

1 Tuesday, 4 April 2023
2 [Opening Statements]
3 [Open session]
4 [The accused entered the courtroom]
5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE SMITH: Good morning, everyone.

7 Madam Court Officer, please call the case.

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

11 PRESIDING JUDGE SMITH: Thank you.

12 I note that Mr. Thaci, Mr. Veseli, Mr. Selimi, and Mr. Krasniqi
13 are all present in the courtroom.

14 On the agenda today is the opening statement of the Defence
15 teams. In accordance with Rule 126, we will start with the Thaci
16 Defence and continue with the Veseli Defence. Depending on the time,
17 we may also start with the opening of the Selimi Defence today.
18 Otherwise, tomorrow. We anticipate that tomorrow we will hear all of
19 the remainder of the Selimi opening and the opening statement of the
20 Krasniqi Defence.

21 The same directions and indications given yesterday do, of
22 course, apply to this hearing.

23 Before we start, the Panel has received the Veseli Defence
24 submissions regarding an associated exhibit of W04474. It is filing
25 F01414. Considering that this matter pertains to a witness to be

1 called early in the Prosecution case, the Panel wants to deal with
2 this matter expeditiously. Therefore, we would like the SPO to
3 respond to this filing by tomorrow, Wednesday, 5 April, at 4.00 p.m.,
4 with no reply being entertained.

5 Mr. Halling, or whoever, is that feasible?

6 MR. HALLING: It is, Your Honour.

7 PRESIDING JUDGE SMITH: All right. Thank you.

8 This concludes that -- or, I'm sorry, it is, therefore, ordered
9 that the SPO respond to F01414 no later than Wednesday, 5 April, by
10 4.00 p.m., with no reply to be entertained by the Panel. This
11 concludes the oral order.

12 We will now hear the opening statement from the Veseli Defence
13 -- I'm sorry, from the Thaci Defence.

14 MR. KEHOE: [Microphone not activated]

15 PRESIDING JUDGE SMITH: Yes, you can do them both.

16 Mr. Kehoe, you may begin. You have three hours.

17 MR. KEHOE: Thank you, Mr. President. Your Honours, Defence
18 counsel, our respective clients, the SPO, our colleagues across the
19 floor, good morning.

20 I believe, Your Honour, that we have given up to you a
21 PowerPoint presentation which will basically be the script that we'll
22 go through for the course of our discussions. We have given a copy
23 of that to the SPO as well as to Victims' Counsel.

24 Your Honour, if I may, just before we move to the script, just
25 very brief comments concerning the SPO's opening statement yesterday.

1 We were sat here for almost a little over four hours listening to
2 their statement. And the SPO would have you believe that my client,
3 President Thaci, was at the head of some vast criminal enterprise to
4 take over Kosovo beginning in early 1998, when the KLA was a
5 fledgling group of volunteers defending their homes and fighting for
6 their existence and continuing until September 1999, when
7 Hashim Thaci, together with KFOR, UNMIK completed the
8 demilitarisation of the KLA and set up a multi-ethnic police force.

9 They do so by putting forth documents and attempting to connect
10 those documents to detention centres located in sparse locations
11 controlled by local people defending their homes and villages. That
12 was their connection to documents and detention centres, and they
13 believe it is tantamount to guilt.

14 What they failed to bring out through the over four hours of
15 their opening statement is context. War. What war does in the
16 context of command and control and effective command and control.
17 Counsel for the SPO talked about collaborators being an existential
18 threat. The only existential threat in 1998 and 1999 was the
19 Yugoslav Army and the police, in conjunction with paramilitaries.

20 They failed to mention command and control operated at a local
21 grassroot basis where loyalties flowed directly to the operative zone
22 commanders. They failed to mention the essential ingredient of
23 command and control, which is the commander, the general commander of
24 the KLA, who was replaced during the Rambouillet conference while
25 President Thaci and Mr. Krasniqi and Azem Sylja were in Paris. Local

1 commanders changed the general commander of the KLA without any input
2 from President Thaci, from Azem Sylja who was then the general
3 commander, or anybody else in Rambouillet.

4 There is no discussion about who controlled the power, and that
5 was at a local level. Nor did they put in context the war, the war
6 that began -- started again so viciously in the summer of 1998 and
7 went into September of 1998.

8 And what did that do to the command and control structure of the
9 KLA, that devastating offensive by the Yugoslav Army and the military
10 police? Well, I take the words from the SPO's own witness:

11 "It destroyed our brigade. People left and went to other
12 countries. And it wasn't just in our zone that this happened but for
13 every zone in Kosovo. In fact, there was no command and control left
14 after the offensive in the summer of 1998."

15 And that destruction of the command and control aspects of the
16 KLA replicated itself again in March, April 1999, with the ethnic
17 cleansing campaign again by the Serb forces. The KLA during that
18 period of time was totally dismembered. To the extent that the KLA
19 had recovered from 1998, it was virtually eliminated in 1999.

20 What happens to a command and control under these circumstances?
21 What happens to the alleged vertical command and control that the SPO
22 attempted to put before you? It virtually ceases to exist. Yet
23 throughout all of this, the SPO would have you believe there was a
24 functioning command structure with effective control. I submit to
25 Your Honours nothing could be further from the truth.

1 What we would like to do at this point, Your Honours, is begin
2 to put this matter in context, to put the facts of what was happening
3 on the ground in context by beginning with an initial introduction of
4 our client, President Thaci, taking through with you his role
5 throughout all of these years, in 1998 and 1999.

6 What we have done is put a roadmap on page 2 and 3 to allow
7 Your Honours and respective counsel to follow us through so
8 Your Honours can know exactly what subjects we're going to touch upon
9 and the relevance to these proceedings.

10 I mean, who was Hashim Thaci in 1998 and 1999? A young man, 30
11 years of age, not to be confused with the man that became the
12 prime minister and the president of Kosovo years later. He had been
13 a student activist that came back to Kosovo in March 1998, right
14 after the Jashari murders, which, of course, the Jashari murders
15 being the kicking-off point of this alleged joint criminal
16 enterprise.

17 And there was discussions yesterday about motive. And I believe
18 counsel for the SPO talked about motive and that there was no need to
19 examine motive. We submit to Your Honours motive is a very, very
20 important aspect of this case.

21 Hashim Thaci had no motive to participate in any crimes. As one
22 of the political leaders of the KLA, Hashim Thaci knew that the
23 success of the Kosovo liberation movement depended on the support of
24 Western countries, in particular the United States.

25 Yes, you can broadcast. I'm sorry.

1 My apologies, Your Honour. I don't think I told the folks to
2 broadcast this.

3 May I proceed?

4 We can move to the next slide.

5 Very early in these proceedings in 1998, the United States
6 offered assistance to the KLA under certain conditions: No attacks
7 on civilians, no actions outside of the territory of Kosovo, no
8 assistance for Islamic fundamentalists or any extremist groups, and
9 no financing from illegal drug trafficking.

10 The conclusion of the CIA in a report to the US House of
11 Representatives noted:

12 "The UCK," or the KLA, "was not involved in terrorist
13 activities - defined as premeditated, politically motivated violence
14 perpetrated against non-combatant targets."

15 In short, Hashim Thaci and the KLA had no motive to violate the
16 US conditions. Hashim Thaci was well aware that Kosovo could not
17 achieve either independence or self-rule without the assistance of
18 the United States or other Western powers. He had every motivation
19 not to engage in the JCE described in the indictment to not
20 jeopardise US support.

21 Now, crimes were committed, but they were not motivated by the
22 JCE described in the indictment. President Thaci does not deny that
23 crimes were committed by some Albanian individuals during and after
24 the conflict. He informed the UN Security Council of such in a
25 public hearing on 17 December 2018. But he rejects - and the facts

1 militate - against the SPO's claim that the crimes were committed as
2 a matter of policy of the leadership of the KLA. He also rejects the
3 SPO's claims that crimes were committed in a widespread and
4 systematic manner on a scale alleged by the SPO.

5 Where did this violence come from? Because there was violence,
6 and we do not argue that there was violence. But the violence was
7 the result of uncontrolled localised activity, not the product of a
8 JCE. There was revenge and score settling, general lawlessness due
9 to the war and the post-war absence of institutions, and we will get
10 into those issues as we move forward. And the lack of effective
11 control by the General Staff over operative zones, because the KLA
12 was a locally based army, to the extent that it was an army at all.
13 And post-war hatred of the displaced population returning after the
14 war ended had a lot to do with the violence that took place.

15 In short, revenge was a significant motive for violence and
16 crime.

17 Crimes committed by the Serbian regime explain the violence that
18 occurred during the war and following the return of the displaced
19 population. At no point during the SPO's opening was the issue of
20 revenge of the local population during the war as to what happened to
21 them by the Serb regime and thereafter ever discussed.

22 If I can quote for you the comments at the time, this is
23 September 22, 1999, these are the comments of Milo Djukanovic.
24 Comments that are very significant because when he made them, he was
25 not only the president of Montenegro, but as I know Your Honours

1 know, this was Serbia and Montenegro. They were connected with
2 Serbia. It wasn't just Montenegro alone. And he noted in comments
3 to the Parliamentary Assembly of the Council of Europe:

4 "The ordeal that the Serbs, the Montenegrins and other
5 non-Albanian populations are undergoing is a result of the atrocities
6 perpetrated by Serb forces, who wreaked havoc during the war in the
7 province and then fled to a safe distance, leaving their compatriots
8 to pay for their misdeeds."

9 Revenge by the population was very much a reason for the crimes
10 that took place on the ground.

11 If we can turn to the next video. This is a video from the BBC,
12 and it talks about the expulsion of civilians from Peja in March and
13 April 1999.

14 [Video-clip played]

15 "Narrator: Valmir and his sister Valentina remembered the
16 threats their Serbian neighbours had issued earlier. Now their
17 neighbours turned on them again.

18 "That night they were herded with thousands of others into a
19 sports stadium.

20 "The next day they were driven, on foot, from their country.
21 The first trickle of what would soon become a flood of humanity.
22 Valentina thought only of returning, and of revenge."

23 MR. KEHOE: Revenge, the motivation for so much of the violence
24 that took place during and certainly after the war.

25 And the Limaj judgment acknowledged that and noted that revenge

1 was a significant motive for crime. In Limaj, they expressly found
2 that rogue elements of the KLA had, in fact, committed crimes against
3 perceived collaborators with the Serbian regime in revenge for crimes
4 that had been committed against Albanians.

5 "... a number of Kosovo Albanian civilians may have been
6 abducted for other reasons, such as personal revenge of individual
7 KLA members and other motives. The KLA did not have the resources or
8 the command structure to adequately control the implementation of
9 this policy by its forces at the time relevant to the Indictment, and
10 the Chamber accepts that individual cases of abduction, for reasons
11 not within the collaborator policy, were carried out by rogue
12 elements of the KLA."

13 Now, Your Honours, we have, of course, taken your guidance on
14 not going through all the Serbian crimes. We are not advancing a *tu*
15 *quoque* defence, but I believe a brief recitation of the idea of the
16 crimes that took place during the operative timeframe -- and this
17 list is not meant to be exhaustive, but an examination of some of
18 these incidents during this timeframe, I believe, would be
19 instructive.

20 This is during February, March 1998 and thereafter. We have the
21 5 March 1998 Jashari compound killings, 59 dead, 18 women, 10
22 children.

23 23 April 1998, Decan, 20 Albanians dead.

24 In the six months in spring, summer 1998, 300 villages were
25 ravaged with over 250.000 people driven from their homes. These

1 attacks were accompanied by military operations against the KLA by
2 the Yugoslav Army and the Serbian police from the spring 1998,
3 increasing in intensity over until October 1998. That is the
4 offensive to which I referred to from the SPO witness, that their
5 brigades were totally destroyed in the KLA and they were destroyed
6 all over Kosovo.

7 26 September 1998, Abria e Eperme, 25 killed.

8 15 January 1999, Recak, 40 killed -- 45, excuse me.

9 25-27 March 1999, Krushe e Madhe, 241 killed.

10 28 March 1999, Izbice, somewhere between 146 and 166 Albanians
11 were killed.

12 Rezalle, 41 Albanians killed.

13 And 27 April 1999, in Meje, 300 Albanians.

14 2 May 1999, in Studime, 100 Albanians killed.

15 And then, of course, the forced expulsion from Kosovo itself of
16 800.000 Albanians, with another approximately 250 to 300.000 Kosovo
17 Albanians being displaced from their homes during the operative
18 timeframe in the winter offensive of 1999.

19 What does this do to the command structure of the KLA? The
20 Serbian violence led to the destruction of the KLA and it led to
21 action from the UN Security Council. The brutality and scope of the
22 Serb state acts during the summer 1998 offensive nearly destroyed the
23 KLA. Soldiers left their units, they left the country, and when a
24 cease-fire came, they attempted to piece the entire entity back
25 together again.

1 observers, led by the American William Walker, now say as many as 45
2 civilians were executed by Serb forces. Surviving villages say the
3 Serb police separated men from their families on Friday before
4 herding them up a hill where they were shot. All the dead were
5 wearing civilian clothing. Among them, a young woman, a 12-year-old
6 boy, and many older men, including one aged 70.

7 "William Walker: Unfortunately, I do not have the words to
8 describe my personal revulsion or that of all who are with me at the
9 site of what can only be described as an unspeakable atrocity."

10 MR. KEHOE: These atrocities were followed by other criminal
11 acts by the Serb forces. But it did lead - if we can go to the next
12 slide - to a meeting, an emergency meeting, if I will, of the Contact
13 Group ministers which was convened in London on 29 January 1999.

14 The Contact Group condemned the Recak massacre and summoned the
15 parties to Rambouillet to "stop the spiral of violence that is
16 building toward renewed humanitarian catastrophe and all-out war."
17 Not only was it leading to humanitarian catastrophe and all-out war,
18 it led to the destruction of any conceivable command structure within
19 the KLA.

20 NATO expressed its readiness to "take whatever measures
21 necessary" if the parties fail to meet the demands of the
22 international community.

23 And so we move to the Rambouillet conference in February 1999.
24 Mr. Thaci had been elected leader of the Albanian delegation, but the
25 fact is that Mr. Thaci, who was living in Switzerland at the time,

1 had no control over the KLA. Hashim Thaci could not sign the
2 Rambouillet Agreement without the consent of the zone commanders, and
3 the zone commanders had so much power that they sacked the general
4 commander Azem Sylja while Hashim Thaci was in Rambouillet.

