  
11 of public order, and no allegation that Selimi as minister of public  
12 order was Thaci's subordinate during the PGoK period or at any other  
13 time.

14 At slide 211, they claim at paragraph 298 that Mr. Thaci  
15 appointed Selimi. However, their citation to support this claim in  
16 footnote 1230 does not demonstrate that Thaci personally made the  
17 appointment.

18 Slide 212.

19 We note for the record that the SPO has not provided any  
20 evidence of any meetings of the PGoK in the summer of 1999.

21 And, finally, slide 213 and 214.

22 The SPO makes no assertion that Hashim Thaci was actually  
23 commander-in-chief. There is no evidence of any orders from him or  
24 reports to him, no evidence of any reports from him in any police  
25 line, be it military or Ministry of Public Order, to him, or orders

1 from him to them.

2 Mr. President, at this time I would ask leave for Ms. Tavakoli  
3 to address you on the provisional government, and then I will return  
4 in the afternoon.

5 PRESIDING JUDGE SMITH: Yes, you may go.

6 MR. MISETIC: Thank you.

7 PRESIDING JUDGE SMITH: You may proceed, Ms. Tavakoli, whenever  
8 you're ready.

9 MS. TAVAKOLI: Thank you.

10 The Prosecution's case is that the provisional government was  
11 one of the "structures and mechanisms of power created, enforced,  
12 and/or controlled by the Accused" to further the common purpose. It  
13 was, in their words, "a vehicle through which to execute and  
14 accomplish their common criminal plan."

15 Three factors create a reasonable doubt that this was ever its  
16 purpose: Its multiparty make-up; its international backing; and the  
17 reality that it could never be a real mechanism of power, as there  
18 was no country called Kosovo over which it could govern.

19 As set out by Mr. Misetiç, the PGoK was a multiparty government  
20 from its outset and continued as such.

21 THE INTERPRETER: Could the speaker kindly be asked to slow  
22 down.

23 MS. TAVAKOLI: As set out in paragraph 25 of our final brief,  
24 its establishment was supported by the US, the UK, and other European  
25 nations as a way to unify the diverse Kosovan Albanian

1 constituencies.

2 This international support in and of itself raises a reasonable  
3 doubt that it was created as a vehicle to execute a common criminal  
4 plan for the accused to take over Kosovo, unless, of course, the SPO  
5 is alleging that the United States, the United Kingdom, and Europe  
6 were supportive of such a criminal plan, or are they asserting that  
7 it was a massive failure of Western diplomatic and intelligence  
8 services who didn't realise that that was its purpose?

9 Had our 29-year-old client duped them all?

10 Third, on any view, and as set out in our brief at paragraphs  
11 564 to 566 and 577, the PGoK was always an aspirational endeavour as  
12 the so-called government could not lead a country that did not exist.  
13 Security Council Resolution 1244 vested exclusive authority to run  
14 Kosovo in UNMIK, thus cementing its fate.

15 Turning now to the specific actions of Hashim Thaci that the  
16 Prosecutor alleges that he made a significant contribution to this  
17 JCE via, firstly, becoming the prime minister; secondly, in this  
18 capacity, making political appointments and passing legislation;  
19 thirdly, contesting UNMIK's authority under 1244 by asserting the  
20 primacy of the PGoK; and, finally, by being aware of the crimes  
21 committed in the summer of 1999 but failing to prevent or punish  
22 them.

23 Thaci held the position of the prime minister, but what real  
24 power did that bring him to effect any common plan to seize control  
25 of Kosovo when the international community didn't even recognise that

1 position? He could not even send a letter to UNMIK in his capacity  
2 as the prime minister because they returned those letters pursuant to  
3 an official policy. That's Exhibit 1D00361.

4 He could not sign any significant commitments binding the  
5 Kosovars in that capacity. As John Duncan testified, he could not  
6 sign the undertaking to demilitarise the KLA using the title of  
7 prime minister as the allied powers would not accept it as they were  
8 not ready to recognise Kosovo, and they were certainly not ready to  
9 recognise Hashim Thaci as the leader of Kosovo.

10 In reality, it was a meaningless title for an office in a state  
11 that didn't exist. It was not a vehicle through which a JCE could be  
12 implemented.

13 Now, the SPO allege that in his capacity as prime minister, he  
14 passed legislation and made political appointments which were a  
15 significant contribution to that criminal purpose. However, the SPO  
16 has not established beyond reasonable doubt that he personally issued  
17 PGoK laws and decrees over aspects of civilian governance.

18 At paragraph 44 of their brief, the Prosecution cite to  
19 additional documents to those relied on in their pre-trial brief,  
20 which we dealt with at paragraphs 213 to 228 of our brief, which I  
21 won't repeat here, to support that allegation. These new documents  
22 don't take them any further.

23 None of the PGoK decrees or related documents listed is signed  
24 by Thaci, nor do they even mention him. None of the reports from  
25 international organisations that PGoK initiatives extend to trying to

1 levy taxes make any mention of Thaci and his involvement in or  
2 awareness of activities. And none of the reports of governance at a  
3 regional level mentioned Thaci or actions by the PGoK. They reflect  
4 local initiatives.

5 But even if Your Honours were to find for the Prosecution that  
6 he did issue legislation, where does that take them? None of the  
7 alleged legislation was criminal, and there is no evidence beyond a  
8 reasonable doubt that it entered into effect.

9 The fact that Thaci may have told a journalist at the end of  
10 July 1999 that the PGoK had achieved a horizontal and vertical spread  
11 of government in all of the municipalities doesn't make it true.  
12 And, indeed, this Court heard credible international witnesses who  
13 were on the ground at the time who said that the PGoK was never a  
14 fully functioning government, and any alleged attempts to make it  
15 appear so were simply aspirational.

16 Turning to his appointment of ministers. Mr. Misetic has  
17 addressed you on this, and I will not repeat it. To the extent that  
18 there are allegations concerning new appointments - for example, that  
19 of Jakup Krasniqi and others - we rely on the same evidential basis  
20 to refute those claims that we did in our brief. For any  
21 appointments based on P00813, see paragraphs 208 to 209. For use of  
22 1D00070, see paragraph 210. And for reliance on the untested  
23 statement of a co-accused, see paragraph 119.

24 In any event, notwithstanding any finding that Your Honours may  
25 make about who appointed Thaci's co-counsel [sic] to so-called

1 ministerial office, the Prosecution has not proven beyond a  
2 reasonable doubt that Thaci exercised any authority over them. The  
3 record contains no orders from Thaci to them and no reports from them  
4 to Thaci.

5 The Prosecution's allegation that he appointed mayors is  
6 similarly tenuous. There is little direct credible evidence that he  
7 did so. Mainly, it's hearsay of individuals telling others that  
8 Thaci had appointed them.

9 But, again, even if Your Honours are persuaded by the  
10 Prosecution's argument, where does it take them? These appointments  
11 were not in and of themselves criminal.

12 Despite this, to the extent that there was an effort by the PGoK  
13 to stand up some sort of a government, be it via drafting or issuing  
14 legislation or appointing local or national politicians, it's a  
15 reasonable possibility that this was to try and get some sort of  
16 civilian administration up and running following the complete  
17 collapse of basic services when the Serbs left, rather than any  
18 attempt to seize control of the country.

19 Indeed, this Court heard extensive evidence from internationals,  
20 some of whom will be named on this slide, including John Duncan,  
21 W02135, and W02161, that when the war ended and the Serbian  
22 population largely left Kosovo, the governance structure completely  
23 collapsed as it had been staffed predominantly by Serbs, the  
24 Albanians having been forced out of their jobs during the apartheid  
25 rule of Serbia.

1 Faced with this reality, it's a reasonable possibility that  
2 Kosovar Albanians, including those in the PGoK and UCK, tried to get  
3 the society working again. Indeed, W02161 testified that the UCK  
4 tried to find Albanians to run the electricity, the sanitation, the  
5 basic services, as nothing was functioning when the Serbs left.

6 Turning now to the allegation that Thaci contested UNMIK's  
7 authority.

8 We don't deny, as Jock Covey testified, that in the early days  
9 of the UNMIK mission, Thaci jockeyed or vied for influence with  
10 UNMIK, and he tried to assert a role for the PGoK in the governance  
11 of Kosovo. However, ultimately he turned towards and cooperated with  
12 UNMIK.

13 It's also important to remember that there were at least three  
14 governments in Kosovo at that time. There was the PGoK, the Bukoshi  
15 government, and the Serbian government office in Prishtine. None of  
16 these were legal pursuant to 1244, but the Prosecution doesn't allege  
17 that the other two were vehicles for a JCE. Rather, it says that the  
18 LDK were the victims of the PGoK's JCE.

19 Pursuant to 1244, it was UNMIK that legally ran Kosovo, so any  
20 attempt by Thaci to seize power and control meant that he had to  
21 seize it from UNMIK who had been granted their authority by the  
22 UN Security Council. The evidence of veteran American diplomat  
23 Jock Covey, the deputy head of UNMIK, that this was never  
24 Hashim Thaci's intention in and of itself raises a reasonable doubt  
25 that seizing control was ever Thaci's aim, even when, in the early

1 days of the administration, he was competing with UNMIK for  
2 authority.

3 Indeed, as captured in this slide, Covey testified that he and  
4 Bernard Kouchner, who when they were deployed had decades of  
5 experience in this kind of work, they expected that there would be  
6 some kind of a contest, a push and a shove, a testing of UNMIK to see  
7 if it was capable of administering.

8 And in that regard, Thaci lived up to their expectations. And  
9 in Covey's words, he initially attempted to legitimise the claims of  
10 the PGoK to administer Kosovo in direct contradiction to the mandate  
11 of the UN Security Council before relenting and realising that his  
12 interests were best served by cooperating with UNMIK.

13 Indeed, that Hashim Thaci ultimately recognised and respected  
14 the authority of UNMIK was confirmed by the SRSG Bernard Kouchner  
15 himself in a cable on 16 November 1999, which is set out in this  
16 slide. And he stated that all leaders, which includes Thaci,  
17 accepted "my special role as SRSG, thus as legislative authority and  
18 ultimate decision-maker."

19 Now, turning back to the early days of UNMIK's mandate, Covey  
20 was unsurprised by the way that Thaci initially competed with UNMIK's  
21 mandate, as in his words, as set out in this slide, they were dealing  
22 with "someone who was very young, very young, and who was trying to  
23 build -- trying to seize an opportunity that he thought he saw. Why  
24 would [he] be surprised that this is the way he would act initially?"  
25 It was nothing more than a very young, highly ambitious future

1 politician trying roles for size.

2 As Your Honours know, this is what politicians do. They  
3 posture, they position themselves, and they try to appeal to  
4 different audiences and constituencies for their current or future  
5 political gain.

6 The Prosecution has a very difficult burden of proving to you  
7 beyond a reasonable doubt where Thaci was posturing and where he was  
8 not. What was his actual intent?

