Monday, 16 February 2026
[Open session]
[Closing Statements]
[The accused entered the courtroom]
--- Upon commencing at 9.45 a.m.

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

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

PRESIDING JUDGE SMITH: Good morning, everyone. I note that the accused are present in the courtroom.

Unfortunately, we had a delay. We'll try to deal with it by making some adjustments during the day-to-day. We will continue hearing the closing statements in this case. This morning, we will continue with the closing statements from the Defence for Jakup Krasniqi. Thereafter, we will continue with questions from the Panel. And later today, if possible, we will hear responses from the Specialist Prosecutor's Office, and then, if we have time, Victims' Counsel. Some of that may have to, however, be on Wednesday, depending on how much time is used.

We will give you the full 90 minutes that you have at this time, if you need it all, and we don't break until you're finished, and then we'll take a break at that time, probably a shorter break than we had been doing, in order to try to get back on schedule.

I want to remind everyone once again that since the closing statements are being interpreted to please speak at a slow pace to allow the interpreters to catch up.

So this concludes the remarks from the Panel. We will now continue with the closing statements of the Defence for Jakup Krasniqi. And as I've said, you have an hour and a half. Please proceed when you're ready.

MR. ELLIS: Thank you, Your Honours. And good morning.

I had reached the second of my topics regarding Mr. Krasniqi's alleged significant contributions to the JCE as spokesperson, and that is to address public statements more generally.

Your Honours, this has always been a case about linkage, and what the Prosecution failed to prove, in our submission, is any causal link between the public statements attributed to Mr. Krasniqi and the indictment crimes, or, in the terms of the JCE, a significant contribution to those crimes.

I adopt the cases already referred to in argument by Mr. Misetic on public statements, and highlight in particular that, in considering the similar test of substantial contribution, the appeals chamber of the ICTY in the Seselj noted at paragraph 132, first, that a significant lapse of time between statement and offence could lead a panel to find that the link is only tenuous; and that, in that case, the prosecution's failure to prove the breadth of dissemination of the statements or the specific impact that they had on the commission of crimes meant that certain charges were not made out.

And in this case, we say the Prosecution has not proved broad dissemination or specific impact on crimes or sufficiently strong temporal connection.

Your Honours will recall that in closing argument on Monday and Tuesday, the Prosecution read passages of Mr. Krasniqi's two interviews from July 1998, the *Koha Ditore* and *Der Spiegel*. I won't repeat all of the submissions in our final brief about those two articles. The written submissions are extensive. But we note that the Prosecution did not address, first, the submission that the Prosecution failed to call evidence from the journalists involved to verify the precise words used by Mr. Krasniqi, despite the obvious internal inconsistencies, mistakes, and exaggerations within them. That's paragraph 411 of our final brief. Furthermore, at paragraph 413, Mr. Krasniqi's statements, including these two, make it clear that the KLA did not take up arms to fight civilians, and they often qualify the very phrases picked out by the Prosecution by saying that the KLA respects international law. And the Prosecution has not established beyond reasonable doubt that these references to civilians, to international law are a deception rather than Mr. Krasniqi's genuine intent.

The further point that I want to highlight this morning is the failure to establish a nexus between those statements and any crime. Until last week, the previous occasion the Prosecution relied on these July 1998 statements was in the course of their opening statements to Your Honours. Since then, we've had well over 125

witnesses, including around 40 witnesses who were KLA members, and the Prosecution did not put these statements directly to those witnesses in court. It's a bit late in the trial, Your Honours, to bring them back for closing statements.

In order to try to prove a connection, the Prosecution did put one of the July 1998 interviews to W1493 in its Prosecution interview. He, of course, was not a member of the KLA, and he said vaguely at P911.5, page 9, that he saw the interview "after," and later, at page 12, "I heard about this interview later on."

So far as I can see, from footnote 225 of the Prosecution brief, the only other example relied on of a direct interview of Mr. Krasniqi being put to a witness was W4393, who was shown P1853, and that, of course, was a victim witness who promptly responded, at T22509, that he hadn't seen the interview until it was put to him by the Prosecution. Such witnesses cannot establish broad dissemination of the statements, and not being members of the KLA, they cannot establish that the statements had a significant impact on any crime.

By not putting the statements that it relies on so heavily against Mr. Krasniqi squarely to witnesses in this courtroom, the Prosecution is not entitled to a finding that they were widely disseminated and read, that they were acted upon, or that they significantly contributed to the commission of any crime.

Very briefly on the connection between communiqués and crimes. This is a topic already addressed by Mr. Misetic and Mr. Roberts. Now, I adopt those submissions and add only one of my own, and that

is that at paragraph 358 of the Prosecution brief, the Prosecution make the claim that communiqués contributed to detentions in the Llap zone. The critical evidence, in my submission, is plainly that from the zone commander, Rrustem Mustafa. What I rely on in particular is Rrustem Mustafa's final answers in re-cross-examination by Mr. Misetic. And the reason I go to that is because one of the benefits of oral proceedings is that through the process of questioning, first by Prosecution, then by Defence, then by Your Honours, and then in further re-cross-examination, is that it gives the parties the chance to clarify those issues that really matter in the case.

And his final answers in re-cross-examination were clear. He said, at T5955, that the major reason for dealing with people who obstructed the KLA was "military reasons." He didn't recall any specific communiqué giving him permission to deal with such people. And at the next page, 5956, he did not need permission from anyone to carry out detentions in his zone. He was king in his own kingdom. That's the final product, the distillation of his evidence into its essence, and at the very least, in our submission, it creates a reasonable doubt about the alleged causal link to the Llap zone.

The Prosecution try in their brief to counter this obvious problem with their own witness by submitting, at paragraph 1426 of their brief, that Rrustem Mustafa's "testimony goes in circles and is contradictory." The problem with that submission is that it is the Prosecution that bears the burden of proof, not the Defence. This

was a Prosecution witness, not a Defence witness. And if the Prosecution's own evidence goes in circles and is contradictory, then the conclusion must be that they have failed to prove their case.

I turn to deal with my third topic, regulations. And as to authorship, date, and distribution, we rely on the submissions at section 2.10 and paragraph 470 of our brief.

The point I want to address in oral argument is that, once again, the Prosecution failed to prove connection between the regulations and the indictment crimes. What the Prosecution does at paragraph 545 of its brief is to highlight a line from the provisional regulations. I'm sure we're all familiar with it. It's the one about "the military police must be ruthless" - sometimes translated as "merciless" - "with enemies and all those who in various ways try to impede or sabotage our liberation struggle," and then critically submits that this "directly informed how the Opponent policy was implemented on the ground."

The evidence relied upon in support is provided at footnote 2241. And this is another of those footnotes in the Prosecution brief that we invite Your Honours to scrutinise carefully, because in my submission, it does not demonstrate that a requirement for the military police to be ruthless was implemented on the ground. Most of the witnesses cited were referred to a more general provision about the military police duties, and then the Prosecution moved on. That sort of evidence does not establish that the "merciless" or "ruthless" provision was followed on the ground.

It doesn't prove the point because the critical question was not asked.

The exception to that is Witness 4747. And for all the reasons set out in our brief and the Veseli brief, we say this is a deeply unreliable witness who the Panel should not rely upon, not least because he was not here to be cross-examined. But even in relation to the specific issue of this regulation, when shown the "merciless" provision, he claimed to have seen it in October 1998 - that's P3580.9, page 31 - which, of course, is far later than the Prosecution claim it was distributed, and, in our submission, no crimes alleged in his zone at that time.

But he also claimed at page 26, when asked if he had seen this document, "I might have. I've seen quite a few of these documents. There were a few of these. But I am sure that 99 per cent of the soldiers never saw any of these." So the person who the Prosecution actually put this provision to gave evidence that the very great majority of soldiers - 99 per cent - never saw it.

Now, it's right to acknowledge that His Honour Judge Gaynor put this provision to, by my count, two Prosecution witnesses: Bislim Zyrapi and Shukri Buja. Mr. Zyrapi, at T18448, made no direct comment on the word "merciless" or "ruthless." Shukri Buja, at page T22242, read the words in the regulation and said, "In my zone, this thing did not happen." Neither witness, of course, was military police, and their evidence stops far short of establishing that this provision directly informed the behaviour of military police on the

ground.

And if I could move to the regulation itself. There has been a laser focus on the provision about using the word "merciless" or "ruthless," but it isn't the only provision. The same regulation provides that the military police should treat all travellers equally, should have good manners, be polite, and, importantly, were "not to use physical force except when attacked or prevented from carrying out their duty." I invite Your Honours to read the regulation as a whole. It cannot be assumed that only the most negative reading of one provision was the one intended to be followed on the ground. There is evidence in this case that certain members of the military police beat detainees severely. But in my submission, every time that a member of the military police used force again a person in detention that, on its face, would be a breach of this regulation. The commission of crimes by members of the military police is not evidence, in our submission, that any role Mr. Krasniqi played in these regulations significantly contributed to crimes.

And I move to my final topic on the spokesman period, which is mere presence at locations.

In its final brief, the Prosecution wrongly tries to convert Mr. Krasniqi's proximity to a small number of the alleged detention sites into a connection to crimes, without producing any evidence that he actually saw a person in detention, or that his presence contributed in any way to those crimes.

For instance, at paragraph 581, the allegation is that Mr. Krasniqi's field visits "often took place at or near the time and the place where crimes were committed." Thus, implying that there must be a connection without actually directly alleging knowledge or that his presence contributed. Without proof of a connection, we say mere presence is insufficient. That being illustrated, for example, by the trial judgment in Mrksic at paragraph 671.

I'll deal briefly with some of -- with the locations relied upon. Firstly, in relation to Jabllanice, the claim is that Mr. Krasniqi visited Lahi Brahimaj in 1998, including in July, and that it was "well-known" that Brahimaj controlled the compound where detainees were kept. Well, control of the compound, of course, isn't the issue. The issue is what is the evidence that Mr. Krasniqi knew at the time that crimes were committed there. And in our submission, there is no evidence of that. There's no evidence that communications in July 1998 were sufficient to bring notice to Mr. Krasniqi, and no concrete evidence has been identified that information reached him.

And allegations about Bajgore follow a similar pattern. Mr. Krasniqi was part of a delegation that visited the Llap zone in August 1998, but it was not proved that that delegation went to the detention centre or that Mr. Krasniqi was told about any detention. Instead, the pleaded allegation at paragraph 566 is "Krasniqi also passed through Bajgore during this visit." That's obviously insufficient to establish knowledge of detentions there.

And it's worth emphasising that in relation to both these visits, a point which Mr. Misetic alluded to in his submissions, Bislim Zyrapi was there as well. He has not been charged with any offence. The Prosecution are very clear that he was not a JCE member. If there is nothing criminal in these same visits in relation to Mr. Zyrapi, the same conclusion must apply to Mr. Krasniqi.

And it's much the same in relation to Kukes. Bislim Zyrapi was actually based there for a time. That's transcript 17509. He said he didn't know about detentions there, transcript 17780. If he was based there and did not know, what finding can properly be based on the very limited evidence that Mr. Krasniqi visited Kukes? As explained in our brief, the witness evidence about his presence there was either non-specific as to dates, times, and precise locations, or came from witnesses who did not give oral evidence and could not be cross-examined by us. P3910 adds nothing to this analysis in our submission; an unattributed handwritten document, admitted through the bar table without being tested with any witness. Findings cannot fairly be made on such evidence on an allegation of acts and conduct of the accused.

The remaining paragraph 581 allegation that Mr. Krasniqi was in the Malisheve area at other times in June, July 1998, was already addressed by Ms. Alagendra in her remarks on Friday.

I've focused on those locations because those are the ones identified by the Prosecution in paragraph 581 of its final brief,

but zooming in on those allegations risks distracting from what we say is the bigger picture. We heard in Prosecution submissions on Monday morning that there are 50-plus detention sites alleged in this indictment. For the great majority of these, there is no evidence whatsoever that Jakup Krasniqi visited them at the material time, or was even aware of any crimes that took place there. No evidence whatsoever has been led that at the material times Mr. Krasniqi was at locations including Drenoc, Budakove, Jeshkove, Dobratin, Qirez, Bob, Bubel, Zllash, Verban, the various Prizren sites, Gllanaselle, Nerodime i Ulet, Gjilan, Suhareke, Novoberde, and others. Nor is it explained how the Prosecution case can stand in the absence of any connection between him and the vast majority of detention sites in its case.

Even on Monday morning when the Prosecution highlighted other locations, events that it said were relevant, it does not place Mr. Krasniqi at Belacevac mine, or as part of the organisation for the defence following the Rahovec counteroffensives, or in Gllogjan or Decan. Even where locations are listed in paragraph 581, it is not alleged that Mr. Krasniqi actually saw detainees, or witnessed or participated in any mistreatment, or that his presence in the area contributed in any way to any crime. Simply saying that he was in the area proves nothing.

But the reason the Prosecution has to fall back on these weak allegations based on proximity is because of the lack of evidence actually linking Mr. Krasniqi to crimes. All it has are crimes

committed in locations he did not visit, largely by people he did not know.

Before I leave the spokesperson period, I'll deal briefly with one matter raised by the Prosecution in closing. On Monday last week, the Prosecution relied on P879, an order dated 1 July 1998 and which it was submitted reached the Dukagjin zone and was communicated onwards by Ramush Haradinaj.

P879 is unsigned and unstamped, and it said, amongst other things, that "KLA officers are forbidden from giving interviews and making other public appearances."

But in the period shortly after this was apparently issued, there is evidence in the record of KLA officers in various locations giving interviews. For instance, Sylejman Selimi in July and August 1998; P2030, P2031, and 8851.1. Naim Maloku at P2103.2. Shukri Buja at P1508. And zones including the Llap zone gave their own press releases, for example, 4D135.

That evidence shows that P879 was not followed. Adding another to the list of General Staff orders which was not implemented does not assist the Prosecution.

And I conclude this section by submitting, Your Honours, that the Prosecution has failed to prove that Mr. Krasniqi significantly contributed to any crime in his role as spokesperson. No connection between him and crimes has been established to the required standard.

And with the time I have left, I want to turn now to a number of specific incidents relied on by the Prosecution.

At paragraph 222 of its brief, the allegation is that "General Staff members including Mr. Krasniqi used satellite phones to discuss and issue instructions concerning detainees, suspicions against and mistreatment of alleged collaborators, and the state and status of charged victims." As so often, a sweeping allegation whilst the actual evidence underpinning it, if any, is narrow, specific, and limited.

At its heart, at the end of this long trial process, what are the incidents that the Prosecution relies on to try to establish Mr. Krasniqi's connection to detentions? There are five, and I'll give an overview before turning to the detail.

The case of the two LDK activists and the Tanjug journalists. Not alleged that Mr. Krasniqi was involved in their arrest or detention, no evidence that he was aware of any mistreatment. Instead, the allegation is that he foreshadowed their release in a meeting with Ambassador Hill and others on 6 November 1998.

The VJ soldiers. Mr. Krasniqi was not involved in the detention. No evidence of mistreatment or unlawful conduct. The evidence, at its highest, shows his involvement in negotiations for their release.

Blerim Kuqi. This is the exception. It's the one case in which the Prosecution alleges that a person was arrested in Mr. Krasniqi's presence, and we say they've got that completely wrong. No evidence of mistreatment. Brought to the legal sector, and investigated and sentenced by Sokol Dobruna.

The five Serbian civilians on the 22nd, 23rd January 1999. No evidence that Mr. Krasniqi was involved in their detention. No evidence of awareness of mistreatment. Only role of Mr. Krasniqi alleged is in relation to release.

The two Serbian woodcutters at the end of February 1999. No involvement in arrest. At most, the evidence includes one conversation between Mr. Krasniqi and Mr. Bashota about response to internationals.

Before turning to the detail of those cases, it's worth standing back to try to draw out what those allegations, at their highest, show, because Mr. Krasniqi's involvement is typically alleged to arise in relation to releases. That's the position regarding the Tanjug journalists, the VJ soldiers, and the five Serb civilians.

Aside from the single allegation about Blerim Kuqi, which we will confront in a moment, the evidence does not show Mr. Krasniqi's involvement in arrests, it does not show him ordering or involved in mistreatment, and it does not show him directing the handling of detainees. He is someone who, when he learned of detentions, tried to resolve it, and that, in our submission, is not evidence of crime. Attempts to undo or mitigate detention cannot be twisted into proof of responsibility for its creation.

Moreover, none of these cases establish the broader knowledge, intent, or shared criminal purpose that the Prosecution rely on. Discussion of specific situations, once brought to the General Staff's attention, usually by internationals, doesn't

demonstrate a wider awareness, let alone an endorsement of a wider system of detention or mistreatment. It does not show the intent or knowledge alleged by the Prosecution. Context-specific conversations, localised in the period between November 1998 and February 1999, can't be elevated into proof of an overarching policy.

Again, this indictment includes 437 detentions at more than 50 detention centres. Set against those numbers, the number of cases which it is even alleged that Mr. Krasniqi was aware of is vanishingly small.

Dealing then with the detail. As to the LDK activists and the Tanjug journalists, the allegation at paragraph 954 of the final brief is that the Tanjug journalists were detained for part of the time at the white house in Divjake which at the time served as the office and base of Mr. Krasniqi, and at paragraph 961 that Mr. Krasniqi "foreshadowed" their release in a meeting with internationals. And I'll take those in turn.

First, the Prosecution fails to prove to the required standard that Mr. Krasniqi's presence in the white house overlapped with the alleged presence of the Tanjug journalists. And I do stand first on a notice point. The Prosecution pre-trial brief at paragraph 501 and the Rule 86 outline at pages 366 to 367 alleged that the Tanjug journalists were transferred to Klecke, not the white house at Divjake. The indictment at paragraph 77 alleged that they were transferred to a location near Klecke, Lipjan, and another unknown location. It was only the preparation notes of Naim Maloku dated

March 2025 that first suggested it was the white house in Divjake. And, opportunistically, the Prosecution now seek to jump on that. But I make the notice objection because an allegation of this nature, potentially going to the conduct of the accused themselves, should be spelled out properly so that the Defence can address it. And bringing the allegation in March 2025, through what was one of the last Prosecution witnesses, does cause prejudice because it could have been addressed through the cross-examination of other earlier witnesses, including but not limited to Bislim Zyrapi.

In any event, Maloku himself agreed in cross-examination, at T25935, that when he spoke of Mr. Krasniqi's presence at Divjake, he was speaking of Mr. Krasniqi being there in December 1998 and January 1999. And as we've explained in our final brief at paragraphs 115 and 116, only one building of the headquarters was functional before December 1998. Renovations were in progress. The Prosecution has not proved that Mr. Krasniqi was there as early as the dates in November 1998 where it is now alleged that the Tanjug journalists were there.

As to the release, the pleaded case is now that Mr. Krasniqi foreshadowed the release during the meeting with Ambassador Hill and Shaun Byrnes on 6 November 1998. The choice of words mattered. "Foreshadowed," meaning acted as a sign of a future event, as opposed, for example, to "ordered," presumably because the Prosecution knows it does not have the evidence necessary to prove that Mr. Krasniqi ordered the release.

Both Ambassador Hill and Shaun Byrnes confirmed that the principal topic of the meeting on 6 November 1998 was Ambassador Hill's proposed agreement. Both initially testified they did not recall detentions being discussed. That's T13782 and T27912. Although P1091, an unfinished draft which states, on its face, that it was in the course of preparation, refers to a discussion about the release of the Tanjug journalists, an unfinished, unpublished draft is not sufficient to discharge burden of proof, and, in any event, does not identify who decided on the release, nor state that Mr. Krasniqi ordered it.

Mr. Byrnes expressly accepted that he dealt with Bashota about these detentions, not Mr. Krasniqi. That's T13780. The contemporaneous US cable dated 3 November 1998 which confirmed that US KDOM had not heard from Mr. Krasniqi "for some time." And it was Mr. Bashota who was present at the release of 28 November 1998. That's P93. And it was very clear from the Prosecution's closing arguments on Monday - Your Honours will recall the slide where they put up the members of the General Staff and circled in black those that were alleged to be JCE members - that the Prosecution does not say that Mr. Bashota was a JCE member. If no crime was committed through his greater involvement in this case, the same must apply to Mr. Krasniqi.