5 And if I might add, not only was Hashim Thaci in Rambouillet, so
6 was Azem Sylja.

7 So to lay the scene: Hashim Thaci is in Rambouillet, as is
8 Azem Sylja, as are other members of the KLA including Mr. Krasniqi.
9 At the time, Azem Sylja is the general commander of the KLA. And with
10 no input from Hashim Thaci or Azem Sylja or anybody part of the KLA
11 delegation, Azem Sylja was sacked as commander and replaced by
12 Sylejman Selimi.

13 Now, this is supposed to be a command structure that has
14 effective command and control over all of the detention centres that
15 were outlined by the SPO yesterday. By this act alone, the Court
16 unmistakably can conclude that there was no effective command and
17 control structure by Mr. Thaci or anybody else in Rambouillet over
18 the zone commanders in the field.

19 He simply did not have effective control of the KLA nor the
20 final authority over the politics and policy of the KLA. The
21 evidence from Rambouillet demonstrates that Hashim Thaci did not have
22 the ability to prevent or punish crimes occurring in the zones. And
23 as I noted, although Hashim Thaci was elected leader of the Albanian
24 delegation, the real power remained with the zone commanders.

25 Next slide.

1 I have set forth here, Your Honours, the delegations. There
2 were LDK members, Mr. Rugova, Prime Minister Bukoshi, there were LBD
3 members, and, of course, there were KLA members and also
4 independents. I highlighted Azem Sylja's name there because, at that
5 time, he was the general commander of the KLA when he got to
6 Rambouillet. Unfortunately, he was not the general commander of the
7 KLA when he left Rambouillet. And that was a decision that was made
8 by none of these KLA representatives in Rambouillet.

9 The vehement opposition to this delegation's attendance and
10 engagement from some KLA factions, including the zone commanders in
11 the Albanian diaspora. As I noted, in the midst of the Rambouillet
12 negotiations, Azem Sylja was removed from his position and replaced by
13 Sylejman Selimi as overall KLA commander, and these developments were
14 supported publicly by Adem Demaci.

15 Now, we will talk about Adem Demaci and the power that
16 Adem Demaci wielded in the KLA, but I note, for the record, that
17 after almost four hours of discussion yesterday, the name
18 "Adem Demaci" did not come from the SPO in any context as wielding
19 any power in the KLA. Suffice it to say, this decision on the
20 removal of Azem Sylja was made with no consultation with Azem Sylja,
21 Hashim Thaci, or anybody else.

22 Yet - yet - we sit yesterday for over four hours through a
23 litany of detention centres and command and control arguments and
24 documents without once referencing the fact that the person, the
25 overall commander of the KLA, was removed without any input by the

1 so-called folks who were in Rambouillet and speaking on behalf of the
2 KLA.

3 Who was in command and control of any of these detention
4 centres? I think it's quite clear. It was the people on the local
5 level, the zone commanders, and their subordinates.

6 And as far as Hashim Thaci's ability to sign any Rambouillet
7 Agreement whatsoever, that was seriously called into question by a
8 variety of factors. The first factor was the need for some type or
9 the desire for some type of approval by Adem Demaci. Adem Demaci was
10 the KLA general political representative and supreme political
11 authority in the KLA.

12 During the conference in Rambouillet, Hashim Thaci left
13 Rambouillet to travel to Slovenia to seek Demaci's approval and
14 support. US Secretary of State Madeleine Albright called Demaci to
15 support Rambouillet. He categorically denied. Demaci opposed
16 participating and signing the Rambouillet Agreement because it did
17 not include independence for Kosovo.

18 Notwithstanding that, Mr. Thaci went back to Rambouillet to
19 discuss matters with international leaders, who then in turn put
20 pressure on him to sign the Rambouillet accords, which he ultimately
21 did not.

22 We can turn to the next tape.

23 [Video-clip played]

24 "Albright: The foreign ministers all sat at a long table, as if
25 we were in judgment or something, and first Thaci was brought in with

1 a couple of other members of the Albanian delegation. The question
2 was, basically, do you agree with the framework, yes or no, and we
3 were expecting a 'yes.' Or I was. I said, look, I don't understand
4 what just happened in there. You have let us down. It is an
5 impossible situation now. How could you do this? We expected you to
6 be a leader. You could see that he was just shocked. I mean, he
7 looked like a high school student that I had dressed down."

8 MR. KEHOE: "He looked like a high school student that I had
9 dressed down." This person that the SPO wants to advance as
10 spearheading the efforts of the KLA are described by the Secretary of
11 State as a high school student that she had just dressed down.

12 And there was a reason why he did not want to sign the
13 Rambouillet accords. Keeping in mind, Your Honours, that if they
14 didn't sign the Rambouillet accords, NATO would not intervene. If
15 they did sign, they would, and then they would begin their bombing
16 campaign. The stakes were quite high.

17 Yet, Hashim Thaci was reluctant to sign the accords, and we will
18 tell you the reason why.

19 We can go to the next tape.

20 [Video-clip played]

21 "Voiceover: Mrs. Albright was confident Thaci would accept the
22 terms of offer. Even though they promised Kosovo only autonomy
23 within Serbia, not the independence the KLA was fighting for. But
24 she didn't realise the pressure the KLA leader was under from home.

25 THE INTERPRETER: "KLA Commander Remi: We phoned each delegate

1 and warned them. We said, Don't dare sign.

2 "Hashim Thaci: In Kosovo there was the opinion that maybe the
3 Albanian delegation is acting in a treason.

4 "KLA Commander Remi: I remember one of them -- I told them, 'We
5 have anti-aircraft rockets on the Serbs. We'll use them against
6 Serbs. If you sign, we will save one to bring down your plane.'"

7 MR. KEHOE: An operative zone commander, *nom de guerre* Remi,
8 noted that if they sign the Rambouillet accords, they will take down
9 the plane with a rocket.

10 And these threats did not just come from the zone commanders,
11 and they were not just some imagined threat that Hashim Thaci came up
12 with in Rambouillet. They're reflected in the book of Ambassador
13 Christopher Hill, who is a senior US ambassador in these delegations
14 throughout the Rambouillet accords in February 1999.

15 He wrote a book, in *Outpost*, where he talks about his
16 conversations with Hashim Thaci on this particular issue.

17 If we can go to that slide.

18 Hill asks:

19 "'Why can't you agree to this?' I asked Thaci, truly not
20 understanding whether he comprehended the near-fatal consequences for
21 the Kosovars of a 'no' answer.

22 "'It is you who doesn't understand,' he replied. 'If I agree to
23 this, I will go home and they will kill me.'"

24 Those threats were echoed by yet another zone commander and then
25 the general commander of the KLA, Sylejman Selimi. He noted in a

1 book, Kosovo War and Peace:

2 "The first time, as I said, we managed through some kind of
3 threat to stop the signing of the Rambouillet Agreement. We
4 threatened them that if they signed something without us knowing,
5 meaning all commanders of the zones, people who carried the burden of
6 the war, then ... they would have consequences."

7 Notwithstanding any argument or opening that you heard
8 yesterday, Your Honours, Hashim Thaci did not control the KLA. The
9 zone commanders did. This is a reference to comments by then Senator
10 Biden before the Committee on Foreign Relations of the US Senate. He
11 had had a meeting in July 1999 with Hashim Thaci, and he made these
12 comments before foreign relations on 26 September 1998. And in this,
13 you can see Thaci was trying to advance the position of the KLA in
14 bringing about the end of the war. He notes:

15 "It seems to me bombing worked and even though Mr. Thaci tells
16 me, as I met with him for several hours, how he did anything - that
17 is," and pardon my comment here, "a bunch of crap." And I'm not sure
18 whether that's a comment that's bandied about the Committee on
19 Foreign Relations often. "The incremental impact of the KLA on this
20 process was just that, incremental. No evidence, none."

21 Not surprising, because the KLA had been virtually destroyed
22 during this period of time.

23 "You may be talking about 1500 fighters, not 10.000. Mr. Thaci
24 asked me, he said, 'You are 29, like I am, when you took office. Do
25 you have any advice?' I said, 'Well, if you are asking, I am happy

1 to tell you, although very different circumstances.' He said, 'What
2 is your advice?' I said, 'No. 1, do not take yourself so seriously.
3 And, No. 2, understand ... I know that you know you do not control
4 the KLA.'"

5 Next slide, please.

6 Despite intense pressure, Hashim Thaci would not sign without
7 the approval of zone commanders.

8 Keep in mind, Your Honour, there were two key concessions from
9 the United States that the Kosovo delegation secured. First, within
10 three years the will of the people would be taken into account in a
11 referendum. That assurance was conveyed in a draft letter from the
12 US delegation. Second, the KLA would undertake a transformation
13 process, meaning it would have to transform from an army into a civil
14 force to continue the pressure on Mr. Thaci to sign.

15 US Secretary of State Albright arranged for a meeting with the
16 Albanian delegation and NATO General Wesley Clark, who at that time
17 was the Supreme Allied Commander for NATO.

18 Despite these concessions and pressure from the international
19 community and the Albanian delegation, because there were others in
20 the Albanian delegation that wanted to sign, Thaci refused to give
21 his final approval until he obtained the consent of the zone
22 commanders.

23 Next slide, please.

24 Kosovo Albanian delegation then returned to Kosovo after the
25 Rambouillet conference to seek approval from the zone commanders and

1 other segments of society. They met with zone commanders and other
2 KLA units to explain the agreement and seek their approval.

3 Several zone commanders were not convinced, but ultimately did
4 not oppose the signing of the Rambouillet conference because they
5 feared loss of support from the international community, including
6 NATO, and the civilian population who were suffering. This was at a
7 time when the KLA was under siege and virtually decimated, and it
8 only got worse.

9 Moreover, they were persuaded by US Secretary of State
10 Albright's letter promising an independent referendum in three years
11 and that the KLA would not be disbanded but transformed. Ultimately,
12 they went back to Paris in March 1999, 18 March, and the agreement
13 was signed.

14 Now, if we can turn our attention to the Provisional Government
15 of Kosovo, because comments were made yesterday by the SPO that the
16 Provisional Government of Kosovo came in to fill a vacuum of power,
17 and that the Provisional Government of Kosovo, with Mr. Thaci as the
18 named prime minister, was attempting to take control of Kosovo.
19 Nothing is further from the truth, both factually and legally.

20 And let us go back and talk about this power vacuum that the SPO
21 talks about. When did the Provisional Government of Kosovo, or the
22 idea, if you will, of the Provisional Government of Kosovo come up?
23 At the Rambouillet accords.

24 During the Rambouillet negotiations, US Secretary of State
25 Albright and other European leaders urged that a unified structure be

1 established to speak on behalf of all Kosovo Albanians and to be an
2 implementing partner for the Rambouillet Agreement with OSCE, KVM,
3 and NATO.

4 Keep in mind, Your Honours, at this juncture there was no
5 discussion of UNMIK. UNMIK had not been created, and in February
6 1999, it wasn't even contemplated.

7 The Rambouillet accords were intended to be an inclusive
8 structure -- excuse me, the Provisional Government of Kosovo was
9 intended to be an inclusive structure, not just comprised of KLA
10 members but also members of the LDK and the LBD. We have before you
11 the agreement that is in, obviously, Albanian, and the translation in
12 the next slide that is signed by Hashim Thaci for the KLA,
13 Dr. Ibrahim Rugova for the LDK, and for the LBD, Rexhep Qosja.

14 And this was supposed to be a temporary government that was
15 going to be in place until free elections were held and that the
16 three political groups would have equal representation.

17 So the Provisional Government of Kosovo was not some plan by
18 Hashim Thaci or anybody else in the Kosovo Albanian side to fill some
19 power vacuum to take over the country. To the contrary, even after
20 the Serbs refused to sign the Rambouillet accords and the LDK pulled
21 out of the Provisional Government of Kosovo, the United States still
22 wanted a provisional government set up so that the provisional
23 government could work in concert with international entities on the
24 ground.

25 I cite to you a cable by Secretary of State Albright on 12 April

1 1999.

2 "Secretary Albright stressed the need for a broad-based Kosovo
3 'provisional government.' It was good places had been reserved for
4 the LDK, and it was important to continue to reach out to Rugova.
5 While we could not recognise the provisional government, we would
6 certainly want to work with it in practice."

7 So what is the takeaway from all of this information about the
8 Provisional Government of Kosovo? The Provisional Government of
9 Kosovo was an inclusive implementing partner with the international
10 community. It was intended to be a broad-based government
11 incorporating all Kosovar Albanian political entities. It was not
12 designed to enable the KLA to forcefully take control of Kosovo by
13 targeting opponents and marginalising other political parties. And
14 it was not designed to fill some "power vacuum" that has been
15 advanced by the SPO.

16 To the contrary, at the urging of the US and internationals, it
17 was the basic framework upon which international entities would
18 rebuild the civil infrastructure of Kosovo in concert with the
19 international community. Its work began before the war ended, but it
20 began in earnest to work with international entities after the war.

21 With the withdrawal of the Serbian forces and the establishment
22 of UNMIK - and we will get to the UNMIK establishment in a moment -
23 the Provisional Government of Kosovo sought to facilitate the return
24 of refugees and assist in civilian support to the municipalities in
25 the country, which would include distribution of food, locating

1 places to live, education, utilities, and other civil functions.

2 The Provisional Government of Kosovo did not have any control
3 over military structures. That was under the authority of KFOR
4 Commander Sir General Michael Jackson and the KLA commander
5 General Agim Ceku.

6 And in the post-war arena, the Provisional Government of Kosovo
7 was only one of several governments competing for popular support,
8 including the Rugova-Bukoshi provisional government and a Serbian
9 office.

10 But let us turn, if we can, for a moment to the 1999 Serb ethnic
11 cleansing campaign and what that did to the command and control
12 structure of the KLA. What that did to the command and control
13 structure of the KLA and all of the matters -- or many of the matters
14 that were discussed by the SPO yesterday where this impact was never
15 addressed.

16 Make no mistake that the plan of the Serb authorities was to
17 ethnically cleanse Kosovo of Kosovo Albanians.

18 If we can go to the next tape.

19 [Video-clip played]

20 "Narrator: Serbia's parliament duly backed Milosevic's
21 rejection of the Rambouillet terms, as did the Serb public. Serbia's
22 deputy prime minister revealed what Milosevic was planning to do
23 next.