9 One reasonable explanation of Thaci's behaviour toward UNMIK in  
10 the early days was that he was trying to build a power base for a  
11 future lifetime in politics, because, in Covey's words at 27594, "he  
12 knew he didn't have those -- that power" at the time.

13 And Your Honours will recall, if you look at Exhibit 1D00216,  
14 that the summer of 1999 immediately preceded Thaci's establishment of  
15 his own political party on 10 October 1999. However, there came a  
16 point, as Durkee and Covey testified, where Thaci realised that his  
17 ambitions were best served by cooperating with UNMIK, which he did.  
18 And the references are T27953 to 4; 1D00390, paragraphs 69 to 71; and  
19 1D00428, paragraph 19.

20 Now, ultimately, as set out in this paragraph of Jock Covey's  
21 statement, Mr. Thaci played a very constructive role to advance  
22 UNMIK's peace-building aims, including by accepting that the  
23 Provisional Government of Kosovo, of which he was the prime minister,  
24 became irrelevant upon the arrival of UNMIK; accepting appropriate  
25 roles within the new joint administration structures; routinely

1 sharing power and credit with figures he had once denounced; and  
2 accepting his party's defeat in municipal and local elections.

3 Your Honours, does a man who agreed to and did demilitarise the  
4 KLA, who abandoned, according to Jock Covey at 27527, any pretence of  
5 a government to work constructively with UNMIK post-war including by  
6 supporting the implementation of the KPS, and who later in October  
7 2000 and November 2001 stood and lost in two democratic elections,  
8 conceded defeat, and kept going till he won an election in 2007 fair  
9 and square, really sound like a man who was trying to seize control  
10 of Kosovo? The Defence submit that it does not.

11 The SPO case simply doesn't fit the facts. They have  
12 overreached.

13 That's a convenient place to stop.

14 PRESIDING JUDGE SMITH: We'll be adjourned for lunch until 2.30.  
15 We are adjourned.

16 --- Luncheon recess taken at 12.58 p.m.

17 --- On resuming at 2.30 p.m.

18 PRESIDING JUDGE SMITH: Ms. Tavakoli, you still have the floor.

19 MS. TAVAKOLI: Thank you.

20 I turn now to the Prosecution's final argument, that  
21 Hashim Thaci demonstrated his intent and made a significant  
22 contribution to the common plan in the summer of 1999 by failing to  
23 prevent or punish the crimes. I will not repeat what we've said in  
24 our brief here save to underscore that the SPO have not established  
25 beyond a reasonable doubt that Thaci was put on notice of the crimes

1 in the summer of 1999 in anything more than general terms. You can  
2 see our brief, references 288 to 289, 294 to 296, and 607. Or that  
3 he had effective control over the alleged perpetrators such that he  
4 could prevent or punish those crimes. And that's in our brief at  
5 paragraphs 456 to 595 and Section V(C) (3).

6 On Tuesday, the Prosecution highlighted a meeting on  
7 27 July 1999 where Hashim Thaci was described as being evasive on  
8 criminality, and this was in respect of alleged PU crimes. As stated  
9 in paragraph 296 of our brief, Covey, who attended this meeting,  
10 described Thaci's alleged "vague" and temporising responses as  
11 consistent with the understanding that he had, and I quote, "very  
12 little influence but was reluctant to say so."

13 Another participant, W02183, who was also in attendance, whilst  
14 interpreting Thaci's evasive answer as an attempt to minimise  
15 responsibility, couldn't confirm that Thaci or Ceku had direct  
16 control over the black-shirted policemen or the Atlantic Brigade.

17 In any event, following the passage of UN Security Council  
18 Resolution 1244, UNMIK was the only body that could punish crimes.  
19 Hashim Thaci could not.

20 Now, turning to what Hashim Thaci could do. He could speak out,  
21 and he did. As detailed in our closing brief, paragraphs 409 to 417,  
22 the trial record is replete with multiple examples and multiple  
23 statements of Thaci speaking out against the violence and asking for  
24 stabilisation within Kosovo and for the Kosovo Serbs to stay and also  
25 taking concrete steps in the same vein; for example, accompanying the

1 SRSB to use his influence to calm the Kosovar Albanians demonstrating  
2 in Mitrovica and visiting Serb victims of the violence with Kouchner,  
3 which Covey testified at 27611, and in quotes, "might have put a  
4 bullseye on his back." Covey was clear when asked questions by  
5 Judge Barthe at 27610 that this was not just virtue signaling given  
6 the possible personal and political risk that such actions exposed  
7 Thaci to.

8 It is our case that such statements and actions by Thaci, which  
9 General Clark considered genuine, raised further doubt that he had  
10 the intent to seize power and control in Kosovo by committing crimes.

11 The Prosecution argue the opposite. They say in their final  
12 brief that such statements in the summer of 1999 fail to negate  
13 Thaci's intent because they were aimed at advancing his own goals,  
14 were made in response to pressure from internationals, and were made  
15 simultaneously with contrary action on the ground, i.e., the  
16 continued commission of crimes.

17 Yes, making these statements did advance Hashim Thaci's own  
18 goals because, as already stated, his interests lay in cooperating  
19 with the international community. Yes, sometimes he made them when  
20 having been asked to do so by internationals. But every statement he  
21 made put him at significant personal risk and yet he made them all  
22 the same.

23 The fact that crimes continued despite Thaci's statements  
24 doesn't negate his intent as alleged. Indeed, the Prosecution's case  
25 in this regard appears to be built, in a large part, on the evidence

1 of W02183, who, at that time, was a junior international in his  
2 second foreign posting, who struggled to understand why,  
3 notwithstanding Thaci's position as the prime minister, his public  
4 statements didn't stop the violence, and he concluded that Thaci must  
5 have tacitly condoned it.

6 It's worth recalling at this juncture the evidence of a much  
7 more seasoned hand, that of Jock Covey, who stated that many in UNMIK  
8 were taken in by Thaci's pretence to power, and we suggest that that  
9 included individuals like W02183. And you'll see on the slide  
10 paragraph 72 of Covey's statement:

11 "Mr. Thaci's instincts and pretence to power may have been  
12 politically useful before Kosovar audiences but they were  
13 misunderstood by some within the human rights community, including  
14 human rights specialists in UNMIK, who inaccurately concluded, based  
15 [on] Mr. Thaci's efforts to portray himself as leader, that he  
16 actually had the power to control violence perpetrated by elements of  
17 what always had been a highly decentralised (and now former) KLA.  
18 For all of us on the ground, it was clear that Mr. Thaci's ambition  
19 far outstripped his actual influence over the KLA."

20 Indeed, under cross-examination, W02183 conceded that he didn't  
21 know the command-and-control structure of the KLA and was not  
22 qualified to opine on military matters. And that's at 23889 to  
23 23890, and 23977.

24 We submit that it's a reasonable possibility that the reason  
25 violence continued in the summer of 1999 despite Thaci's calls for

1 tolerance was precisely because he didn't have the power over the  
2 perpetrators to stop it. Now, whether this was because the crimes  
3 were being committed by former or current KLA members, organised  
4 criminal groups, returning refugees, none of whom the SPO has proved  
5 he had effective control over. Indeed, as discussed at paragraphs  
6 34, 416, 586, 636, and 654 of the Defence brief, this was also the  
7 view of NATO and its Member States as expressed by General Clark,  
8 John Duncan, and Michael Durkee.

9 Individually or collectively, their evidence raises a reasonable  
10 doubt that Thaci could have prevented or punished the crimes in the  
11 summer of 1999 regardless of whether or not he knew about them.

12 And it's for all these reasons that the Prosecution has failed  
13 to establish beyond a reasonable doubt that Thaci used the PGoK to  
14 execute the alleged common criminal plan.

15 And now I'm going to hand the floor to Ambassador Prosper.

16 PRESIDING JUDGE SMITH: Thank you, Ms. Tavakoli.

17 You may proceed, Mr. Prosper.

18 MR. PROSPER: Thank you. Good afternoon.

19 Well, I will need to be brief in order to save some additional  
20 time for our lead counsel, but I want to talk about the Defence  
21 witnesses, the internationals, and the attacks that occurred during  
22 the course of these closing arguments against them. I'm going to  
23 speak broadly and briefly.

24 But let me begin by -- yesterday, I had an exchange with a  
25 friend, a senior diplomat, a multitime ambassador, a former special

1 envoy, and I read to him quotes that you heard from Monday,  
2 particularly from the Specialist Prosecutor. The quote in particular  
3 is:

4 "The Court ... heard live evidence from seven Defence witnesses,  
5 all international. Each was involved in discrete efforts to bring  
6 peace and administration to Kosovo ... But whether their involvement  
7 in this case and their limited observations are valuable for the  
8 purposes of this Court is entirely a different matter. For the most  
9 part, the seven international witnesses parachuted in to a situation  
10 with little background knowledge of the players involved, did not  
11 speak the language, interacted face-to-face with key players only a  
12 handful of times, hardly if ever saw any KLA rules, regulations,  
13 orders or communiqués, and were not familiar with ... KLA structure."

14 And then she goes on to say they had a "scant layer of  
15 information."

16 My friend and colleague responded by saying, "Geez, a wee bit  
17 dismissive of my profession."

18 Gentlemen, I think we need to look at this because these  
19 comments display a level of arrogance and condescension that has  
20 plagued these proceedings from the very beginning. To dismiss out of  
21 hand the testimony or the experiences of these experienced  
22 professionals whose job it was to go and analyse and assess a  
23 situation, to look at the events in order to preserve and protect  
24 international security is reckless. In fact, it's wrong and perhaps  
25 even an act of desperation.

1           It's no wonder governments are leery of tribunals, international  
2 tribunals. When you have their professionals that come and tell you  
3 how it was, what was happening, and it's rejected by someone or  
4 people that weren't even there, this is highly problematic.

5           We need to keep in mind that these institutions, these tribunals  
6 are a tool of the international order of the international system.  
7 The people that came before you are part of that order. They are the  
8 ones that decide whether there should be tribunals and should be  
9 justice. Think of the ramification if we just say, hey, they don't  
10 know what they're talking about. You were there, but it doesn't  
11 matter because we will interpret it differently. Don't believe your  
12 eyes. Don't believe your ears. We know better.

13           I think it's important for us to remind ourselves of these  
14 witnesses. Now, you may not like them, and you don't need to. You  
15 may not respect our international witnesses as individuals, and you  
16 don't need to. But you do need to respect their roles, their  
17 professions, and who they represented: the United States Government,  
18 the British Government, NATO, and the United Nations. These  
19 individuals did not come here simply in a private capacity to say,  
20 "Here is what I think." They spoke with you or to you on behalf of  
21 their experiences and essentially on behalf of their institutions.  
22 Why else did we need to get clearance for them to be able to speak?  
23 Because the information they possess belongs to those institutions.