I pause there to say that it is important in dealing with this case to recognise the limits of any reliance that can safely be placed on Mr. Krasniqi's prior ICTY testimony about it. In his

testimony, Mr. Krasniqi made it plain he had not seen press releases about the case at the time, and that he knew more about their release than their arrest. That's P795, pages 3396 to 3397. His testimony about possible reasons for the detention does not clarify whether that evidence was based on information available in 1998 or information obtained later. Sources and basis of knowledge were not clarified. Yet, the Prosecution now seeks to rely on the most favourable reading of that evidence in support of its own case. But where the foundation of the answers has not been established, attempts to explain a case years later should not be treated as contemporaneous knowledge or as admission.

Finally, the assertion at paragraph 552 of the brief that Mr. Krasniqi failed to punish the MP members who publicly announced the detentions is not proved. He testified himself he was not aware of the press releases at the time. The Prosecution failed to establish also that he knew at the time of detention that they were held without justification, or that he was aware of any allegation of mistreatment, or even that he had any ability to punish the perpetrators. At the time of release in November 1998, Sokol Dobruna had yet to even arrive in Divjake, and there was no functional legal department reasonably available to Mr. Krasniqi.

I move on to the VJ soldiers.

The allegation at paragraph 552 of the brief is that Krasniqi had authority over KLA detentions as demonstrated by his primary negotiating role for the release of eight captured VJ soldiers in

January 1999.

It is a curious feature of the evidence relied on by the Prosecution, for instance, at footnote 2262, that it doesn't address the evidence given orally by the senior international witnesses present and directly involved. The evidence of Ambassador Hill is not cited. The testimony of Jan Kickert is not cited. And rather than in engaging with the oral testimony of Shaun Byrnes, the Prosecution relies on his admitted statement. And most of its arguments are grounded solely in the evidence of Bislim Zyrapi in what we say is a clear example of cherry-picking.

The evidence of the internationals, which the Prosecution deliberately disregarded, was closure on two points. First, they knew Mr. Krasniqi as the KLA spokesperson and nothing more. Second, they did not regard him as personally powerful. During cross-examination by Mr. Pace, Ambassador Christopher Hill agreed that he had said that:

"'As he recalls, Krasniqi disappeared for a bit and came back. He thought he had received some instructions on that, because he did not think he was that big of a deal.'"

That's at pages 27806 to 27807 of the transcript.

Ambassador Hill was plainly highly experienced, knowledgeable about the Balkans and Kosovo in particular, and his assessment, with his own distinctive turn of phrase, was that Mr. Krasniqi was "not that big of a deal."

Once Mr. Krasniqi entered the negotiations, the evidence

suggests it was Bislim Zyrapi who liaised with Rrahman Rama. That's T18209; and P2094, page 111533. So operational engagement by Zyrapi and political engagement by Mr. Krasniqi.

The broader record confirms that Mr. Krasniqi was not acting unilaterally. He attended each phase of the VJ negotiations as one of a group, not as the sole decision-maker. Throughout negotiations, the evidence of both Byrnes and Kickert was that Mr. Krasniqi was on the telephone regularly, remaining in contact with others. If Mr. Krasniqi was the one with authority over detentions, why did he need this constant communication with others?

And, finally, on any view, these prisoner exchange negotiations were exceptional. They are the only exchange of prisoners in the whole conflict, brokered by the high-level involvement of senior internationals, such as Ambassador Hill himself. They're also nothing to do with any crime because there's nothing wrong in detaining the VJ soldiers. No broader conclusions about control over all detentions can safely be drawn from what was, on any view, a one-off.

The five Serbian civilians.

The allegation at paragraph 567 of the Prosecution brief is that Mr. Krasniqi was in contact with Zyrapi and Rrahman Rama regarding the arrest and detention of five elderly Serbs. At paragraph 639, the Prosecution goes further and alleges that Mr. Krasniqi and others coordinated and ordered the release of five elderly Serbs. The evidence, we say, is not consistent with Mr. Krasniqi significantly

contributing to crime.

The conversations on which the Prosecution relies do not support their position. They support the Defence. And if these conversations are relied on - and Your Honours know well our objections to them - it's essential that the Court looks objectively at both the good and the bad, the inculpatory and the exculpatory. We invite the Panel to look at all relevant conversations, which were at P2094 from page 111630 to 111636, and analysed together, we say the Prosecution has failed to prove its case against Mr. Krasniqi.

What they show, if relied on, is that Mr. Krasniqi was unhappy that the Serb civilians had been detained. "Somebody should go to Prekaz and tell them not to play with such things. We agreed that day not to make such mistakes." "This move is very bad." Those are at page 111634. They show the struggle to obtain accurate information, with members of the General Staff, including Mr. Krasniqi, unable to contact the Drenica zone in a timely way. They show Bislim Zyrapi, at 111636 and 111630, giving instructions to the zone about the detainees. This is not evidence of criminality on the part of Mr. Krasniqi. It's evidence of the General Staff being surprised by actions conducted locally and trying to undo them and to secure releases, the opposite of the alleged JCE.

Whilst Mr. Byrnes testified that he saw Mr. Krasniqi appearing to order Lushtaku to release the Serbs, Mr. Byrnes' Albanian was not sufficiently fluent to understand the exchange between Mr. Krasniqi and Lushtaku. The conversations relied on by the Prosecution suggest

the order to release had already been given by Zyrapi. If that's correct, what Byrnes could have observed was Lushtaku expressing displeasure at Zyrapi's order.

I turn to Blerim Kuqi.

In relation to this case, the Prosecution's position in oral argument, reflected by two speakers, was that Blerim Kuqi was arrested in the presence of Mr. Krasniqi and two others. That in itself is a retreat from the position pleaded at paragraphs 967(k) and 997 of the final brief, which alleged, we say unfoundedly, that Jakup Krasniqi exercised his authority to have him arrested and detained or that he ordered the arrest. Presumably, the Prosecution knows it has not proved those allegations and hence sought to move away from them in oral argument.

This case remains the sole foundation for the important allegation at paragraph 550 that Mr. Krasniqi was directly involved in the arrest and detention of those deemed suspicious. And the Prosecution has failed to prove it.

There are detailed submissions about this case in our final brief, which we stand by. I want to deal here with what we say is the heart of the matter.

The Prosecution have not even proved that Kuqi was arrested in the presence of Mr. Krasniqi. This, in our submission, is a textbook case study on the burden of proof. The Prosecution did not call any witness who was actually present at the moment of arrest. Whilst Zyrapi and 4739 said that they left Blerim Kuqi in a room with

Mr. Krasniqi and two others, they then left the room. Mr. Zyrapi confirmed, at T18244, that he does not know what happened after he left the room. That is not capable of proving beyond reasonable doubt that Mr. Krasniqi was there at the moment of arrest, still less that he ordered the arrest. He could equally have left beforehand.

The Prosecution could have filled the gap in its evidence by taking steps including summonsing Blerim Kuqi himself or Fatmir Limaj to shed light on the moment of arrest. It chose not to. Their absence leaves a gap in the evidence at the critical moment of arrest which we say cannot be filled by speculation. What it leaves is reasonable doubt.

Moreover, the Prosecution fundamentally mischaracterises the evidence by persisting in the allegation that Blerim Kuqi was somehow an opponent of the KLA who was detained because of links to the LDK or FARK. It has not proved that Mr. Kuqi was an emblematic victim of the opponent policy because there is a reasonable alternative explanation, which the evidence allows.

Simply, Mr. Kuqi was detained on the allegation that he deserted during the Serbian offensives of 1998. Desertion is an offence in every military. KLA witnesses with military backgrounds, like Zyrapi, at page 17984, acknowledge that desertion is a criminal offence. Numerous documents referred to at paragraphs 358, 365, and 372 of our final brief refer to desertion, including P1104, P1106, P1109, P1174, P515_ET.18, so too did the evidence of witnesses including Zyrapi, Bashota, and Dobruna. In particular, Zyrapi

previously testified that Dobruna consulted him about how serious the military rules that Kuqi allegedly violated were, that's at 4D78, so confirming that the arrest was for breaches of the military rules.

The Prosecution ignores that body of evidence. Instead, it seeks to point to other documents which it claims link the detention of Kuqi to his role in FARK or the LDK. In closing argument on Monday, for instance, the Prosecution relied on P1111, a document said to be seized from Mr. Krasniqi's house. But both before and after the passage picked out by the Prosecution, P1111 refers to desertion. Those references are to those who "have deserted" and more specifically, "another deserter, Blerim Kuqi." So this document is consistent with all the other documentation explaining the reason for the arrest.

Moreover, in addressing Tahir Zemaj, P1111 explains why desertion was such a concern for the KLA, and it was because it left the civilian population - women, children, and elderly - defenceless against the Serbian forces. And Your Honours have evidence about the devastation wrought on the Suhareke area by the September 1998 Serbian offensive, the burned houses and villages. At the very least, the documents and testimony leave a reasonable alternative explanation that Mr. Kuqi was detained for desertion. That takes his case outside the alleged common purpose.

And I deal finally with the two Serbian woodcutters.

The reality is that the evidence of Mr. Krasniqi's involvement is limited to a single conversation with Sokol Bashota, at a time

when neither man had full or reliable information. Now, there is a slide about that conversation which is not to be broadcast.

We say the Prosecution has got this conversation fundamentally wrong. You've already heard that in their final brief at paragraphs 567 and 997, and repeated in the oral submission on Tuesday, that this same conversation is relied on by the Prosecution as both evidence that Mr. Krasniqi oversaw Sokol Dobruna and the legal department and that he spoke to Sokol Bashota about the woodcutters. Plainly, he could only talk to one Sokol at a time.

But if these conversations are to be relied on, again, we invite the Court to take into account the exculpatory within them. And we say the most telling aspect of that evidence is that Mr. Krasniqi is purported to have said to Sokol Bashota "they shouldn't have abducted them in the first place." And I can understand why the Prosecution felt the need to go back into that line in their closing argument on Tuesday. Because, Your Honours will recall my submissions on Friday afternoon linked to the meeting with 4255, this conversation, if relied on, is another moment where, in my submission, you can see clearly who Mr. Krasniqi was and what he stood for. He could not have known that that conversation would assume significance in the courtroom 25 years later. Unguarded words in that sort of conversation with a colleague are a key window into what he thought at the time, and we say they show unequivocally that he did not intend or approve the detention of civilians.

The Prosecution's submission that we are not putting the words

into proper context, and that he was only speaking about how they should explain themselves to the international community, simply do not stand with the actual words used: "They should have abducted them in the first place." Leaving aside that the benefit of the doubt belongs to the Defence, Mr. Krasniqi's words cannot be read simply as an explanation for internationals. His meaning, with respect, is clear. A spontaneous reaction to what he was being told. The same stance that he took when saying to Rrahman Rama that the detention of the five Serbian civilians was a mistake and very bad. Mr. Krasniqi was not part of a policy to detain opponents, and he did not intend the detention of civilians, nor did he endorse it.

The remaining features of the conversation were addressed already by Ms. Alagendra. They show Mr. Krasniqi was not in control, did not know what to do, and waited for Bisi - Bislim Zyrapi - to arrive.

On Monday, the Prosecution submitted that Sokol Dobruna went personally to the detention site, discussed the case with other General Staff members, yet failed to ensure the initiation of any investigation. But the Prosecution did not charge Dobruna with any offence, nor is he named in the final brief as a JCE member. Bislim Zyrapi was the General Staff member whom Sokol Dobruna spoke to. He was not charged, and the Prosecution say expressly that he was not a JCE member. Sokol Bashota, the other participant in these conversations, not charged and, the Prosecution say on Monday, not a JCE member.

If they're not part of the JCE, how could Mr. Krasniqi incur limited responsibility for his limited involvement in the incident.

After all the evidence, after the years of trial, this is all that the Prosecution has, and it does not show Mr. Krasniqi leading, joining, or significantly contributing to a common policy to detain and mistreat opponents, do not show that he had authority over detentions. Instead, the evidence is consistent with decentralised action on the ground, and Mr. Krasniqi's involvement, such as it appears, is political engagement designed to secure releases. That is not consistent with the alleged JCE.

Insofar as the evidence may show conversations between Mr. Krasniqi and Mr. Bashota or Mr. Zyrapi, that cannot be evidence of involvement in a criminal enterprise because Bashota and Zyrapi are not alleged to be members of the JCE. Indeed, one might observe that the evidence shows Mr. Krasniqi spending more time with Bashota, Rame Buja, and Zyrapi, none of whom were JCE members, than he did with the alleged members of the JCE.

I want to end by saying that it was in the course of regular meetings with Mr. Krasniqi, including in relation to the cases I've just discussed, that Shaun Byrnes had the opportunity to meet and assess Mr. Krasniqi. Plainly, Shaun Byrnes was well respected within the US administration for providing accurate information, that's T26560, and Your Honours had your own chance to assess him over several days of evidence in March 2024. In my submission, he was highly credible, shrewd, knowledgeable, and his character assessments

were something on which I submit you can safely rely. His contemporaneous view was that Mr. Krasniqi was one of the moderates. That was how he described Mr. Krasniqi in several cables at the time, and he stuck to that throughout his oral evidence. Through his eyes, the Panel has an opportunity to see how Mr. Krasniqi behaved during the conflict, and I can do no better than to end with what Mr. Byrnes said about Mr. Krasniqi at transcript page 13734:

"... I had a sense of his humanity and his seriousness ... he was angry at what the Serbs had done to his people, but he was basically a man of peace ..."

Thank you, Your Honours.

PRESIDING JUDGE SMITH: Thank you, Mr. Ellis.

MR. BEQIRI: Thank you, Your Honours. It is a great honour for me, Your Honours, to be permitted by you to say a few words on behalf of Mr. Jakup Krasniqi today, and I am grateful that you have granted me leave to address you. I hope to be no more than 20 minutes, and I will briefly deal with three areas: Firstly, the creation of the KLA as a defensive organisation; secondly, the relevance to cultural practices and the Kanun to the proper assessment of evidence and charges in this case; and, lastly, Your Honours, with your permission, very brief submissions touching on some points made by the Victims' Counsel. I will deal with these in turn.

As far as the KLA creation is concerned, Your Honours, the Prosecution's allegation that Mr. Krasniqi and other members of the KLA shared a common purpose to seize and exercise control over Kosovo

through the commission of crimes cannot withstand scrutiny. The evidence heard in this case demonstrates that the KLA did not originate as a power-seeking organisation. It arose as a defensive movement, formed in response to the imminent and existential threat faced by the Kosovo Albanian civilians which were subjected to widespread repression and violence by the Serbian forces.

Witness 4410 testified that:

"... my main aim was to inform the opinion about the developments in war zones, where the Serbian army and police terrorised the Albanian civilians and the Kosovo Liberation Army was protecting these civilians."

That is reference to transcript page 16618, which you can also see on your screens.

Even Prosecution's victim witnesses confirm it. One example, Witness 4710 testified that "the KLA were protecting the population, defending the country and the people," which is transcript page 15827.

Furthermore, Witness 4366 learned that the KLA was protecting the people. Men from his village joined the KLA. When their village was attacked, his family sought refuge in the mountains, where the KLA were protecting them. That is P1660.1, page 18.

While the Defence has been consistently constrained in leading evidence concerning Serbian crimes, the context in which the KLA emerged remains legally and factually indispensable. The events of 1998 unfolded against the backdrop of systematic human rights

violations perpetrated by Serbian military, police, and paramilitary structures. This campaign of terror is not a matter of dispute. It has been judicially established, including through final convictions of senior Serbian officials by the ICTY. Former Yugoslav Deputy Prime Minister Nikola Sainovic, Yugoslav Army General Nebojsa Pavkovic, and Serbian police General Sreten Lukic were each sentenced to 22 years' imprisonment. Yugoslav Army General Vladimir Lazarevic and Chief of the General Staff Dragoljub Ojdanic were found guilty and each sentenced to 15 years' imprisonment. The appeals chamber of the ICTY upheld these convictions. It is striking that the Prosecution now seeks sentence of 45 years of imprisonment, more than double the sentences imposed on the Serbian leaders. Any assessment of the KLA's objectives that ignores this disparity is incomplete and unsound.

The Panel cannot fairly assess the KLA's objectives, structure, or actions in isolation without considering the conditions that compelled its formation. Armed resistance did not precede repression but it followed it. The evidence shows that the KLA emerged only after years of escalating discrimination, violence, and the complete erosion of institutional and legal protections for Kosovo Albanians. And as Rrustem Mustafa put it, legal provisions "existed until the time when Albanians were expelled from the institutions ... including the educational sector. So at this point, we were opposed to those who were holding Kosovo against their will and with violence." That is transcript page 5745.

The Serbian oppression of Kosovo Albanians is reflected in unrebutted adjudicated facts. Kosovo's autonomous status was abolished in 1989. Witness 3825 testified that:

"... I do know that it was an immediate need to respond to Serbian invasion of Kosovo, which, as of 1989, when the Kosovo autonomy was suspended, was engaged in ethnic cleansing, terrorised the population, expelled the Albanians from their work positions. So it was a response mostly in self-protection and prevention of ethnic cleansing."

That is transcript page 9519.

Throughout the 1990s, Kosovo Albanians were systemically excluded from public life through discriminatory laws and practices, including mass dismissals from public employment, the closure of Albanian-language educational institutions, and the suppression of Albanian media. These measures, Your Honours, form part of a sustained policy of domination and exclusion.

In this context, the evidence establishes that the common purpose animating the KLA was the liberation of Kosovo from Serbian forces and the protection of the civilian population. Neither of these aims, in law or in fact, implies a criminal objective. On the contrary, international actors recognise the KLA emerged from a population subjected to an apartheid-like system of repression, rather than from any pursuit of political power through unlawful means. As Jamie Rubin testified:

"There was since 1989, with the revocation of the 1974 status,

there was a near apartheid regime in Kosova, and they were a highly traumatised and victimised population ..."

That is transcript page 26845, which is also on your screens.

The character of the KLA is further confirmed by its composition. It was formed by volunteers, ordinary civilians seeking to defend themselves, their families, and their communities. These individuals were not professional soldiers, and nor did they have the backing of any established military infrastructure. Prosecution witnesses, including 4846, 4323, 3165, Rrustem Tetaj, Fatmir Sopi, Nuredin Abazi, were unequivocal. They joined the KLA to escape years of Serbian oppression and to defend their country from killings, massacres, and mistreatment committed by Serbian forces.

The expansion of the KLA following the Jashari massacre is particularly telling. It is an agreed fact, supported by witness evidence, that a significant influx of volunteers joined only after witnessing the scale and brutality of Serbian attacks in March 1998. As Naim Maloku said:

"... after this massacre on Jashari family, the KLA grew much faster. And there were many volunteers from all countries of the world. That's what I mean when I say there was a mass effect."

And that is P02090.6 which is also on your screen.

This growth was reactive, driven by fear and necessity, and reflects a collective realisation that armed self-defence had become indispensable to the protection of Kosovo civilian population.

These circumstances demonstrate that the KLA was not conceived,

established, or operated as a vehicle for criminal activity. Its development was a response to violence, not a catalyst for it. The Prosecution's attempt to retroactively ascribe a criminal purpose to an organisation born of civilian self-defence is simply unsupported by the evidence.

And, finally, the spontaneous and decentralised nature of the early KLA decisively undermines the allegation of a shared criminal purpose. Witnesses consistently described fighters as civilians who organised locally within their villages, often independently and without any overarching command structure. As Rrustem Mustafa put it: We regarded ourselves completely independent from the General Staff. And that is transcript page 5771, which should be on your screen.

Communities raised funds to purchase weapons. Volunteers supplied their own arms and uniforms. This fragmented, grassroots organisation is fundamentally incompatible with the existence of a centrally coordinated criminal enterprise, and confirms the defensive nature of the KLA's formation and actions.

Your Honours, in assessing the conduct attributed to individuals during the relevant period, the Panel must take into account the local social dynamics and cultural framework within which events unfolded. The evidence from Kosovo Albanian witnesses, international observers, and contemporaneous reporting consistently confirms the enduring influence of the Kanun on Kosovo Albanian society.

As John Duncan explained:

"Kanun is very old and it's medieval lexicon which is based around honour. And it is really the same as the biblical eye for an eye, tooth for a tooth, it's the same idea."

That is transcript page 27026, which is also on your screen.

The Kanun constituted not merely a set of customs but a foundational world view, one that intensified in significance during periods of societal stress and insecurity.

Central to the Kanun is the concept of honour and the permissibility of revenge. Its core principle, or principles, in plural, include the freedom of an individual to act in accordance with a personal honour, without submission to another's authority, within accepted norms. Acts deemed dishonourable under the Kanun included, among others, the seizure of a person's weapon, a culturally loaded act of grave significance. Witness 4433 testified that such an act imposed an obligation on the aggrieved family to kill the perpetrator, if known, underscoring the powerful and coercive force of these norms. That, Your Honour, is P03352, page 1183.