24 "Serbia's parliament duly backed Milosevic's rejection of the
25 Rambouillet terms as did the Serb public. Serbia's deputy

1 prime minister revealed what Milosevic was planning to do next."

2 THE COURT OFFICER: Apologies. The Serbian booth was on the
3 English channel.

4 [Video-clip played]

5 MR. KEHOE: "The bombing campaign goes forward, we will suffer
6 casualties. But there will be no Kosovo Albanians left."

7 The bombing campaign went from 24 March 1999 to 9 June. True to
8 the word of Mr. Seselj, the ethnic cleansing continued during that
9 bombing period. As we noted previously, 800.000 Kosovar Albanians
10 were expelled to other countries and another 500.000 internally
11 displaced. Homes were burned, IDs seized, farm animals killed, water
12 sources contaminated, women raped. The goal of the Serb campaign was
13 to prevent the Kosovo Albanian population from ever returning to
14 their homes and villages in Kosovo, and the deportation of these
15 individuals was on a massive scale.

16 We turn to the next tape.

17 [Video-clip played]

18 "Alan Little: On the ground, the chaos that was sweeping the
19 countryside was about to hit the capital. Unhindered by NATO air
20 strikes, armed police and paramilitaries began to spread terror among
21 the civilian population, looting as they went."

22 THE INTERPRETER: "General Nebojsa Pavkovic: There was no chance
23 that anyone would attack the army from the back in Kosovo. As soon
24 as NATO started attacking civilian targets, there was a mass
25 population movement out of Kosovo. This favoured our defensive

1 deployments."

2 [In English] "Alan Little: Armoured police vehicles patrolled
3 the streets as, systematically, the civilian population were given a
4 few hours to leave. These pictures were taken secretly by a
5 concealed Albanian photographer."

6 THE INTERPRETER: "General Nebojsa Pavkovic: We tried to
7 dissuade them, and sometimes we succeeded. A great number stayed in
8 Kosovo and were protected by our units."

9 [In English] "Alan Little: The whole world could see that that
10 was a lie. General Pavkovic's units were, in fact, organising the
11 biggest programme of forced deportation in Europe since the Second
12 World War. It was bound by the sheer force of the image to evoke
13 memories of Nazi Germany.

14 "General Wesley Clark: We knew that there would have been some
15 effort to retaliate against the population, but what we didn't
16 foresee is that it would have been calculated in a way that would
17 have generated a massive refugee outflow.

18 "Alan Little: The scale of it was breathtaking. Milosevic had
19 dramatically raised the stakes."

20 MR. KEHOE: This entire ethnic cleansing campaign was part of
21 the Milutinovic judgment - if we can go to the next slide - where the
22 court, as read by Judge Bonomy, as part of the summary in
23 Milutinovic, noted that:

24 "The most compelling evidence in support of the allegation that
25 there was a common purpose to modify the ethnic balance in Kosovo in

1 order to ensure continued control by the FRY and Serbian authorities
2 over the province is the evidence establishing the widespread
3 campaign of violence that was directed against the Kosovo Albanian
4 population between March and June 1999, and the resulting massive
5 displacement of that population."

6 What was the effect on the KLA and the command and control
7 structure of the KLA?

8 In short, the fighting capability of the KLA was crippled as a
9 result of Serbia's ethnic cleansing campaign. Supplies to the KLA
10 were cut off and, of course, the morale of KLA members plummeted.
11 Most of the KLA members inside Kosovo left their units, for good
12 reason, to accompany their families who had been expelled from their
13 homes and villages.

14 If I might emphasise, Your Honours, that this was a volunteer
15 army of volunteer fighters, where people could come and go virtually
16 as they pleased.

17 The Serb offensives destroyed individual KLA units and shattered
18 the KLA's command structure such that most of the General Staff of
19 the KLA left Kosovo. During this entire period of time, virtually
20 the entire General Staff was not even in Kosovo.

21 The second Serb offensive - not the one in 1998, we're now
22 talking about the massive campaign in 1999 - removed any possibility
23 for the KLA to operate as a cohesive unit. That is the impact on the
24 command and control structures of the KLA while these events were
25 transpiring and while you heard so much evidence by the SPO of events

1 taking place on the ground. There was no KLA command structure and
2 certainly no effective command structure.

3 If we can just change topics for one moment, we talk a bit about
4 the end of the armed conflict.

5 Next slide, please.

6 After 78 days of bombing, NATO prepared for a ground war, and
7 Milosevic elected to end hostilities in Kosovo.

8 On 3 June 1999, the Serb parliament confirmed the decision to
9 end the armed conflict.

10 On 9 June, Serbia signed the Kumanovo Agreement with KFOR, which
11 provided that all Serb forces would leave Kosovo no later than
12 20 June 1999.

13 What came into effect the next day was UN Security Council
14 Resolution 1244. The United Nations took over responsibility for
15 maintaining law and order. Their responsibility, as part of a
16 Chapter 7 resolution, was:

17 "(i) maintaining ... law and order, including establishing local
18 police forces and meanwhile through the deployment of international
19 police personnel to serve in Kosovo;

20 "(j) Protecting and promoting human rights;

21 "(k) Assuring the safe and unimpeded return of all refugees and
22 displaced persons to their homes in Kosovo."

23 With the end of the war, KFOR arrived in Kosovo on 12 June 1999
24 followed by UNMIK civilian personnel the next day, the 13th.

25 On schedule, 20 June 1999, Serb forces withdrew from Kosovo

1 pursuant to the Kumanovo Agreement.

2 On 21 June, KLA and KFOR signed the undertaking to begin the
3 demilitarisation of the KLA. Such undertakings were signed with KFOR
4 with other armed groups such as FARK. FARK was the armed wing of the
5 LDK. At the urging of the US, Hashim Thaci signed the undertaking,
6 and after the signing of the undertaking, President Clinton
7 congratulated him for doing so.

8 On 24 June 1999, Serbian parliament lifted the state of war. At
9 that juncture, notwithstanding the protestations and allegations of
10 the SPO, the war was over. It did not extend until September 1999.

11 And what happened with UNMIK when they took over pursuant to UN
12 Security Council Resolution 1244?

13 This was the first time the UN had established an international
14 civil and security presence as was mandated in 1244. The goal to
15 assume full control over judicial, legal, security, and
16 administrative functions. This was not a typical peacekeeping
17 mission. It was unprecedented undertaking in terms of magnitude and
18 complexity.

19 UNMIK was mandated to establish the rule of law and restore
20 Kosovo's institution of self-government. Was it easy? No. To the
21 contrary, it is quite difficult, as reflected by the comments by
22 General Clark to the US Armed Services Committee on 2 February 2000:

23 "The difference between Bosnia and Kosovo is that ... we were
24 dealing with organised governmental factions in Bosnia. There were
25 police, there were elected officials, there were structures that one

1 could deal with.

2 "That hasn't been the mission in Kosovo.

3 "There are no governmental structures. There are no local
4 police. There's no shadow communist party network which had kept
5 everybody intimidated there and performed as a shadow government.

6 "Instead, there are a million point six people who are looking
7 to the United Nations for their total civilian leadership and to KFOR
8 for stability, authority, order and protection, while civilian
9 structures are created."

10 When UNMIK arrived on 13 June, Kosovo was devoid of civil and
11 security institutions. There were no laws, no courts, no municipal
12 structures, no civil society, no municipal services. And what
13 happens in such an environment?

14 In this lawless environment, hundreds of thousands of displaced
15 Kosovo Albanians return to find their homes destroyed, their property
16 taken, and their loved ones missing or dead, and no civil
17 institutions. In short, looking for revenge.

18 Localised individual acts of violence fuelled by anger, hatred,
19 and score settling were inevitable and often caused by criminals,
20 rogue elements of the KLA, and people posing as KLA in uniforms
21 purchased on the streets of Prishtine and elsewhere.

22 As the International Crisis Group reported in 6 August 1999, the
23 KLA denied "that there is an organised campaign aimed at creating an
24 ethnically pure Albanian Kosovo."

25 And that was credible because of the revenge motive and that

1 there was not sufficient proof of an organised campaign.

2 And the Pentagon was well aware of that. This is Ken Bacon
3 speaking on 5 June 1999, shortly before the bombing campaign ended,
4 who commented on what they anticipated was going to happen at the end
5 of the bombing campaign.

6 We can turn to that.

7 [Video-clip played]

8 "Bacon: The fact of the matter is that I don't think that
9 Kosovo is going to be a very happy place for Serbs when NATO comes
10 in, and the -- and the -- I don't think Serbs will want to stay
11 there. I think they will want to return to Serbia. We don't know
12 how big the Serb minority is there. It could -- it's -- it's
13 probably about 100.000, it could be a little more than that. But as
14 Kosovar Albanians flow back in, our assumption is that many Serbs
15 will probably return to Serbia.

16 "Question: It sounds like you're encouraging the Serbs who now
17 live in Kosovo then to leave.

18 "Bacon: I am not encouraging them at all. I'm just stating
19 what we anticipate the facts will be."

20 MR. KEHOE: And General Clark echoed those comments and also
21 talked with a reporter about what the KLA was actually trying to do.

22 And if we can turn to the next tape. This is a tape from 1 July
23 1999.

24 [Video-clip played]

25 "Jim Lehrer: Margaret Warner has our interview with US Army

1 General Wesley Clark, the Supreme Allied Commander of NATO. She
2 spoke to him earlier this evening.

3 "Margaret Warner: Welcome, General.

4 "Gen. Wesley Clark: Thank you, Margaret.

5 "Margaret Warner: I want to talk to you first about the KFOR
6 mission in Kosovo. Secretary of State Albright said yesterday when
7 she was up at the UN the people of Kosovo are not safe. Is that
8 true?

9 "Gen. Wesley Clark: Well, I think that this period of sorting
10 out that's going on. There are hundreds of thousands of people
11 coming back. There have been some terrible things done in that
12 country. There are all kinds of emotions running rampant. And there
13 are Serbs still there, some of who may have participated in that,
14 others who are just afraid they are going to be taken for guilty
15 because of their ethnicity. There are gypsies who are also being
16 discriminated against. And so there is some legitimate efforts to
17 get property back. There's some revenge taking. There's some score
18 settling. One doesn't really know. But it's a very difficult time.
19 Our troops are there, we're doing everything we can, but of course
20 we're not police.

21 "Margaret Warner: Do you think if Serbs continue to leave and
22 they don't come back, do you think that in any way undercuts the
23 credibility of what NATO went to war for, this multi-ethnic ideal, as
24 you put it?

25 "Gen. Wesley Clark: Well, I think we have to temper the ideal

1 with reality. And we don't know how widespread Serb popular
2 participation in the atrocities really were. And so maybe a lot of
3 these people helped themselves to their neighbour's property,
4 participated in -- in some masked banditry and worse mischief while
5 the ethnic cleansing was going on. We just don't know. And so some
6 of the people that are leaving may well consider themselves as real
7 targets for international justice as well as for Albanian revenge.
8 It's a little hard to generalise. But -- but as I said, the ideal is
9 we would like to promote a multi-ethnic society. And, by the way,
10 the KLA leadership has called for the same thing.

11 "Margaret Warner: And do you think they're genuine?

12 "Gen. Wesley Clark: I think they are."

13 MR. KEHOE: And the person and the voice at that point calling
14 for a multi-ethnic country in Kosovo was Hashim Thaci.

15 During Mr. Misetic's presentation, Your Honours will get to see,
16 during this very volatile timeframe, the steps that Hashim Thaci was
17 making and speeches he was making, to his own people and the
18 international community, to bring back and bring about that peaceful
19 reconciliation. Hardly the person who came in to fill a power void
20 to promote violence so that he and anybody else in the Provisional
21 Government of Kosovo could take over.

22 To the contrary, and if we just can touch on a few other items,
23 was that Hashim Thaci supported practical efforts in this post-war
24 arena to control violence and promote ethnic tolerance.

25 When UNMIK first came to Kosovo following 13 June 1999, the

1 authority for public security in Kosovo rested solely with UNMIK, not
2 with anybody else, just with UNMIK, pursuant to 1244. Despite having
3 the legal authority, UNMIK could not prevent the violence because it
4 didn't initially have the resources. KFOR had the resources but did
5 not have the training or the desire to undertake police functions.

6 What is clear is that the KLA - next slide, please - lacked
7 policing authority. Neither the KLA nor any Kosovo Albanian
8 organisation had authority to act as security forces. UNMIK's civil
9 security presence did not step aside and cede government control to
10 any person or entity. One need only look at UNMIK Regulation 1.1:

11 "All legislative and executive authority with respect to Kosovo,
12 including the administration of the judiciary, is vested in
13 UNMIK ..."

14 They had no power to -- KLA and the Provisional Government of
15 Kosovo had no power to arrest, had no power to prosecute, had no
16 power to incarcerate, all of that power, that legal power rested with
17 UNMIK. Notwithstanding that, and knowing that there were problems on
18 the streets of Prishtine and the other areas of Kosovo, Hashim Thaci
19 promoted, in the next slide, and supported the Kosovo police force.

20 Now, before we go into this, the argument by the SPO in their
21 pre-trial brief and in their indictment is that through this power
22 vacuum, that the Provisional Government of Kosovo and Hashim Thaci
23 was somehow boiling up and promoting this violence so that they would
24 be the ones that could fill this power vacuum.

25 What does it ask? If you want to promote this type of violence,

1 if you want to promote this type of upheaval, why would you support a
2 police force? Why would you support the demilitarisation of the KLA?
3 Why wouldn't you just send the KLA to the mountains of Kosovo where
4 they could live and fight another day?

5 He didn't do that. He didn't do that. Look what he did for the
6 Kosovo police force. In early July 1999, it was very clear and UNMIK
7 recognised the lack of police enforcement presence in the streets of
8 Kosovo. UNMIK and the OSCE, with the full support of Hashim Thaci,
9 created the Kosovo Police Service which was designed to train
10 Kosovars of all ethnicities. And keep in mind that Hashim Thaci
11 promoted a police force, a multi-ethnic police force, to serve as
12 police officers and begin handling criminal activity and violence.
13 The training programme was accelerated with the recognition that this
14 was an urgent need, and the first class graduated in October 1999.