24           So when they gave you their views, they were considered views.  
25 They were the product of collaboration, collating information from

1 defence, military organisations, from the intelligence community,  
2 from reports from NGOs, from internal debates, from personal  
3 observations in the field, from in-field briefings, so you had a  
4 complete considered view.

5 Jamie Rubin, a staffer on Foreign Relations Committee for  
6 Senator Biden, adviser to the Secretary of State. In fact, he was  
7 tasked as a result of being in every meeting with the Secretary, he  
8 was tasked to go and find out who Hashim Thaci was. Go spend time  
9 with him. And you'll recall from his testimony that he at  
10 Rambouillet at every opportunity would go and have a cigarette with  
11 Mr. Thaci, would be there in the room. He got a chance to observe  
12 and gave you his views.

13 Professor Paul Williams, an esteemed professor at an American  
14 university. Now, he's very interesting because you have an  
15 individual who is assisting fragile states and governments in  
16 pursuing peace and building democratic societies and he does it  
17 *pro bono*. He was there. He was in the room. He heard the  
18 conversations. He saw the interactions. And he came here, as the  
19 others, voluntarily to give you his perspectives. This cannot be  
20 dismissed.

21 John Duncan, Ambassador John Duncan, Mike Durkee, senior  
22 diplomats in their own bureaucracy, decades of experience. Durkee, a  
23 military veteran. It rose to a level of trust where they were sent  
24 to NATO to represent their countries and be the political adviser.  
25 They studied these issues day in and day out.

1 Jock Covey, appointed by the Secretary-General, former deputy  
2 national security adviser, seasoned diplomat, gave you his views.

3 And yet they want to dismiss their experiences.

4 We know Ambassador Hill, six-time ambassador, and we can go on  
5 and talk about his other experiences, but the most important part was  
6 he was the Special Envoy for Kosovo with one responsibility: to find  
7 out who was who, what is what within the Kosovo-Serbia issue. That  
8 was his job. But the Prosecution wants you to believe that he  
9 parachuted in, he only had scant information. Come on, is that  
10 believable? When the President of the United States, the Contact  
11 Group, which is United States, UK, France, Italy, Germany, Russia,  
12 they all need to know who is who and what is what, do you believe  
13 that they would go back and say, "Hey, Madam Secretary, I only have  
14 scant information. I know you are about to decide whether or not to  
15 go to war, but here's my mere impressions," as the Prosecution wants  
16 you to believe?

17 And, of course, General Clark, West Point grad, Rhodes Scholar,  
18 four-star general, was at Dayton, as was Ambassador Hill,  
19 Supreme Allied Commander, commander of US forces in Europe. He gave  
20 you his views, considered views based on all the information from  
21 intelligence, from political meetings, and so on, that would  
22 percolate up. Recall he said he read everything, and he formed a  
23 conclusion and shared it with you.

24 These people had personal interactions. They were not on solo  
25 missions. They were not on some tours or safari to Kosovo.

1           Now, the Prosecution wants you to believe that they were maybe  
2 just passing by and just made some scant observations. They want to  
3 minimise their role. That is disrespectful. These people are  
4 serving their country, serving their institutions. This displays an  
5 ignorance, if you will, as to how the process works. These  
6 diplomats, these experts, this is their life work, and they came here  
7 voluntarily to talk to you to say: This is what I know, this is what  
8 I saw, these are my expert conclusions, and we're just going to toss  
9 it away?

10           Your Honours, I think we need to remind ourselves that public  
11 servants have a role. Public servants have something to offer. We,  
12 as lawyers, in looking at things in hindsight, do not know  
13 everything, so you have to trust the people that were there.

14           In fact, I think it's also important for us to look at this in  
15 the historical lens. They were working on consequential issues.

16           This was 1999, and please bear with me. Just a few short years  
17 earlier, we had an event in Somalia where the international community  
18 committed troops, and we lost 18 US service members and had 11  
19 international UN casualties, either killed or injured. This shocked  
20 the peacekeeping community so much so that a year later, less than a  
21 year later, in Rwanda, the world sat by and watched out of fear of  
22 the unknown, and a million people were killed in 100 days. It  
23 shocked them so much so that a year after that, in 1995, Dutch forces  
24 in Srebrenica watched as 8.000 men and boys were killed because they  
25 were so afraid to do anything and lose service members.

1           So now in 1999, all that changes, and the international  
2 community decides on scant information, "Hey, we are going to go to  
3 war. We are going to go to war against Serbia," without knowing who  
4 is who? Without knowing who the KLA is? Are they friends? Are they  
5 foe? Can we work with them? What is their organisation? Who's in  
6 charge? Who do we talk to? Of course they ask these questions.  
7 They had to.

8           So when these witnesses came here and 26 years later shared this  
9 information with you, whilst part of it, obviously, is based on  
10 reflection and memory, you have to know that at the time the  
11 information was real, it was solid, it was not scant, and it was not  
12 mere impressions.

13           Now, earlier Mr. Halling said something very interesting. He  
14 essentially -- and I'm going to paraphrase, but he essentially made  
15 the point that the internationals - Jamie Rubin, Wesley Clark - were  
16 essentially duped by 29-year-old Hashim Thaci. Do you really believe  
17 that? We have a man who just was recently a student, spent time in  
18 Switzerland, would be able to dupe these esteemed people that we have  
19 talked about? Of course not.

20           Now, all these witnesses came here and they all shared something  
21 with you. They said there was no effective command and control of  
22 the KLA. There was no political structure. Hashim Thaci was not in  
23 charge. And the armed conflict ended in June 1999. The SPO does not  
24 want you to focus on that. In fact, so much so that they didn't even  
25 call these witnesses who were all over the records that have been in

1 these proceedings. They chose not to interview them. They chose not  
2 to even call them.

3 Instead, the Prosecution comes here today and basically engages  
4 in evidentiary gymnastics, trying to twist and turn the facts,  
5 contorting, hoping that you don't see that they have missed the mark,  
6 that they have not stuck the landing. They have the burden of proof.  
7 And we need to remind ourselves that this burden of proof is  
8 extremely high, beyond a reasonable doubt.

9 I ask you to reflect back when you were either in law school, a  
10 young lawyer, a young judge, and you learned about this burden of  
11 proof. You learned about how important it was and how high this bar  
12 is to prevent overreach, to ensure that if we are going to deny  
13 someone of their liberty, if a government is going to do that or an  
14 authoritative body is going to do that, that we are sure, that we are  
15 convinced.

16 The international witnesses are walking reasonable doubt. You  
17 take them one by one. Jamie Rubin, he was there, he told you about  
18 his experiences, Rambouillet, and demilitarisation. Paul Williams,  
19 he was there, he told you what he saw. John Duncan was in the room,  
20 said the zone commanders were leading the way, he was there.  
21 Mike Durkee, he was involved, read all the information, and was there  
22 with meetings with Hashim Thaci with the Supreme Allied Commander.  
23 Christopher Hill, walking reasonable doubt up and down, they don't  
24 even comment on his testimony. General Wesley Clark, his title, his  
25 position speaks for itself, and the man was able to tell you what he

1 saw.

2 You believe one of those witnesses, that's it. However, take  
3 them as a collective, end of story. They all come from different  
4 walks of life, they corroborate one another, and they [indiscernible]  
5 and share with you the exact same picture, that Hashim Thaci is not  
6 guilty of the charges for which he has been brought to these  
7 proceedings.

8 The Prosecutor concluded in her remarks that the KSC is becoming  
9 a regular and conventional court. I fear that instead of this Court  
10 being a model of what we want the rule of law and courts to be,  
11 because of this Prosecution it is becoming a symbol of what we're  
12 trying to prevent.

13 So this case will be in your hands. I invite you to read the  
14 testimonies of these international witnesses, these people whose life  
15 work was made available to you and were able to share real stories  
16 from the real world about what happened in 1998 and 1999.

17 Thank you.

18 PRESIDING JUDGE SMITH: Thank you, Mr. Prosper.

19 Mr. Misetic, I understand we get some more from you.

20 MR. MISETIC: Yes, in case you haven't had enough of me,  
21 30 minutes to go.

22 I will move away from the facts, and I would like to just make  
23 some brief submissions on some legal and evidentiary aspects of the  
24 case.

25 Starting with, in slide 224, the first thing we were struck by

1 when we started reading the SPO's final trial brief, namely, the  
2 extent to which the SPO's case relies on untested evidence.

3 Slide 225.

4 Although the Trial Panel heard from 130 live witnesses in this  
5 case, the SPO's final trial brief and their final submissions rely to  
6 an overwhelming extent on other material where the authors or  
7 purported authors were not called or examined and in some cases  
8 remain unknown.

9 Some statistics. Starting with the accused's own formal prior  
10 statements. The accused in this case did not testify, as is their  
11 right. They did, however, cooperate through giving interviews with  
12 the SPO or other prosecutorial authorities, which were not subjected  
13 to testing or cross-examination, and were admitted over objections.  
14 The SPO relies on the accused's untested formal statements more than  
15 1.100 times to try to prove their case. We see the statistics --  
16 actually, I can read them out.

17 Mr. Selimi's prior statements are cited 499 times.

18 Mr. Krasniqi's prior statements are cited 274 times.

19 Mr. Thaci's prior statements are cited 229 times.

20 Mr. Veseli's prior statements are cited 100 times.

21 And this is before we consider their other informal statements,  
22 including the hundreds and hundreds of citations to other interviews,  
23 books, both published and unpublished, or documents they prepared,  
24 which Mr. Thaci was unable to confront and test. For example, one  
25 book written by Mr. Krasniqi was cited 271 times in the SPO final

1 trial brief. Other post-war books, manuscripts, or documents  
2 allegedly drafted by Mr. Krasniqi are cited more than 100 times, and  
3 informal interviews with Mr. Selimi are cited 80 times.

4 Slide 226, please.

5 This is a pattern. The SPO has attempted to build a case on  
6 documents, manuscripts, interviews, press articles, all admitted  
7 through the bar table and not tested in this courtroom. This is  
8 trial by hearsay.

9 The danger with this is the evidence you heard from witnesses  
10 who were cross-examined and testified under oath about the propaganda  
11 and half-truths and exaggerations that affected the reliability of  
12 materials and documents that were created during the war and which  
13 also affected the accounts that were created afterwards.

14 Sokol Bashota explained this phenomenon to you when he was shown  
15 documents purportedly authored by Mr. Selimi, Mr. Krasniqi, and  
16 others, explaining that people exaggerate in these books for many  
17 reasons, to glorify the process of wartime, for their own ego, or for  
18 their own political purposes.

19 Similarly, Mr. Kurtaj walked away from his own published book,  
20 calling them exaggerated and unreliable, yet his book is cited 31  
21 times in the final brief.

22 This is made worse by the fact that untested materials often  
23 originate with allegedly key KLA members or named JCE members or  
24 international observers whom the SPO could have called to  
25 authenticate these materials but chose not to.