Blood feuds governed by the Kanun were not confined to the immediate individuals involved. They frequently extended to relatives and associates and could persist across generations. During the conflict, dormant feuds resurfaced as a breakdown of law and order created conditions in which personal revenge and the settling of long-standing scores became possible. Jackson observed that certain detentions were more plausibly explained by personal

grudges than by any policy attributable to the KLA. That is P02517, paragraph 50.

The evidence establishes that some of the crimes charged in this case were committed to resolve private disputes wholly unrelated to the KLA objectives. For example, Witness 4444's detention stemmed from his family's involvement in a blood feud and bore no connection to the KLA. Similarly, W4586's brother was engaged in a blood feud with two local KLA members, one of which was directly responsible for his detention. Yet another witness, W4018, testified that the principal, if not sole, reason for his arrest, detention, and mistreatment was a land dispute between his family and that of a member of the KLA. W4491 clearly stated that "there was a property dispute between our families, this is why it all started." And that is 3D34, which is on your screen, but it's not for public display. Similarly, W4422 testified that his brother's incident occurred because of an old feud in between his family and another KLA member's family. These incidents were unauthorised acts driven by personal motives, not actions taken pursuant to any KLA or General Staff directive.

Acts of revenge were not confined to the period of active hostilities. Following the end of the conflict in June 1999, violence motivated by retribution occurred throughout Kosovo. Serbian forces had displaced approximately 700.000 Albanians from Kosovo, many of whom returned within a short period to find their homes destroyed and their family members killed. In the absence of

effective law enforcement, and as international observers had anticipated, some individuals responded to this devastation by engaging in acts of retaliatory violence. That is transcript page 28026.

This phenomenon was observed and documented by international actors. Herrling, a member of KFOR, described widespread house burnings in Prizren, and explained that the expulsion and the destruction of property constitute the most severe forms of punishment under the Kanun. That is P02047.1, page 5.

Crimes committed for personal reasons cannot establish the existence of a joint criminal enterprise or fall within an alleged common purpose. The perpetrators of such acts were not participants in any JCE, nor were they acting to advance any collective objective. No evidence demonstrates that any alleged JCE member used others as an instrument to carry out a shared criminal plan. Instead, the record consistently points to private conduct motivated by revenge, honour, or personal dispute. The Defence expressly adopts and relies upon the submissions advanced by Thaci Defence in relation to the alleged joint criminal enterprise.

Your Honours will have seen at paragraphs 171, 182 of our brief the submissions concerning the alleged "pattern" of crimes, and particularly our visual representations at paragraph 175, which you also have on your screen. On Monday, the Prosecution sought to dismiss these submissions as "flawed both in concept and interpretation," and then listed some features which, in their

submission, are common among different charged incidents.

Those Prosecution submissions miss the core point. If there was a common criminal plan at central level to target opponents, why is that the number of allegations of crimes and the number of victims rise when there are offensives, chaos, and disorganisation, and decrease when the situation on the ground is calm and the KLA's organisation was improving?

Why is it that the two clearly identifiable peaks when both the number of alleged criminal incidents and targeted victims are at their highest, are July 1998, when fierce Serbian offensives were launched through Kosovo and the KLA's organisation consisted only of small volunteer units, and June 1999, when waves of refugees returned to their villages in Kosovo and interethnic violence among civilians spiralled? This is not a coincidence, Your Honours. It's a trend which fundamentally undermines the Prosecution's case theory and which the Prosecution chose not to address directly.

Now, Your Honours, I'm going to move to Victims' Counsel's raised points.

The Defence submits that the Victims' Counsel brief suffers from a fundamental evidentiary flaw. It repeatedly transforms social phenomena, perceptions, and post-facto narratives into alleged proof of a centrally adopted KLA policy, and then seeks, without evidentiary foundation, to attach that policy to Mr. Jakup Krasniqi personally. This leap is simply unsupported by the record. Not a single witness before this Court has testified that Mr. Krasniqi

directly ordered, participated in, or even witnessed any of the alleged crimes. The Prosecution has not filled that gap, and the Victims' Counsel cannot do so by rhetoric or inference.

Victims' Counsel asserts that the plight of those labelled "collaborators" was the result of a policy adopted and implemented by the KLA. That assertion is contradicted by the very evidence on the record. Multiple witnesses across different backgrounds and allegiances, including W4323 and Fred Abrahams, testified that the stigma attached to collaboration predated the armed conflict and was deeply rooted in Kosovo Albanian society long before the indictment period. More references for that can be found at transcript pages 4719, 7669, and 7670. To recharacterise a long-standing social phenomenon as a wartime organisational policy is simply to misread the evidence.

Even where violence against the alleged collaborators occurred, the evidence points consistently away from centralised decision-making. Former KLA members testified that operational zones acted independently, at their own discretion, without safeguards, and without verification mechanisms, and without central control. You can find such references in the testimony of Sylejman Selimi, transcript page 25256; Shukri Buja, transcript page 29900; and Rrustem Mustafa, transcript page 5771.

Victims' Counsel places undue weight on selected excerpts of Mr. Krasniqi's ICTY testimony while disregarding its context and its limits. His comments were in relation to communiqués published

abroad, communiqués he neither authored or verified, and which in his testimony he confirms he only knew from literature he later came into possession of and read. When asked whether certain events occurred, he answered that if the communiqués said so, then they must have happened. That is P00794, page 3321. That is not first-hand knowledge, not admission, and certainly not proof of responsibility.

On the communiqués referred to by Victims' Counsel, we will rest on the submissions made in our final brief and our previous oral submissions on this point.

THE INTERPRETER: The speaker is kindly requested to slow down when reading for the purposes of interpretation. Thank you.

MR. BEQIRI: The Victims' Counsel has not demonstrated the existence of a centrally adopted KLA policy targeting collaborators, nor any nexus between such alleged policy and Mr. Jakup Krasniqi. The evidence establishes social stigma predating the war, decentralised and often chaotic conduct during it, and widespread reliance on hearsay and perception rather than fact.

Thank you very much, Your Honours. Ms. Alagendra will now conclude.

PRESIDING JUDGE SMITH: Thank you.

MS. V. ALAGENDRA: Your Honours, I have the honour to briefly wrap up the final submissions on behalf of Jakup Krasniqi.

Mr. Krasniqi was a respected teacher and was active in the LDK in leadership positions in Drenas. A committed advocate for a free Kosovo, he was, as Rrustem Mustafa described him, "one of the great

political activists at the time."

For his activism, Mr. Krasniqi has paid dearly. He spent ten years as a political prisoner between 1981 and 1991, enduring torture and grave mistreatment in squalid conditions by the then Yugoslav authorities.

He's a long-standing opponent of the Serbian regime and he is proud of that, not out of hatred for Serbs but out of principle, by refusal to accept the apartheid-like oppressive, discriminatory policies that subjected Kosovan Albanians and deepened under Milosevic's Serbian regime.

Jakup Krasniqi is made of different mettle. He is certainly not cut from the same cloth as Milosevic or those of that ilk. Your Honours need not take my word for it. Domestic and international witnesses alike describe Mr. Krasniqi as a moderate. They recalled his constructive role in negotiations and political processes, his willingness to engage pragmatically and work towards peaceful solutions. He was viewed as an interlocutor who valued compromise, lawful political processes, and the protection of civilians and minorities, not confrontation or escalation.

His integrity and standing are confirmed not only by Prosecution witnesses but also victim witnesses. And I'll stand by the record for that.

Most importantly, Your Honours, no witness testified that Mr. Krasniqi was perceived as involved in crimes or any criminal plan. On the contrary, allegations were met with disbelief.

Witness 4744 called it "absurd" to suggest he ordered an arrest. Ledwidge stated he "did not think Jakup Krasniqi was involved in any of this." Blerim Kuqi, alleged by the Prosecution to be a direct victim of Mr. Krasniqi, publicly called for an apology for the undignified treatment of Mr. Krasniqi during his arrest.

This evidence is not merely anecdotal. It bears directly upon moral culpability and character. When assessing the evidence, we respectfully invite Your Honours to consider the allegations of cruelty and to ask whether that is truly the type of conduct that has characterised Mr. Krasniqi's life. We say it is not. His life has instead been marked by an earnest attempt to serve others with humanity and decency, and by a willingness to share whatever modest knowledge he has had the opportunity to acquire.

At the opening of this trial, I said to Your Honours that nearly 25 years, after years of investigations, after the Dick Marty report, after the ICTY, after EULEX, one undeniable fact remained: not a single credible witness could place Jakup Krasniqi at the interrogation, mistreatment, or killing of any civilian.

Today, after 232 days of trial, 257 witnesses, and more than 5.000 exhibits, we return to the same very point, Your Honours, because the evidence has left that initial Defence submission entirely untouched. The Prosecution has had every opportunity, through every witness and every document, to close the gap that existed on Day 1. It has not done so.

Witness after witness came before this Court. The case did not

strengthen, it did not clarify, it never reached the threshold required to establish beyond reasonable doubt a link between Mr. Krasniqi and the crimes alleged. Instead, the central allegation remained where it began: unsupported by credible evidence.

Your Honours, there remains no credible evidence that Jakup Krasniqi was present for, ordered, or participated in crimes against any civilian. Not in his name. Not in his presence. That was true at the beginning of this trial. It is true now. And when a case begins and ends in the same place, the law permits only one result: an acquittal on all counts.

The Defence addresses directly and without reservation the suffering of victims and their families. The harm endured by civilians in and after the conflict in Kosovo is undeniable. Nothing in the Defence case seeks to diminish that suffering, nor to question its reality. But the law is clear: Suffering, however grave, must be attributed only to those proven to bear individual criminal responsibility.

In that light, the Defence position is firm. Mr. Jakup Krasniqi is not responsible for the suffering. The evidence does not establish that he ordered, encouraged, condoned, or intended crimes against civilians. On the contrary, the record shows he repeatedly called for restraint and protection of civilians, Albanian and Serbian alike. His words and actions point in one direction: restraint, not escalation; protection, not persecution.

Mr. Krasniqi consistently maintained that civilians must never

be targets, that their protection is paramount, and that no political or military objective can justify their harm. The position is not an afterthought crafted for trial. It is borne out by the evidence and by his conduct at the relevant time. Criminal justice is not served by conflating collective tragedy with individual guilt. It is served by careful attribution, principled restraint, and fidelity to the evidence.

Honourable Judges, before I conclude, the Defence expresses its gratitude to the Panel, and acknowledges the professionalism and cooperation that have marked these proceedings. Proceedings in trial can be intense, and this has been a long trial. Despite this, I would like to record my thanks to everyone in and around the courtroom for the unfailing courtesy that has been extended to me and my team.

I express particular thanks to the Registrar, Dr. Fidelma Donlon and her entire team for their courtesy, assistance, and guidance throughout these proceedings. We are also grateful to the Detention Management Unit and IT services.

And I pause to extend particular thanks and acknowledgement to the court interpreters. Your role has been critical, and I recognise it is an arduous one. Thank you for your patience, professionalism, and support throughout this trial.

And, finally, before I sit down, Your Honours, permit me to thank my Defence team for their sterling work throughout this long trial. Their diligence, professionalism, and commitment have been

unwavering, and I am deeply grateful for their support.

Thank you, Your Honours.

PRESIDING JUDGE SMITH: Thank you, Ms. Alagendra.

We'll take a ten-minute break. Then we'll come back and we'll begin with the Panel's questions.

--- Recess taken at 11.14 a.m.

--- On resuming at 11.32 a.m.

PRESIDING JUDGE SMITH: As I stated, we will be beginning with the questions or clarifications from the Judges. We'll begin with Judge Barthe.

JUDGE BARTHE: Thank you, Judge Smith. And good morning.

My first question is about the international humanitarian law status of former members of the Serbian forces and other authorities, and I would like to start with the Thaci Defence.

Mr. Misetic, in paragraph 93 of your final trial brief, you said that individuals were also detained because they were legitimately perceived as combatants and not because they were opponents to an objective to gain and exercise control over all of Kosovo. And you refer, among others, to a witness who had been a Serbian police, an army reservist, and who, according to your submissions, had never formally left the Serbian army or renounced his weapon.

In the following paragraph, paragraph 94, you state that, in this instance, as well as in numerous others involving people arrested and detained who were known to have been part of various Yugoslav and Serbian forces, there were reasonable grounds to believe

that this individual was subjectively perceived to be a combatant by those arresting him.

I know, Mr. Misetic, you're discussing these cases in the context of the common purpose alleged by the SPO, which, in your opinion, is not the only reasonable inference that can be drawn from the evidence. But what I would like to know is whether you argue that these individuals were, indeed, combatants or, rather, since we are dealing with a potential non-international armed conflict, members of governmental armed forces at the time they were arrested. Or if that's not the case, are you claiming a mistake of fact or law of those people who arrested them? And just to be clear, I'm not talking about the question whether the KLA had a right to arrest and detain these people, we'll come to that later. Right now I would just like to know what status you believe these individuals had under international humanitarian law at the time of their arrest.

MR. MISETIC: So what I would say is it's -- and I don't know all of the incidents off the top of my head that you're referring to, so it would be a case-by-case assessment. For example, the eight VJ soldiers, in my view, would be the most clear case of active combatants, full uniform, made a mistake, a wrong turn, and got detained. Then it would be a sliding scale down from that incident as to how much evidence there was that they were combatants.

The point -- and then that relates to the second point, you said which we'll get to later, which is for purposes of IHL and a non-international armed conflict, this was one of the reasons we

raised this issue in the pre-trial phase, and the Prosecution conceded that there was a right that the KLA had to detain as long as it wasn't abusive or in some other means unlawful. There can be no more clear example if you have the right to detain than to detain someone who's a combatant on the other side.

JUDGE BARTHE: We'll come to that in a second.

MR. MISETIC: Yes. So in terms of the status then, again, I would have to go back and check on each of these incidents, but to the extent that they had given some grounded suspicion that they were engaged in hostilities, they would be combatants. If that was not the case and they were still picked up, as you said, for mistake of fact or otherwise, then that ties into what you said, why we were raising the issue in the first place. If it's a mistake, they shouldn't have been picked up, that still doesn't mean it was for the purpose of targeting opponents, and that was the submission we were making.

JUDGE BARTHE: I understand.

MR. MISETIC: Thank you.

JUDGE BARTHE: Thank you. And my next question - maybe you can get up again on your feet - is also for you, Mr. Misetic. Even if these people were still members, generally speaking, members of governmental armed forces at the time of their arrest, were they not placed *hors de combat* by their detention within the meaning of Common Article 3 to the Geneva Conventions and Article 14(1)(c) of the Law at the time of their alleged mistreatment?

MR. MISETIC: Yes, but, again, this goes to the issue of what is the purpose of their detention. So if the point is that even people who are combatants cannot be beaten and abused, the answer to that is obviously yes, that's correct. But in terms of the overall JCE, are they opponents who are being targeted because they're obstructing some ultimate purpose of the JCE, our submission is that is not the only reasonable inference you can make.

JUDGE BARTHE: Thank you.

MR. MISETIC: Thank you.

PRESIDING JUDGE SMITH: Does the Prosecution wish to be heard on that matter, briefly?

MR. PACE: Yes, Your Honour. We addressed the issue during our closing arguments, and we stand by those submissions. There is nothing further to add.

JUDGE BARTHE: Thank you.

Mr. Misetic, I would like to move on to the arrest and detention of the two Serbian journalists from the Tanjug news agency in October 1998. In paragraph 7 of your final trial brief, you said:

"The SPO has failed to uncover that at least one of the two Serbs was a suspected war criminal and a paramilitary."

And following up on my first question. Assuming that this person was indeed, as you say, a suspected war criminal, does this affect his status under international humanitarian law as probably being *hors de combat* following detention?

MR. MISETIC: It would not affect that status, but it does go to

the issue of why was he picked up. So that fact that we've been repeating over and over again is part of the mosaic of information that we also established through Witness Shaun Byrnes about there having been an outbreak of a conflict right at that moment between the KLA -- not only Serbian forces but Serbian paramilitary forces in the area, and the fact that this is -- at least one of these individuals was a known Serbian paramilitary from at least two other wars, creates a reasonable doubt as to what his ultimate reason for being there was and whether there was a reasonable grounds to stop him as he was entering, which again goes to whether there is a reasonable doubt as to whether his stop was for -- in furtherance of the common purpose or whether it was for a military justification.

JUDGE BARTHE: Thank you.

I will now come to the question - and you already addressed that question, Mr. Misetic - of whether and under what circumstances a non-state armed group has a right to arrest and detain persons in a non-international armed conflict. And I apologise, but I would like to start with you again, Mr. Misetic, since you have raised that question and also -- not only in your final trial brief but also here in this courtroom.

MR. MISETIC: To me -- sorry, I apologise.

To me this is a -- with all due respect, an academic question that was live in the pre-trial phase, which is why we raised the defence that we raised before, and then the Prosecution conceded the point. And so in the context of this case, I believe it is a

non-issue, an undisputed issue that the KLA, as a non-state armed group, did have the right to detain in certain circumstances.

JUDGE BARTHE: Let me please ask the question first, and I will ask the same question to the Prosecution afterwards, very briefly, even if it might be an academic question, which I doubt, because you have raised it in your final trial brief again in paragraph 380 of that brief, where you write that the two Serbian journalists were arrested for "a legitimate military and security purpose as they were moving toward an active conflict zone, and the KLA had reasonable grounds to suspect they were Serbian spies." And a little further down you state that their link to Tanjug, a state-run agency closely tied to the Serbian government, further reinforced these concerns.

And, again, I'm not talking about the common purpose. I'm only talking about international humanitarian law here. And I would like to ask you, just to be clear, is it your case that the KLA, as a non-state armed group, had the right to arrest these two individuals for military and/or security purposes; and if so, what is the legal basis for this? Perhaps we can start with international humanitarian treaty law. Is there a provision that provides an explicit legal basis in international humanitarian treaty law?

MR. MISETIC: Again, I'm going to fall back on my position, which was the very reason we raised self-defence in the pre-trial phrase was precisely to provide a legal basis under domestic Yugoslav law that would allow for such detentions in our view. When the SPO came back and said they don't challenge that point, we spent the

whole trial not mounting the self-defence defence.

So for it to be a live issue again at this point would be prejudicial to us because it's a point that was off the table by the SPO, and we specifically raised it as an affirmative defence. There was a lot of pushback from the Bench on why we were raising it. We explained the point. And I believe Judge Smith put it directly to Mr. Halling: Are you challenging the right to detain? And he said no.

Just one second. So our point is it was a valid basis to detain. It was a valid basis to detain certainly under domestic law. The IHL issues have not been flushed out at this point, and we would argue that we haven't gotten sufficient notice that it was a live issue.

JUDGE BARTHE: Before I turn to the Prosecution, I would like to turn to the Veseli Defence, Mr. Dixon.

MR. MISETIC: I apologise. I was just handed a note. For Your Honour, Judge Barthe, the discussion of this is at transcript page 2116 to 2117 of the transcript. Thank you.

JUDGE BARTHE: Thank you.

Mr. Dixon, if I'm not mistaken, you also address that question in your final trial brief in paragraph 354 in relation to the detention of the eight VJ soldiers in January 1999, which you describe as not criminal. And Mr. Ellis made a similar remark earlier this morning by stating that there is nothing wrong in detaining the VJ soldiers.

Mr. Dixon, can you maybe briefly explain to me what you believe to be the legal basis for the alleged detention of the eight VJ soldiers by the KLA.

MR. DIXON: Yes, thank you, Your Honours.

The fundamental position in international humanitarian law for NIACs is that you certainly can arrest persons who present a security risk. We cited to the earlier submissions that we'd made to Your Honours, and we cited to the Prlic decision in particular, where it was made clear that activities that are harmful to the security of a state, or here the KLA, or if there are legitimate reasons why persons could be arrested because of those security concerns, depending on their activities, their knowledge, their qualifications, if they represent a real threat - present or future - to security, then they can be detained. And there's clear ICTY jurisprudence on that, as I say, from Prlic, for example.

So it's a customary law basis. It's recognised in the case law. It's not dealt with specifically in Additional Protocol II. But usually what applies in international armed conflict on this issue has been transported over and has been incorporated into the law applicable to internal armed conflict.

So there can be no doubt if persons present a risk, then they can be detained. We're not here in civilian times. It's times of war. Persons can be detained.

It's for the Prosecution to prove in each case when somebody is detained that there wasn't a security threat. We have raised in

relation to these persons that there was. They have to disprove that.