15 In supporting the police force, Hashim Thaci addressed two civil
16 unrest issues: To get police officers on the street to deal with
17 violence; and to get individual former KLA soldiers employed in
18 reducing the violence.

19 In addition, he worked with KFOR and UNMIK for the
20 demilitarisation of the KLA. Is this a step of someone that is bent
21 on taking power and doing so through civil unrest? I suggest,
22 Your Honours, it is not.

23 As part of the demilitarisation process, which had begun on
24 20 June 1999, the KLA was transformed into the Kosovo Protection
25 Corps, a civil entity. The KLA zone commanders' reluctance to

1 demilitarise were transformed by the personal intervention of
2 General Clark with the commanders. General Clark in fact came and
3 convinced them personally to sign on to this agreement. The
4 demilitarisation process proceeded to a successful conclusion under
5 the authority of KFOR General Sir Mike Jackson and the KLA commander
6 Agim Ceku, in coordination with UNMIK and with the support of Hashim
7 Thaci.

8 In the picture we have before you, of course, is Hashim Thaci to
9 the left, Bernard Kouchner from the UN and UNMIK. That's Sir Mike
10 Jackson in the middle. That's Agim Ceku, and, of course,
11 General Wesley Clark. Signed on September 21st, 1999.

12 And how did this go? Was this just something that was in
13 writing? Was this just something that wasn't taking place in reality
14 on the stand? General Clark answered that before the US Armed
15 Services Committee on 2 February 2000. Senator Reed asks General
16 Clark:

17 "Let me ask you, with respect to the KLA. Are they abiding by
18 their agreement to disarm to your satisfaction?"

19 General Clark: "Yes, they are."

20 Senator Reed: "And also, in terms of their integration into the
21 new civil service, for want of a better term, of Kosovo, that
22 integration is going peacefully and effectively?"

23 General Clark: "It is."

24 So here, this man who is supposed to lead this provisional
25 government in violence and unrest to fill this power vacuum is

1 participating and assisting in establishing two crucial institutions
2 to disarm the KLA and to promote civil order on the streets with the
3 establishment of the Kosovo police force.

4 Now, let us talk a bit just about the structure of the KLA,
5 because we didn't hear anything about the structure of the KLA except
6 in some documents that the SPO put on the screen yesterday without
7 explaining what actually happened on the ground with the KLA. But
8 let's talk about the KLA beginning in 1998.

9 The KLA was a fledgling guerrilla force made up of local groups
10 of volunteers set to defend their homes. This was not an army. This
11 was people who, to try to repel and throw off the yoke of the Serbian
12 regime, got together as volunteers to protect their villages and
13 homes.

14 Who were these people? These volunteers were farmers, teachers,
15 workers, students, and other civilians from cities, towns, and
16 villages throughout Kosovo and the diaspora. They weren't trained
17 soldiers. They weren't trained military people. They weren't people
18 that had spent time in armies. They were the common man.

19 As a result, units came together at a local level with loyalty
20 to local leaders. And as I noted previously, any developing attempts
21 to organise, those were destroyed in the spring 1998 by the vastly
22 superior Serbian forces during their summer offensive, which, as I
23 noted, one of the SPO witnesses will tell you that the brigades were
24 destroyed, and those brigades were destroyed all over Kosovo.

25 In November 1998, as part of the attempted reorganisation from

1 the summer offensive that decimated the KLA, the KLA reconfirmed
2 Azem Syla as the general commander, not Hashim Thaci. Reconfirmed
3 Azem Syla, the individual who was replaced in the Rambouillet
4 conference by the zone commanders.

5 In addition, two deputy commanders were appointed, neither of
6 whom was Hashim Thaci.

7 Hashim Thaci was named one of the nine directorates, the
8 political director -- or the head of one of the nine directorates,
9 with no command responsibility over KLA troops in the field. In fact
10 - in fact - from approximately 16 November 1998, Hashim Thaci left
11 Kosovo for Western Europe and didn't return to Kosovo until 9 March
12 1999.

13 So with all of this reorganisation and all this restructuring,
14 what is the end result of the KLA in light of everything that
15 happened with the summer offensive and the offensive that took place
16 in 1999 which decimated the population and with the ethnic cleansing
17 caused over 800.000 people to be taken and thrown out of the country?

18 Well, the International Crisis Group had a comment in a 3 March
19 2000 document noted "What happened to the KLA?" The highlight:

20 "The KLA now is not rigidly structured, and never was."

21 And at the bottom:

22 "Moreover, in terms of a recognisable ... command structure,
23 'the KLA' does not exist, and therefore 'the KLA' cannot be blamed
24 for anything. The question ... has to be ... which part of it? which
25 group? which individual?"

1 This basic information was reflected in a US Department of State
2 cable on 10 March 1999, and it talks about the competition or vying
3 for power between the zone commanders and the General Staff. It
4 notes, this is March 1999, after the supposed restructuring:

5 "The prospect of a loss of power and influence is the driving
6 force in the opposition to Rambouillet among some military
7 commanders. General Staff political-wing officers appear very
8 concerned to maintain KLA unity in the face of the military
9 commanders' opposition to Rambouillet.

10 "The other major issue has been what the KLA calls its
11 'reorganisation' but what in fact has been the leadership effort to
12 create an effective General Staff with genuine control over the
13 disparate KLA formations scattered about Kosovo. This effort appears
14 to have been only partially successful as the zone commanders clearly
15 retain considerable operational independence."

16 I'll read that again:

17 "... the zone commanders clearly retain considerable operational
18 independence."

19 This is March 1999.

20 That entire matter is reflected once again in a letter from the
21 New York State Department that was written to -- I'm sorry, the
22 US State Department concerning the KLA command and control. It's
23 from the State Department Assistant Secretary of Legislative Affairs
24 to Mitch McConnell, then at the Foreign Operations Committee. The
25 letter is dated 4 May 1999. 4 May. Just before -- just a month

1 before the bombing campaign ends.

2 And in this 4 May 1999 letter, the US State Department tells us
3 the United States Senate, Senator Mitch McConnell:

4 "Moreover, as there is no political structure in Kosovo or
5 effective command and control of the KLA, it would take many months,
6 if not years, to organise them to use and maintain any military
7 assistance the United States would provide."

8 Again, there is no effective command and control of the KLA as
9 of May 1999. What you will find, Your Honours, throughout all of
10 this case and with all of this testimony, the accuracy of the lack of
11 effective command and control in the KLA is beyond any question.
12 There was no effective command and control in the KLA. To the extent
13 there was any attempt to do so, that was destroyed in the first
14 offensive in 1998 and certainly during the ethnic cleansing campaign
15 in 1999.

16 So what was Hashim Thaci's role in the political directorate?
17 We saw this organigramme, which we will take on, which was, I will
18 submit to Your Honours, completely wrong, the one submitted
19 yesterday. Let us talk a bit about his role in the political
20 directorate, and let us go back, if you will, to Hashim Thaci coming
21 back to Kosovo in March 1998 after the Jashari massacre.

22 By spring 1998, he was invited to become a member of the newly
23 named General Staff, in charge of logistics and media. What did he
24 do? Transported materials and weapons from Albania, like many KLA
25 soldiers did and many KLA members did; engage with media,

1 specifically facilitating interviews for other KLA leaders, and he
2 himself interfaced with diplomats in the field.

3 But how about his command and control responsibilities,
4 especially over the zone commanders? His lack of command
5 responsibility was demonstrated by the Drenica subzone command who
6 issued an arrest warrant for him on 10 July 1998. So he is supposed
7 to be this big power in the KLA and a subzone commander -- this was
8 before they split up into operative zones. The subzone commander
9 issued an arrest warrant for him on 10 July 1998.

10 His lack of command responsibility in the field is further
11 demonstrated by the decision to unify the KLA and FARK, an agreement
12 that was not signed but it was, in fact, a proposal that was made.

13 And if we can turn to the next slide.

14 And this is a SPO document which, unfortunately, wasn't played
15 for you yesterday, but this is an agreement by members of FARK and
16 the KLA to join forces. So we heard a tremendous amount yesterday
17 about the KLA fighting the LDK and that the LDK were part of the
18 "opponents" that the KLA was trying to go after. Well, FARK is the
19 military arm of the LDK. They are attempting to join the military
20 arm of the LDK, part of the supposed opponents, with the KLA.

21 Importantly, if we look at the individuals that were -- first of
22 all, if we look at the individuals who are at the meeting, and this
23 is 2 November 1998, Mr. Thaci is so important he's not even at the
24 meeting. And look who has to approve this meeting: Adem Demaci,
25 Bujar Bukoshi, the prime minister of the LDK, representatives of the

1 KLA, and another representative of the LDK.

2 They do not even mention -- he was not perceived, Hashim Thaci
3 was not perceived to be a necessary decision-maker. He was not
4 perceived to be a person they had to name in order to bring about
5 this unification of the KLA. And why is that? Quite clearly, in a
6 command and control responsibility for combat operations in the
7 field, Hashim Thaci had no responsibility whatsoever.

8 If we turn to the next page, Hashim Thaci is listed as one of
9 the members of the government in J.1. But, look, the power is
10 distributed among FARK members that you see highlighted in yellow.
11 But, nevertheless, the import here is who is the person in the KLA
12 who has to approve this? Who is the first person on the list?

13 If we go back to the other slide.

14 Adem Demaci. Not Hashim Thaci. No one else. Adem Demaci. He
15 was the one who had to agree that the FARK and the KLA unify their
16 forces. And who is this man? We mentioned him previously. He is
17 the general political representative of the KLA from 13 August 1998
18 to 2 March 1999. He's the general political representative, the
19 highest political office of the KLA during the operative timeframe of
20 so much of what the SPO was talking about yesterday, and he's never
21 mentioned in the conversation as the eminent power broker in the KLA.
22 Not once.

23 Who was he and what did he do? He headquartered in Prishtine.
24 He had advisers. He held press conferences every week to present the
25 KLA political positions and objectives. He had direct regular

1 contact with zone commanders, met regularly with representatives of
2 the international community, issued passes to international diplomats
3 and journalists to go to KLA-controlled areas, and mediated the
4 release of KLA detainees. He staunchly opposed the KLA's presence
5 and participation in Rambouillet.

6 A highly respected leader. A person that was the highest
7 political office of the KLA. A person that was revered in Kosovo for
8 having spent so many years in a Serb jail. The person who was
9 presenting KLA's political positions and objectives, and the person
10 that is called upon to approve this agreement for the KLA. And the
11 SPO mentions nothing about him. Nothing about his authority and
12 nothing about what steps he took during this operative timeframe.

13 Now, if I may, Your Honours, with all due respect, we are moving
14 into the next segment. And if I could turn the floor over to my
15 learned colleague, Mr. Misetic, with the Court's permission.

16 PRESIDING JUDGE SMITH: Absolutely. Go ahead.

17 MR. MISETIC: Mr. President, members of the Trial Panel, good
18 morning. I will pick up here with the discussion of the importance
19 of the distinction between the words "policy" and "politics" in this
20 case.

21 Slide 77, please.

22 The role of the political directorate of the General Staff of
23 the KLA was to present the political objectives of the KLA and
24 communicate the political positions of the KLA with domestic and
25 foreign delegations, as well as with local and international media.

1 Amongst other things, the KLA political directorate opened KLA
2 liaison offices in western countries and held press conferences
3 abroad.

4 The political directorate was responsible for liaising with
5 European and American authorities and other organisations like KDOM
6 and OSCE. Importantly, the KLA political directorate did not set KLA
7 policy and it did not exercise political control over the KLA.

8 Slide 78, please.

9 The SPO, at paragraph 18 of its pre-trial brief, argues that
10 there was a KLA "policy concerning opponents," and then alleges that
11 it was the KLA political directorate which "had responsibility for
12 KLA policy."

13 Slide 79.

14 The SPO, in its pre-trial brief, then implies that an alleged
15 KLA policy to target so-called opponents was created through the
16 General Staff's "policy-making authority," which was allegedly
17 respected by KLA members and which allegedly found itself in KLA
18 rules and regulations as well as in KLA public statements.

19 And yesterday you were told, and I quote:

20 "In his role at the political directorate, KLA policy was
21 Thaci's responsibility."

22 Slide 80.

23 The implication is, therefore, that the alleged policy to target
24 so-called opponents was created by the General Staff, and more
25 specifically the political directorate of the General Staff, and even

1 more specifically Hashim Thaci. But what evidence has the SPO cited
2 to support its contention that the political directorate and
3 Mr. Thaci "had responsibility for KLA policy"? All we have is the
4 Prosecution pre-trial brief. And there, it cites to only one piece
5 of evidence, a book written by Mr. Jakup Krasniqi.

6 Slide 81, please.

7 Before we turn to Mr. Krasniqi's book, it is important for the
8 Trial Panel to understand that the Albanian language makes no
9 distinction between the words "policy" and "politics." In Albanian,
10 both concepts are covered by the same word, "*politike*," but the words
11 have very different consequential meaning in English.

12 In English, politics is defined as "exercising or seeking power
13 in the governmental or public affairs of a state, municipality, etc."

14 And in English, policy is defined as "a course of action adopted
15 and pursued by a government, ruler, political party, etc."

16 The political directorate of the KLA, including Hashim Thaci,
17 publicly presented the KLA's politics; in other words, the KLA's
18 political positions. That's why it was called the political
19 directorate and not the policy directorate.

20 The political directorate's task was to meet and negotiate with
21 international leaders and representatives to secure their support for
22 the cause of Kosovo's freedom. Neither Hashim Thaci nor the
23 political directorate were responsible for setting KLA "policy."

24 Slide 82.

25 Now returning to Mr. Krasniqi's 2006 book titled, "The Major

1 Turning Point," which is the sole piece of evidence cited by the SPO
2 in its pre-trial brief to support the allegation that the political
3 directorate was responsible for setting KLA policy.

4 Mr. Krasniqi's book was written in Albanian. The SPO submitted
5 an English translation of a short excerpt of that book to support its
6 allegation that the political directorate set KLA policy. That
7 excerpt is the following quotation:

8 "Hashim Thaci, from Buroje, Skenderaj, had pursued his PhD
9 studies in political sciences in Zurich University. He was among the
10 first KLA political leaders and the leader of the Student Movement in
11 the 1990s, was the head of the Political Department (leading KLA
12 policy). Although sentenced in absentia by the enemy's court, he was
13 continuously present in Kosovo."