1 Slide 227.

2 I would like to refer back to this Panel's decision admitting  
3 these statements of the accused, F01917 at paragraph 218, in which it  
4 is stated that:

5 "... Rule 140(4) (a) provides that a conviction may not be based  
6 solely or to a decisive extent on the statement of a witness whom the  
7 Defence had no opportunity to examine."

8 And you see the Panel's decision there highlighted. The Panel  
9 went on to say that because the accused could elect not to testify,  
10 "the Panel will pay particular attention to the existence or  
11 otherwise of corroborating tested evidence before relying upon the  
12 statement of an Accused in respect of a co-Accused, in particular in  
13 relation to any critical or material aspect of the Prosecution case."

14 Now, there seemed to be some suggestion yesterday that you  
15 didn't need tested evidence, which is in direct conflict with your  
16 own ruling on admitting the statements of co-accused. These  
17 statements lack independent corroboration through tested evidence and  
18 cannot be relied upon against Mr. Thaci.

19 Slide 228.

20 One significant example is the proposition in paragraph 1477 of  
21 the SPO final trial brief - I've showed it to you earlier - that says  
22 that principal responsibility for communiqués rested with Thaci and  
23 Krasniqi. I have already taken you through why the sources in the  
24 relevant footnote, footnote 6234, do not substantively support the  
25 proposition, including failing to establish beyond reasonable doubt

1 that Hashim Thaci had any involvement at all in the preparation of  
2 communiqués and political declarations.

3 We now also note that Mr. Thaci has not been able to test the  
4 single piece of evidence cited by the SPO to support its claim that  
5 "primary responsibility for communiqués rested with Thaci."  
6 Specifically, Mr. Thaci has not been able to cross-examine  
7 Rexhep Selimi and dispute his suggestion that Mr. Thaci was somehow  
8 involved in the preparation of Communiqué 59.

9 To the extent the SPO suggests in footnote 6234 that  
10 Mr. Selimi's SPO interview is corroborated by a Facebook post of  
11 Mr. Krasniqi's, and I note that we dispute that it is corroborative,  
12 the same issue applies: Mr. Thaci is not able to test Mr. Krasniqi  
13 either.

14 We also refer you to other examples, including the propositions  
15 in paragraph 230, footnote 940; paragraph 266, footnote 1096; and  
16 paragraph 503, footnotes 2056 and 2057. This list is by no means  
17 exhaustive, and we urge you to carefully review and identify all  
18 propositions in the SPO final trial brief which are supported only by  
19 evidence from Mr. Thaci's co-accused, whether formal or informal  
20 statements, and whom he has been unable to effectively interrogate.

21 Slide 229, please.

22 We turn to modes of responsibility.

23 I wanted to make some brief submissions on JCE.

24 Slide 230.

25 Our starting point for the JCE case is that the alleged common

1 criminal purpose in the case did not exist. There was never a  
2 criminal plan to gain and exercise control over all of Kosovo through  
3 the commission of the charged crimes. Even if the SPO had  
4 established the existence of this common plan beyond a reasonable  
5 doubt, it must also prove Mr. Thaci's significant contribution. But,  
6 specifically, a significant contribution to what exactly?

7 Throughout its brief, the SPO alleges that the accused made a  
8 significant contribution to the common plan; for example, at  
9 paragraphs 471, 481, and 570.

10 However, the position at this Court is that for JCE liability to  
11 arise, the SPO must demonstrate beyond a reasonable doubt that  
12 Mr. Thaci made a significant contribution to the crimes for which he  
13 is found responsible. In other words, Mr. Thaci must be found to  
14 have contributed significantly to the commission of the charged  
15 crimes - murder, torture, cruel treatment, et cetera. And this is  
16 the consistent language which you see on your screen in the judgments  
17 of this Court, including in our Confirmation Decision F0026,  
18 paragraph 110.

19 Slide 231, please.

20 To be clear, the relevant case law establishes that  
21 participation in a JCE may take the form of contribution to the  
22 common purpose. However, this same case law takes this a step  
23 further and also stipulates that this contribution "should at least  
24 be a significant contribution to the crimes for which the accused is  
25 found responsible."

1           This next step is a crucial one, and the SPO has missed it, both  
2           in their submissions and in their presentation of the evidence in  
3           this case. Whole sections of the SPO brief are dedicated to whether  
4           the accused made a significant contribution to the common purpose,  
5           but with no submissions on how Mr. Thaci's alleged acts and conduct  
6           contributed to the charged crimes.

7           The question, which the SPO has never answered, is how did  
8           Hashim Thaci make a significant contribution to killings and unlawful  
9           detentions? How did he make a significant contribution to torture?  
10          Particularly when, as the evidence shows, he was out of the country  
11          for much of the indictment period, and that many of the perpetrators  
12          were acting on the basis of personal motives and out of revenge.

13          On Monday, the SPO told you that other motives "do not negate  
14          the common purpose or even necessarily remove any particular crime  
15          from its scope. Indeed, a direct perpetrator need not share or even  
16          know of the common purpose." That's true. We have never said that  
17          JCE law requires that each of the perpetrators must share or know of  
18          the common purpose. But the SPO is required to demonstrate beyond a  
19          reasonable doubt that Hashim Thaci made a significant contribution to  
20          the charged crimes.

21          The Prosecution, in closing, claimed that the SPO's final brief  
22          sets out "in detail" in Part III, "statements of the JCE members  
23          which correspond to subsequent attacks or crimes on the ground."  
24          That's at transcript page 28428. This is just not true. The SPO has  
25          never done this exercise in relation to Mr. Thaci, by pointing to

1 evidence that shows that speech, this public statement, corresponds  
2 to these subsequent crimes. And this link is needed.

3 Ms. Lawson told you that there needs to be a "sufficient link  
4 between the perpetrator in question and a JCE member," transcript  
5 page 28424. If the perpetrators were acting on the basis of their  
6 own personal motive and not because of something Mr. Thaci did or  
7 said, where is this link?

8 In reality, if you have people who are on the ground committing  
9 crimes for personal reasons, because of a property dispute or for  
10 revenge for past violence against their own family, this raises  
11 reasonable doubt to the SPO's claim that this person was being used  
12 as a tool of the JCE, and that is what undoubtedly removes those  
13 crimes from the JCE's scope.

14 Slide 232.

15 I also want to briefly address an issue that we raised in  
16 opening statements about the way in which the SPO has attempted to  
17 distort one of the underlying contextual elements of crimes against  
18 humanity in this case. We first raised this in our opening  
19 statements three years ago, and we have set out the position at  
20 paragraphs 625 to 630 of our final trial brief.

21 The SPO brought this case and charged these accused with crimes  
22 against humanity knowing full well that the ICTY had examined whether  
23 KLA members were committing crimes against humanity, and had found in  
24 the Limaj and Haradinaj cases that the prosecution had not  
25 established a widespread or systematic attack against a civilian

1 population. To circumvent these ICTY findings, which undermine the  
2 SPO's crimes against humanity case, the SPO has shifted the playing  
3 field and is attempting to rewrite the law of crimes against  
4 humanity.

5 Slide 234, please.

6 Namely, instead of alleging that there was a widespread or  
7 systematic attack directed against any civilian population, the SPO  
8 has narrowed down the target of the KLA's alleged attack, framing it  
9 as being against "the civilian population of Opponents," defined as  
10 people who were considered at the time to be against the KLA. In  
11 other words, the people the SPO alleges that the KLA was attacking.

12 So instead of assessing whether there was an attack against a  
13 civilian population, the SPO is asking this Trial Panel to assess  
14 whether the KLA was attacking the people it was alleged to be  
15 attacking. This type of circular reasoning is a logical fallacy  
16 known as bootstrapping. Rather than asking whether a targeted group  
17 was part of an overall targeted population, the SPO argues that every  
18 group of victims of a perpetrator can be defined as a "civilian  
19 population" by virtue of being intended victims of the perpetrator.

20 This narrowed definition undoubtedly helps the SPO in  
21 demonstrating that the crimes committed as part of the attack were  
22 widespread. If you narrow the definition of the alleged civilian  
23 population to the people who were attacked, it is much easier to say  
24 that this smaller population was the subject of a widespread attack.

25 We have described this as increasing the fraction's numerator

1 while decreasing the denominator to make it appear that a larger  
2 portion of a smaller civilian population was targeted.

3 Slide 235.

4 In its final trial brief, the SPO doubles down on this approach  
5 and uses new language, stating that the attack "was directed at  
6 Opponents, a segment of the population that was overwhelmingly  
7 civilian." That's paragraph 1373. So the SPO acknowledges that it  
8 has framed the attack in terms of a smaller population, a "segment"  
9 of the Kosovo population.

10 The problem is population in the contextual elements of crimes  
11 against humanity is not something that can be altered in this way.  
12 The case law requires that to constitute a population for the  
13 purposes of crimes against humanity a group must form "a sufficiently  
14 stable and identifiable group of individuals, either geographically  
15 or as a result of certain common features"; namely, "[a] group of  
16 individuals who share common ethnic, religious, or racial features  
17 could constitute such a population." In other words, the civilian  
18 population must be defined by reference to some objective  
19 characteristics.

20 The population in this case is not sufficiently stable or  
21 identifiable. The SPO has not defined the civilian population by  
22 reference to any objective characteristics. It is a shifting,  
23 changeable, undefined, moveable collection of people whose membership  
24 depended on how they were subjectively viewed by unidentified KLA  
25 members at a particular moment in time.

1           This is the problem with the SPO's workaround. The requirement  
2           that the crimes must be committed in the context of an attack against  
3           any civilian population must mean something, and it must mean more  
4           than an attack against the people the SPO itself claims were being  
5           attacked. By attempting to stretch the crimes against humanity  
6           definition past the restrictions of Limaj and Haradinaj, the SPO has  
7           gone far outside the bounds of the very contextual elements which  
8           characterise this crime.

9           And, lastly, let me come to another evidentiary anomaly, slide  
10          236.

11          One of the anomalies is the extent to which the SPO witnesses,  
12          particularly former KLA fighters but also others, gave evidence which  
13          undermines the SPO's case.

14          One of the consequences of this is that we see that the SPO is  
15          now trying to back away from the evidence of its own insider and  
16          Rule 143 witnesses. The SPO repeatedly urges the Trial Panel to  
17          disregard exculpatory material from these witnesses on the basis that  
18          it contradicts other corroborated evidence.

19          Slide 238.

20          In making this claim, the SPO misapplies the legal standard.  
21          Rule 139(6) of the KSC Rules provides that:

22                 "Inconsistencies in a piece of evidence do not *per se* require a  
23                 Panel to reject it as unreliable. A Panel may accept parts of a  
24                 piece of evidence and reject others."

25          And this is part of the case law of this Court, and you see the

1 references on slide 238.