JUDGE BARTHE: Let me -- let me --

MR. DIXON: And we say they haven't done that.

JUDGE BARTHE: Let me interrupt you.

MR. DIXON: That's our submission in a nutshell.

JUDGE BARTHE: Thank you very much because you already answered my question. My follow-up question would be does this apply, this rule you just mentioned, customary international law rule, does this rule also apply to non-state actors?

MR. DIXON: Yes, it certainly does, and the ICTY jurisprudence confirms that. So it goes both ways. It's the state concerned, and then also the entity that's not a state that's fighting in the internal armed conflict. And we certainly wouldn't want to change the law on that in any respect, and we're not arguing that.

In such a conflict, you can arrest for those reasons, but it has to be properly established. And, of course, once they are arrested, then you have to treat them properly.

JUDGE BARTHE: You are probably aware, Mr. Dixon, that there is a debate in international humanitarian law, or international law in general, whether Common Article 3 and other treaty law contains or contain an implicit legal basis to intern. And I would like to ask you what do you say to the argument that Common Article 3 and other treaty law, in particular Additional Protocol II, refer to detention and internment, but that these legal instruments merely recognise the

fact that detention and internment occur in armed conflict and seek to regulate particular aspects thereof, such as substantive treatment standards, and that this recognition does not create a legal basis for such actions?

MR. DIXON: Yes. Your Honours, I am referring to the ICTY case law which makes it clear that these provisions apply equally to both sides in an internal armed conflict, that we are talking about a situation not only where detention is to be regulated, but where it should match the provisions that apply in international armed conflict, where there can be legitimate security concerns that give rise to the right then to be able to detain. The issue about what happens thereafter is clear. They have to be treated properly, humanely. And that's really the issue in this case, whether that happened or not, and then whether there was any knowledge of that passed on through the JCE.

So I don't want to downplay the issue, but it's one that has been applied before other courts before, and it would seem to be, on a policy basis as well, something that makes sense, that if you are involved in armed conflict, you've got to be able to assess the other side, the risks, and be able to detain for those purposes alone and nothing beyond that.

JUDGE BARTHE: Thank you. I don't want to put you on the spot now, but if you can point to - not now, maybe later - to any relevant state practice, apart from the cases you cited from the ICTY, that can confirm a customary international law rule that non-international

armed groups or non-state armed groups can actually detain or are entitled to detain, I would be grateful. But we can leave it at that now for the moment. Thank you.

MR. DIXON: Yes, we did refer in our initial brief, and this was right at the beginning when we were dealing with legal issues, to a lot of that practice including what has been recorded in the ICRC commentary. And we did refer to the Prlic decision as well. Unfortunately, it was cut out of our final brief because of space, but we did refer back to our initial submission on the law which was made at the beginning of the trial, where we did include that judgment and other judgments to show how it has applied practically. But if there are any other aspects which I can highlight and assist Your Honour with, I will certainly come back to that.

JUDGE BARTHE: Thank you.

MR. DIXON: Thank you.

MR. ELLIS: Your Honours, if I may briefly.

JUDGE BARTHE: Very briefly, because we have time problems this morning, you know.

MR. ELLIS: Of course. I simply then cite to paragraph 308 of our final brief which we say cited to the relevant ICRC reports and documents. And then to make very briefly the practical point that what -- if there is no ability to detain, what are the KLA supposed to do when eight enemy soldiers wander by chance into their camp? In our submission, there must be a right to detain in those circumstances. Otherwise, the provisions being cited would make no

sense in our respectful submission.

JUDGE BARTHE: Thank you, Mr. Ellis. I'm not disputing that. I was only asking for state practice. This was my only concern. I'm not disputing that there might be a right or there can be a right. I'm not saying there is no right.

Anyway, let's move on. I will next be dealing with the legal elements of joint criminal enterprise liability. And my first question is for the Prosecution.

In paragraph 114 of its final trial brief, the Thaci Defence refers to the SPO's pre-trial brief in which it is claimed that in addition to Mr. Thaci's role at the General Staff, and in the formulation, dissemination, and implementation of the opponents policy through communiqués and other means, Mr. Thaci significantly contributed to the common purpose by conduct the Thaci Defence describes as objectively non-criminal or neutral contributions, for example, leading deployments of KLA members into Kosovo, issuing General Staff instructions to commanders, or coordinating, taking part in, and receiving reports concerning military operations on the ground.

Could the SPO briefly explain how the Panel can distinguish acts that were a significant contribution to the common purpose to gain and exercise control over all of Kosovo through the commission of crimes from conduct that merely contributed to the KLA and/or to the KLA general war effort?

Mr. Prosecutor.

MR. HALLING: Thank you, Your Honour. We would say that the answer to the question is to consider those contributions in the context in which they were made. The dissemination of information is, in general, protected. It can be something that can be non-criminal. But when you disseminate information of the kind that the accused are, from their positions in the General Staff, and in the context of the opponent policy and the evidence that we have shown at that, it takes on a different character.

It's basically the answer is a case-by-case assessment of the contribution in the context of the case.

JUDGE BARTHE: Thank you, Mr. Prosecutor.

My next question concerns the claim made by Thaci and other Defence teams in their final trial briefs, and also here in this courtroom, that the SPO has failed to establish that the accused contributed significantly to the crimes for which they are said to be responsible.

And I'm sorry, it's Mr. Misetic again I would like to address first. You relied in your final trial brief and in your oral submissions on the trial judgment in the Mustafa case, the Confirmation Decision of the Pre-Trial Judge in this case, and on other jurisprudence.

What I would like to know from you is, are you saying that a person accused of participating in a joint criminal enterprise must significantly contribute to each specific crime in the indictment - that is, the detention of person A in village X, or the killing of

person B in village Y - and if so, what does this mean for the accused's *mens rea*?

MR. MISETIC: We are not suggesting that it's each individual event, but it is to each individual charged crime as a whole, meaning each count. There has to be some linkage between his actions and the crimes that were occurring as charged in the indictment.

In the pre-trial phase, I believe it was Judge Mettraux where this issue about the nexus and the necessary nexus between the significant contribution and the crimes versus the contribution to the common purpose was discussed, and the question was asked whether there is a case where this issue is addressed. And I would just like to alert you to the case of Prosecutor versus Ndahimana, ICTR-01-68-A, judgment of 16 December 2013, at paragraphs 198 and 199, where the appeals chamber there held in paragraph 198:

"The participation in the common purpose need not involve the commission of a crime, but may take the form of assistance in, or contribution to, the execution of the common purpose. The contribution need not be necessary or substantial, but it should be at least a significant contribution to the crimes for which the accused is found responsible."

It then goes on and says:

"In the present case, the Trial Chamber unambiguously found that, by providing moral support to the assailants, Ndahimana substantially contributed to the killings of Tutsis perpetrated with genocidal intent on 16 April 1994."

So that's an example of where the appeals chamber recognised that there has to be some link between the actions and the actual perpetrators to establish responsibility.

JUDGE BARTHE: Thank you.

MR. MISETIC: Thank you.

JUDGE BARTHE: Would anybody else like to comment on this? Prosecution?

MR. HALLING: Thank you, Your Honour. Briefly.

The Thaci Defence talking about looking at each charged count, we don't understand the distinction between that and looking at each specific crime. They say that they are talking only about the former. But in order to look at a contribution to torture or murder, it is a contribution to the specific crimes, and that is clearly not required by the jurisprudence.

In the words of the ICTY appeals chamber in paragraph 1535 of the Prlic et al. appeals judgment, volume II, it says:

"... the jurisprudence of the Tribunal does not require a direct link between an accused's contribution and crimes as the accused does not have to contribute to a specific crime in order to be held responsible for it and because a contribution to a JCE may take the form of contribution to the execution of a common criminal purpose."

And counsel referenced an ICTR appeals chamber judgment for an ICTR version of what I just said. You can also see paragraph 109 of the Karemera appeals judgment.

JUDGE BARTHE: Thank you, Mr. Prosecutor.

Yes.

MR. MISETIC: May I reply? May I reply?

JUDGE BARTHE: Yes.

MR. MISETIC: Our point, actually, is when you read the ICTY JCE cases, you see the judges engaging in the same exercise as was engaged in Seselj case. For example, I think we would all agree that if a communiqué was issued two years after a crime had been committed, we would say there is no linkage between a communiqué and the criminal act. Right? It's understood that there has to be some temporal and geographic relationship between the act and the crimes that were committed on the ground.

The exercise that all of the JCE cases engage in, if you read Prlic, Karadzic, Stakic, Martic judgments, you see language like the statements were "issued at crucial times;" that's at Prlic trial judgment paragraph 267.

You see:

"... rhetoric was used by the Accused to engender fear and hatred of Bosnian Muslims and Bosnian Croats and had the effect of exacerbating ethnic divisions and tensions in [Bosnia and Herzegovina]."

That's Karadzic trial judgment paragraph 3486.

So there has to be some linkage between the actions of the accused and the crimes. And I would just point out one additional fact that makes this case unique -- I shouldn't say "unique," unlike most JCE cases, and the only other one that I can think has a similar

allegation is Prlic, where in Prlic they said the ultimate purpose of the JCE was to link Herceg-Bosna to Croatia, which in and of itself is not a criminal act, but it was the means used to achieve that purpose that was criminal.

We have a similar allegation here, which is to gain and exercise control over Kosovo. Well, that in and of itself is not a crime. The allegation is, though, that the use -- well, it's not a crime under the jurisdiction of this Court; right? And the means used is what is alleged to have been the unlawful part of that ultimate objective.

So there has to be some link. It just can't be Mr. Thaci was engaged in combat. Because that could go to the ultimate purpose, but not that he was involved in the criminal aspect of the trying to achieve that ultimate purpose, and that's the linkage that's required.

The rest of the JCE cases -- for example, a JCE to commit genocide in Srebrenica, the distinction there -- because the act itself, the purpose, the ultimate purpose is itself the crime, then you could say, well, you have made a substantial contribution to the common purpose. You don't need to go to the next step of proving a linkage to the crime because it's one and the same.

Thank you.

JUDGE BARTHE: Thank you very much.

Anybody else? Thank you.

I have another question in relation to the link or the linkage

you just mentioned, and this question is for you, Mr. Misetic, because you probably already answered 50 per cent of my next question by your submissions.

But in paragraph 401 of your final trial brief, you claim that the SPO has not demonstrated the link between KLA public statements and the crimes charged in the indictment, and you refer to cases in which instigation was charged as a mode of liability. And you further argue that:

"Although instigation commission through a JCE have different elements, both require a causal connection between the alleged public statements and the resultant crimes."

And I note that the Krasniqi Defence made similar submissions in paragraph 684 of their final trial brief, and earlier today submissions were made by Mr. Ellis in his oral submissions.

Just to make sure, Mr. Misetic, I understand you correctly, you are not saying that for JCE liability the Prosecution must prove that and how the particular statement, whether made orally or in writing, has affected the decision of the direct perpetrator, or are you saying that?

MR. MISETIC: [Microphone not activated].

We are saying that. Like, there has to be some showing that there was an effect of that statement on some perpetrator of some crime charged in the indictment. Otherwise, you're just engaging in an exercise of speculation as to whether a statement had an effect on anything that was actually happening on the ground.

JUDGE BARTHE: So some perpetrator but not all perpetrators, because otherwise it would be -- or if you require a linkage or a link between a public statement and the decision of a perpetrator, that would be quite difficult, if not impossible, to prove, in my view, in cases of international crimes where we have -- or which usually involve a large number of participants at different levels. So we have to -- in other words, you have to identify each and every perpetrator first and then inquire whether -- or assess whether that perpetrator was influenced by the public statement or not. Is that what you're saying?

MR. MISETIC: I don't know about each and every perpetrator, but it has to be enough of a showing, enough of a linkage to rise to the level of a significant contribution. So then that's exactly why we cite to Seselj. You would have to explain to me then what is the distinction in -- we throw a different label on it instead of saying it's instigation, we call it a significant contribution to a JCE.

In one, Seselj, who undoubtedly was engaged in extreme rhetoric throughout the wars in Croatia and Bosnia and Herzegovina, gets acquitted of everything except the one case in Vojvodina where he gives a speech, forces under his control the very next day engage in ethnic cleansing of a Croat village. That's the one incident that they could establish linkage to the statement. And we argue that that same reasoning not only should apply but has applied in the JCE cases, although not as explicitly as in Seselj, to say that you have to establish some link. There is an atmosphere that's created by a

communiqué, and immediately thereafter, or shortly thereafter, some perpetrators -- and you've seen evidence that they read communiqués at a morning briefing, and then you draw a linkage to the fact that the very next day, or two days or three days later, some crime is committed consistent with the text of the communiqué.

We have none of that here. And so we have argued, and do argue, that Seselj is a classic example of how you have to link the statements to some actual crime. Thank you.

JUDGE BARTHE: Thank you. That was helpful.

I'm coming now to my final question, and my final question is for the Prosecution.

In paragraph 629 of its final trial brief, the Thaci Defence argues that the group of opponents as defined by the SPO is not a stable and identifiable group distinguishable by nationality, ethnicity, or religion, but that it is rather "a variable, inconstant group that a person may fall within or outside of depending on whether they were subjectively viewed in that moment as being supportive of the aims or means of the KLA."

What I would like to know from the SPO is the following: Does the object of the attack within the meaning of Article 13 of the Law have to be a sufficiently stable and objectively identifiable group; and if so, why is the group of opponents such a stable and identifiable group? Or, in the alternative, is it sufficient that members of the group are targeted on the basis of their nationality, ethnicity, religion, or certain other actual or perceived common

features?

MR. PACE: Thank you, Your Honour.

So what is required is that the charged crimes were committed, as we know, as part of a widespread or systematic attack directed against any civilian population. As set out in paragraph 53 of the Confirmation Decision, there is no requirement to demonstrate that the entire population of the geographical area in which the attack took place must have been subject to the attack. And this was upheld, for example, in Kunarac appeal judgment, paragraph 90.

What the SPO must show, and what it has shown, is that enough individuals were targeted in the course of the attack, or that they were targeted in such a way that the attack was, in fact, directed against a civilian population rather than against a limited and randomly selected group of individuals. That's also Confirmation Decision, paragraph 93. So the civilian population at which the attack was directed need not share a common nationality, ethnicity, or other similar distinguishing features. And that's the same paragraph from the Confirmation Decision.

And if you bear with me a minute, Your Honour. The essence of what all this boils down to, to answer your question, is that what matters is that there is some distinguishable characteristic being sufficient. And, again, on this point, I could refer you to the CDF appeal judgment at the SCSL which is the Fofana, Kondewa one, and there we have:

"... while several cases have held that crimes against humanity

were committed as a result of attacks against civilian populations sharing a common nationality, race or ethnicity, the same has also been found in several cases where civilians were targeted on less defined grounds. In some of these cases alleged or perceived opponents to a regime, faction or political party have been targeted. Indeed, the Trial Chamber found in the AFRC trial judgment that attacks against the civilian population were 'aimed broadly at quelling opposition to the regime and punishing civilians suspected of supporting the CDF ...'"

And that's paragraph 263 of that judgment.

So, Your Honour, the jurisprudence is clear of what is required, and the Thaci submissions fail to show that anything other than what the clear provisions of the law and the jurisprudence are necessary.

JUDGE BARTHE: Thank you, Mr. Prosecutor.

Does anybody else wish to be briefly heard on this matter? I note this is -- yes, Mr. Misetic.

MR. MISETIC: Just we'll reserve until we've looked up the case that was cited.

JUDGE BARTHE: Thank you very much. Those were my questions.

PRESIDING JUDGE SMITH: Thank you.

Judge Mettraux.

JUDGE METTRAUX: Thank you, Judge Smith.

And I'll start with the SPO, and the Defence can comment on my questions if necessary.

The first one is a question about pleadings in the indictment,

and I want to be sure that I have understood the pleadings correctly on one point.

Am I right to understand that under the indictment as you pleaded it, you're asking the Panel to enter convictions in respect of each and all of the ten counts charged in the indictment, but you are not asking the Panel to enter convictions in relation to any of the individual incidents that are said to be relevant to the counts or at the relevant locations for that matter?

So to take a concrete example, which might help you answer my question, you have 40-plus alleged murders listed in Annex B to the indictment. As I understand it, the convictions that you seek are only in relation to Counts 8, 9, and 10 in relation to those. Am I correct in that understanding?

MR. QUICK: Yes, Your Honour, that's correct. The counts are the crimes. However, the crimes are made up of those individual incidents. So we would request Your Honours to make findings on the individual incidents, but the counts are those ten crimes.

JUDGE METTRAUX: Thank you.

My second question, and still for the SPO, has to do with something the Blaskic appeals chamber said at the ICTY. It's the Blaskic appeals chamber judgment, paragraph 711. The appeals chamber has said:

"Conflict by its nature is chaotic, and it is incumbent on the participants to reduce that chaos and to respect international humanitarian law."

Now, in your understanding, and, of course, assuming that holding to be correct, what do you say is a non-state armed group required to do to comply with these obligations; and in particular, would the chaos of war or the circumstances of war ever justify arbitrary detention or an execution without the benefit of due process?

MR. PACE: Thank you, Your Honour.

I'm just catching up for a moment.

JUDGE METTRAUX: I read as slowly as I could, Mr. Pace.

MR. PACE: There's a lot going through my mind. I'm not blaming you, Your Honour.

First of all, would the chaos of war or the circumstances justify arbitrary detention or execution without the benefit of due process. The answer to that is no. And for that, I refer Your Honours to the Shala appeal judgment which clearly sets out the basic procedural safeguards which apply in any circumstances. So those basic procedural safeguards are non-negotiable.

You heard argument last week that tried to negotiate certain safeguards. I will turn to some of that in my presentations in reply later today, but the answer to that is simple. The basic procedural safeguards are not up for discussion and there is no justification for them. And that's both in the Shala appeals judgment and also in the Confirmation Decision.

JUDGE METTRAUX: Thank you. And as I said, if any of the Defence teams want to opine on either of these matters, they should

do as part of their response.

I'll give a break to Mr. Misetic, and I'll start with the Selimi Defence, if I may. And Mr. Roberts, I assume, that might be for you.

Now, on the Prosecution case, it appears that of the four accused, only your client is not said to be a member of the political directorate of the General Staff. And, again, assuming this to be factually correct, what significance, if any, would you attach to the fact that your client, unlike the three others, was not a member of the political directorate?

MR. ROBERTS: I would confirm, obviously, that that is our understanding of the case and the case that has always been, that he's not a member of the political directorate. There were certain allegations in relation to very limited political activities in the SPO final brief that we responded to.

In terms of the significance, our position would simply be that the burden remains on the Prosecution to demonstrate any role that he would have in any of the political activities of any of the other accused or individuals within that directorate.

In terms of the actual allegations that relate to membership within that organisation, because we had never assumed that Mr. Selimi was a member of the political directorate, that was not part of our case to address those.

JUDGE METTRAUX: Thank you. And I'll stay with the Selimi team, but this time it might be for Mr. Mair.

You've made submissions to the effect that, in your view and

submissions, the non-international armed conflict said to be relevant to these proceedings started sometime in November 1998, as I understand it. And I want to put to you a number of elements that we have on the record, and I will ask you, if you may, to square the circle of these submissions with those elements.

The first one is a political declaration of 29 April 1998 - that's Exhibit P286 - in which the following is said:

"The KLA recognises and respects the international acts of the United Nations and the conventions on war."

Then there is a speech of 14 June 1998, where Mr. Krasniqi, Jakup Krasniqi, is recorded as saying that the KLA was acting "according to the laws of war." That's Exhibit P1096, page 123.

And then there is Bislim Zyrapi - that's P1356, page 5954 to 5955 - who suggested that when he joined the KLA, which he places sometime in May 1998, he said that your client, Rexhep Selimi, had distributed booklets of the Red Cross which, in Mr. Zyrapi's words, "included all the rules of warfare and the legal rules applying to them."

So my question is really how, if at all, you are able to, as I called it, square the circle between these statements attributed to the General Staff or members of the General Staff that the laws of war were applicable and, therefore, that an armed conflict was understood to be in existence at the time, in your submissions, that, in fact, the armed conflict only started a month later.

MR. MAIR: Thank you, Your Honour. Coming to the first point.

My submission was not that the armed conflict only started in November 1998. My submission was the Prosecution failed to discharge its burden in proving that it began at any point before that, which I believe then leads on to answering the questions that you've posed.