14 Slide 83, please.

15 Now, putting aside Mr. Krasniqi's incorrect assertion that
16 Mr. Thaci was continuously present in Kosovo, the key question is
17 whether Mr. Krasniqi actually asserted that Mr. Thaci was the head of
18 the political department and was "leading KLA policy." In the
19 original Albanian text, Mr. Krasniqi wrote that Mr. Thaci directed
20 the "*politike*." The correct translation of *politike* in this context
21 should have been that Mr. Thaci directed the KLA's politics and not
22 its "policy." But the SPO submitted an incorrect translation to the
23 Pre-Trial Judge, who confirmed the indictment on the basis of the
24 inaccurate translation that Mr. Thaci was allegedly responsible for
25 KLA policy.

1 It should not be in dispute any longer that the word *politike* in
2 Mr. Krasniqi's book should be understood in English to mean that he
3 asserts that Mr. Thaci directed the KLA's politics and not its
4 policy. We know this because, in July 2021, the SPO provided an
5 updated translation of Mr. Krasniqi's book which now has the correct
6 translation.

7 "Hashim Thaci, from Buroje (Skenderaj municipality), who had
8 pursued postgraduate studies in Political Sciences at Zurich
9 University, one of the first political leaders of the KLA, and the
10 leader of the Student Movement in the 1990s, headed the Political
11 Directorate (he directed all the politics of the KLA)."

12 Next slide, 84.

13 Again, this is the SPO's own updated translation. Accordingly,
14 there should no longer be any dispute that the SPO incorrectly
15 translated the evidence used to confirm the indictment, and in its
16 pre-trial brief, to allege that the political directorate was in
17 charge of KLA policy, and, therefore, its allegation that the
18 political directorate was responsible for an alleged policy of
19 targeting civilians.

20 The political directorate and Hashim Thaci were not in charge of
21 the KLA's policies, but rather were tasked with presenting the
22 political positions of the KLA.

23 It should be noted that the SPO provided the correct translation
24 of Mr. Krasniqi's book in July 2021. Nevertheless, five months
25 later, in its pre-trial brief of December 2021, it cited to the

1 earlier incorrect translation to continue to assert that the
2 political directorate was responsible for KLA policy. It then
3 repeated this false allegation against Mr. Thaci yesterday, and the
4 only evidence we know of is what they cited to support the earlier
5 mistranslation.

6 Why the SPO continues to rely on the mistranslation remains
7 unexplained.

8 Slide 85, please.

9 Next, we turn to Hashim Thaci's role in the so-called
10 Provisional Government of Kosovo.

11 Slide 86.

12 Hashim Thaci never had any executive legal authority in his
13 capacity as so-called prime minister of the Provisional Government of
14 Kosovo because, as Mr. Kehoe explained, the Provisional Government of
15 Kosovo never came into existence as had been contemplated at
16 Rambouillet and instead was superseded by UNMIK.

17 Mr. Thaci never had authority over the KLA in his capacity as
18 the so-called prime minister of the Provisional Government of Kosovo.

19 While it is true that Mr. Thaci used titles such as
20 prime minister in order to present himself to internationals as
21 having more authority than he actually had, he used these titles in
22 name only. As I will explain in a moment, the evidence, or absence
23 of evidence, sufficiently demonstrates this fact. He did as much as
24 he could to promote himself as a person of power and authority, but
25 the reality was that he had no real authority and never had effective

1 control.

2 Soon after the arrival of UNMIK, Mr. Thaci realised that UNMIK
3 had the real power and authority to govern Kosovo and began to
4 cooperate with UNMIK.

5 Slide 87, please.

6 As an aspiring politician with hopes of leading Kosovo, it was
7 in Mr. Thaci's interest to demonstrate to UNMIK that he was a
8 reliable and credible partner. He had no motive to allow or
9 encourage the commission of crimes in Kosovo. Such chaos would only
10 undermine his relevance to international leaders and the local
11 population.

12 To the contrary, he continued to need international support,
13 particularly the support of the United States. Not for personal
14 aspirations but, more importantly, because Kosovo's status had yet to
15 be determined, including Kosovo's ultimate goal of independence.
16 Fomenting violence and lawlessness in the direct presence of UNMIK,
17 international organisations and NGOs and the world media would have
18 been fatal to Kosovo's independence objectives, and the SPO's
19 allegations to the contrary simply make no sense.

20 Slide 88, please.

21 Hashim Thaci never had authority to investigate and prosecute
22 crimes committed in Kosovo. Such power and responsibility rested
23 with UNMIK. While Mr. Thaci was an influential person and pretended
24 to have power, he had no effective control of the KLA or former KLA
25 persons or people wearing KLA uniforms. The SPO makes much of

1 Mr. Thaci's use of the title of prime minister, but what does the
2 evidence actually show in terms of whether a superior-subordinate
3 relationship existed between Mr. Thaci and any KLA perpetrators
4 committing crimes?

5 The Prosecution has not cited any credible evidence that
6 Hashim Thaci issued any orders to KLA units or soldiers, whether in
7 his capacity as the so-called prime minister of the Provisional
8 Government of Kosovo or as a member of the General Staff or
9 otherwise. And the Prosecution has cited no evidence of any
10 reporting line between Mr. Thaci and KLA units or perpetrators.

11 If there are no orders from Mr. Thaci to KLA units and no
12 reporting from KLA units to Mr. Thaci, it is unclear how the SPO
13 thinks it can prove that a superior-subordinate relationship existed
14 between Mr. Thaci and KLA perpetrators of crimes.

15 Moreover, it is clear that Mr. Thaci had no material ability to
16 prevent or punish crimes.

17 Slide 89, please.

18 As I mentioned previously, NGOs were on the ground in Kosovo
19 post-conflict and documented the crimes committed in the lawlessness
20 of the immediate post-war period. One such NGO was the International
21 Crisis Group. In its report of November 2, 1999, titled "Who's
22 Killing Whom in Kosovo," ICG agreed that there were many people
23 running around Kosovo wearing KLA uniforms but who were not
24 necessarily part of the KLA:

25 "... KLA uniforms and insignia are widely available at shops and

1 kiosks throughout Kosovo and Albania and, after all, anyone can wear
2 a mask."

3 Slide 90.

4 The UN High Commissioner for Human Rights reached a similar
5 position in his report of 27 November 1999 concerning the prevalence
6 of KLA uniforms in Kosovo:

7 "Some victims of ethnic violence have reported that their
8 assailants included men in KLA uniforms, although it is possible that
9 much of the violence is simply the work of criminal elements,
10 masquerading in uniforms of the KLA. Open borders have in fact
11 allowed the large scale arrival of criminal elements, particularly
12 from Albania. It has also been noted that KLA uniforms are available
13 for about 50 DEM in Albania, and that Albanian nationals men with no
14 relationship at all to KLA can use the uniform as a passport through
15 the German KFOR sector of Kosovo."

16 Slide 91.

17 And to my earlier point about how post-war violence was not in
18 the interests of Kosovo's independence ambitions and, therefore, not
19 in Mr. Thaci's interests, we note this corroborating quote from the
20 ICG's November report:

21 "It is also generally acknowledged that it is not in the
22 interests of the KLA leadership to be seen sanctioning the
23 increasingly barbaric attacks on Serbs. They are aware of the
24 damaging effect of such assaults, often upon elderly and defenceless
25 civilians, that are rapidly eroding the hard-won sympathy that the

1 Kosovo Albanians enjoy in the west."

2 Slide 92.

3 The ICG report then notes it is likely credible that Mr. Thaci
4 specifically was unhappy with the crimes being committed.

5 "It is credible that the KLA leader Hashim Thaci, together with
6 many of the KLA's higher command, could be unhappy with the continued
7 assaults and intimidation inflicted on Kosovo's non-Albanian
8 population. KLA leaders have consistently called for Serbs to remain
9 in Kosovo.

10 "... Thaci said that he was committed to establishing a 'society
11 of tolerance,' and that he regretted acts of violence against Serbs
12 and the flight of Serb civilians saying that: 'We were committed
13 from the very first day to establishing a society where tolerance and
14 not revenge would rule. We ask all Serbs who left Kosovo to return
15 to help peace and democracy and to respect each other.'

16 "Since the KLA never had a unified central command, its
17 leadership, even if sincere, can therefore not give complete
18 assurance that KLA soldiers are not responsible for specific acts of
19 violence. Thaci also does not speak for all KLA and former KLA
20 commanders or soldiers, many of whom are known to be vehemently
21 opposed to demilitarisation."

22 Slide 93.

23 This is the first video we'll play, and what we'll show you now
24 is, in realtime, the statements Mr. Thaci made in the summer 1999
25 concerning the violence. Mr. Thaci repeatedly and publicly called

1 for an end to violence and for the maintenance of Kosovo as a
2 multi-ethnic country where the rights and safety of all citizens
3 would be respected. The following is a video of a public statement
4 issued by Mr. Thaci on 17 June 1999.

5 [Video-clip played]

6 THE INTERPRETER: "Hashim Thaci: I call on Serbs to come back
7 to Kosovo. To those Serbs who fled Kosovo, because we consider that
8 these massacres were not committed by the Serbian people. Because we
9 consider that these people can offer a vital contribution for the
10 future and prosperity of Kosovo. And we have worked -- we have not
11 waged the war to cleanse Kosovo, but a war so that we are all free
12 and equal."

13 MR. MISETIC: Slide 94.

14 And nine days later, on 26 June 1999, Mr. Thaci went to
15 Mitrovica to speak to a large crowd and to diffuse potential ethnic
16 violence.

17 [Video-clip played]

18 THE INTERPRETER: "Hashim Thaci: I am glad we are meeting in
19 Mitrovica today, for which we fought. We have come here today with
20 Mr. de Mello to talk to you and also to talk to the Serb side across
21 the bridge. We crossed the bridge. We went to the hospital. We
22 have sent our people there, they started work. And we are interested
23 in regulating and fixing everything in close cooperation with the
24 international community, and we are going to fix it.

25 "As always, we are really interested in solving every problem in

1 a dignified way, with discipline, with culture. We have even waged
2 our war in a cultural way, and so we are going back to premises and
3 build lives with real civic culture, not only Albanian culture but a
4 democratic culture.

5 "We need to understand that Serbs, too, need to live in
6 Mitrovica, those who have not committed crimes, those who have not
7 killed people. We are not interested and we do not fuel the fires of
8 a mono-ethnic life. We need to understand that whoever wants to live
9 in Kosovo should live in Kosovo. Kosovo belongs to Kosovars, and
10 they are going to live here."

11 MR. MISETIC: If we can go to slide 95, please.

12 A few days later, on 2 July 1999, Mr. Thaci called for tolerance
13 and ethnic inclusion in a joint statement with other leaders. The
14 first speaker in the video is Mr. Sergio de Mello, the then Special
15 Representative of the Secretary-General.

16 [Video-clip played]

17 "Sergio de Mello: Today, I believe is the first time that
18 Albanian and Serb leaders of Kosovo meet and talk to one another,
19 establish a dialogue on the most pressing issue of the moment, which
20 is the safety, security, the right to life, the right to property of
21 all inhabitants of this province.

22 "If you just sit, please.

23 "Well done. I miss it."

24 THE INTERPRETER: "Hashim Thaci: We call on all citizens of
25 Kosovo, be them civilians or military, to refrain and influence the

1 others to refrain from undertaking acts of violence against their
2 neighbours since such acts are unacceptable and those who are
3 responsible for such acts will be brought to justice.

4 "We also insist that all the missing people are handed over to
5 UNMIK representatives. We support the joint efforts currently made
6 by activists of Albanian or Serb or other communities so that
7 together with UNMIK and other international organisations to
8 implement these requests. The road to reconciliation will be long
9 and difficult. It is not true that there is an innate hatred amongst
10 people in Kosovo. We need to work together. As first steps, we have
11 agreed today to immediately establish a line of communication between
12 us, UNMIK and KFOR, and holding of joint meetings like this one
13 today, send out joint messages of reconciliation from TVs and radio,
14 create a joint crisis force in the region together with UNMIK and
15 KFOR which would be able to address urgent problems anywhere,
16 including historic and religious sites, and organise an early meeting
17 between religious and spiritual leaders calling for tolerance.

18 "Father Sava: Both sides condemn the crimes of the Milosevic
19 regime. Persons suspected of war crimes and crimes against humanity
20 shall be brought to justice. We support the role of an international
21 war crimes tribunal. Peace can only be built on justice, not
22 revenge."

23 MR. MISETIC: If we can go to slide 96, please.

24 And three days later, on 6 July 1999, Mr. Thaci publicly
25 condemned crimes, including against the Serb population. This is at

1 least the fourth such public statement by Mr. Thaci in the first few
2 weeks after the armed conflict ended.

3 [Video-clip played]

4 THE INTERPRETER: "Hashim Thaci: It is true that recently,
5 especially following the end of the war, and the last few days in
6 particular, we have seen a not very good, decent or responsible
7 situation by certain individuals or groups who have been involved in
8 breaking in to apartments, also abusing the symbols of the Kosovo
9 Liberation Army, in lootings, burglaries, burnings, destructions,
10 also in desecrating monuments and busts of Serbs. This is a
11 concerning and worrying phenomenon for us. The Kosovo Provisional
12 Government, and myself personally, distance ourselves from such
13 irresponsible acts."

14 MR. MISETIC: If we can go to slide 97.

15 Mr. Thaci's public calls for ethnic tolerance and unity
16 continued throughout the summer and fall of 1999. And we see that in
17 the following video of Mr. Thaci in Rahovec on 17 July 1999.

18 [Video-clip played]

19 THE INTERPRETER: "Hashim Thaci: Your town, as it has always
20 known, will also know today to separate what is even
21 incomprehensible, not respectable at all, or what we have experienced
22 for our orientation, our future. However, the time has come today,
23 as we have always expected new realities created, not to think too
24 much of revenge, of hatred, of divisions. Today is the time of
25 unification. And for this unification, each of us is to play their

1 role, from ordinary citizens to politicians, and all the public
2 strata, without any discrimination, political affiliation, ideology,
3 province, religion or any other affiliation.