2 So while the Panel may choose to rely on some parts of a  
3 witness's evidence and not others, this case law does not stand for  
4 the broader proposition that the Panel can accept only incriminating  
5 evidence and disregard exculpatory evidence.

6 Slide 239.

7 Moreover, the SPO rarely put its case to witnesses to challenge  
8 their exculpatory evidence. It would violate the fundamental fair  
9 trial rights of the accused for the Trial Panel to disregard  
10 exculpatory evidence of witnesses that was never challenged by the  
11 SPO at trial. And it would be fundamentally unfair to witnesses to  
12 hold that their exculpatory evidence was not credible because of  
13 alleged fear of a climate of intimidation in Kosovo, or because of  
14 their alleged loyalty to the accused, but where they were never  
15 confronted by the SPO and given an opportunity to answer such  
16 allegations.

17 Any credible evidence by the SPO witnesses that contradicts  
18 other SPO evidence or testimony should be considered as raising  
19 reasonable doubt.

20 If we go to slide 240.

21 The SPO's approach to Sokol Bashota's evidence in its final  
22 brief is a good example. The SPO states that "in general" where  
23 Bashota's evidence exculpates the accused, it should be rejected  
24 where it conflicted with reliable contradictory evidence. That's  
25 footnote 5976.

1           Again, this evidence is unsound -- sorry, this argument is  
2           unsound. Assessing the credibility and reliability of his evidence  
3           requires a careful weighing and analysis rather than simple  
4           dismissal.

5           The SPO urges the Panel to reject his exculpatory evidence,  
6           including his explanation that his prior ICTY statement referencing a  
7           General Staff policy to target collaborators was only hypothetical,  
8           but they offer no more as a rationale than it is exculpatory, and  
9           make no meaningful attempt to demonstrate why it is patently  
10          implausible.

11          But many factors undermine the SPO's position. Bashota was able  
12          to coherently and consistently explain why he had given this answer  
13          to the ICTY. He understood both the question and the answer to be  
14          hypothetical, a statement he repeated several times throughout his  
15          testimony.

16          The fact that Bashota was speaking hypothetically to the ICTY is  
17          corroborated by the fact that the ICTY investigators did not attempt  
18          to obtain any details about any specific instances of the  
19          General Staff having issued orders to target collaborators, showing  
20          that they also understood Bashota to be speaking hypothetically. No  
21          professional investigator would have failed to obtain specific  
22          details of such orders if they felt Bashota was not speaking  
23          hypothetically.

24          Let me turn quickly to sentencing as I'm running out of time.

25          Our starting point is that the SPO has not proven the charges

1 against Mr. Thaci, and he should be acquitted and immediately  
2 released to return to his family and his country.

3 It is awkward to have to make sentencing submissions at a point  
4 where the Defence is passionate about its position that the only just  
5 outcome is Mr. Thaci's acquittal. Making sentencing submissions now  
6 threatens to leave the wrong impression that the Defence accepts the  
7 possibility of conviction. We trust that you as professional Judges  
8 understand the position we are in.

9 Nevertheless, let me just take a few seconds to talk about the  
10 sentence the SPO has asked for in this case. They've asked for a  
11 45-year sentence, effectively a life sentence. The SPO's starting  
12 point is that there are no mitigating factors in this case. This is  
13 an incredible submission from an office that knows that the  
14 Kosovo Specialist Chambers and the SPO would not even exist if it  
15 weren't for Hashim Thaci.

16 THE INTERPRETER: The interpreter kindly asks the counsel to  
17 slow down.

18 MR. MISETIC: Yeah. I see my -- the clock is causing me to  
19 speed up.

20 PRESIDING JUDGE SMITH: Repeat the sentence, though.

21 MR. MISETIC: Okay. Yes.

22 This is an incredible submission from an office that knows that  
23 the KSC and SPO would not even exist if it weren't for Hashim Thaci.  
24 In the context of how few high-level international suspects are  
25 currently in The Hague, or have ever been in The Hague, it is

1 manifestly relevant and mitigating that Mr. Thaci cooperated with the  
2 Prosecutor, resigned the presidency, surrendered himself, and came to  
3 The Hague to face this Court and clear his name. The SPO's claim  
4 that all of this counts for nothing is not a serious submission.

5 Next, in asking for a 45-year sentence, the SPO relies for  
6 comparison on cases it says encompass "similar offences and  
7 circumstances": Stakic, Martic, and Taylor.

8 Slide 245.

9 These cases are not comparable.

10 Stakic was convicted of extermination of approximately  
11 1500 civilians and the forced removal of tens of thousands of others.  
12 He played a unique pivotal role in coordinating the persecutory  
13 campaign and took part in ordering attacks against non-Serbs. Unlike  
14 Mr. Thaci, he did not voluntarily surrender and was sentenced to  
15 40 years in prison.

16 Martic was convicted of 16 counts, including murder,  
17 persecution, torture, and inhumane acts, for his conduct which  
18 spanned four years. He committed these crimes with discriminatory  
19 intent, and they were directed at ethnically cleansing a territory,  
20 for which he showed no remorse. Unlike Mr. Thaci, he was a fugitive  
21 from justice for seven years. He was given a sentence of 35 years.

22 Charles Taylor, former president of Liberia, was convicted for  
23 his support of the RUF rebels in Sierra Leone over a six-year period  
24 of brutal armed conflict with approximately 50.000 victims, many of  
25 them children, and many victims of rape and sexual slavery. Unlike

1 Mr. Thaci, he did not voluntarily surrender, and his sentence was  
2 aggravated by the prolonged suffering of the victims. He received a  
3 50-year sentence.

4 There is simply no comparison between this conduct and an  
5 accused like Mr. Thaci. Rather than having a leading role in the  
6 relevant conflict, Mr. Thaci was outside of Kosovo for much of the  
7 indictment period trying to find a way to end it. The SPO request  
8 for a 45-year sentence is not grounded in past practice or the  
9 reality of this case.

10 Slide 246.

11 I will conclude by saying this: At the beginning of our closing  
12 statement, I told you that this trial was a test of the SPO. We have  
13 no doubt that this distinguished Trial Panel will analyse all of the  
14 evidence in this case in great detail as well as all of the  
15 submissions made by the parties. But I urge you not to overthink  
16 this. There are too many holes in the Prosecution case, too many  
17 internal inconsistencies, too many illogical arguments, too many  
18 unanswered questions, too many international witnesses telling you  
19 that Hashim Thaci is not guilty, too many insider witnesses telling  
20 you the same thing, too many documents that are missing such as  
21 illegal orders from Mr. Thaci or proof that he was authoring  
22 communiqués, if the Prosecution's theory were true. No connection  
23 between Hashim Thaci and any criminal conduct.

24 This nearly three-year trial was a test of the Prosecution, and  
25 the Prosecution has failed.

1 Mr. Thaci's presumption of innocence remains. It is time for  
2 Hashim Thaci to go home. We ask that you enter a judgment of  
3 acquittal.

4 Your Honours, thank you very much for your patience and for  
5 listening. Thank you.

6 PRESIDING JUDGE SMITH: Thank you, Mr. Misetic.

7 We'll take a 15-minute break, and then we'll give you a chance  
8 to start. I know you can't finish today, but we'll get you a good  
9 start. [Microphone not activated].

10 --- Break taken at 3.29 p.m.

11 --- On resuming at 3.45 p.m.

12 PRESIDING JUDGE SMITH: All right. Mr. Dixon, you have the  
13 floor.

14 MR. DIXON: Thank you, Your Honours.

15 The Prosecution's case against Mr. Kadri Veseli is most  
16 accurately described as a wild goose chase. For over five years  
17 since the indictment in this case, and going back even further to  
18 2015 when the KSC was established and investigations under it  
19 commenced, the SPO has been pursuing something that does not exist;  
20 namely, any evidence of Mr. Kadri Veseli's involvement in any  
21 criminal conduct.

22 He uniquely scarcely features in the evidence in this case, let  
23 alone actually doing anything criminal. He was certainly a committed  
24 member of the KLA who, in a time of great need, as a young graduate  
25 without any professional military training, joined together with

1 thousands of others from all walks of life and persuasions to fight  
2 for Kosovo's freedom and a future free of authoritarianism,  
3 apartheid, and brutality for themselves and their children. That,  
4 Your Honours, is not a crime. Very far from it. And in pursuing his  
5 role in the KLA with honour and courage, and lawfully, there is no  
6 evidence of any worth, or at all, that Kadri Veseli ever participated  
7 in any criminal activities. The evidence concerning Mr. Veseli, or  
8 more aptly the lack thereof, speaks for itself. And in our  
9 submission, Your Honours, professional forensic examination of that  
10 evidence confirms that there's nothing criminal in it.

11 The pursuit of the impossible, that's what the SPO have been  
12 doing. They have persisted with a dogmatic faith that it'll somehow  
13 come right over time in the end, frantically chasing down every last  
14 rainbow, tilting at every windmill along the way. But they have come  
15 to the end of a long road, and they stand before Your Honours, in our  
16 submission, empty-handed. Their final brief that finally is an  
17 attempt to put their case exposes just that, as have their closing  
18 oral submissions to Your Honours this week.

19 In our submission, it is a case against a man that has the  
20 traits of being pre-determined, launched by the SPO regardless of  
21 what must have been obvious shortcomings from the beginning. There  
22 must have been fraught arguments about whether to include my client  
23 or not in this case. But once done, nothing would cause the SPO to  
24 pause and reconsider. Even as each witness they rolled out did not  
25 give any evidence against Mr. Veseli, or had never even known him,

1 the SPO publicly showed no misgivings about their case. But  
2 privately, they must thought it when they retreated into their  
3 offices after court and in their heart of hearts had their doubts.  
4 And now, when the SPO finally have had to put their case in concrete  
5 terms for Your Honours, we see those doubts and manifest defects  
6 oozing from their submissions.

7 Your Honours, just look at the first few lines of their brief,  
8 which they have regurgitated here in court again: Public statements  
9 vowed to punish opponents. Rules and regulations dictated their  
10 merciless treatment. Orders put into effect a policy targeting them.  
11 Where in the world is the evidence that Mr. Veseli did any of that,  
12 whatever that is. There is absolutely no evidence that he acted in  
13 this way.

14 Quite the opposite. The evidence shows he was working in the  
15 KLA to prevent Kosovar civilians from, and this is using their own  
16 words of the SPO, being punished, treated mercilessly, and targeted,  
17 in particular by engaging the international diplomatic and  
18 intelligence community abroad to understand the KLA and help save the  
19 people of Kosovo from annihilation, and, very importantly, to bring  
20 peace through a peace deal as soon as possible, for which purposes he  
21 was on the evidence, and this is not disputed, absent from Kosovo for  
22 huge swathes of time.