These internal statements or political declarations I don't believe establish the existence of an armed conflict under the law. It does establish that members of the KLA recognised that there may be duties that they should follow. But that doesn't establish the fact that the legal determination of an armed conflict had commenced by that point in time.

JUDGE METTRAUX: Just to follow up. Isn't a pre-condition to the applicability of the laws of war that there is, indeed, an armed conflict going on?

MR. MAIR: Yes, that's correct.

JUDGE METTRAUX: Thank you.

I have -- my next question is for the Krasniqi Defence, if I may, Ms. Alagendra or Mr. Ellis.

I want to take you to submissions you make at paragraph 409 and following, and more specifically at paragraph 410 of your final brief, about what you say were the role and responsibility of Mr. Krasniqi as spokesperson of the KLA.

And I will read the relevant passage. You say:

"Treated with the appropriate caution, Mr. Krasniqi's ICTY testimony is revealing as to his approach to his role. Mr. Krasniqi understood that he was 'no longer an individual,' but 'represented

and publicised the policy of the General Staff.'"

Now, what I want to understand is what is the submission that you are making in relation to this matter on behalf of your client. And in particular, do we have to understand this to mean that when he spoke as a spokesman of the KLA - Mr. Krasniqi, that is - the views that he expressed reflected the opinion of the General Staff? Is that what you are saying here, or is it something different?

MR. ELLIS: I think what we are saying there aligns with the point made in the Prosecution's final brief, which we cited in oral argument, about him being the mouthpiece.

JUDGE METTRAUX: And the mouthpiece of the General Staff; is that right?

MR. ELLIS: Yes.

JUDGE METTRAUX: Thank you.

I'll turn to you, Mr. Misetic. You've rested enough.

You've placed, as I understand, a great deal of reliance on the account of Mr. Zyrapi in relation to the alleged JCE, and you've pointed to a number of, you say, contradictions between what the Prosecution says in relation to him and the inferences that they seek in relation to others. And you've pointed in your binder in particular to a couple of questions that you had asked Mr. Zyrapi about, just to refresh your memory, whether he recalled an agreement about violations and mistreatment to which he said no.

Now, elsewhere in his evidence - and I will give you the reference if it's useful to you - Mr. Zyrapi had admitted that one --

maybe I'll give you the reference, Mr. Misetic, so your colleagues can look them up. One is P1356 at page 5051; and the other one is P01355.5 at page 6 and following.

Now, in these pages, Mr. Zyrapi admits a number of facts that are put to him. First, he says that he had knowledge of the fact that collaborators were being assassinated by the KLA. He admits to knowing that some of these assassinations were publicised in General Staff communiqués. He also said that he disapproved of these actions. And fourth, he said that he had nothing to do with this and did not know who was preparing these communiqués.

Now, I wanted to hear from you whether these four facts or admissions that Mr. Zyrapi made in his prior interviews should affect the credibility and/or reliability that this Panel should be prepared to give to his evidence in relation to the existence or otherwise of an agreement to commit crimes.

MR. MISETIC: Yes, we have some slides to address some of these questions, which I anticipated would be asked.

First, I think it's important to emphasise here that the burden of proof rests solely on the SPO, and that is, if we can see that on the screen, the Mustafa trial judgment, paragraph 27, of 16 December 2022. They make the explicit ruling that "the burden of proof rests solely on the SPO."

We agree with that proposition. It's not for the Defence to rebut it. It's not for the Trial Panel to fill in any gaps or contradict their case as they've put it to us.

So my first answer to you is they've taken the position that he was not in the alleged JCE and that the members of the JCE were attempting to conceal it from him. The evidence that you've cited, and I haven't had a chance to look it up yet, wouldn't affect that. And even if you were to say it does affect it, that's not the case they've put forward. Right? They've said Zyrapi was not in the JCE and was kept out of the common criminal purpose, but yet he's still everywhere.

So in answer to your specific questions, and let me pull them back up --

JUDGE METTRAUX: I can put it back to you.

MR. MISETIC: Yes.

JUDGE METTRAUX: It's simply to hear from you and to give you an opportunity to make submissions, if you so wish, as to whether these "admissions" should impact our assessment, the Panel's assessment on the reliability and credibility of Mr. Zyrapi in respect of the answers he gave you about his awareness of an agreement or otherwise.

MR. MISETIC: Well, no, because I don't think anything you read suggested that he said the General Staff was executing anyone. Right? And so to the extent that language means he was aware that someone in the zones -- and I do recall his testimony, which I believe I cited, was that he issued 1D29 precisely because he had heard complaints when he was in the field visiting the zones to stop any kind of mistreatment of -- I believe the word in the order is "persons" and not just civilians. And so to that extent, I would say

that Zyrapi's evidence is corroborated, in fact, by his own order, 1D29.

And as I said in our remarks last Wednesday, the fact that he was made chief of the General Staff, was issuing orders that are, on their face, at counter-purposes with the alleged common criminal purpose as alleged by the SPO, suggests that his evidence is credible. And, moreover, as I said, the fact that he issued the order, as he says, in response to things he had heard in the field suggests that that was not a policy of the General Staff but a phenomenon that he wanted to suppress in the zones. Thank you.

JUDGE METTRAUX: Thank you.

And my last set of questions. It's actually a question made of two for you, Mr. Dixon, or the Veseli Defence.

In your oral and written submissions, and, frankly, all through this case, you have directed the Panel to the fact that your client, Mr. Veseli, was out of Kosovo for certain period of time. So we understand the question of your client's whereabouts to be material to your case or the case that you've put forward.

My questions -- it's a question made of two. My first one is whether those submissions you have made must be interpreted as a suggestion on your part that physical distance from the relevant events has any bearing on the legal obligations of your client, you say; or, it should be an and/or for that matter, whether what you are telling us is that the physical distance which you say existed between your client and relevant conduct had practical significance

in terms of what is alleged against him. And if your answer is the latter, that the distance caused your client to have difficulties communicating or acting or contributing, what evidence you'd direct the Panel to look at in particular, and, of course, with the caveat that, as I'm sure you would remind me otherwise, the burden is on the SPO, which we know and assume. But I would be assisted. Thank you.

MR. DIXON: Yes, thank you, Your Honour.

Clearly distance alone doesn't alter the overarching legal obligation. I referred Your Honours to many cases from the Second World War where the distances were huge between the General Staff and what was happening on the front, either in Western Europe or on the Russian front. So the legal obligation doesn't get diluted because of distance per se. But what one then has to do, as Your Honour has foreshadowed, is look at whether or not that has any practical ramification.

The first point we make is that the Prosecution has to prove that my client has, in fact, got command and control over anyone in Kosovo such that an obligation arises. This was something that came from the Milutinovic judgment, where he was acquitted on the basis of, yes, you were involved in quite a lot of things, but you weren't actually exercising authority over the perpetrators, both *de facto*, *de jure*. That link was broken. And we say exactly the same applies here. So no effective control, authority in respect of anyone in Kosovo.

But then also a number of practical interventions which make it

impossible to prove that there has been communication. Your Honours are asking about whether there is any evidence to point you to. I have tried to emphasise, I hope with some degree of clarity, that there is no evidence of showing that communication and link. There was that one bit of evidence from Refsdal, which was one incident, where it wasn't even shown that my client was on the phone. That's all the SPO has been able to point to.

So I'd point to that limited amount of information that we have on the evidence to show that there hasn't been a pattern proved of being able to communicate on a consistent basis, if at all. We have that one moment in time where he wasn't even on the phone and nothing beyond that. No evidence of there being any replacement in place where there were communications going on.

So that, we say, is a huge gulf in the Prosecution case that they have to fill. If they want to show that we have an obligation, they've got to prove command, first of all, effective authority and control, but then also show that that wasn't interfered with as a result of being abroad.

So it's the lack of evidence that we rely on to emphasise our point, Your Honour.

JUDGE METTRAUX: Thank you. I'm done with my questions. I'll give a chance to the SPO and/or to Mr. Laws if there's any further submissions to be made in response to the Defence answers.

MR. HALLING: Yes, Your Honour. I'll just respond on just the last answer that Mr. Dixon made.

We certainly agree that the legal obligation is not diluted through distance. What counsel doesn't seem to appreciate is that that dooms Mr. Veseli. Kadri Veseli's most sustained and direct interaction in the indictment timeframe is in its early months. The command edifice is sufficiently set up before the periods where he's largely absent from Kosovo. And it's our case, with reference to the Refsdal book and other indicators, that Mr. Veseli was able to maintain his control while abroad.

JUDGE METTRAUX: Mr. Laws, anything?

MR. LAWS: No, thank you, Your Honour.

JUDGE METTRAUX: Thank you.

Mr. Misetic.

MR. MISETIC: Sorry, we're having trouble with one of the citations you provided, so I would be grateful if you could check on it. P01356, if you could tell us the exact page.

JUDGE METTRAUX: I'll check my own reference, Mr. Misetic, but what I have noted for myself is P01356_ET. That should be the ICTY transcript of 6 November 2006, and I believe it's page 6051.

MR. MISETIC: Okay.

JUDGE METTRAUX: I'll check again.

MR. MISETIC: We had 5051 on the transcript, so we'll check --

JUDGE METTRAUX: I might have misspoken. Thank you.

MR. MISETIC: And if I may while I'm on my feet, one other point on Zyrapi, just as a procedural matter.

One of the few things that all parties in the case agree on is

that Zyrapi was not in a JCE. That's one of the few things we all agree on. So for the Panel to make any kind of finding to the contrary would require you to find that the joint position of the parties is so unreasonable that it cannot even be a reasonable inference on the evidence. Thank you.

JUDGE METTRAUX: Thank you. Those were my questions.

PRESIDING JUDGE SMITH: All right. We'll switch to Judge Gaynor now. But first, we will break at 1.00. I'm sure the accused need to have a break, as all the rest of you do too. So at 1.00 we'll take a break until 2.30 and then commence again.

Judge Gaynor.

JUDGE GAYNOR: Thank you, Judge Smith.

Very briefly, and without any prejudice to any findings the Panel might make, I note the SPO hasn't referred in its brief to voluntary surrender as a mitigating factor. Does the SPO contest that the accused did not make any effort to evade arrest and are entitled to the mitigating factor of voluntary surrender?

MS. CLANTON: Thank you, Your Honours.

The SPO does not contest that Kadri Veseli, Rexhep Selimi, and Hashim Thaci turned themselves in. However, this factor should be given very little, if any, weight in mitigation. I refer Your Honours to a decision at the ICC, Abd-Al-Rahman sentencing judgment, paragraph 80, where it states that voluntary surrender has be given limited factor as a factor to reduce the sentence of an accused.

JUDGE GAYNOR: Thank you for that.

Now, I want to return to the rights and duties of a non-state armed group after it has detained persons, but before it has established any kind of court to review the lawfulness of detention.

And I note, Mr. Halling, your concession was referred to by the Defence, and also Mr. Pace said earlier the "basic procedural safeguards are non-negotiable."

Now, I want to note that the Krasniqi Defence relies on a publication by the ICRC called "Detention by Non-state Armed Groups" of 2023. And in that publication, it says that -- it talks about the minimal guarantees applicable under international humanitarian law, and it sets out the minimum due process right of the accused. And then it says:

"In practice, it has proven challenging for non-state armed groups to provide all necessary judicial guarantees for detainees who are accused of having committed a crime. If a non-state armed group is unable to ensure a fair trial, it must neither pass nor enforce a sentence. In no circumstance can the inability to conduct a fair trial justify the arbitrary detention or the execution of a detainee."

So, first of all, is it the SPO's position that a non-state armed group can detain persons in an non-international armed conflict before it establishes a court which complies with the Common Article 3 standard of a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by

civilised peoples, or, as described in Article 6(2) of Additional Protocol II, a court offering the essential guarantees of independence and impartiality?

So maybe, Mr. Halling, can you clarify? Can the non-state armed group detain pending the establishment of that kind of court?

MR. HALLING: Mr. Pace will answer this one, if that's all right.

MR. PACE: Thank you, Your Honour.

No, a non-state armed group must be in a position to provide the basic procedural safeguards if it's going to detain. Earlier Judge Barthe was asking about what has been termed an academic discussion as to whether a non-state armed group has or does not have the right to detain. What is clear is that the basic procedural safeguards apply in all circumstances. If they are not in a position to offer those, it cannot detain. And in the circumstances on the facts of this case, it shows that the procedural safeguards were not offered, so the detentions should not have happened and were a crime to begin with, in most cases at least.

JUDGE GAYNOR: So if you have a scenario where a non-state armed group is in an armed conflict with a state actor which already has an existing military and civilian court system, does this mean that the non-state armed group is at a disadvantage in that it must release persons who it believes may have committed crimes, but the state actor does not have to release?

MR. PACE: Your Honours, what also should be borne in mind in

relation to your question just now is the specifications given in the Shala appeal judgment which explain the depth of these procedural guarantees.

If the non-state armed group is not able or doesn't have the court system, let's call it that, in place, it can refer to another entity. If it doesn't do so, then it should not have been detained to begin with.

So, again, this all the goes back to the basic procedural safeguards. It is not up for discussion as to whether they can detain if they cannot offer those basic procedural safeguards.

But to be clear, we don't need full procedures. Because when you said "disadvantaged compared to the state," we're not saying, and neither does the law establish, that there needs to be a fully functional court system. The basic procedural safeguards themselves, the three in the Shala appeal judgment echoing the three in the Confirmation Decision in this case, don't say there needs to be a fully functioning judiciary. We have the very basic things there, which is an opportunity to review by an independent or impartial entity. And then the Shala appeals judgment also dismissed Defence arguments in that case which were arguing that what is being aspired to by the prosecution in that case was not achievable. That was not allowed by the Shala appeals judgment. So -- and this ties again with the arguments we've heard from both Veseli and Thaci before. There is no need for there to be a court system. That is not a defence that the KLA could not have had that. What there needs to be

are the basic procedural safeguards.

JUDGE GAYNOR: But in practical terms, in the early stages of the indictment period here, where we've heard a great deal of evidence that the KLA was strengthening its internal organisation, what state authority could it have referred detainees to? Are you saying it should have referred them to the court systems of the FRY?

MR. PACE: I'm not making those submissions, Your Honour. I'm saying that if they were not able to do anything which the law requires them to do in any circumstance, being themselves offer some form of independent review, referral to a state authority or to another authority, they should not have detained. And that is a crime, and that is failing to meet the procedural safeguards.

JUDGE GAYNOR: And at paragraph 57 of the 2023 ICRC publication, it says, in the ICRC's view, the process of review should provide the following safeguards, and the second is:

"The detaining authority should periodically, for example, every six months, review whether the detainee continues to pose an imperative threat to security, and to order release if that is not the case."

Now, can you clarify if you consider the 2023 ICRC publication as indicative of customary international law on this point?

MR. PACE: Your Honour, I wouldn't go that far, especially if it's a paper, and I don't think this is even the commentary that we're all used to citing. So our position on that is no, it's not indicative of customary international law on the issue.

But what matters in this case is that even the initial detention was illegal. Where Your Honour is referring to continued review, that is also a basic procedural safeguard. It's not just the initial review has to be -- the initial detention has to be considered for its legality, but there needs to be continuing review of detention, the legality thereof, because, of course, things might change.

JUDGE GAYNOR: And would you consider to review every six months to be enough for an NSAG to carry out?

MR. PACE: I would say in general everything needs to be assessed on a case-by-case basis. Six months sounds like an awfully long amount of time. But, again, when you look at the fact that even the initial detention would not have been justified, even a few days is a long amount of time. If the initial detention is not justified, there is no legitimate basis for it. It's not, to quote the jurisprudence, absolutely necessary. Zero days is enough for review. Six months in any situation sounds very, very long, and we don't agree with that.

JUDGE GAYNOR: But we're back to the position where you are putting an armed group, which may be poorly organised and poorly armed, which is involved in a conflict with a very well-organised state actor, you're putting them into the almost impossible position of having to have on day one of the conflict a fully functioning court system.

MR. PACE: Your Honour, just in case I wasn't clear earlier, nobody is saying that the KLA was obliged to have a fully functioning

court system. That is absolutely not our position. It is absolutely not the law.

To also be clear, we are not the ones who put the KLA members at issue, the accused, in a situation. The crimes are charged against the accused for crimes they undertook. The position was what it was. The basic procedural safeguards cannot be derogated from. Common Article 3 applies in all circumstances. That is, indeed, the point of Common Article 3.

JUDGE GAYNOR: And just to clarify this, is it your position that from the very start of the indictment period, the KLA was required to inform detainees of the reason for their detention, provide access to a lawyer, bring them promptly before competent authority, and to provide them with an opportunity to challenge the lawfulness of detention? Is that your position?

MR. PACE: Yes, Your Honour. Our position is that the basic procedural safeguards as set out in the Shala appeals judgment apply here. You cannot simply abduct people without there being a due process.

And just to go back to an earlier question very briefly, an option is always available to release people to the ICRC if that's a possibility.

JUDGE GAYNOR: Thank you for that.

Perhaps the Defence can respond now or after lunch. Entirely as you wish.

MR. MISETIC: Judge Gaynor, I just wanted to raise a policy

issue, which is the position of telling non-state armed groups early in their formation that they don't have the right to detain has potentially very negative consequences for, for example, combatants that they encounter. Because if you're telling them, "You're committing a war crime by detaining these people," I just put to you what are you encouraging them to do with people who are combatants and whom they've captured?

It's sometimes in the interests of the people who are captured to be detained rather than to take other measures against them. Thank you.

JUDGE GAYNOR: I'll continue unless anyone else wishes to make submissions at this point.

MR. DIXON: Your Honour, if I can briefly just refer to paragraph 835 of our final brief where we focus on a crime by omission, highlighting that arbitrary detention is not a strict liability offence, and making the general criminal law point that you can't be held responsible, guilty for something that is impossible to do at the time. So we'd ask that that principle be taken into account as well.

If it was completely impossible at that time to ensure any procedural guarantees, whatever might happen over time, then as a matter of basic criminal law it would be wrong to say somebody can be held responsible for being -- omitting to do something when it is impossible to do that in the circumstances. So that's a matter of principle separate to then assessing whether or not it could be done

and how it was done over time.

I'll just draw Your Honours' attention to that point in our brief as well. Thank you.

JUDGE GAYNOR: Thank you.

MR. ELLIS: Your Honours, if I may very briefly, simply to add to the previous submissions, that there may, of course, be different reasons for a detention by a non-state armed group in a non-international armed conflict. They may, on the one hand, be what is described as penal or criminal law detentions. It's in relation to those typically that we speak about judicial guarantees as such.

But there's also the other category of security detentions. And it's our position that in those cases, in addition to the reasons previously cited, the reason for those detentions is to protect the civilian population in the area who are at risk as a result of the security risk activity. And to create a situation where you cannot detain on that basis, in our submission, would be a very unfortunate result, indeed.

MR. MISETIC: I apologise. Judge Gaynor, just on your first question about the mitigating factors and sentencing, we have been able to look at it. And the case that was cited to you from the ICC, Abd-Al-Rahman, is a case where he took 13 years to voluntarily surrender. So we would say that the circumstances there are substantially different to the circumstances here. Thank you.

JUDGE GAYNOR: Thank you.

Ms. Lawson for the SPO, I believe you are arguing that the

crimes occurred "not in random locations, but in and around KLA detention facilities." Now, the SPO itself selected the charged crimes. If the selection of charged crimes by the SPO was influenced by their connection to detention facilities, isn't the Prosecution's reasoning circular?

My point is that you chose the specific criminal incidents, and then you say, look, they're all in and around KLA detention facilities. How does that actually prove the pattern that you claim it proves? It seems to be a circular argument to me. I want to give you an opportunity to clarify.

MS. LAWSON: Yes, Your Honour, I wouldn't say so because what we have charged are crimes that are clearly attributable to the accused and to members of -- and to persons who were under their authority. We did not attempt to charge incidents that may have been unconnected or disconnected to them, so I wouldn't say that it's circular in that sense.

JUDGE GAYNOR: Thank you.

Mr. Misetic, a great deal of your defence relied, well, to some extent, on the argument that the General Staff didn't exercise effective control over the zone commanders. Now, setting aside any question of command responsibility, is a finding of effective control necessary to conclude that some or all of the General Staff and zone commanders were participating in a joint criminal enterprise in respect of the arrests and detentions of perceived opponents and perceived traitors?

MR. MISETIC: Effective control is not a necessary conclusion, but it is certainly a important consideration. And I cited the Milutinovic case to you where the president of Serbia was acquitted in a JCE case, where it was found he didn't have effective control over the perpetrators.