4 "We should be the ones who, unlike never before, unite for the
5 independence of Kosovo. We do not need an ethnic town. We need to
6 respect all those who want to live in town as free citizens, as
7 law-abiding citizens, citizens who do not think about confrontations,
8 and citizens who did not participate in the massacres committed
9 against our brothers, sisters, and parents. We'll respect all those
10 worthy of respect, but we will also not allow anyone to shield
11 criminals in the town of Rahovec.

12 "We are also not going to allow anarchy in town. No anarchy and
13 no spirit of intolerance whatsoever in Kosovo, because, as we have
14 often shown ourselves, we will show ourselves again that we are the
15 ones who have always respected and who will keep respecting the rules
16 of democratic order. As we respected that in the past, we are going
17 to respect it again in the future."

18 MR. MISETIC: Next slide, slide 98.

19 On 21 July 1999, the day before the killings of 14 Serbs in
20 Staro Gracko, in Kosovo, Mr. Thaci visited Serb victims of crimes
21 together with the Serbian Orthodox priest, Father Sava, as well as
22 with Mr. Bernard Kouchner, the Special Representative of the
23 Secretary-General, and Mr. Momcilo Trajkovic, a Kosovo Serb
24 politician.

25 Next slide, 99.

1 we do ask from all Serbians who left Kosova to return in Kosova to
2 help peace and democracy. We concluded in the meeting of the
3 transitional council yesterday that the situation is improving every
4 day. But I am more than sure that we are going to work in accordance
5 with all the agreements that we have already signed, and the process
6 of the transformation and demilitarisation of the KLA will be
7 successful.

8 [In English] "Mr. Thaci, sir, can you give us a 100 per cent
9 guarantee?"

10 "Robin Cook: We have been encouraged that so far the KLA has
11 kept the timetable and has actually surrendered weapons in advance of
12 the dates by which they had to be returned.

13 "Could you tell us why you're unable ..."

14 MR. MISETIC: Mr. President, I note the time. I have one slide
15 left in this section. I should finish? Thank you.

16 Next slide, 101.

17 All of this video evidence demonstrates that the policy of
18 Hashim Thaci was exactly the opposite of the policy that the
19 Prosecution tries to ascribe to him in the indictment. Mr. Thaci was
20 a smart and pragmatic leader who advocated for law and order in a
21 multi-ethnic Kosovo, both because he personally believed in these
22 ideals and because he knew that this was the only path to Kosovo's
23 ultimate independence. The evidence supports that conclusion.

24 In contrast, the Prosecution bears the burden of proving beyond
25 reasonable doubt that there is no reasonable explanation of the

1 evidence other than that Mr. Thaci was part of a policy to use
2 violence and criminality to target civilians in order to achieve and
3 maintain power.

4 The SPO cannot plausibly advance that argument in light of the
5 evidence, some of which you have just watched, and in light of
6 numerous decisions of international courts and tribunals that refute
7 the Prosecution's case here, and which I will discuss after the
8 break.

9 The Prosecution's burden of proof in this case, in our
10 submission, will be insurmountable. For example, let's take a look
11 at this slide. This is from a report prepared by the US Department
12 of State in December 1999, titled "Ethnic Cleansing in Kosovo: An
13 Accounting," in which the State Department reported, and I quote:

14 "A July 20 statement condemning attacks on Serbs and Roma was
15 released by the former UCK leadership, and former UCK leader
16 Hashim Thaci publicly denounced the July 23 Gradsko attack. There is
17 no evidence that the former UCK leadership is orchestrating the
18 violence."

19 The SPO will have to convince you that the State Department
20 got it wrong despite numerous US personnel and assets on the ground,
21 and they will have to convince you that the Prosecution has
22 discovered the only reasonable interpretation of the evidence 24
23 years after the fact; namely, their allegation that the KLA
24 leadership generally, and Hashim Thaci specifically, were, in fact,
25 orchestrating the violence.

1 Mr. President, after the break I will discuss the Prosecution's
2 evidence specifically against Mr. Thaci as well as the prior
3 international jurisprudence and how it impacts this case.

4 PRESIDING JUDGE SMITH: Do you have an estimate of how long you
5 will continue before ending your portion of the opening statement or
6 your team's opening statement?

7 MR. MISETIC: Our plan is I should have about 30 minutes, maybe
8 40 minutes, and then Mr. Thaci would like five minutes.

9 PRESIDING JUDGE SMITH: All right.

10 MR. MISETIC: Oh, and Mr. Kehoe will have a conclusion as well.
11 I apologise. Yes. But it will be a short conclusion, and then
12 Mr. Thaci. So we should be finished by 12.15.

13 PRESIDING JUDGE SMITH: All right. Thank you very much. You
14 can be seated.

15 We will stand adjourned till 11.30, and please be back at that
16 time.

17 --- Recess taken at 11.02 a.m.

18 --- On resuming at 11.30 a.m.

19 PRESIDING JUDGE SMITH: [Microphone not activated]

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

21 Members of the Trial Panel, much of the evidence that we
22 presented to you this morning, including in the form of US government
23 cables, statements in the US Senate, reports of NGOs - like
24 International Crisis Group - have subsequently had their conclusions
25 corroborated by findings of an international tribunal.

1 And so in addition to the lack of evidence to support its
2 theory, the Prosecution's burden is particularly high in this case
3 because many of the SPO allegations have already been rejected by the
4 ICTY.

5 And for the transcript, this is slide 102.

6 The SPO's excuses yesterday in attempting to avoid the
7 importance of these findings are not convincing for reasons I will
8 explain in a moment.

9 Slide 103.

10 But first we discuss the ICTY findings. In order to prove that
11 the accused in this case are responsible for war crimes committed in
12 the summer of 1999, the Prosecution must prove that an armed conflict
13 existed in Kosovo into September 1999. But the prosecutor of the
14 ICTY concluded that the armed conflict ended in Kosovo in June 1999,
15 and, therefore, the ICTY had no jurisdiction to investigate crimes
16 committed in Kosovo after June 1999. She made these representations
17 to the Security Council of the United Nations on 24 November 2000.
18 And that's on the screen before you.

19 Next slide, slide 104.

20 The same conclusion was reached by Mr. Clint Williamson, the
21 prosecutor of the Special Investigative Task Force set up by the
22 European Union specifically to investigate the allegations in the
23 Marty report. Mr. Williamson is, in effect, the predecessor to the
24 current Specialist Prosecutor's Office. And in a press release dated
25 29 July 2014, Prosecutor Williamson stated:

1 "The reality is that the ICTY had jurisdiction to address crimes
2 occurring during the period of armed conflict, so up to the point
3 that the war ended in mid-June 1999."

4 Mr. Williamson thus publicly expressed his conclusion that the
5 armed conflict in Kosovo ended in mid-June 1999, but SPO evidently
6 thinks it discovered some evidence between Mr. Williamson's statement
7 in July 2014 and the time it filed its indictment in April 2020,
8 evidence that so convincingly proves the existence of an armed
9 conflict in Kosovo after June 1999 that you, as the Trial Panel, will
10 be compelled to conclude that there is no reasonable interpretation
11 of the evidence other than that an armed conflict existed after June
12 1999 despite the contrary findings of two international prosecutors.

13 Slide 105.

14 Six of the ten counts of the indictment filed by the Prosecution
15 in this case charge crimes against humanity. To prove these six
16 counts, the Prosecution is going to have to prove that a widespread
17 or systematic attack against the civilian population occurred during
18 the indictment period. If it cannot prove that such an attack
19 existed against the civilian population, those six counts of the
20 indictment must be rejected and you must acquit the accused of those
21 counts.

22 The ICTY, in the Limaj case, concluded that there was no
23 widespread or systematic attack against the civilian population. But
24 they are worth repeating in the context of the discussion about
25 crimes against humanity. In paragraphs 210 to 217, the findings were

1 that there was no widespread or systematic attack against the
2 civilian population, whether Serbian or Albanian; no policy to target
3 civilians; the policy was to target collaborators with the Serbian
4 regime that was linked to the KLA's military objectives; individual
5 cases of abduction were carried out by rogue elements not acting
6 within the policy; and any abductions were carried out outside of the
7 central KLA control because of limited effective control.

8 And paragraph 228 of the judgment says there was no policy to
9 attack the civilian population, but a limited policy directed at
10 those collaborating with the Serbian regime, and this policy was
11 linked to military objectives, as established earlier in the
12 judgment.

13 That last finding in paragraph 228 is additionally notable
14 because it recognises that there were, indeed, collaborators with the
15 Serbian regime, something which the Prosecution yesterday did not
16 acknowledge a single time.

17 Slide 106.

18 It will also not surprise you to hear that the issue of KLA
19 communiqués has previously been litigated before international courts
20 and tribunals which have rejected previous attempts by prosecutors to
21 ascribe criminal motives to the issuance of such communiqués.

22 For example, at the ICTY, the Limaj trial chamber concluded that
23 the KLA issued communiqués for propaganda purposes and also to target
24 "only those who were believed to have, or suspected of having, links
25 with the Serbian regime." It made the express finding that this

1 policy was "linked to [the KLA's] military objectives." And this is
2 all at paragraphs 216 and 217 of the Limaj trial judgment, which are
3 on the slide before you now.

4 At paragraph 216, the Limaj trial chamber addressed the issue of
5 KLA communiqués, and this is the highlighted portion:

6 "The Chamber accepts that communiqués were intended partly for
7 propaganda purposes. However, there was a KLA policy, linked to its
8 military objectives, to target those individuals thought to be
9 collaborating with the Serbian forces. Nevertheless, in the guise of
10 giving effect to this policy, a number of Kosovo Albanian civilians
11 may have been abducted for other reasons, such as personal revenge of
12 individual KLA members and other motives. The KLA did not have the
13 resources or the command structure to adequately control the
14 implementation of this policy by its forces at the time relevant to
15 the Indictment, and the Chamber accepts that individual cases of
16 abduction, for reasons not within the collaborator policy, were
17 carried out by rogue elements of the KLA."

18 I also note that the Prosecution yesterday argued that, after
19 the conflict, the accused tried to justify the communiqués as
20 propaganda, and you were told yesterday that this was "plainly
21 false." As this slide shows, the Prosecution is not arguing that the
22 accused are plainly false. It is arguing that the ICTY was plainly
23 false, and it is essentially asking you to enter a contrary finding.

24 You will not hear any new sufficiently compelling evidence from
25 the SPO in this trial that will lead you to any conclusion different

1 from the one reached by the ICTY in the Limaj case.

2 Slide 107, please.

3 The ICTY in the Haradinaj trials also did not find the existence
4 of a JCE to target collaborators. The 2012 Haradinaj trial judgment
5 rejected prosecution allegations of a JCE to target collaborators,
6 found that there was no widespread or systematic attack against the
7 civilian population, there was no plan to consolidate the total
8 control of the KLA over the Dukagjin operational zone through the
9 mistreatment of civilians, and "victims were singled out for reasons
10 that pertain to them individually," a finding which contradicts the
11 SPO's allegation here that a civilian population as such was
12 targeted.

13 Slide 108.

14 To circumvent the findings of the ICTY, and in order to try to
15 fit a square peg into a round hole, the Prosecution in this case has
16 tried to redefine the elements of crimes against humanity. So
17 instead of alleging that there was a widespread or systematic attack
18 against a civilian population, they have charged that there was a
19 widespread or systematic attack against a "civilian population of
20 opponents." This approach marginalises international humanitarian
21 law with unforeseen consequences for future cases.

22 The Limaj trial chamber found that the number of victims of
23 crimes was relatively small when compared to the overall population
24 and, therefore, the trial chamber could not find that the civilian
25 population as such was the subject of attack.

1 Here, the Prosecution has tried to build a case by increasing
2 the total number of victims while simultaneously decreasing the
3 definition of civilian population. In effect, increasing the
4 numerator of the fraction while decreasing the denominator in order
5 to make it appear that a substantial portion of an overall smaller
6 civilian population was targeted. However, the SPO cites no
7 authority for its novel attempt to redefine the term "civilian
8 population" and, thus, to reduce the denominator.

9 Just as importantly, the evidence at trial will show that the
10 Prosecution in this case will not be able to substantially increase
11 the numerator either. While the number of victims in the Limaj case
12 that were allegedly abducted by KLA forces was up to 140 - and that
13 number can be found at paragraph 209 of the Limaj trial judgment -
14 the total number of such victims alleged by the Prosecution in this
15 case appears to be no more than 440, taking the Prosecution's case at
16 its highest. This number does not materially impact the conclusions
17 of the Limaj trial chamber that there was no attack against the
18 civilian population as such.

19 Finally, let me note the additional novelty that the Prosecution
20 is pursuing here. The zone commanders in Limaj and Haradinaj were
21 acquitted in part on the basis that there was no JCE in their zones
22 and no crimes against humanity in their zones. But the SPO is now
23 charging the alleged superiors of these acquitted zone commanders for
24 participation in a JCE with those same acquitted zone commanders for
25 crimes against humanity in their zones based on materially the same

1 evidence, even though the ICTY rejected those allegations.

2 We submit to you that charging alleged superiors for the actions
3 of alleged subordinates who have already been acquitted for those
4 actions cannot be right. How the accused could have implemented a
5 JCE through acquitted zone commanders is unexplained by the SPO.

6 Slide 109.

7 The KLA did not have a policy to target opponents.

8 Slide 110.

9 Again, the Limaj trial chamber explicitly concluded:

10 "The evidence does not establish, or even indicate, a general
11 policy of targeting civilians as such, whether Serbian or Kosovo
12 Albanian."

13 Slide 111.

14 And I've already shown you the Limaj trial chamber's finding
15 that any abuses by KLA forces were outside of KLA policy and,
16 moreover, that the KLA did not have the resources or command
17 structure to adequately control its forces. That is paragraph 216 of
18 the Limaj trial judgment.

19 And as an aside here, let me again note that the KLA's use of
20 forces that it could not necessarily effectively control was legally
21 justified for many reasons including, but not limited to, matters the
22 Thaci Defence has properly noticed to the Court, including military
23 necessity and self-defence against the Serbian military campaign and
24 crimes that Mr. Kehoe has already described to you.

25 Slide 112.

1 Accordingly, the SPO must now argue that every international
2 institution that has looked at these issues over the last 24 years
3 has gotten it wrong in many material respects.