23 As proclaimed by Mr. Tieger, it did not all start with the  
24 Jashari attack by the Serbian forces, although he couldn't even bring  
25 himself to say attack by the Serbian forces or mention the Serbian

1 campaign at all, such is, we say, the SPO's bent on rewriting the  
2 history. Indeed, it started long before that attack, as Mr. Tieger  
3 knows because he was part of the prosecution that prosecuted that  
4 case at the ICTY. It started with the Milosevic regime's targeting  
5 of Albanians from late 1980s and throughout the 1990s through an  
6 organised system of repression and ethnic cleansing. It was in  
7 response to that policy - and, Your Honours, that is, that is, a  
8 criminal policy and plan - that Kosovar Albanians grew in their  
9 resistance for survival. The idea that Kosovar Albanians were abroad  
10 plotting to come back into Kosovo to target opponents in some kind of  
11 special war and that they started the war by returning in March 1998  
12 is outlandish. It requires the most blinkered of outlooks. We say  
13 it's like saying that the Ukrainians started the war in their country  
14 because they planned to fight, and fought, against a whole-scale  
15 invasion, and when last did we hear that?

16 Kosovar Albanians like Mr. Veseli did volunteer to save their  
17 country and its people, and they have had to dedicate their whole  
18 lives to that. They would have preferred a normal, peaceful life  
19 raising their children, like we enjoy in democracies, without being  
20 regarded as second-class citizens and living in constant fear. But  
21 there's no chance that was going to happen, and they had no choice  
22 but to try to stand up to the tyranny of Milosevic. And it is  
23 regarded as a celebrated moment in world history in the 1990s when  
24 democracy stood on the side of humanity and intervened to halt the  
25 obliteration of Albanians in Kosovo, having previously failed to act

1 as decisively in Bosnia and Rwanda.

2 So the SPO can try to argue until hell freezes over that there  
3 is enough evidence against Mr. Veseli, but that will not change what  
4 Your Honours can see now is the actual paltry state of the case  
5 against him. It is, indeed, the distinctive non-existence of  
6 evidence, the SPO's pursuit of the futile, that is the beating heart  
7 of the Veseli case. And it's time to call it what it is.

8 It is reminiscent of an Orwellian type of doublethink; namely,  
9 the mental ability to simultaneously hold in the mind and accept two  
10 completely contradictory points and yet believe both to be true. It  
11 involves a reshaping of the mind to genuinely believe a falsehood.  
12 War is peace, innocence is guilt. The SPO cannot make 2 plus 2 equal  
13 5. However much the truth is denied, the truth goes on existing.

14 Your Honours, let's then consider the SPO's final brief and oral  
15 submissions as a whole, first of all, and then I will break it down  
16 piece by piece, footnote by deceptive footnote. It's a sobering  
17 exercise, Your Honours.

18 But looking at it as a whole first, there are four core issues I  
19 want to address at the outset today and then going into the first  
20 session tomorrow, and that's, first of all, the lack of any evidence  
21 of any direct involvement by Mr. Veseli in anything criminal and the  
22 crimes alleged, and focus there very much centrally on the issue of  
23 hearsay evidence - crucial issue.

24 Secondly, I will look at the purely circumstantial nature of the  
25 SPO's case, which is entirely consistent with innocence, we submit.

1           And then, thirdly, the fundamental imperative of justice for the  
2 victims, as highlighted by Mr. Laws yesterday in this case, without  
3 imperilling the rule of law.

4           And then, fourthly, the extraordinary irrationality of the  
5 prosecution we have witnessed here, which shows that there's no case  
6 against Mr. Veseli, let alone one that comes anywhere near the high  
7 threshold of beyond reasonable doubt.

8           So it's those four overall topics first, and then for the rest  
9 of my time tomorrow I will descend into the misguided details of the  
10 SPO's submissions, breaking them down further, paragraph by laborious  
11 paragraph, with a few key examples of the gross overstatements, we  
12 say, inaccuracies in the text, and the sham sourcing of many of those  
13 footnotes. I'll only but look at a few key examples, Your Honours,  
14 otherwise we'll be here for weeks. But they will be more than  
15 sufficient to show that their entire case is debunked.

16           I will, as Your Honours have directed with the simultaneous  
17 filings and brief, respond to the case put by the Prosecution in its  
18 brief and then on Monday and Tuesday. I will not repeat what is in  
19 our final brief, and it must be taken that we rely on that in its  
20 entirety.

21           First overall topic then, Your Honours. There is no direct  
22 first-hand evidence of Mr. Veseli's direct involvement in any crimes  
23 it is alleged he committed. The direct allegations are all based  
24 purely on hearsay evidence, often twice removed. The SPO could not  
25 find one witness, after all this time, to come to court to allege

1 that Mr. Veseli committed any crime. They couldn't do it because  
2 there are none. This is a singularly astonishing fact.

3 The SPO says: Don't worry, Your Honours, it's all corroborated.  
4 But as you will see, that is an invention; something just stated as  
5 they have to say so after all this time, but it's not real.

6 While Mr. Veseli is mentioned some 260 times in the SPO final  
7 brief, none of them, only if you look at those handful of unsupported  
8 allegations which I will come to, leaving those aside, but none of  
9 them, none of the others, show him doing anything criminal or  
10 unlawful. It's ordinary, legitimate military stuff. This is an  
11 extraordinary statistic as well.

12 It is made even more exceptional when set against a background  
13 of several trials following international investigations, going back  
14 to 1993 before the ICTY, and then before UNMIK and EULEX courts, in  
15 which many of the exact same crimes alleged in this case against  
16 Mr. Veseli were litigated without any mention of him being involved  
17 in any of those crimes. As far as it can be calculated, we are  
18 talking about nearly 1.000 witnesses, maybe even more, I'm sure even  
19 more interviewed, in those related cases, namely two cases here, nine  
20 before UNMIK and EULEX courts, and five before the ICTY, with  
21 approximately 1.260 days of trial across all of those cases. No  
22 accusations against him in all of that.

23 The sweeping breadth of these related investigations and  
24 prosecutions that could have found evidence of criminal wrong-doing  
25 that could be brought against Mr. Veseli have been going on his

1 entire adult life, extending right back to the establishment of the  
2 ICTY in 1993, and yet there has been nothing criminal alleged against  
3 him until this case.

4         Witness after witness has testified here that during the war  
5 they did not know of Mr. Veseli, or did not have contact with him, or  
6 hardly had any dealings with him; that he was not around, that he was  
7 rather abroad. He was criticised for that. After the war, when he  
8 became more known, more politically prominent, only then do a few  
9 people suddenly pop up who seek to tarnish his name, not having said  
10 anything at the time of the war about him, but only later in the  
11 politicised environment after the war, then making shady,  
12 unsubstantiated allegations. But then none of them have appeared  
13 here in court to give evidence to be challenged. We are left with  
14 odds and ends of pure hearsay with no other support that amount to  
15 nothing, literally, forensically, and as a matter of law. It's a  
16 very sorry state of affairs.

17         In sum, Your Honours, those few uncorroborated hearsay accounts  
18 of Mr. Veseli's alleged direct involvement in any crimes are  
19 precisely that, purely unadulterated hearsay, where Mr. Veseli has  
20 not been able to confront the alleged maker and test that evidence,  
21 as is his fundamental right under the law of this Court, European  
22 law, and international law, and there's no corroboration of it  
23 either.

24         We are, Your Honours, talking here about a limited number of  
25 allegations of direct involvement - and I'll do them in general terms

1 to ensure that they can be done in public - two in fact: one  
2 concerning two persons who were taken away in Drenoc, and another  
3 concerning one detainee in Klecke. And then there are a few other  
4 unconnected bits and pieces which I'll scoop up later when I return  
5 to it, but it's those two in particular. Those are the two that the  
6 Prosecution have focused on.

7 For the very first time in these entire proceedings, we heard  
8 Mr. Halling saying yesterday: Don't worry, Your Honours,  
9 Rule 140(4)(a) is not applicable here. You can still convict on the  
10 basis of the untested hearsay evidence that Mr. Veseli was involved  
11 in these two incidents because that rule only applies to witness  
12 statements as defined by Your Honours.

13 So now, according to Mr. Halling, "statement" in the rule means  
14 "witness statement" as defined by the Panel. That, in our  
15 submission, is a rewriting of Strasbourg's fundamental law and a  
16 ripping up of the KSC's rule book and its case law. It is shockingly  
17 wrong, we say, for the SPO suddenly now to rest on such an argument.  
18 They're in a corner, they know it, and this is how they try to fight  
19 out. But that is, of course, Your Honours, no justification.

20 Rule 140(4)(a), a cornerstone provision, undoubtedly applies to  
21 both of these instances that I am talking about of the alleged direct  
22 involvement of Mr. Veseli. The evidence of his alleged involvement  
23 in the taking away of the two persons comes from the statements of a  
24 person who did not testify in this trial, and his evidence was not  
25 tested. Even though, as we've heard, he could have been called as a

1 witness. The SPO had interviewed him. His statements, his evidence,  
2 all came into evidence before Your Honours through other witnesses  
3 who simply came here to relay that hearsay, what they were told by  
4 him. It matters not, Your Honours, that the hearsay is not in the  
5 form of a witness statement as defined by the KSC. What matters is  
6 that his evidence, his statements are untested. That's why the rule  
7 applies. As the Appeals Panel of this Court in Shala has recognised,  
8 that rule derives from Article 6, the fundamental article in the  
9 convention. It derives from that article in the Strasbourg  
10 jurisprudence that guarantees the right of an accused to examine and  
11 confront the witnesses against him. The Appeals Panel here has made  
12 absolutely clear that that rule applies to all - all - untested  
13 evidence, and whether that be evidence in relation to direct  
14 participation or facts constituting the elements of the modes of  
15 liability or any other fact that is indispensable for entering a  
16 conviction. So that applies across the board: direct involvement,  
17 JCE, superior responsibility, all facts relied on to convict. That's  
18 paragraph, Your Honours, 478.

19 The Appeals Chamber refers to untested evidence over and over  
20 again when confirming the applicability of Rule 140(4)(a), making it  
21 abundantly clear that what the rule is in place to protect is against  
22 sole and decisive reliance on such evidence. Paragraph 480, a few  
23 paragraphs on in that same judgment, when referring to how this rule  
24 applies and what must be assessed, the Appeals Panel says very  
25 clearly, and I'll quote:

1           "... the central question is whether a conviction rests  
2           decisively on untested evidence" - they don't say witness statements  
3           there as defined by the Court, "untested evidence" - "the extent to  
4           which an accused has been afforded the opportunity to examine the  
5           evidence relied on in corroboration, including ... 'corroborative  
6           pattern' evidence ..."

7           And then this sentence, a crucial one, it's in our brief, but I  
8           will take the liberty of repeating it because it's so vital to what  
9           the SPO now say:

10           "Where one piece of untested evidence is being used to  
11           corroborate another piece of untested evidence, a trial panel must  
12           exercise caution to ensure that findings which are indispensable for  
13           a conviction do not rest solely or decisively on untested evidence."