To the extent that the substantial contribution of Mr. Thaci is alleged to be his superior status within the KLA, then we do think it is incumbent on the Prosecution to prove effective control over those perpetrators, and they have alleged that the substantial contribution included failing to punish and failing to take measures and issuing orders and thing to that effect. So we would say that is a -- one issue or factor that further undermines the Prosecution case in respect to the significant contribution of Mr. Thaci.

JUDGE GAYNOR: And I want to move now to the relevance of the zone commanders' opposition -- of some zone commanders to certain concessions that the Kosovan Albanian delegation was considering at the Rambouillet negotiations, most obviously the question of independence for Kosovo itself, and there was a fair degree of emphasis placed by you and the other Defence teams on that point.

And I would like to give you an opportunity to express the relevance of zone commanders openly protesting or contesting proposed courses of action being taken at Rambouillet. Does it logically follow that the zone commanders were in any way opposed to a policy of detaining perceived opponents and perceived traitors of the KLA?

MR. MISETIC: We never suggested the last part of what you said.

So we never suggested that the zone commanders were opposed to that policy. Our point relates to the evidence of Mr. Zyrapi from 2005, which we showed you on Wednesday, which is that Mr. Zyrapi told the ICTY in 2005 that the power in the KLA through November 1998 rested with the zone commanders and not the General Staff.

Then we extended that timeframe - and this is the example of what Shaun Byrnes first referred to as the palace coup - to show not -- the issue is not their opposition to Rambouillet. It's what they did as a result of their opposition to Rambouillet, which is to topple the overall commander of the KLA and install their own, which tells you that if they have the power to replace members of the General Staff - indeed, the highest-ranking person in the structure - then Zyrapi's evidence from 2005 is correct, and it continued into 1999.

And there was a turn of phrase earlier this morning: The zone commanders were the kings of their own kingdom is the point. And to the extent they were doing things in their zones, that did not necessarily have to be on orders from the General Staff because they were running their own kingdoms in their zones. And that was Zyrapi's evidence in 2005. The coup is evidence of who continued to exercise that authority. They not only replaced Mr. Syla, but they said, We don't like Jakup Krasniqi, we don't like Sokol Bashota, and we know that within days after that meeting those two were gone as deputy commanders.

So that's the context we're saying. These are not subordinates

in the classic military sense.

JUDGE GAYNOR: But doesn't your argument carry with it the weakness that if they were able to speak out without fear about certain concessions that were being made at Rambouillet, they could have spoken out without fear about crimes being committed against people being held in detention, and they never did so?

MR. MISETIC: We're speaking of the zone commanders?

JUDGE GAYNOR: I'm speaking of both the zone commanders and the members of the General Staff itself.

MR. MISETIC: Yes, but that requires that -- the knowledge of each individual member of the General Staff. And what we're showing is that Zyrapi, in 1D29, did address the issue and did attempt to address the issue, and we know what happened immediately thereafter, right, in terms of he issues it on 28 November 1999, some of these things continue to happen despite the order. Why did they continue to happen despite the order from Zyrapi? Our point is the coup shows that they continued to do what they wanted to do.

Remi told you personally. He said, "I reported to no one. I was the highest authority in the zone." That was his evidence, and that was correct.

JUDGE GAYNOR: The order may have been 28 November 1998.

MR. MISETIC: I'm sorry. That is what I meant, yes.

JUDGE GAYNOR: Now, Mr. Mair, for the Selimi Defence, I'm coming back to your citation concerning the existence of a non-international armed conflict.

Now, in your brief, I believe that you have cited to paragraph 120 of the Tadic appeal judgment. Now, as I read paragraph 120 of the Tadic appeal judgment, that's concerning the attribution to a state of acts being carried out by armed groups in Bosnia, and it concerns an international armed conflict, specifically whether acts of the VRS could be attributed to the FRY.

So your entire argument about the organisation of the armed group is limited to an international armed conflict, not -- and it's actually not relevant here because nobody is claiming that the KLA was acting on behalf of a particular state.

MR. MAIR: That is correct. But our submissions are that the elements, in terms of determining the non-international armed conflict, that being organisation and intensity, remain the same. And on the evidence here, the organisation, in terms of the KLA being an organised armed group capable of participating in sustained combat, that has not been proven.

JUDGE GAYNOR: Just taking your argument to its logical conclusion, if you have a well-resourced and well-armed state actor, and it's carrying out military attacks against a poorly armed and poorly resourced non-state actor, according to your test, that will never be an armed conflict. That unless both parties are relatively well-organised and well-armed, can there be an armed conflict according to your test?

MR. MAIR: That is a logical extension of that argument. Obviously, there is evidence that the KLA was attempting to

strengthen itself and gain military power in numbers, and we say that that did not take place during this time period on the evidence before Your Honours.

The law, and Article 14 here, specifically excludes those kinds of sporadic and isolated attacks such that those kinds of incidents where there is a overpowering army, that that would not fall necessarily within the jurisdiction of the court.

JUDGE GAYNOR: Okay. I'm on to my final question. Mr. Ellis, I'll give it to you now, and if you have time, you can answer it, or you can answer it after lunch, with the benefit of being fortified by your lunch.

You have forcefully challenged the authenticity and reliability of intercepted conversations, and you have also relied on some of those conversations for the truth of their contents. I wanted to give you an opportunity to clarify if you consider the contents of the conversations to be reliable evidence or not.

MR. ELLIS: Can I take it now so that we can all enjoy our lunch afterwards?

PRESIDING JUDGE SMITH: Yes, we'll listen to your answer.

MR. ELLIS: First, we say, straightforward point, burden of proof on the Prosecution to establish authenticity of all intercepts, and we say they haven't done so for the reasons set out in our final brief and in our submissions at the admissibility phase.

Second point. We say if you are relying on them to any extent, then, as I put it, I think, this morning, you then have to take into

account both the good and the bad in them, and that there is, certainly in the way the Prosecution cites them, a tendency to cherry-pick a bad or an inculpatory sentence and then to ignore the rest of it, which often contains evidence that we would say is exculpatory.

So our position is if you are going to take them into account to any extent, take into account both the good and the bad as a whole.

And, finally, can I make this point, that there is, it seems to me, a difference between cases in which a conversation was put to a witness in court who was a part of that conversation and who, whilst, of course, after 25 years, couldn't verify the exact words used, could nonetheless recall having a similar conversation and was able to, to some extent, say something about what was said in that conversation.

There's another category of conversations relied on in this case which have never been put to any witness for any contextual evidence or authenticating evidence about that conversation. And I think the ones that certainly I relied on this morning are all ones that were put to relevant witnesses and contextualised. In relation to the others, we say no weight whatsoever, because we don't concede reliability, no witness has authenticated, and we know there are examples of things that are wrong. One that comes to mind is, for example, the ones that were put to Nuredin Ibishi where the nickname was completely wrong.

JUDGE GAYNOR: Thank you. Those are all my questions. Thank

you.

PRESIDING JUDGE SMITH: All right. We will break for lunch. Then we'll be back, reconvene at 2.30.

Yes?

MS. LAWSON: Your Honour, if I may just clarify, are we starting our rebuttal immediately after the break?

PRESIDING JUDGE SMITH: Yes.

MS. LAWSON: Thank you.

PRESIDING JUDGE SMITH: So we're adjourned till 2.30.

--- Luncheon recess taken at 1.00 p.m.

--- On resuming at 2.30 p.m.

PRESIDING JUDGE SMITH: We will begin now with the replies by the SPO.

MR. ELLIS: Your Honour, may I make a transcript correction before that starts very briefly?

Transcript page 12, line 4, the name should be "Naim Maloku." I think that's what I said in court, but in substitution for the surname that now appears.

PRESIDING JUDGE SMITH: I think you're right. I think you maybe didn't say it a different way that didn't sound like Maloku.

MR. ELLIS: I apologise for that and all my other errors of pronouncing Albanian names.

PRESIDING JUDGE SMITH: Thank you. Thank you for the correction.

Mr. Prosecutor, you may proceed.

MR. TIEGER: Thank you, Your Honour.

Your Honours, I will be commencing the Prosecution submissions today. I will then yield the floor to Mr. Pace, who will be followed by Mr. Quick, and then Mr. Halling.

In one form or another, the Defence have cast their clients as well-meaning but largely powerless figures whose motivations were indistinguishable from those of the many thousands who joined the KLA.

For example, the Veseli Defence depicted their client as "a committed member of the KLA who, in a time of great need, as a young graduate without any military training, joined together with thousands of others from all walks of life and persuasions to fight for Kosovo's freedom and a future free of authoritarianism, apartheid, and brutality for themselves and their children. That, Your Honours, is not a crime."

Of course, it is not a crime to join an army to fight for freedom and liberty, and the SPO has never asserted that it is. But depicting the accused as just another of the many thousands who joined the KLA in an effort to fight for freedom is an effort to run from their real roles as pioneers, as founders, as key members of the General Staff, roles they acknowledged repeatedly or are reflected in, for one of a number of examples, the meeting to discuss KLA history recorded in P186.

They run from those roles because their actions in those roles, using their combined authority and individual efforts, reflect both

the common purpose and their commitment to it. True believers in both their cause and their unique ability to achieve it, they claimed the right to mercilessly deal with those deemed to be impeding its fulfilment. The evidence of their purpose and the resulting crimes are reflected in the vast tapestry of overlapping evidence that cannot be ignored or denied, no matter how hard they struggle to have each piece of evidence viewed in isolation.

Now, that evidence, of course, includes the years of publicly proclaiming what they were doing, what they had done, and what they would do. Recognising how incriminating the communiqués and public declarations are, the Defence teams expended much effort in attempting to distance their clients from authorship or, indeed, any form of involvement in the communiqués. Those arguments fail.

First, there are admissions of such involvement, and the Panel can use those admissions not only against the accused who made them but, given the corroboration in many instances, also against co-accused, of course, with the requisite caution. Mr. Halling will address this general issue in more detail later.

Second, there is also the independent evidence regarding the origin of the communiqués, including from witnesses available for cross-examination, such as 1453, 4240, and 4401, amongst others; as well as documentary evidence, for example, P3551 at pages 111750 through 751, and at 111865, and P4209. And this, of course, is even before reaching the multiple copies and versions, some handwritten and some with handwritten annotations, seized from Mr. Krasniqi.

And, third, the relevance and probative value of the communiqués is not dependent upon knowing who held the pen at any given moment. This is not about one incriminating communiqué. They were repeated, and repeated, and repeated, over many months, in fact over years. Issued consistently in the name of the General Staff, including at a time when its composition was small and very closely knit. It is the inescapable knowledge and intent directly evidenced by that which is so telling and so damning.

The accused had and indeed exercised the capacity to distance themselves from any purported communiqués wrongly attributed to them. You can see, for example, P154. But it's only Communiqué 59, out of so many, from which some of the accused have at times sought to distance themselves. For the others, as Mr. Krasniqi said: "Our communiqués and political declarations have always outlined clearly and accurately its political and national platform." That's P3698. And you can also see P1287, in which Mr. Krasniqi notes, "we, as the UCK" have publicly condemned the surrendering of weapons "in our communiqués," a document discussed in court with its maker. P1264 at pages 28677 and 28852; and transcript 16720 through 22.

We've already set out in paragraph 67 of our brief, and discussed last Monday, the clear message delivered by these communiqués. They were both intended and understood to be communicating KLA General Staff policy and authorising measures against opponents. None of the assertions by the Defence, including the claim that individual communiqués did not mention amnesty - you

find that at T28649 through 50 - none of that can displace this evidence.

And, in any event, the suggestion that the absence of General Staff communiqués calling for amnesty somehow undermines this evidence is also factually deficient. In November 1998, prior to the amnesties issued in the Llap zone, the General Staff did, in fact, announce amnesties for certain detainees and did so by way of communiqué, one which underscored how advantageous this could be to the KLA's image in the eyes of the international community. That's 1D47.

As a final point on this subject, the Selimi Defence is in error in claiming that evidence was not led in relation to events mentioned in the communiqués. For a sample of that evidence, we refer you to footnote 6206 of our final trial brief. And specifically in relation to the killing mentioned in Communiqué 28, as raised by the Defence, see, for example, P741_ET.1, which is an article from January 1997 describing the death of Sheholli and indicating that, at that time, no one had yet claimed responsibility for the killing. As it happened, Communiqué 28, claiming responsibility, would be published that same day. And see also P104, an alleged collaborator list seized directly from SHIK headquarters, listing Sheholli.

Next, Defence efforts to depict Mr. Zyrapi's role or evidence as somehow incompatible with the common purpose also fail. Now, this is one variation of Defence claims that if someone is not a named JCE member, he could not have known about or participated in the

implementation of the common purpose, augmented by the false assertion that anyone not a named JCE member has been specifically determined not to be in the JCE. Both are red herrings intended to deflect from the evidence of criminal responsibility of the accused.

But turning back to the assertion that Mr. Zyrapi's role or knowledge somehow disproves the common purpose, it is not the case that Mr. Zyrapi was unaware of crimes or of the opponent policy. As for crimes, you'll recall, for example, that he did acknowledge some of them in testimony. See transcript 17446 through 47; or 17525 through 28; or 18229 through 39; or 18358; or transcript 17523 through 25.

On others, he had already been questioned and confronted during his SPO interview, and, as addressed in our brief at paragraph 1434, was largely unforthcoming on these matters, and his denials of knowledge are not facially credible, given the weight of the evidence, and must be viewed in context.

As for the argument that the SPO is asking the Panel to make a finding about the opponent policy that "would not have been evident to the chief of staff" - that's at T28576 - Zyrapi was aware of the opponent policy. His consistent evidence is that it was common knowledge that Albanians were being killed because they were considered collaborators with Serbs; that's T18257 through 58, and P1356 at page 6051. And he confirmed that the language of the provisional regulations referring to "all those who in various ways impede or sabotage" the liberation war reflected his understanding of

how collaborators were being defined at the time; that's P1355.6 at pages 10 through 11.

As with the crimes, we have addressed in our brief the extent to which the JCE members would have been fully open with Zyrapi on this matter in any event, and the extent to which he would now be prepared to be fully open about such matters with the Court. You need only refer to contemporaneous documentation to understand the precariousness of his position both then and now. And I refer you, for example, to P75 at pages U001-9297, and P182 at pages SPOE0022641 through 13, the latter of which is a record of a conversation involving Rexhep Selimi as evidenced by the reference to "you 10."

And with regard to Mr. Zyrapi's engagement by the General Staff, it's very clear that there was effectively little choice. The expertise of professional officers was needed to organise the army, in particular following its expansion in early summer 1998. As explained in our earlier submissions, the manner in which the closely knit General Staff on the ground had been managing up to that point was extremely burdensome for it. However, as reflected in the citations just provided, the introduction of professional officers was done with caution, and, as further reflected in P1109, at page U002-2868, only to be done after specific checks by the intelligence directorate.

A Selimi notebook reflecting, among other things, the completion of a three-day inspection in Nerodime, which he signed, reflects a similar sentiment:

"Muharremi promotes professionalism and the government and talks against the Homeland Calling Fund. Maybe we can work with this person on the professional aspect, but we must be very careful."

That's 1D33 at page SPOE00226344.

Also a couple of discrete points related to Mr. Zyrapi's role and evidence.

First, the Defence sought to imply or directly claim that Zyrapi was "leading the General Staff" overall. The evidence contradicts this. Zyrapi's role, at least for the approximately four to five months from November 1998 to April 1999 - see P1356 at page 5932 - was in overseeing the directorates, with a particular focus on operations. But he was subordinate to the commander and deputy commanders, including Krasniqi, and he did not have supervisory capacity over those reporting directly to the command, including Mr. Thaci and Mr. Selimi.

And this can be seen not only from Zyrapi's evidence but also from Mr. Krasniqi's book, among other sources. For the period of time prior to November 1998, the chapter entitled "Who Led the KLA" very clearly does not place Zyrapi in charge. See P189_ET.1 at pages U015-8832 through 35. And for the period from November 1998, U015-8878, it is the distinct role of the political directorate members that is first described, and then the remaining General Staff composition is indicated in the following terms:

"At the top was the Commander together with his two deputies, one in charge of military operations, the other for support, an

Inspector-General and the Commander's office. Then, it was the Chief of Staff supervising the directorates [and there was also a reconnaissance and a police battalion and a logistics platoon]."

And a following page, U015-8880, even specifies that Zyrapi was just the "acting Chief of Staff." And this structuring is corroborated by, among other sources, the notes of the 12 and 13 November General Staff meetings, 4D11, and P712, page SPOE00209329.

Second, at transcript 28651 through 52, and impliedly in the Thaci brief at paragraph 273, the Thaci Defence suggested that there is a reasonable inference that Thaci should be credited both for setting up of the Court and even the order issued by Mr. Zyrapi on 28 November 1998.

Now, first, that must have come as something of a surprise to Mr. Thaci who distanced himself from the 28 November order in his SPO interview. And for that you can see P739.5 at pages 3 through 4, and P739.7 at pages 21 through 24. In any event, as discussed in earlier submissions, neither the 28 November order nor the military justice court were aimed at ending the opponent policy or its implementation.

And just to be clear, contrary to the assertions of the Thaci Defence, we did not say in our earlier submissions that the 28 November order did not apply to collaborators. What we said, very clearly, as reflected in the transcript at T28400, is that "the General Staff in its communications had made clear it did not consider collaborators subject to protections normally accorded

civilians," and that centralised control, that thrust of the order, was the problem rather than solution with respect to the opponent policy.

Turning to a different subject. The Thaci Defence claimed that special war or opponents were only shown to have been discussed at two General Staff meetings. That's at transcript 28759. This is not correct. While accessible records of General Staff meetings are incomplete, the records that do exist show a much more consistent pattern. In addition to the meetings on 16 August 1998 and 29 December 1998, which the Defence acknowledged, such references are also to be found, for example, in: The meeting of 23 July 1998, noting "strong tendencies to destroy the KLA through the LDK;" that's P643 at page SPOE00229213. The meetings on the 12th and 13th November 1998, where special war was noted in the context of creation of KosovaPress, as evidenced in P189 at pages U015-8884 through 885. On 20 December 1998, in an expanded meeting with zone commanders, when the help of special units in fighting the enemy special war and its extended hand was discussed and reported on; for that see P228 at page 3. Meeting of 30 December 1998, when the KLA General Staff discussed that Bukoshi's government shall be declared treasonous and will be prosecuted by the KLA if they don't hand over funds; see P3691.

And all of that before even getting to Mr. Mustafa's testimony regarding the expanded General Staff and zone commander meeting at which the detention of collaborators was discussed, or to meetings

between General Staff representatives, including Mr. Thaci, Mr. Selimi, and Mr. Krasniqi, and zone commands during visits, visits where specific instructions on special war were provided and specific detained opponents were discussed with certain of those representatives. And that's all described, for example, in paragraphs 75 through 77 of our brief.

In fact, the Selimi Defence recognised the frequency with which the term "special warfare" was used while simultaneously claiming that the SPO had not defined it and that the concept was not linked to the accused. However, as elaborated in our brief, for example, at paragraphs 54 through 55, and again in closing submissions, the term was used directly by more than one accused in ways which made its meaning and those intended to be targeted by its use very clear.

For example, as discussed in paragraph 55 of the SPO final trial brief, in November 1998, during celebrations for Flag Day, Mr. Krasniqi made specific reference to the special war the KLA had been confronted with from outside and inside, stating that "the spectrum of enemies" aimed to "eliminate the KLA" from public life and impose a "contemptible pacifist" choice.

As another example, around 30 October 1998, during a public appearance filmed by W4410, Mr. Thaci discussed the special war waged against the KLA, with the assistance of "autonomous elements."

And similarly, Mr. Selimi publicly attacked those advocating for pacifist solutions in his November 1997 first public appearance of the KLA speech. That's P1878. And these and other examples can be

found in paragraph 54 of the SPO's final trial brief.

Your Honours, before turning the podium over to Mr. Pace, just three quick and discrete evidentiary points.

First, I need to make one addition to the citations provided in response to Judge Mettraux's clarification question regarding Lahi Brahimaj. Now, that additional citation is P889. And so my earlier submission should have been that Lahi Brahimaj was present at a meeting of the Dukagjin staff, that's P1598, at which the regulations of the military police, P909 and P927, were adopted, which obligated the military police to investigate and uncover all individuals who collaborate with the enemy in any way. And the Dukagjini zone also adopted KLA rules governing the life of the KLA in the Dukagjini zone which provided that collaborators with the enemy shall be executed; P889.