4 Despite ICTY findings and Mr. Williamson's findings, the SPO now
5 argues a JCE to target collaborators and opponents existed, the KLA
6 engaged in widespread or systematic attacks, those attacks were
7 directed against the civilian population of opponents, and an armed
8 conflict existed after June 1999 into September 1999.

9 The SPO, 21 years after the fact, implies that the ICTY got it
10 wrong as did the SPO's predecessor, the SITF Prosecutor
11 Mr. Williamson. They will have to prove to you that the ICTY and
12 Mr. Williamson were wrong in their reasoning or that the SPO has
13 discovered new compelling evidence that was both unavailable to the
14 ICTY or Mr. Williamson or both. This is a huge mountain to climb for
15 the Prosecution in this case.

16 The SPO yesterday recognised that it has a problem known as the
17 ICTY problem in this case. And it tried to circumvent that problem
18 by advancing two primary arguments. You are essentially told you
19 should forget the ICTY findings because, first, the Prosecution
20 argued that "no prior court has been called upon to consider the role
21 and responsibility of key members of the General Staff in the manner
22 in which the Trial Panel will be required to do so."

23 First, that is misleading. As I've just shown you, the Limaj
24 trial chamber in fact did conclude that the KLA did not have the
25 command structure to control implementation of a policy to detain

1 collaborators in pursuit of military objectives.

2 Second, with respect to the point made that you will be the
3 first Trial Panel assessing the responsibility of the General Staff,
4 the question they left unanswered is: Why are you the first
5 Trial Panel looking at this issue? You are the first Trial Panel
6 looking at this issue because no prior prosecutor thought that there
7 was sufficient evidence to indict anyone on the General Staff for
8 crimes that were committed in 1998 and 1999. They reviewed the
9 evidence and found it insufficient to indict.

10 Fifteen years later, the SPO has indicted on the basis of
11 essentially the same evidence. Now, the SPO tries to distinguish its
12 prosecution from the ICTY cases by relying on documents seized from
13 Mr. Selimi and Mr. Krasniqi, but the SPO did not have those documents
14 when it filed the charges in this case. It filed an indictment on
15 essentially the same evidence that the ICTY OTP found insufficient.

16 The SPO yesterday also argued that "no prior court had the
17 fullness of evidence at its disposal which the Trial Panel will
18 have." But what evidence specifically has the SPO uncovered that is
19 so significant that it will require you to overturn the findings of
20 the ICTY trial and appeals chambers that I have just taken you
21 through? The SPO, of course, did not specifically identify any such
22 evidence yesterday.

23 Members of the Trial Panel, at the end of the Prosecution's
24 case, we will ask you: Did the ICTY and Mr. Williamson get it wrong,
25 or, instead, did the SPO get it wrong as a consequence of an

1 overzealousness to pursue Mr. Thaci?

2 Slide 113.

3 Next, we turn to the reliability and sufficiency of the
4 Prosecution evidence. We will not use opening statements to reveal
5 now all of the holes in the credibility of the Prosecution evidence.
6 As this experienced Trial Panel is aware, there is significant
7 forensic value in witnesses being confronted with impeachment
8 evidence for the very first time when they are under
9 cross-examination.

10 Members of the Trial Panel, rest assured that the Defence will
11 be producing significant impeachment evidence throughout the course
12 of the Prosecution's case as they bring their witnesses forward. For
13 now, we will highlight only a few examples for you of just how
14 deficient the Prosecution's investigation of this case has been.

15 Slide 114.

16 The first example is the case of the so-called two Serb
17 journalists. Paragraph 113 of the indictment alleges that two Serb
18 journalists were detained and questioned by Hashim Thaci and
19 Fatmir Limaj. They were allegedly threatened and beaten, and the
20 indictment notes that the case "attracted the attention of
21 international representatives," and, indeed, human rights
22 organisations issued public statements in relation to the alleged
23 abductions of these so-called journalists.

24 The following slide are not to be shown in the public.

25 Slide 115.

1 The SPO has identified two alleged journalists. Putting aside
2 for the moment the allegation that Mr. Thaci in any way was involved
3 in the detention of these individuals, whether through questioning of
4 them or otherwise, which is expressly denied by Mr. Thaci, what do
5 the SPO do to verify the status of these two individuals and confirm
6 that they were, indeed, journalists and, more importantly, civilians?

7 Next slide. Slide 116.

8 The person whom I will refer to as SPO Journalist 1 was, in
9 fact, not simply a journalist. He was suspected by Serbian leaders
10 of being a Serb war criminal in the war in Croatia and of also being
11 a combatant in the war in Bosnia. The evidence will also establish
12 that SPO Journalist 1, posed as a photo journalist using media
13 credentials, was actually a radical nationalist and a combatant in
14 both the Serbian and Croatian wars.

15 What you see on the screen in front of you is a document of the
16 state security service of the Ministry of the Interior of the
17 so-called Republika Srpska Krajina, the Serb parastate that existed
18 on the territory of Croatia from 1991 to 1995. In this document, the
19 state security service identified SPO Journalist 1 as having come to
20 Croatia in October 1991 "with a group of volunteers from Serbia and
21 Bosnia-Herzegovina."

22 The report says he "claimed to be a newspaper photographer from
23 a media organisation and had a certified newspaper identification
24 card. However, he expressed his wish to join the units of the
25 Benkovac Territorial Defence as a volunteer."

1 The report goes on:

2 "The group of volunteers gathered around" SPO Journalist 1
3 "gained the reputation of criminals for a short time, criminals who
4 were abusing their participation in battles to carry out robberies
5 and often even murders."

6 It goes on:

7 "Due to criminal activities and murders committed, especially in
8 actions near Skabrnja, where they killed tens of civilians, it was
9 decided that this unit be closed down."

10 For those that are not aware, the reference to the murder of
11 civilians in Skabrnja is a reference to one of the worst atrocities
12 in the Croatian war for which Milan Martić was ultimately convicted
13 through JCE liability by the ICTY. And this report states that the
14 direct perpetrator of this crime, among others, was SPO Journalist 1,
15 the man who is being presented to you as nothing more than a
16 journalist who happened to be in Kosovo in October 1998.

17 What's also important about this document is that it comes to us
18 from the archives of the ICTY as prosecution evidence used to convict
19 Milan Martić. And I will get back to this point in a moment.

20 Slide 117.

21 We also obtained from the ICTY archives this witness statement
22 of an ICTY prosecution intelligence analyst, whose name is on the
23 slide before you now. The ICTY prosecution intelligence analyst
24 testified that SPO Journalist 1 was "a hard-core Chetnik," and noted
25 that his "combat activities were not limited to the war in Croatia

1 but also that he reappeared in the region in March 1992, trying to
2 arrange arms supplies to the Serbs in Bosnia."

3 Slide 118.

4 Members of the Trial Panel, the Prosecution, like you, is
5 learning for the first time this morning who SPO Journalist 1 really
6 was. Until this moment, the Prosecution has not known that one of
7 its so-called two Serbian journalists was a suspected war criminal
8 and a combatant in the Croatian and Bosnian wars.

9 We know this because the documents we just showed you were not
10 produced to us by the SPO, and they would have had to disclose them
11 to us as exculpatory material if they had it in their possession.
12 The fact that it has not been produced to us leads us to the
13 conclusion that the SPO is not aware of the true background of SPO
14 Journalist 1.

15 And the Prosecution's ignorance of his background is troubling
16 because it is an example of how the Prosecution in this case has
17 failed to take the most basic of investigative steps to objectively
18 establish the facts. The two documents we just showed you are in the
19 public domain. We went to the online ICTY evidentiary database and
20 typed in the name of SPO Journalist 1, and these documents were
21 available to us in a matter of seconds.

22 How many more of the Prosecution's alleged victims has the
23 Prosecution not done a basic background check on?

24 The Prosecution here evidently did not run the name through the
25 ICTY database to do a basic investigation of who he really was. We,

1 on the other hand, can tell you already that there are other names
2 that they have never bothered to check either. Some were even
3 mentioned in the SPO opening statement yesterday, but more on that
4 during trial and in cross-examination.

5 Members of the Trial Panel, the Prosecution bears the burden of
6 proving the civilian status of each and every one of the persons they
7 claimed to have been a civilian victim of crimes charged in the
8 indictment. The case of the Serbian "journalist" shows that they
9 have not even begun to investigate the status of its alleged victims,
10 and the trial is now underway.

11 The following slide can be shown in public.

12 Slide 119.

13 Next, we turn to the Prosecution's allegation in paragraphs 110
14 and 111 of the indictment that on or about 20 September 1998,
15 thirteen parliamentarians were detained in Qirez. They were then
16 allegedly taken to a school in Baice/Banjica, and subjected to
17 allegedly "severe beatings and psychological abuse" over two days.
18 Then, after these delegation members had been "badly beaten, and had
19 visible injuries," they were allegedly questioned by Hashim Thaci,
20 amongst others. This allegation was repeated yesterday in the
21 Prosecution's opening statement. But is it true?

22 Slide 120, please.

23 Were the parliamentarians allegedly severely beaten with visible
24 injuries? The Defence will have much to say in the cross-examination
25 of witnesses about the events at Qirez and Baice/Banjica. You will

1 hear evidence of the security concerns created by this delegation.
2 But we can already show you contemporaneous evidence of the condition
3 of these parliamentarians within 24 hours of their release on
4 23 September 1998. You can hear from the parliamentarians themselves
5 on this video and judge whether they appear to have been severely
6 beaten with visible injuries.

7 You can also hear their own contemporaneous accounts of whether
8 they had been mistreated while detained.

9 And, sorry, next slide, please.

10 The video we're about to show you is from a TV show in Kosovo
11 that was broadcast on 21 October 2020 within which the video of the
12 press conference of the parliamentarians of 23 September 1998 is
13 shown. That is why you see the date of 21 October 2020 on the video,
14 but what is relevant for our purposes is the video you will see now
15 which was taken on 23 September 1998.

16 [Video-clip played]

17 THE INTERPRETER: "Presenter: This is a conference that was
18 held by Mr. Gjergj Dedaj upon his return from Drenica which was
19 widely commented and which I believe will be commented even more. So
20 let us see this material, and then we'll get back to the studio to
21 listen to the story of Mr. Dedaj about what happened there.

22 "Gjergj Dedaj: Once we arrived in Qirez, after we travelled
23 through the road passing through several villages and after we were
24 stopped several times at Serb police checkpoints, sometimes for an
25 hour and a half, a unit of secret police arrived, as they say, of

1 Kosovo Liberation Army, who wanted to know who the organiser was, who
2 the group leader was, who the persons there were. I said we were 30
3 participants from Prishtine, members of the delegation, including
4 journalists as well.

5 "They also had separate conversations with us. They mainly
6 wanted to know about our political activity, activities of each of
7 us, and I'm referring to conversations they had with me, my political
8 activity, in my capacity as the deputy head of the parliament and as
9 the leader of the Kosovo Liberal Party. The method we were stopped,
10 we were detained, for me, personally, was incomprehensible,
11 unnecessary, because we are not unknown people to the public. Our
12 activity has always been legal. We will always give it priority.

13 "Yesterday, after a very fierce offensive started, Drenica was
14 fully seized. I can say an iron siege. In Qirez, and on our way to
15 Qirez, we saw a situation where people were moving around, running in
16 different directions, asking each other, 'Where are you going,'
17 'where am I going.' It was a situation when people were at a
18 crossroad, not knowing who was going where. A situation that can
19 only be described as a consequence of this brutal Serb offensive, and
20 they were really very worried.

21 "Until 1400 hours yesterday, meaning after 48 hours yesterday,
22 when they informed us that, Now you are free and that we kept you in
23 detention for 48 hours. They were first interested to know why we
24 had not announced the visit, which I consider we are not going to
25 announce our visits any time, and we're going to other territories as

1 well, because, like I said, it is our obligation to go to our people,
2 to our lands.

3 "We were not threatened in the real sense of the word 'threat.'
4 In my view, it is just that our stopping was senseless. It has no
5 sense whatsoever. There was no reason for us to be stopped while
6 we're all public persons. We were people whose public activity
7 obliged us to work every day, and we have done that in a legal way.
8 Therefore, we did not go there to do any sort of propaganda
9 whatsoever, be it political or party-related, against or pro the KLA.

10 "So as I said at the beginning, our mission was of a
11 humanitarian character.

12 "The forces, the unit that we met, they behaved in a correct
13 manner with us. While about us, other parties, being closer to
14 President Rugova, I consider that all the political parties have all
15 due respect for Mr. Rugova, for President Rugova, the president of
16 the Republic of Kosovo, who won the vote of the people of Kosovo in
17 the last elections.

18 "I'm not aware of what arguments they had, but I can tell you
19 publicly that from all the participants there, it was nowhere said or
20 written that we are against the Kosovo Liberation Army, against the
21 institutional organisation of Kosovo."

22 MR. MISETIC: While the parliamentarians clearly do protest at
23 the fact that they were detained, they also clearly indicate "we were
24 not threatened, not in the real sense of the word 'threat,'" and "the
25 forces, the unit that we met, they behaved in a correct manner."

1 And contrary to the Prosecution's allegations in the indictment
2 and what was told to you yesterday, these parliamentarians did not
3 appear to have any "visible injuries" as alleged by the Prosecution.

4 For now, we leave it at that concerning the allegations about
5 the events at Qirez, but we will have much more to say during the
6 cross-examination of the Prosecution's witnesses.

7 The following slides are not to be shown to the public.

8 Finally, we turn to the allegations against Mr. Thaci concerning
9 the disappearances of two individuals in Drenoc. The Prosecution
10 alleges that in June 1998 two opponents who had been arrested,
11 interrogated, and in one case severely beaten by JCE members and
12 tools at the Drenoc headquarters, were taken in the direction of the
13 KLA general headquarters by Hashim Thaci and Kadri Veseli personally,
14 with Rexhep Selimi also present. The detainees were never seen or
15 heard from again.

16 Slide 123.

17 The SPO has no credible evidence that Mr. Thaci was involved in
18 the disappearances of these two individuals, and that is because he
19 had no involvement whatsoever. *[REDACTED] Pursuant to In-Court
Redaction Order F01423RED.*

20 *[REDACTED] Pursuant to In-Court Redaction Order F01423RED.*

21 *[REDACTED] Pursuant to In-Court Redaction Order F01423RED.*

22 *[REDACTED] Pursuant to In-Court Redaction Order F01423RED.*

23 *[REDACTED] Pursuant to In-Court Redaction Order F01423RED.*

24 *[REDACTED] Pursuant to In-Court Redaction Order F01423RED.*

25 *[REDACTED] Pursuant to In-Court Redaction Order F01423RED.*

1 [REDACTED] Pursuant to In-Court Redaction Order F01423RED.