14           Therefore, the Appeals Chamber clearly prohibits what the SPO is  
15           inviting Your Honours to do, which is to convict on a collection of  
16           untested, uncorroborated evidence.

17           The Appeals Panel, responding to the appeal of Witness 4747, and  
18           the admissibility of that evidence, Your Honours will recall,  
19           confirmed that corroboration -- and this is important as well because  
20           it undermines the SPO submission. Corroboration means "confirmation  
21           or support by additional evidence or authority," or "to corroborate"  
22           can be defined as "to strengthen to confirm," "to make more certain."  
23           To be considered as corroborative, different testimonies or evidence  
24           need not be "identical," the Appeals Panel said, "in all aspects or  
25           describe the same facts in the same way," but the crucial point, this

1 is what they say, that "evidence must confirm, even if in different  
2 ways, the same fact." Not a different surrounding fact, "the same  
3 fact" that is being put forward, the allegation that's being put  
4 forward, the corroborative evidence must confirm that allegation.  
5 And that's at paragraph 36 of that Appeals Panel decision.

6 Now, these are fundamental legal principles which were skipped  
7 over by Mr. Halling yesterday. He referred merely in passing to  
8 paragraphs 329 and 330 of the Shala appeal judgment to support the  
9 uncontested proposition - no one disputes this - that hearsay can  
10 sometimes be relied upon, but omitted the critical bit further down,  
11 paragraph 333, I'd invite Your Honours to look at this, where the  
12 Appeals Panel explicitly reinforced the requirement for  
13 corroboration, recognising that a live witness, in other words,  
14 someone who would come to court and was cross-examined, was able to  
15 corroborate the hearsay identification of the accused, which was the  
16 issue in that case. So hearsay identification evidence corroborated  
17 by another live witness. And the Appeals Panel said, yes, well, in  
18 that case, you're fine. And you don't have that, as I'm going to  
19 show now, in relation to these two instances.

20 Further, Mr. Halling went on to the Karadzic judgment, he  
21 referenced that, stating, in terms, that that supported his argument.  
22 Once again, not highlighting the final sentence in the paragraph he  
23 referred to, this is paragraph 452, the final sentence, which makes  
24 it very clear that untested evidence requires sufficient  
25 corroboration to be relied upon in support of a conviction. That's

1 there in the Karadzic judgment at paragraph 452. Once again,  
2 referring to "untested evidence," not witness statements according to  
3 any definition.

4 So, Your Honour, we are at this point: Is Mr. Halling really  
5 saying to Your Honours that this untested evidence of a person who  
6 did not come to court can be the sole basis for a conviction because  
7 it is not recorded in a witness statement that comes within the  
8 definition of the KSC?

9 Now, he dropped in that argument. He didn't then go on to apply  
10 it to these two persons who were taken away and say, look,  
11 Your Honours, you can actually rely on that evidence. He didn't say  
12 that explicitly. And I think it's important, and I do this in the  
13 most constructive sense to assist Your Honours in knowing what are  
14 the disputes between the parties, I think it's important that he come  
15 back and say is he saying in relation to that particular allegation,  
16 one of only two against my client, that Your Honours can rely on the  
17 untested evidence because it's not in the form of a witness statement  
18 and convict on that basis alone.

19 If he's not saying that, maybe he wishes to clarify it, then he  
20 can say no, I'm not taking it that far. That would be the sensible  
21 approach to take. But if he's going to stick with that argument,  
22 then I've shown you, Your Honours, why it's fundamentally wrong under  
23 Strasbourg law, under the law of this Court.

24 If the SPO comes back and says, well, no, no, no, actually, what  
25 we are saying is that untested evidence is corroborated, well, then

1 we're in a different sphere of argument. And our response then is  
2 no, it hasn't been corroborated according to the principles of law  
3 that I've just outlined, and I'll go through that now.

4 So we wait to hear from the SPO, because if they're simply  
5 saying it's not a question of definitions of witness statements but  
6 really it's about corroboration, well, then in regard to that issue,  
7 there are some critical principles that I've mentioned already that  
8 the SPO have to take into account and they need to address  
9 Your Honours on that. And the first is that, yes, hearsay evidence  
10 could form part of the basis of a conviction, but it has to be  
11 properly corroborated, as the Appeals Panel has decided. That cannot  
12 be more untested hearsay evidence. You can't just add more hearsay  
13 on top of hearsay. That's the first principle.

14 And, secondly, a very important one, which comes from 4747,  
15 appeal decision, the evidence has to go to the specific facts of  
16 involvement that are alleged, not the general facts but the specific  
17 facts. It's the same facts regarding the accused's involvement.  
18 More evidence about the underlying crime generally does not  
19 corroborate the allegation of the accused's involvement.

20 So applying those principles to the two instances. Firstly, for  
21 the two taken away, the SPO merely rely on more untested hearsay. It  
22 was on Monday that Mr. Pace, in a brushing-aside way, said that the  
23 purely hearsay evidence concerning the two being taken away was  
24 corroborated by the ability of the Defence to be able to  
25 cross-examine the witnesses who told Your Honours about that hearsay.

1 But that completely ignores that the law requires cross-examination  
2 of the maker of the incriminating statement, not the persons who  
3 relay the hearsay to the Court. It doesn't matter how many people  
4 come here and say, "I heard that," unless the source can be  
5 cross-examined, the SPO's case doesn't get off the ground. It does  
6 not matter that the Defence can cross-examine the person who conveyed  
7 the hearsay to your Court. We need to be able to cross-examine the  
8 maker. Otherwise, it needs to be corroborated in other ways. The  
9 untested evidence needs to be properly corroborated, full stop.  
10 Similarly, the untested statement of a co-accused cannot corroborate  
11 the untested evidence before the Court as it itself is untested. So  
12 we're back into the same cycle that doesn't assist the SPO.

13 For the allegation - this is the second one now - concerning the  
14 one detainee in Klecke, that is also based purely on hearsay. And on  
15 Monday, Mr. Pace did not even try to corroborate it. On Tuesday,  
16 Mr. Halling made a stab at it by saying Mr. Veseli was in the general  
17 area in the general time period, nothing specific, which, even if  
18 proven, obviously does not corroborate the hearsay account, which in  
19 this case comes from W4839, that Mr. Veseli was in the specific  
20 places and committing the acts that constituted the alleged crime,  
21 the same fact, as required by the law.

22 The SPO relies on other evidence that the underlying crime was  
23 committed, but that evidence is just evidence that the crime  
24 happened. There's no dispute about the detention. That happened.  
25 But once again, that does not confirm Mr. Veseli's involvement in

1 that crime. It only begs the question. His involvement comes from  
2 one witness and there's no other evidence to support what that  
3 witness said. That one witness is, of course, an untested witness.

4 Now, Mr. Halling did not even try to deploy the witness  
5 statements only argument for this allegation as he probably realised  
6 that W4839's account is in the form of a witness statement as defined  
7 here. So he then conveniently resorted to other arguments and says  
8 that this allegation is not based solely on W4839's untested evidence  
9 but other evidence too. But which, which other evidence which shows  
10 Mr. Veseli's involvement? The SPO do not pinpoint this.

11 There is some more evidence of the underlying crime, as I've  
12 said, but not of his involvement in any part of it. It does not  
13 matter that I could cross-examine witnesses about the underlying  
14 crime who say nothing about his involvement. In fact, they say he  
15 wasn't involved. The sole evidence of his involvement comes from one  
16 witness I can't cross-examine, and his evidence on Mr. Veseli's  
17 alleged involvement is not corroborated. It's crystal clear, Your  
18 Honours. There can be no conviction based solely or decisively on  
19 that evidence. That is the touchstone of Strasbourg as incorporated  
20 into the KSC rules and reaffirmed by the Appeals Panel in Shala.

21 Lastly, because this may now be clutched on to, Mr. Halling  
22 slipped in at the end yesterday the Defence had a chance to  
23 cross-examine the broader pattern of detentions in Klecke. And in  
24 their final brief, they invoked some dicta from the Appeals Chamber  
25 in Shala regarding use of "pattern evidence" and "similar fact

1 evidence," as we know it in common law jurisdictions, to corroborate  
2 untested evidence. But then the SPO did not apply that practically  
3 to any of the untested evidence concerning Mr. Veseli. They, in  
4 fact, bury this legal point about pattern evidence very deep in their  
5 brief at paragraphs 1405 to 09, but they never brought it to the fore  
6 in their brief. However, they hinted at it yesterday without  
7 developing the point.

8 But what is the pattern that they're relying on here? The case  
9 law requires the SPO to specify it and show how it directly relates  
10 to the accused. Under the Appeals Panel's case law, broad patterns  
11 of detention cannot corroborate the accused's direct involvement in  
12 the specific crime alleged. It has to be a pattern or similar fact  
13 evidence relevant to the accused's actual involvement, i.e., evidence  
14 of a similar pattern of behaviour by Mr. Veseli personally, of which  
15 there is none.

16 There is no issue, as I've said, that the detention took place.  
17 The issue is whether Mr. Veseli was involved at all. The critical  
18 point is there's no corroboration of that hearsay involvement.

19 Now, Your Honours, with respect to both of these two  
20 allegations, there are a host of other reasons why the SPO has not  
21 proven its case regarding them. The various hearsay accounts are  
22 themselves unclear, vague, riddled with inconsistencies, and really  
23 something of a dog's breakfast if you try to piece them all together.  
24 But we say, fortunately, Your Honours don't even need to go there.  
25 And, in fact, the Prosecution don't even get a chance to delve into

1 their dog's breakfast because none of it corroborates the untested  
2 evidence that's at the heart of each allegation. It's just more  
3 untested evidence, more evidence outside of any evidence that would  
4 show any direct involvement, general evidence which, even if I was  
5 able to cross-examine, which I did in some cases, doesn't go to the  
6 heart of the matter.

7 And it's for that reason that I've spent some time of it at the  
8 outset for Your Honours, because the whole issue of the sole or  
9 decisive rule is such a central one because it shows that the SPO  
10 failed to establish its case on these key limited areas of direct  
11 involvement. But it spreads throughout their entire brief, including  
12 in relation to the JCE and superior responsibility allegations as  
13 well. It's such a critical issue for the Court and upholding the  
14 rule of law, as we've seen in the Appeals Chamber addressing this  
15 issue in great detail, and that's why we place so much emphasis on it  
16 at the outset. It is a lens through which Your Honours are going to  
17 have to look at the entire case against my client, particularly in  
18 relation to direct involvement, and once that falls away, which it  
19 inevitably does, we say, then moving on to look at what's left in the  
20 JCE.

21 Your Honours will need to watch the SPO's bogus attempts at  
22 corroboration like hawks. The SPO know that in accordance with the  
23 law they need to do this, but on the vital aspects of the case  
24 against my client they have no way of doing so. Thus you will  
25 encounter, Your Honours, in the undergrowth of footnotes, thousands

1 of them, scrapings from the very depths of the barrel. Each of them  
2 have to be checked and assessed based on the applicable law, not the  
3 law as rewritten by the SPO.