Second, although the Selimi Defence suggested that it should not be open to anyone in the courtroom to note dissimilarities or similarities in handwriting, they did exactly that in paragraphs 442 and 445 of their final trial brief, as well as during trial. See transcript 20025 and 16625. And they made those submissions, Your Honours, because, contrary to the attempt to now expertise this matter, those are things which can plainly be seen, noted, and considered.

Finally, similar to the erroneous claim that Mr. Zyrapi was unaware of the opponent policy, the Defence also claim that no one in the international community knew of it. In fact, both the animus

against and crimes against opponents were widely known. The only thing that some of the international actors, particularly those who were not primarily based on the ground could not ascertain, was the full extent to which it originated from the KLA/PGoK leadership figures who were now dissembling in front of them.

Now, you'll hear from Mr. Pace about their awareness of crime. For now, by way of example, I'll simply distill international awareness of opponent animus and determination to prevail through the evidence of one single Defence witness, who explained that the goals of the KLA leadership included being in the "driver's seat" in the liberation effort, that's P27874 through 75; that they were looking to remove the presence of Ibrahim Rugova as leader of independence aspirations, P27922; that they, not the LDK, were the ones who count in Kosovo, P27922; that they wanted independence and "they thought they were the ones to achieve it," and that's at P27684 through 85.

Thank you, Your Honours. I will now yield the floor to Mr. Pace.

PRESIDING JUDGE SMITH: Thank you, Mr. Tieger.

MR. PACE: Good afternoon.

PRESIDING JUDGE SMITH: Good afternoon, Mr. Pace. Go ahead.

MR. PACE: Thank you.

I'll pick up from where Mr. Tieger left off in relation to information on that internationals were and were not aware of.

Several of the internationals who testified in this case were called as witnesses by Mr. Thaci. In an attempt to rebut

well-founded assertions concerning the limitations to the knowledge of such Defence witnesses, last week counsel for Mr. Thaci asserted that internationals were well aware during the conflict of all public statements, declarations, and communiqués. That assertion does not accurately reflect the record in relation to Defence witnesses.

By way of example, Wesley Clark testified that he did not recall seeing any KLA documents. That's at pages 28160 and 28170.

Paul Williams acknowledged that, before Rambouillet, he had not seen any documents or communiqués issued by the KLA. That's at 26890.

While John Duncan claimed that he saw "a lot" of KLA communiqués, he somehow never saw any referring to the execution of collaborators and nation's traitors. That's 27136, 27137.

Other Defence witnesses, such as James Rubin, simply dismissed KLA communiqués and public statements by KLA members as "manipulations" and "propaganda." That's 26781 to 26799.

The bottom line, Your Honours, is that the evidentiary record in this case is replete with items and information that Defence witnesses did not have access to, or that they could have but they did not consider, or that they chose to dismiss or ignore.

Nevertheless, contrary to what you heard from counsel for Mr. Thaci last week, even when their comparably limited access to, or awareness of, relevant information, certain internationals called by the Defence did see targeting of opponents for crimes.

Let's go to slide 1, please. And this and all my slides today

can be shown to the public.

Defence Witness James Covey, who was shown the excerpt now on your screen, and that's P4502, a US Department of State report for 1998 released in February 1999. We see that this excerpt of the report refers to elements of the KLA, *inter alia*, having committed killings, being responsible for disappearances, and having abducted and detained Serbian police, as well as Serb and Albanian civilians suspected of loyalty to the Serbian government. It also refers to elements of the KLA having, in a few isolated incidents, "tried" suspects without due process, and to there being credible reports of instances of torture by the KLA.

Let's go to slide 2, please.

As we wait for the slide, I can tell you that, when or if it comes up, we are going to see how Defence Witness Covey -- indeed we see it now. This is how Defence Witness Covey responded when he was asked whether the excerpt from the report that we just looked at would be the kind of reporting that he knew of. As you can see here, at page 27476, Covey said the practices described in that paragraph from P4502 were common knowledge, and that somehow everyone knew about them.

James Rubin told you he was aware of the very same excerpt from P4502 and that he would expect that report to contain such information. That's at 26652.

We can take the slide down.

Counsel for Mr. Thaci also referred to the evidence of

Paul Williams that no one in the Contact Group ever mentioned to Thaci that he needed to do something about crimes which were being committed by KLA members. Even in this regard, Your Honours, you have ample evidence from Defence witnesses alone that is worth considering.

For example, Christopher Hill was asked whether, at a meeting with Thaci and others in Dragobil in November 1998, there was any discussion about people allegedly detained or kidnapped by the KLA. He responded that if you went through the various activities of the KLA, you would talk about killings and kidnappings.

Hill also testified that while he did not recall the issue of detained persons being discussed at the November 1998 meeting, the issue of detained people was discussed generally. That's 27692.

And Hill is not the only Defence witness with relevant evidence in this regard. James Rubin testified that, from 1997, US authorities expressed concern about, or condemned, crimes allegedly committed by KLA members, which they wouldn't have done absent reports of sufficient credibility to at least raise concern.

Rubin testified that in a press statement in August 1997, he expressed the United States deep concern about terrorist actions in Kosovo and political killings which took place there in 1997.

Rubin testified that he knew that, by 1998, KLA members were sometimes assassinating civilian workers as well as Serb police. Indeed, Rubin confirmed that, as we can hear him say in video P4487, he told the BBC that the KLA was killing postmen or killing Serb

civilians in cold blood.

Rubin told you he had no reason to dispute the content of P4488. This item reproduces a 9 March 1999 statement by Secretary of State Albright at a Contact Group ministerial on Kosovo. Albright stated that the US has no sympathy for the KLA which judges, tries, and executes the ethnic Serbs and Albanians it does not like.

Rubin testified that, in 1998 and 1999, international media and other entities published multiple reports with credible allegations of crimes committed by KLA members.

Rubin acknowledged that, in January 1999, he called on both sides to release all detainees, cease further detention, and treat detainees humanely.

The relevant evidence from Rubin is at 22642 to 26649, and 26653.

Internationals called to testify by the SPO as well as numerous international reports in evidence also show broad awareness and reporting of crimes committed by KLA members, including in relation to collaborators.

I here refer, for example, to transcript pages 10529, 10530; and to P4059, page ending 668.

It is clear that the evidence of internationals called by both parties shows that the crimes being committed by KLA members were visible to everyone who was paying attention.

I'll next turn to an aspect of the case on which there seems to be at least partial agreement, and that is that certain of the

charged detentions did, indeed, take place. That being said, there is still much the parties disagree on in this regard.

Oral submissions by counsel for Mr. Thaci fail to support the assertion that two Serb journalists detained by KLA members in 1998 in Sedllar and in other locations were combatants. Even on counsel's own submissions, there is only information indicating that one of the two journalists, 4828, was allegedly involved with Serbian paramilitary authorities prior to his arrest. That would mean that nothing in counsel's submissions or the evidence provides that there was a legitimate basis to detain the other journalist.

However, counsel's submissions also fail to legitimise 4828's detention. In particular, there is no evidence that the information available to Mr. Thaci's Defence concerning 4828 was available to the KLA members who were involved in the arrest, detention, and mistreatment of 4828. The Defence cannot rely on information obtained after the arrest or detention to retroactively legitimise it.

P586, the KLA Military Police Directorate communiqué dated 21 October 1998 is telling in this regard. While this item makes fleeting reference to the two journalists possibly being engaged in espionage, it says nothing about the history of either one being involved in any crimes or wars.

What this communiqué does address at some length are the KLA's own views that the two were pro-government journalists engaged in anti-Albanian writings. That does not make the detention absolutely

necessary.

P378 reproduces a communiqué issued by the Military Court of the Justice Directorate of the KLA on 1 November 1998. This similarly makes no reference to either journalists having been involved in any crimes or war.

Another relevant consideration is that KLA members never asked 4828's co-detainee about 4828's alleged engagement in a prior armed conflict. 4828's co-detainee did not know anything of such allegations. 4828 never told his co-detainee that he was asked about this matter either. And I'm here referring to transcript 8613 and 8614.

Further, Fred Abrahams testified that when he met Hashim Thaci and Fatmir Limaj and discussed the detention of the two journalists, neither Thaci nor Limaj mention that one of the journalists was suspected of being involved in criminal activities in the Serb Republic of Krajina and/or in Bosnia in 1991 or 1992. That's 7570.

By way of further relevant evidence, I refer Your Honours, for example, to P93, depicting the release of the two detainees at issue. In the video, you'll hear William Walker refer to them as journalists and emphasising the need to protect journalists.

In relation to the same two detained journalists, counsel for Mr. Thaci claimed: "It is not unusual that these individuals were not brought before a judge." Counsel then showed you slide 168 and stated: "The KLA was in no position to focus on creating institutions of due process in the summer and fall of 1998." In the

context of detentions by KLA members, it was certainly not unusual that these detainees were not brought before a judge.

Counsel's argument and the sources referred to fail to detract from the reality that failure to bring these persons who were being deprived of their liberty promptly before a judge or competent authority violated the basic procedural safeguards owed to them and rendered their detention arbitrary. I here refer to the Shala appeals judgment, including paragraphs 620, 621, and 635, where the Appeals Panel confirmed this procedural safeguard, which I also referred to in my submissions earlier today.

Let's turn to slide 3, please.

This slide reproduces the content of the Thaci slide 168. I'd like you to focus on the first box appearing on the slide. It includes:

"... Article 5(2)(a) of Additional Protocol II recognises that certain conditions of detention must be respected by the detaining party 'within the limits of their capabilities'."

"Within the limits of their capabilities" is highlighted.

What is crucial here, Your Honours, is what the provisions set out in Article 5(2) are. Let's go to slide 4 and have a look.

As you can see on this slide, here we are not talking about what we know to be the basic procedural safeguards. It is the specific provisions you see on your screen which a party to a NIAC shall implement only if doing so is "within the limits of their capabilities." No such leeway is afforded in relation to the

provisions of Article 5(1) of Additional Protocol II, which include, for example, obligations in relation to the provision of food and drinking water.

Similarly, the provisions of Article 4 of Additional Protocol II, cross-referred to in Article 5(1) and calling for humane treatment in all circumstances, those are also not optional.

As I mentioned earlier today, there is no legitimate basis on which to assert that KLA members were somehow absolved of the obligation to bring persons who were deprived of their liberty promptly before a judge or other competent authority.

We can take this slide down.

The detention of the two journalists was not the only detention you heard counsel for Mr. Thaci try but fail to legitimise last week. Thaci Defence oral submissions attempting to legitimise the detention of the parliamentary delegation at Qirez indeed fail in the same way and for the same reasons as those in the Thaci brief and in Thaci's own SPO interview. I addressed the latter during my submissions last week.

During oral arguments, counsel for Mr. Thaci claimed the KLA had military reasons to stop and question the Qirez delegation members. He showed you a slide with evidence from a witness who said it was correct that one of the things that KLA members thought was that somebody had come to Qirez and advocated for disarming. The same slide showed the witness saying he could not rule out the possibility

that someone from the delegation had referred to disarming.

First, even if there were any advocating for disarming, that would not meet the absolutely necessary threshold for detention. The proposition that armed groups could detain any civilians advocating for peaceful opposition rather than armed resistance is as dangerous as it is wrong in law.

Second, any words spoken by one delegation member cannot justify the detention of the entire delegation.

Third, as with all other charged crimes in this case, even if there had been a legitimate reason for the initial detention, at law, there is no justification for mistreatment of detainees, which I will turn to a little later in relation to this incident.

Similarly, any concern KLA members may have had stemming from the delegation's alleged failure to notify the KLA of their visit would not render their detention absolutely necessary. Further, contrary to what counsel submitted, KLA members could not have had objective concerns warranting detention on the basis of failure to notify since, as counsel himself acknowledged at page 28635, the KLA had allowed the delegation to enter Qirez and to speak to the people.

Finally, the evidence in this case, properly considered, establishes that the objectives of the delegation detained in Qirez were humanitarian. Even in the midst of his highly watered-down responses during direct examination, when 3825 was asked whether the purpose of the visit was for him to ask the people in Qirez to lay down their weapons, he emphatically denied this. That's at

page 9449. He was equally emphatic on this point during cross-examination. That's at 9530.

Your Honours also received evidence from other witnesses that the delegation's purpose was to get to Qirez and to go to the branch of the Mother Teresa humanitarian organisation, and that they indeed did meet with a representative thereof to discuss the needs of refugees. That's P3801, pages ending 446; and P678, pages ending 21 to 22.

Your Honours are well aware of the issues certain KLA members had with that specific organisation, the Mother Teresa humanitarian organisation, which was closely aligned with the LDK. And you're also aware of how KLA members treated other individuals who undertook work for that organisation at other times during the conflict. In this regard, I refer you to paragraphs 1080 to 1093 of our brief.

Turning to the mistreatment of the Qirez delegation detainees. Thaci Defence oral submissions concerning this mistreatment once again ignore relevant evidence. For example, in P681, a signed letter dated 4 September 2001, 3825 stated that delegation members were punched and kicked and hit mercilessly with wooden sticks, with six members suffering serious bodily injuries as a result. In the same letter, he explained that during a press conference he attended soon after his release, he did not speak of all the violence he and others were subjected to because that would have placed their lives at permanent risk.

This press conference is captured in P321.

Contrary to counsel for Thaci's submissions, the SPO did, indeed, cite to P321 in its brief. This includes, for example, at footnote 3845 in support of the assertion that the delegation was a humanitarian one, which is something specifically asserted by 3825 in the video.

The year 2001 was not the only time when 3825 asserted delegation members were beaten. In P680, a record of his 2014 EULEX pre-trial testimony, 3825 similarly asserted that KLA members beat six detainees with fists and wooden sticks.

During this same pre-trial testimony, after providing the names of those who were beaten, including himself, the witness stated that when he went back, he had a picture taken and he produced a photograph of himself during that interview. 3825 explained that the photograph he produced was taken two or three days after he was beaten up. With reference to that photograph, he stated, "It is my wish that the EULEX mission hold someone responsible with regard to what happened to me," and that "for the last 16 years, I have been carrying parts of the picture on my body because I did not deserve this."

Your Honours also have evidence from 4147 that when he spoke to 3825 a day or two after 3825's release, 3825 told him that delegation members had been beaten. When 4147 separately spoke to another delegation member soon after his release, he told 4147 that he had been "roughed up." I'm here referring to P1066, paragraphs 108, 109; and testimony 13543 to 13545, 13965 to 13966.

Your Honours will recall 3825 telling the Prosecutor who examined him in this case:

"I have very painful memories which you may never believe. But now that you mention me this beating, you are destroying again my life and endangering even my physical life."

That's at pages 9370, 9371.

Having admitted 3825's prior statements pursuant to Rule 143 for good reason, you will be able to see through 3825's later attempts to distance himself from the contents of his earlier statements.

Other Qirez delegation members also provided evidence of their beating. And by way of example here, I refer you to P678, pages ending 24 and 27; P679_ET, pages 5 to 6.

During my submissions last week, I addressed Hashim Thaci's SPO statement during which he confirmed knowledge of the detainees having been beaten. I won't repeat those submissions today, but they are certainly relevant to the issue.

Before turning to my final submissions, I'll briefly address counsel for Mr. Selimi's oral argument in relation to Qirez.

Rexhep Selimi's involvement in the Qirez incident was clearly pled. No allegations in relation to this event have been withdrawn. Selimi's involvement, which turns on multiple acts, has also been proven. The relevant evidence is summarised and referenced in our brief.

Your Honours, I understand we will probably take a break at 3.30, and I will be able to finish at that time or shortly

thereafter. Is that correct?

PRESIDING JUDGE SMITH: [Microphone not activated].

MR. PACE: I can -- if you allow me seven more minutes or ten at the most, I will finishing mine and then we can hand over.

PRESIDING JUDGE SMITH: [Microphone not activated].

MR. PACE: Thank you, Your Honour.

My final submissions will touch upon what seems to be another of the few things that the SPO and Defence agree about at this stage of the proceedings, and that is the need for the Panel to consider the evidence in its totality, referred to, for example, by counsel for Mr. Veseli last week.

One of many examples illustrating such a need is the submission made by counsel for Mr. Thaci concerning Mr. Thaci's control over KLA public communications at page 28616. On this, I refer Your Honours to paragraph 68 of our brief where our assertions in this regard are clear. Those submissions include that the General Staff information directorate, including Mr. Thaci personally, had significant control over public communications, including, for example, exercising control over interviews given by KLA commanders. We also asserted that Mr. Thaci attempted to influence reporting by the press.

In his submissions on Wednesday, counsel for Mr. Thaci ignored, for example, General Staff order P879 and certain other evidence we cited in our brief, as well as the evidence highlighted by Mr. Quick on Monday. That evidence shows how this order, banning KLA members from speaking to the press without General Staff authorisation, was

implemented.

Rather, in his submissions, counsel for Mr. Thaci zeroed in on the evidence concerning one interaction between Naim Maloku and Hashim Thaci which we relied on in our brief in addition to the General Staff order I just mentioned as well as other relevant evidence.

Maloku testified that, in December 1998, he was called into Jakup Krasniqi's office to speak to Mr. Thaci via satellite phone. Counsel for Mr. Thaci was correct in telling you that, during this call, Mr. Thaci told Maloku not to speak to the media, and that Maloku testified he continued giving interviews after this call. Counsel then asserted that Maloku's evidence alone establishes a reasonable inference that Thaci could not control what KLA soldiers in the field would or would not say.

First, this misrepresents our assertions on the subject.

Second, in view of other highly relevant evidence, Your Honours should not solely look at Maloku's evidence on the subject.

But even if you did only look at Maloku's evidence on this subject, you would see that, considered in its totality, it supports the SPO's assertions concerning Mr. Thaci's authority and attempts to influence reporting by the press. In particular, Maloku testified that Hashim Thaci was the only one in the KLA who ever told him anything on the lines of he should not be giving any further interviews to newspapers. That's at 25811.

An incident involving Maloku which took place soon after the

December 1998 call with Mr. Thaci is also relevant in this regard. During a call between a journalist and Maloku on 18 January 1999, the journalist asked Maloku for information concerning soldiers who had been captured. Maloku told the journalist that he could not make any statement because he did not know the position of the headquarters. In relation to this call, Maloku testified:

"I did not have the competence to give such information on behalf of the General Staff."

He also testified:

"I was not able or in a position to give such information because I did not have the right or authority to give information in the name of the General Staff. That's it."

I here refer you to P2094, page 111605, and testimony pages 25740 to 25742.

Mr. Thaci's December 1998 call to Mr. Maloku clearly had its intended effect. Maloku's interaction with the journalist in January 1999 also demonstrates adherence to General Staff order P879, which I mentioned earlier.

This evidence also stands in sharp contrast to the submissions by counsel for Mr. Krasniqi earlier today on P879.

P851.1, for example, does not assist the Krasniqi argument. In this August 1998 *Zeri i Kosoves* interview, the first words that came out of Sylejman Selimi's mouth are:

"I want to say in the beginning that I am giving this interview with the approval of the KLA General Staff Information Directorate."

Thank you, Your Honours. Mr. Quick will address you next after the break if we're taking one.

PRESIDING JUDGE SMITH: All right. We'll take a short ten-minute break. Please be back in your chairs in ten minutes, and we're adjourned until then.

--- Break taken at 3.31 p.m.

--- On resuming at 3.41 p.m.

PRESIDING JUDGE SMITH: Before I forget, I'd like to remind the Defence to please -- if you could make your clients' statements for tomorrow in -- put them in writing and deliver them to the interpreters, that would be -- or not tomorrow, Wednesday, that would be very helpful to them, and I know they'd appreciate it.

So we continue on. Mr. Quick, you have the floor.

MR. QUICK: Thank you, Your Honour.

Good afternoon. I will address a number of discrete points relating to KLA and provisional government structures arising from the Defence closing statements.

My colleague has just addressed Thaci's supervision of KLA public statements and information. On a related point, during its closing arguments, the Thaci Defence stated that there is no credible evidence that Hashim Thaci was ever the "leader" or the "head" of any KLA directorate prior to November 1998. That's transcript page 28615. That claim is wrong. Evidence from multiple sources establishes that, from at least June 1998, Thaci headed the information directorate, just as he headed a functioning political

directorate from that same time, as addressed in our brief and our closing statement.

Jakup Krasniqi and Rexhep Selimi both confirmed Thaci's role as head of the information directorate, and so did Bislim Zyrapi. When Defence counsel asked him directly whether Thaci was head of the media and public relations directorate in June 1998, Zyrapi testified that he was. That's at page 17548. Zyrapi used the terms "media and public relations directorate" interchangeably with "information directorate" in his prior statements and during his testimony. For example, at transcript pages 17397 to 9, where he refers to both.

Other evidence confirms that such terms were used interchangeably and referred to the same information directorate. P1138 refers to the information and media directorate. And P761.7_ET, pages 17 to 18, and P1352 referred to the public information directorate. And multiple communiqués of the information directorate expressly states that they are issued for public information or the media.

I'll next turn to Selimi's role as general inspector.

The Defence claims that he did not have authority under the disciplinary regulations, P715, or any other formal document to impose disciplinary measures. This is at pages 28829 to 30 of the transcript. This ignores that the disciplinary regulations generally provide superiors the authority to impose disciplinary measures. Further, while Bislim Zyrapi agreed with Defence questions about Selimi's disciplinary authority under the regulations, he also

testified, "as an inspector general he has authority to exercise control." That's page 17949.

This is consistent with the supervisory role Selimi played over KLA organisation and functioning as reflected in the evidence set out in our brief and the General Staff inspection concept document I showed last week, Exhibit 3D27. It specifically provides for identification of weaknesses and their immediate removal by directives on its last page.

At several points during its closing statements, the Defence raised unsubstantiated notice arguments to distract from the evidentiary record, like they did in their briefs. For example, the SPO is not for the first time arguing that the LDK had good reason to boycott the provisional government, as claimed by the Thaci Defence at transcript page 28613.

In the Prosecution's pre-trial brief, at paragraph 60 to 62, the SPO identified the escalation of attacks on the LDK "in the run-up to the Rambouillet negotiations." And in paragraphs 63 to 69, the pre-trial brief sets out continued attacks in KLA and provisional government public statements after the provisional government was formed and its composition announced.

Both Prosecution and Defence witnesses were examined over the course of the trial about KLA and provisional government efforts in spring and summer 1999 to consolidate control and exclude Rugova and the LDK. There is no unfairness.

The Defence says the key point is that "Mr. Thaci was being

meaningfully inclusive of the LDK throughout the spring and summer 1999." That's at page 28614. They relied on paragraph 25 of their brief, which cross-references another paragraph of the brief, but the evidence cited there must be read in context. For instance, the Defence cites 1D168, page DHT04022. This is a 12 May 1999 international briefing document containing an excerpt from a KosovaPress interview given by Hashim Thaci on 11 May 1999, the day before. In the excerpt, Thaci calls on the LDK to respect the agreement and join the provisional government.

However, that is not all he said. The full interview is P813_ET.24. There you can see that he also accuses Bukoshi of sabotaging the war, accuses Rugova of political and national irresponsibility, and calls on the public to distance itself from and ignore what he describes as the "mafia-communist clique" of Bukoshi and his mercenaries. That is not meaningful inclusion.

As set out in paragraphs 36 to 38 of the Prosecution brief, Thaci, Krasniqi, the General Staff, and provisional government continued attacking Rugova, Bukoshi, and the LDK, while demanding loyalty to, and recognition of, the General Staff and the provisional government under Thaci's leadership.

Any rhetoric of inclusion should not be artificially separated from the simultaneous campaign of attacks and denunciation.

The Defence raises another alleged notice issue in relation to personnel, claiming that "there is no allegation in the indictment or the SPO pre-trial brief alleging that Hashim Thaci had any role in

relation to personnel generally, or a Personnel Council specifically;" page 28653.

Again, this alleged lack of notice is baseless. The indictment specifically alleges that the accused contributed to the common purpose in, among other ways, appointing, promoting, and/or approving the appointment and promotion of JCE members and tools, including persons with a history of alleged involvement in serious crimes. Such allegations are also included in the pre-trial brief, and the same allegations were part of the SPO's opening statement, specifically mentioning the personnel council and the accused's roles in it. That's at pages 2189 to 90. The Defence had ample notice.

Contrary to Defence submissions, the personnel council did function, and the evidence on that is set out in paragraphs 177 to 180 and other parts of our final brief. But this council is but one example of the role the accused played in personnel matters in the KLA and provisional government, including the appointment, promotion, and approval of JCE members and tools with a history of involvement in serious crimes, as detailed throughout the brief and our closing statements.

The last issue I want to address is the Thaci Defence statement that there is no evidence of provisional government meetings in summer 1999. It's at page 28658.

First, the functioning of the provisional government in summer 1999 should be considered in context, including the series of General Staff and provisional government meetings that took place in

spring 1999 after the formation of the provisional government, and the evidence of provisional government authority and activity, including as set out in paragraphs 39 to 47 and other parts of the Prosecution brief.

Moreover, the Prosecution brief does discuss multiple records of General Staff and provisional government meetings from at least mid-June to late July 1999. For example, there are Krasniqi's notes, P3910, recording, at PDF page 45, a General Staff meeting on 17 June, assessing operational zones, the future of the KLA, territorial control, and government competences and commitments; PDF pages 54 to 55 concern a government meeting on 28 June.

And certain topics discussed at this meeting, such as resettlement, damage assessment, and vetting of public employees, correspond directly to duties assigned during the transformation period in the three-month KLA transformation plan seized from Krasniqi; and that's P3787.1, PDF pages 2 and 4.

The notes of this meeting also state that "we must act as if we are an independent country," and that the Ministry of Public Order and the Intelligence Service must protect objects, buildings, entities, and institutions. Those duties are likewise part of the three-month transformation plan, P3787.1, PDF page 11.

Krasniqi's notes also include information on meetings in July 1999, such as on PDF page 30 concerning a meeting on 5 July at which the prime minister and ministers reported; and PDF page 33, a government meeting on 8 July 1999, which concerned conclusions on

ministry reports, the political and security situation, and the direction that the police must keep the peace.

There are also provisional government decrees referring to meetings, for example, P4131, PDF page 20. It records a government meeting on 31 July 1999 and the decision reached to issue that decree.

As demonstrated by the minutes and the decrees, provisional government ministers reported, deliberated, made decisions, and decrees followed, consistent with the evidence of the collective decision-making process at previous stages, which should be considered holistically.

I'll hand over now to Mr. Halling.

PRESIDING JUDGE SMITH: Thank you, Mr. Quick.

MR. HALLING: Good afternoon, Your Honours. Just for timing, my remarks, and therefore our remarks, will be finished by 4.45 today.

They did what they said they were going to do. They said opponents were standing in their way and they were going to punish and kill them. And then they were. The names of the murdered are in the schedules of the indictment. They did what they said they were going to do.

The Defence challenge that central truth, but they can't dislodge it. And I want to focus on how they've tried to do that, and what the law actually requires and what the evidence actually is.

We wanted to start with a brief follow-up on one of the issues raised during the Judges' questions; namely, what is the correct

frame of reference for evaluating a contribution to the charged JCE.

As revealed over the course of the questioning last session, the Thaci Defence's position ends up collapsing a distinction between a contribution to the common criminal purpose and a personal contribution to each charged crime. The latter is not a jurisprudential requirement, and we gave those authorities before the lunch break saying so.

The correct analytical frame in this context is to evaluate the accused's contribution to the JCE charged, and the result of that assessment would be a finding of whether the contribution to the JCE's crimes was significant or not. The question is not whether the accused directly caused each charged crime, but whether their conduct significantly furthered the criminal enterprise whose crimes are charged. This isn't a new position. We said the same thing in a pre-trial status conference at T1970.

The Thaci Defence and the Krasniqi Defence, through their reference to their submissions on Kanun earlier today, they also fail to understand how the scope of the JCE charged can extend to acts which are claimed as advancing military objectives or personal motivations. People can have multiple reasons for doing something, and it's why motive is generally irrelevant to criminal intent. And detailed discussion on that can be found across paragraphs 247 to 272 of the Tadic appeals judgment. Whether a given act is part of the JCE depends on factual indicia. Ms. Lawson referenced last week a list of such indicia that are in paragraphs 1081 to 1082 of the

Krajisnik trial judgment. All our charged incidents compare favourably with the factors identified in those paragraphs.

Many of the Defence's JCE contribution arguments last week were dependent upon ignoring the collective decision-making bodies the accused acted in as individuals. When we attribute General Staff decisions to the accused, it's because there's an evidential basis for doing so. Sokol Bashota gave more consistent - and more reliable - testimony on this point across T23370 to 23373. Bashota said that "if the majority decided to approve it, that became -- that would be acceptable to me," adding more broadly elsewhere in this page range that if people were not in favour of a certain General Staff decision, then the decision was taken by a majority, and those who were against a certain decision "did not dispute the outcome." These answers in the evidence illustrate why the Defence can't just say, as the Krasniqi Defence did at T29005, that General Staff decisions are irrelevant to Jakup Krasniqi's contributions and personal responsibility.

Jakup Krasniqi was in the General Staff. All the accused were. They chose to remain in the General Staff over a long period of time while the crimes charged in this case continued to be committed in accordance with General Staff communications, orders, decisions, and support. What the General Staff did bears on their individual responsibility. The accused don't have to be identified by name in each piece of evidence to be making a criminal contribution.

And we don't want to go so far as to say that we never make any

mistakes in individualising our contribution evidence. But any such points raised last week do not affect the larger record. The Thaci Defence, at T28621, noticed a typo in our final brief where we cross-referenced to the Krasniqi contribution section for threats made by Thaci. The citation was, of course, intended to be a general reference to the Thaci contribution section, which is II.A.4.a of our brief. The evidence at issue is fully set out in Thaci's contribution section, so no notice issue arises.

The Krasniqi Defence is also right that the evidentiary basis for the last sentence in paragraph 567 of our brief is incorrect. We withdraw both that sentence and my reference to it last week. But the overall point on Jakup Krasniqi's oversight of the legal sector still stands, including Krasniqi being a KLA deputy commander during the period when Sokol Dobruna's legal sector began its work, and Bislim Zyrapi's evidence at T18359 that when Azem Syla was in Albania, the deputies oversaw that sector, adding that the deputy responsible was mostly Jakup Krasniqi.

Defence misstatements last week were on more significant matters. The Thaci Defence said, at T28596, that "the SPO has no evidence of any direct orders or communications from the General Staff conveying the alleged common criminal purpose." P1581, pages 054134 to 054135, contains a discussion of a mass execution of detainees in the indictment. The killers who shot them arrived saying, "We have an order from the general HQ to remove the prisoners," who they then take to the execution site. That is the

General Staff all accused were a part of at that time. That's a direct order from the General Staff conveying the charged criminal purpose, and such evidence cannot be summarily waived away.

We want the totality of the evidence considered. Multiple Defence teams accused us of relying on incriminating evidence and disregarding exculpatory evidence. That is not the case.

Our brief gives detailed explanations on why witnesses are credible and reliable on certain details and not others. Exculpatory evidence was never rejected because it was exculpatory, which is why certain allegations previously made have been modified or are no longer relied upon, although the Krasniqi Defence decided to defend against one last week anyway. We looked at consistency with past statements, basis for knowledge, corroboration, and a host of other considerations in deciding what parts could be relied upon and how to resolve conflicting evidence in the record. This has all been done in light of Rule 139(6), which provides that when the Trial Panel is assessing evidence, that "inconsistencies in a piece of evidence do not *per se* require a Panel to reject it as unreliable," and that "a Panel may accept parts of a piece of evidence and reject others."

Many of the Defence arguments in this regard seem to stem from superficial reliance on high-level KLA witnesses whose evidence cannot be fully accepted as credible. One such point that came up last week was Sokol Bashota's evidence on the collaborator policy being hypothetical at T28691.

It is simply impossible to read Bashota's evidence in this way,

as noted by Mr. Tieger last week. But moreover, Bashota distanced his previous evidence in that way only when prompted by the Thaci Defence. When Bashota was left to his own devices, he tried to walk back his 2006 testimony in a different way; namely to say that collaborators were targeted, but this was legitimate because they were fighting against the KLA. And this can be seen at P1872, paragraph 15. That's not describing a hypothetical. And needless to say, that explanation is entirely wanting in light of the evidence of who was actually targeted by the opponent policy. When asked why he didn't mention in his preparation session that the KLA General Staff collaborator policy was only hypothetical, Bashota responded, at T23317, that:

"Because I paid no heed to it. Maybe there were quite a few ... things that needed attention, and I wasn't able to focus on this one in particular."

That explanation on a point of such manifest significance is hardly coherent or consistent.

Bashota's two-pronged evasiveness in 2024, coupled with his clear bias, necessitate rejecting both exculpatory interpretations of his 2006 interview. The only interpretation of Bashota's ICTY account which withstands full scrutiny is that the General Staff did what he said they did with the collaborator policy. That 2006 statement was not taken in the context of investigating crimes of General Staff members, which would explain why Bashota was more forthcoming and unguarded with the ICTY than he was in 2024. The

incriminating interpretation is the only one that's credible and reliable.

Defence assessments lack comparable rigour, misrepresenting evidence, procedural history, and our positions in the record on a great many points. I'll just focus on two more from last week.

First - and I'll say this in general terms in order to stay in public session - the Thaci Defence argued last week, across T28628 to 28630, that W04489 was not credible in her description of a 2001 meeting she had. The Thaci Defence resisted the evidence in our brief that W04489's preexisting notes on this meeting have value because preexisting notes are not the same as contemporaneous notes.

That narrative ignores important context as to how those notes got into evidence in the first place. As can be seen at T11448 to 11458, and T11487 to 11489, W04489 was invited to provide those notes by the Trial Panel on request of the Defence. She immediately agreed to give them but did not affirmatively produce them, which means that W04489 wrote those notes in an understanding that no one in this courtroom may ever see them. The notion that the witness would lie about an event in a note to herself so she could somehow use it later as corroboration when the notes were suddenly requested mid-testimony defies belief. We described those notes as pre-existing because W04489 could not precisely identify when they were written. But the circumstances of how these notes came to become an exhibit show high indicia of reliability, especially considering other witnesses who heard the same information from the same person.

Second, at T28738, the Veseli Defence argued that we were eager to rely on written statements rather than in-court testimony to avoid such statements being tested. They gave, in particular, the example of W04747.

That is such a clear and blatant misrepresentation of what happened. W04747 had his written statements admitted into evidence because he had been subjected to interference and refused to appear. We made every effort to call that witness, pursued the procedures to the limit of what the third state where the witness resided could allow, and the diligence we exercised was exercised by the Panel when deciding to admit his evidence.

The Veseli Defence did not even bother to explain how this witness's evidence was going to be unspooled had he testified. Presumably, this was in reference to the evidence they said they could not put to him, which was cited at footnote 62 of the Veseli final brief. The materials cited in that footnote are witness statements taken by the Veseli Defence. The Veseli Defence made no effort to expose any of those people to cross-examination, they never tendered their statements, and they are improperly cited in the Veseli final brief.

Certain of the Veseli Defence's additional claims on untested evidence made last week also demand a response, because they further misrepresent the law.

Nobody disputes that Rule 140(4)(a) of the Rules concerns untested evidence. The purpose of the provision is clear, and it

explains why the Shala Appeals Panel considered European Court of Human Rights jurisprudence on untested evidence in this context. More on what the European Court jurisprudence says can be found at paragraph 486 of the Shala appeals judgment.

But the provision, by its plain language, only covers a subset of untested evidence, namely the statements of witnesses whom the Defence had no opportunity to examine. Contrary to the Selimi Defence, Rule 153 statements are clearly removed from the ambit of the rule when the Defence waived that opportunity by not objecting to the written admission of the witness statement. Now, we agree with the Selimi Defence that waiver does not apply the same way in the Rule 155 context, but we would maintain that non-objection to a Rule 155 tender can be a relevant factor when considering whether and how to rely on such evidence. For every other kind of evidence that isn't a witness statement, the general principles in Rule 139(3) apply.

It also bears mention that the Appeals Panel found at paragraph 478 of the Shala appeals judgment that Rule 140(4)(a) applies only to the facts constituting the elements of the crimes or the modes of liability alleged, and to any other facts indispensable for entering a conviction. Paragraph 491 set out the essential findings impugned in the Shala case itself. They were big picture points: arbitrary detention *mens rea*, the *actus reus* and *mens rea* for torture, Shala's JCE membership, Shala's significant contribution to the JCE, and the JCE common purpose.

So, in short, not every kind of untested evidence falls under Rule 140, and there is no prohibition in using evidence falling under that rule for predicate findings so long as this is done in a way such that no essential finding is based to a sole or decisive extent on that evidence.

For the essential finding of Kadri Veseli's significant contribution to the JCE in this case, the inquiry would require looking at whether the combined effect of all proven contributions used witness statements the Defence had no opportunity to examine to a sole or decisive extent. If there's sufficient corroboration, then there is no sole or decisive issue.

On that as well, the Veseli Defence argues for an unduly narrow understanding of corroboration. There is no requirement for corroboration of the specific fact at issue. Corroboration should be understood within the plain meaning of the term as evidentiary support. It can extend both to a specific fact or a series of linked ones, and it permits for both broader thematic consistencies and reconcilable differences between accounts. On these points, and in addition to what our final brief says on corroboration, we would direct the Panel as well to the cases that we cited in response to the W04747 admissibility appeal in paragraph 2 of IA039/F00003. Rule 140(4)'s plain language makes clear that corroboration, however general or specific it may be, need only be enough to avoid sole or decisive reliance.

The Veseli Defence's errors on untested evidence are fundamental

to understanding their closing statements last week. The Veseli Defence argued, at T28749, that the "guts" of the JCE against Veseli come from his contributions directly contributing to crimes. Now, that submission underplays the importance of Veseli's other contributions, but just think about how little was actually said last week by the Veseli Defence on the supposed "guts" of the SPO case. The allegations were barely addressed on their merits. They summarily divided them out on grounds that they were untested, only to then engage with the rest of the evidence as if it was still whole.

Now, their engagement with that remaining evidence is affected by the same issues we've been discussing. In reference to submissions made at T28754, 28761, and 28779, for instance, the Veseli Defence asks you to ignore what his Baton Haxhiu says on its face, to interpret Veseli's prior statement as being all about SHIK after the war when it includes discussion of his previous G2 role, and to believe that the reference to "Chief Luli" on a Pashtrik ZKZ report is not authentic or in relation to Kadri Veseli.

These arguments amount to an attempt to divide and conquer in a manner fundamentally at odds with assessing the totality of the evidence. Take out inconvenient evidence on inapplicable legal grounds, and now let's look at what's left through blinkered lenses.

We've heard some noble words about checking all footnotes and transparency from the Defence, but their overall arguments don't match the rhetoric because the arguments are: Don't freely assess

all evidence. It's Rule 140 material. Don't resolve inconsistencies. Just take the exculpatory one. Don't ask the witnesses too many questions. Don't ignore the opinions of international witnesses who work for countries that decide whether there should be tribunals. Don't overthink it. It's all signaling, signaling to one degree or another: Don't do your job, don't be Judges.

We have presented a vivid and detailed record. All we want is for every corner of it to be fully considered by Your Honours. That record as a whole reveals that the accused, through abusing their positions in the structures they led, acted with a common criminal purpose and significantly contributed to it.

The accused preserved and furthered the focus from the KLA's earlier years that opponents were standing in their way of controlling Kosovo. They issued public communiqués and declarations condemning, threatening, and vowing to punish these opponents. And then they were punished.

They prepared and issued rules and regulations codifying merciless treatment, and then merciless treatment happened.

The accused acted in line with their own proclamations by contributing directly to some of the charged crimes. Their loyalists were put in positions of power, and they did the same thing.

The perpetrators went unpunished because crimes against opponents were part of what the accused planned to do.

And it happened everywhere, not in one place, or on one day.

This happened across over 50 detention sites in Kosovo and northern Albania over an 18-month period.

The record of this case tells a story of the accused doing what they said they were going to do, and that story convicts them beyond reasonable doubt.

Thank you, Your Honours.

PRESIDING JUDGE SMITH: Thank you, Mr. Halling.

Mr. Laws, we do have 15 minutes if you want to do your comments now or you can wait till morning. I'll leave it to you.

MR. LAWS: My fear is that I go beyond the 15 minutes and start to test people's patience. I may be 20 minutes. Shall we do it on Wednesday morning?

PRESIDING JUDGE SMITH: Yeah, not tomorrow morning.

MR. LAWS: Not tomorrow morning.

PRESIDING JUDGE SMITH: All right. Thank you all, everyone. We will be adjourned today, and we will be reassembling at 9.00 on Wednesday.

Remember to get your clients' statements to the interpreters as soon as possible.

And we'll see you all on Wednesday.

--- Whereupon the hearing adjourned at 4.26 p.m.