4 Your Honours would have noticed that in the SPO's oral  
5 submissions for their case against Mr. Veseli it does really boil  
6 down to a limited number of allegations that are then just recycled  
7 over and over again. When you cut away all of the wearying waffle,  
8 and guilt by association because Mr. Veseli was in the KLA and on the  
9 General Staff, it really amounts to the following: The two  
10 allegations of untested, uncorroborated hearsay that I've just  
11 mentioned, they can't be relied on. Allegedly being in the area  
12 generally in Rahovec in July 1998 in the aftermath of the fighting  
13 there, but no proven details of this, no proven knowledge of the  
14 actual crimes. And then in a similar way being seen at a mine in  
15 June 1998, but the evidence shows that that was at least five days  
16 before any of the reported abductions, which is not even a charged  
17 crime in the case. A single document mentioning Chief Luli from  
18 August 1999, that's P709. In our submission, not an authenticated  
19 document, the truth of its contents have not been proved. It is not  
20 corroborated. It does not prove anything. Even when Mr. Tieger  
21 mentioned it, he did not say why it was so significant. He showed  
22 it, he mentioned it, and I was waiting and thinking, well, so? What  
23 is this used to show at that time? And then the supposedly  
24 subordinate nature of Mr. Sabit Geci to my client as being his  
25 alleged superior, an allegation that has no substance. It's

1 tittle-tattle that cannot be taken seriously. It is not a linguistic  
2 issue, as the SPO claimed on Monday. It is an issue of having no  
3 proof beyond reasonable doubt that he was intelligence, or in any way  
4 under Mr. Veseli's command. But for a few other insignificant odds  
5 and ends, which I'll come to, I mean, that's it, Your Honours.  
6 That's what they're focused on. There's nothing else. And I'll  
7 return to some of them tomorrow to go through to the extent that it's  
8 even needed.

9 That was my first overall point on direct participation. I'm  
10 now going to move on to my second overall point, which is that the  
11 SPO, faced with those scant crumbs against Mr. Veseli, they have to  
12 now resort to an entirely circumstantial case, which the law of this  
13 Court once again requires that particular caution be exercised by the  
14 Court when considering it. And particularly I would urge  
15 Your Honours to do so because it is a most thinly veiled  
16 circumstantial case.

17 We are at the very outer limits here of the meaning of  
18 "evidence." I mean, the evidence that mentions Mr. Veseli's name or  
19 somehow is associated with him does not show any criminal behaviour,  
20 let alone participation in some grand criminal plan or JCE, or  
21 knowledge of any specific crimes he could do anything about.

22 It shows him doing usual, typical, legitimate military things.  
23 I mean, if that is labelled criminal by the SPO or used to infer  
24 criminality, well, then most, if not all, of the KLA should be on  
25 trial, as would most armed forces or guerrilla fighters for any

1 crimes invariably committed in their conflicts. I mean, it simply  
2 can't be right. If apparently bringing seven of the 12 RPGs into  
3 Kosovo in 1997 is indicative of a criminal plan to target opponents -  
4 and here we're not even talking about the Serbian forces who were  
5 implementing the crackdown, this is those in Kosovo - well, then,  
6 Your Honours, the net has been cast virtually across the whole sea by  
7 the SPO. And when we talk about these RPGs, I do just have to remind  
8 Your Honours that that's based on two unconfirmed media interviews  
9 from the same co-accused which cannot be tested. They didn't  
10 testify. That's where it comes from. It is an illustration of how  
11 broad they cast this. I mean, what about the other five RPGs? Who  
12 brought them in? Are they part of this as well?

13 The Chief Prosecutor concluded yesterday by saying it has been a  
14 privilege to meet so many people who lived through the events in the  
15 evidence, including the accused "who fought for their country against  
16 great odds."

17 Well, how can she then hold against them, my client, that they  
18 acquired weapons to conduct that fight? This is the very clear  
19 evidence that has been relied upon against my client to claim he's  
20 part of a JCE, and yet at the same time Mr. Veseli's brave  
21 contribution to fighting for freedom is acknowledged, and this is  
22 what is fundamentally wrong about the JCE that's alleged against my  
23 client.

24 When the Chief Prosecutor opened the case on Monday, she  
25 insisted no conviction is sought on the sole basis of being a member

1 of the General Staff or the KLA. Good start.

2 But then Ms. Lawson followed it up with:

3 "If the multiple contemporaneous public communications of the  
4 General Staff ... are accepted for what they clearly are, that's  
5 direct evidence of the common criminal purpose."

6 Now, these two submissions cannot be reconciled, Your Honours.  
7 On the one hand, the SPO are saying merely being in the General Staff  
8 or the KLA is not sufficient to prove criminal participation; and  
9 then, on the other hand, they are saying the statements in the name  
10 of the General Staff are direct evidence of criminal participation.

11 The statements being relied on as direct evidence are the ones  
12 attributed to the General Staff, and they've been relied upon against  
13 the whole General Staff. It's guilt by being in a certain position.  
14 It is not individualised at all, despite the Prosecutor saying that  
15 this would not happen. If it's not everyone in the General Staff, no  
16 effort is made to explain why certain persons may not be part of that  
17 JCE, why the statements might be attributed to some but not others,  
18 with any explanation as to why.

19 Instead, the JCE is very broadly alleged to extend to "seizing  
20 power and control," and I quote there, in Kosovo which meant the  
21 violent suppression of opponents by the "KLA/PGoK leadership." The  
22 leadership. I mean, that is collective guilt across the whole  
23 spectrum. No clarification is made about who is in, who is out, and  
24 why.

25 The SPO maintain that the KLA and its structures, the

1 General Staff, the zones, the directorates, the regulations that came  
2 out, all of their statements, I mean, however rudimentary they were,  
3 they say this was the vehicle through which a mass criminal campaign  
4 was run to dominate and control Kosovo, wiping out all in their way.  
5 According to the SPO, it permeated the entire KLA at every level.  
6 Now, this essentially means in the eyes of the SPO, the KLA as a body  
7 and its entire General Staff and leadership were acting criminally as  
8 they sought to develop their structures to be able to resist the Serb  
9 forces.

10 I mean, it's all very well for the Prosecutor to say: You  
11 fought against great odds for your country, and, don't worry, I will  
12 not seek conviction on the basis of being a General Staff member or  
13 KLA member. But she's doing exactly that for Mr. Veseli, when his  
14 every action in working in the KLA and seeking to develop it to fight  
15 those odds is alleged as a contribution to furthering the JCE.

16 Now, while the SPO clearly won't and they don't say anything bad  
17 about the conventional, highly organised army which actually  
18 dominated and controlled Kosovo at the time through industrial-scale  
19 violence, namely the Serbian state forces, they have to concede that  
20 the KLA was fighting for independence from Serbia. But they even  
21 pervert that to say what was being done, namely the violent removal  
22 and suppression of all opponents, that was being done in order to  
23 achieve independence.

24 Ms. Lawson said on Monday "logic dictates that independence  
25 would have been a prerequisite" for the JCE members to obtain

1 control. So the whole fight for independence is about getting rid of  
2 opponents. No mention of who you're trying to get independence from.  
3 The SPO uses the very language of "oppression," that of seizing,  
4 usurping control and dominating, to accuse the KLA and its leadership  
5 and its organisation. I mean, it's a perverse inversion of precisely  
6 the policies and behavior of the Milosevic regime in Kosovo at the  
7 time, seeking to dismantle the autonomy and control Kosovo at all  
8 costs.

9 I mean, the idea peddled by the SPO that somehow in the  
10 forefront of the minds of the KLA as they fought and then sought to  
11 entrench themselves and fortify themselves in various pockets in  
12 Kosovo from March 1998 against that onslaught, that at the forefront  
13 of their minds was the common plan of oppressing their own people or  
14 others, I mean, it's preposterous. The idea that Mr. Veseli returned  
15 to Kosovo and moved around Kosovo to help grow the KLA so that it  
16 would be able to engage the Serb forces, and that he had in mind at  
17 that same time a plan to turn on his own people is absurd. I mean,  
18 it's demonstrably not supported by the evidence.

19 The SPO's theories defy logic. Why would thousands of ordinary  
20 people band together in 1998, with the Serbian stranglehold at its  
21 very peak, to try to build the KLA for such a criminal purpose? They  
22 logically in reality did it to defend themselves. The theory flies  
23 in the face of, one, the evidence that we've heard, Your Honours, of  
24 the KLA being swamped and all consumed by fighting the Serbian forces  
25 on a day-to-day basis; two, the position of the international

1 community, in particular the United Nations and NATO, that the KLA  
2 fought valiantly against extreme odds to defend Kosovo; three, the  
3 findings of other international criminal courts to the same effect;  
4 and, four, the ICJ Advisory Opinion on the declaration of  
5 independence in Kosovo in which the ICJ recognised the numerous  
6 instances of declarations of independence in the 18th, 19th, and 20th  
7 centuries, often strenuously opposed by the state from which  
8 independence was being declared, but which were not contrary to  
9 international law, including in Kosovo; as well as the international  
10 law of self-determination that developed in the second half of the  
11 20th century. And for that you can see paragraph 79 of their  
12 advisory opinion.

13 Now, it is widely alleged as part of this JCE that my client  
14 planned, ran, and oversaw a criminal enterprise to identify and kill  
15 all collaborators throughout Kosovo in 1998 and 1999, directing and  
16 controlling all intelligence units in every zone and areas within the  
17 entire scope of Kosovo and the KLA with that criminal purpose in  
18 mind, and that is alleged without any direct evidence at all in  
19 support of their claim, and yet the SPO ask Your Honours nevertheless  
20 to find beyond reasonable doubt that all those very bold allegations  
21 are proven due to scattered fragments of non-criminal circumstantial  
22 evidence.

23 Now, of course, non-criminal conduct can be relevant to a JCE,  
24 but, I mean, you have to have evidence to show that there's criminal  
25 intent and contribution to actual criminal acts. It can't be just

1 taking forward a war on behalf and with the organisation in order to  
2 try and defend it and its people. Legitimate actions cannot be  
3 turned into a joint criminal enterprise.

4 Your Honours, that is an appropriate time. What I will do  
5 tomorrow is finish off this section on JCE by looking at the  
6 circumstances and why there's no evidence to support those  
7 circumstances.

8 PRESIDING JUDGE SMITH: Thank you --

9 MR. DIXON: Thank you.

10 PRESIDING JUDGE SMITH: -- Mr. Dixon.

11 We will be adjourned until 9.00 a.m. tomorrow. Thank you all  
12 for your attendance today. We'll see you tomorrow morning.

13 --- Whereupon the hearing adjourned at 4.44 p.m.

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