2 [REDACTED] Pursuant to In-Court Redaction Order F01423RED.

3 [REDACTED] Pursuant to In-Court Redaction Order F01423RED.

4 [REDACTED] Pursuant to In-Court Redaction Order F01423RED.

5 We emphasise this point: All of the individuals who fabricated
6 this allegation had clear motives to do so, and this will be clear to
7 you very early in this trial.

8 We cannot say more for now in order to protect the effectiveness
9 of the cross-examination of witnesses who will soon appear before
10 you, but rest assured that we will very soon have plenty to say about
11 this allegation.

12 The next slide can be shown to the public.

13 I thank the Trial Panel for its attention this morning, and I
14 will now turn the podium over to Mr. Kehoe for concluding remarks.
15 With your permission, Mr. President.

16 PRESIDING JUDGE SMITH: You have my permission.

17 Mr. Kehoe, you have the floor.

18 MR. KEHOE: Yes, thank you, Mr. President and Your Honours.
19 This will be quite brief.

20 Just in conclusion before President Thaci passes a few remarks
21 to the Chamber.

22 We'd just like to cover some of the matters that we covered this
23 morning. In essence, the SPO is asking this Tribunal to find beyond
24 a reasonable doubt that a massive conspiracy with a common criminal
25 purpose by the four accused is the only plausible explanation for the

1 violence that occurred during the indictment period. As this opening
2 statement clearly revealed, this evidence is simplistic and oftentimes
3 wrong.

4 The violence was an outgrowth of multiple reasons. The chaotic
5 war was localised at a grassroots support by people trying to protect
6 their homes and their villages, and, frankly, the Kosovar Albanians
7 were fighting for their lives.

8 Command and control. The SPO would have you believe that the
9 vertical command and control within the KLA operated without any
10 mistake or deviance -- deviation, if I will, along the way. Such was
11 not the case. There was no effective command and control, and we
12 need not point to any other incident than the zone commanders
13 changing the general commander of the KLA by their own decision,
14 without consultation with Mr. Thaci or anyone else.

15 In addition, there's no indication from the SPO that they have
16 incorporated what was happening on the ground. This was a war. This
17 was a war against one of the greatest armies or most powerful armies
18 in Europe: The Yugoslav Army. Yet, there is no indication or
19 explanation or discussion by the SPO as to what the attacks by the
20 Yugoslav Army and the military police in 1998 and 1999 did to the
21 command structure to the KLA, put aside what it did to the KLA
22 battalions and brigades on the ground.

23 What we will find during the course of this is that those
24 brigades were decimated in virtually every zone in Kosovo.

25 Hashim Thaci was part of the political directorate. He didn't

1 have any control over troops and certainly didn't have any control
2 over detention centres that were located in sparse locations in
3 villages throughout Kosovo.

4 On a pure motive issue, any violence directed against civilians
5 certainly would have undermined Hashim Thaci's standing with the
6 international community after they were specifically told there were
7 not to be attacks against the civilian population, and any such
8 attacks would have been adverse to his personal interest.

9 In sum, Your Honours, contrary to the statements and position
10 taken by the SPO, Hashim Thaci was not a man that wanted to take over
11 Kosovo. What has been demonstrated on numerous occasions by -- not
12 the least of which is the videos that were being played during
13 Mr. Misetic's presentation, that he was trying to bring about a
14 peaceful ethnic society with reconciliation to all parties at the
15 same time that he was demilitarising the KLA and forming a police
16 force. Clearly, these are just some of the facts that we will bring
17 into evidence, but even these facts militate against any position
18 that the SPO has advanced that my client, President Thaci, was part
19 of some common criminal purpose to take over Kosovo. Such was not
20 the case.

21 Your Honours, thank you for your attention in this regard. We
22 will not have this opportunity to address you directly in this
23 fashion until the end of the case, and we look forward to that
24 moment. At that moment, we're going to ask you to enter a verdict of
25 not guilty for President Thaci, because we are confident that the

1 evidence that we presented in this trial, both by the SPO and by the
2 presentation that we will make, will adequately and fully support a
3 position of not guilty.

4 Mr. President, with your permission, if the Court could just
5 give the floor to our client for a brief comment, it would be greatly
6 appreciated.

7 PRESIDING JUDGE SMITH: How much time do you expect?

8 MR. KEHOE: Maybe five minutes.

9 PRESIDING JUDGE SMITH: All right.

10 MR. KEHOE: Although, I'm told it may bleed into seven, but I'm
11 not sure it's going to be more than that.

12 PRESIDING JUDGE SMITH: Mr. Thaci, you may stand up, if you're
13 comfortable standing.

14 You have the right to make an unsworn statement. We grant you
15 that right at this time. Please confine your remarks to five
16 minutes. Thank you.

17 THE ACCUSED THACI: [Interpretation] Thank you very much,
18 Mr. President, Judge Smith, Your Honours, Judge Mettraux, Barthe,
19 Gaynor. Thank you very much for the opportunity to briefly address
20 you today.

21 Today, we are embarking on a journey together, a journey towards
22 truth and justice. Truth and justice are principles that I hold
23 dear. They are the cornerstone of all democracies and a foundation
24 of peace.

25 Let me make myself avail of this occasion to say that I feel

1 sorrow and pain for all the victims of this terrible war, regardless
2 of their ethnicity, religion, or political views. Victims do not
3 obtain justice when the innocent are pursued. One injustice cannot
4 be cured and corrected by another injustice.

5 I'm innocent of all these allegations. However, I'm ready to
6 face this new challenge and succeed, for my family, my people, and my
7 country. Our journey to freedom was long and hard.

8 I was a student in Switzerland, a political exile, when the
9 Jashari family was massacred in March 1998. Like many Albanians in
10 the diaspora, I returned to help my country too, and I joined the
11 resistance for the freedom of Kosovo. Everyone in our place would
12 have done exactly the same thing when freedom was taken away from
13 them.

14 The KLA was made up of simple people, volunteers trying to
15 defend their homes, their families, and their dwellings. They fought
16 and many died bravely. This was the price to freedom. Thousands of
17 families lost their loved ones in hundreds of massacres committed by
18 the Serb forces. Our opponents were the Serbian army, police, and
19 paramilitaries who were battle hardened in killing fields of Bosnia.

20 Dear participants and dear Panelists, both the peaceful and
21 armed resistance shared the same goal of freedom, statehood, and
22 democracy for Kosovo. And without popular resistance, there wouldn't
23 be a Kosovo today. The people of Kosovo did not want war. They
24 instead wanted peace. War was imposed to them. They did what any
25 freedom-loving people would do to protect their families and their

1 children, to protect their home country. So we, the Kosovo, were in
2 the right side of history.

3 Today I'm happy that the people of Kosovo live in a free,
4 independent Kosovo based on equal rights and on the rule of law. So
5 Kosovo is a success story.

6 During this trial, we will travel back in time to the events
7 that took place 25 years ago. I ask all those who listen in to keep
8 in mind that memories over 25 years have been blurred. Reality has
9 been conflated with opinions and different agendas. Speculation has
10 become fact. Also, emotions as well as political reaction of every
11 political stakeholder should not be understood as facts in this court
12 of law. This is also true for some publications and opinions after
13 the war that are exaggerated or adopted to serve interest to
14 different actors of the war.

15 Like in every democratic society, in our country as well, not
16 every core warrior of the law was as well a person accompanying us in
17 the political processes after the war. In not a few cases, ambition,
18 political interests, and personal ego go beyond truth and reality for
19 the story-telling of the KLA and the history of Kosovo itself. So
20 people believe what they want to believe is the truth. However, we
21 have a historical and factual record captured at that time. We must
22 go back to that record, because it is there the truth can be
23 revealed.

24 I regret to say that we will not have the opportunity to hear,
25 in this court of law, the testimony of the Secretary of State

1 Madeleine Albright, Foreign Secretary Robin Cook, Senator
2 Robert Dole, Ambassador Richard Holbrooke, Mr. de Mello, that was the
3 first head of UNMIK immediately after the war, of President Ibrahim
4 Rugova, of Professor Fehmi Agani, of Adem Demaci, and other leaders.
5 They would have testified on my behalf about what I have said and
6 what I did during that very important time in Kosovo's history.

7 I'm happy that many others like them have come forward to
8 testify about my innocence.

9 We believed in ourselves. We believed in our determination to
10 be free. But all of us in Kosovo knew all along that without the
11 help of the international community, and in particular the help of
12 the United States of America, we could never be free and independent.

13 We, in Kosovo, have always supported justice and international
14 justice in particular.

15 When Dick Marty's report 13 years ago hit the international
16 headlines with those lurid allegations of organ trafficking by the
17 Kosovo Liberation Army and me in person, I immediately asked the
18 international community to investigate independently. The
19 international community told me that a special court was essential to
20 lift the black cloud of organ trafficking allegations hanging over
21 Kosovo.

22 The world now knows, as a result of these proceedings, that
23 there was no organ trafficking and that the yellow house never
24 existed. We now know that both myself and the KLA, as well as the
25 people of Kosovo, as well as all Albanians, have been vindicated of

1 those allegations. The truth has been told and the black cloud over
2 Kosovo has been lifted. Therefore, this sacrifice was worth it.

3 I expect to be vindicated of any remaining allegations against
4 myself at the conclusion of this trial.

5 PRESIDING JUDGE SMITH: Mr. Thaci, one minute.

6 THE ACCUSED THACI: Okay.

7 [Interpretation] This is the fourth court by internationals,
8 after the ICTY, UNMIK, and EULEX, for the same charges. I've been
9 interviewed by all the international justice mechanisms at the
10 quality of a witness or of a suspect as well. Every cooperation of
11 myself with all these international justice stakeholders has been in
12 the interests of justice and has been totally transparent, both in
13 Prishtine and in The Hague. Anything else said regarding to this
14 does not stand. Therefore, nobody can rewrite history.

15 This is the price of freedom. And I hope and I have full trust
16 that this process is going to be transparent and expeditious.

17 Thank you very much for your attention.

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

19 I think, rather than starting with Mr. Emmerson now, we'll break
20 for lunch, and you can come back and have that.

21 I will ask the Selimi Defence. I assume Mr. Emmerson is going
22 to be 45 minutes or so. Would you be able to start your opening or
23 do your opening statement yet today?

24 MR. YOUNG: Your Honours, forgive me, just to say, I'm going to
25 give my friend, Mr. Roberts, the chance to speak here.

1 PRESIDING JUDGE SMITH: Fine.

2 MR. YOUNG: Thank you.

3 MR. ROBERTS: Thank you.

4 Your Honour, I would be perfectly willing to start this
5 afternoon, if necessary, but I would prefer to have a straight-run.
6 So it would depend on the duration of Mr. Veseli's submissions.

7 PRESIDING JUDGE SMITH: Are you going to use one hour, is that
8 it?

9 MR. ROBERTS: I am going to use one hour in conjunction --
10 including ten minutes for Mr. Selimi. So my speech will be
11 approximately 45 to 50 minutes, and Mr. Selimi's will be 10 to 12.

12 PRESIDING JUDGE SMITH: And, Mr. Emmerson, you're still with
13 45 minutes?

14 MR. EMMERSON: Slightly less, I think.

15 PRESIDING JUDGE SMITH: Oh, okay. All right.

16 So we will adjourn now until 2.00. Everybody be back at 2.00,
17 and we will begin with Mr. Emmerson, and then proceed onward. Thank
18 you.

19 MR. ROBERTS: Thank you, Your Honour.

20 --- Luncheon recess taken at 12.25 p.m.

21 --- On resuming at 2.00 p.m.

22 PRESIDING JUDGE SMITH: We will hear the opening statement from
23 the Veseli Defence.

24 Mr. Emmerson, the floor is yours.

25 MR. EMMERSON: I'm grateful.

1 Your Honours, I'm going to confine my brief opening remarks to
2 the identification of certain key themes and issues that, on behalf
3 of Mr. Veseli, we're going to invite you to focus on and keep firmly
4 in mind as the evidence unfolds.

5 Firstly, 25 years after the trauma, the massacres, the upheaval
6 brought on by the conflict in Kosovo and the Serbian campaign of
7 ethnic cleansing, Kosovo remains a country rife with speculation
8 portrayed as fact, with rumour and counter-rumour, with claims and
9 counterclaims, with grudges, and even blood feuds. Elements of this
10 culture have existed for centuries, but it continues even to this
11 day.

12 Not surprisingly, the 1998 war has led to a great deal of
13 myth-making over the past 20 years. And shortly before the
14 adjournment, in his final comments, President Thaci referred to the
15 organ trafficking myth. It's just one of many stories that, perhaps
16 through some malevolence, perhaps through amplification through the
17 retelling, has gained a footing that was not founded in fact.

18 The history of the war has also been written and rewritten, in
19 memoirs, newspaper articles, interviews, books, often slanted to
20 serve the legacy interests of various protagonists. But it has also,
21 and separately, been the subject of more considered and more careful
22 judicial examination in trials inside Kosovo in courts established by
23 UNMIK and EULEX and, of course, here in The Hague at the ICTY.

24 And it goes without saying that not everybody involved in those
25 events is an equally reliable historian. Some people have tended to

1 exaggerate their own role and importance within the KLA often for
2 present day or contemporary political purposes. But others have
3 tried to distance themselves from events they were, in fact, involved
4 in, because they know that some of their actions were, to say at the
5 very least, highly questionable and might land them in front of a
6 criminal court.

7 All of this is further complicated by the war propaganda put out
8 on behalf of all sides during the period of the conflict itself.
9 And, of course, the events with which you will be concerned occurred
10 nearly 25 years ago, and with or without bad faith, memories can
11 become distorted and confused over that length of time.

12 Taken together, these factors obviously create a challenging
13 environment for reliable judicial fact-finding. To adopt the
14 familiar aphorism, truth is the first casualty of war. But in this
15 context, that is a description that is particularly apposite for
16 reasons that will unfold with the evidence.

17 So you are going to be confronted with a factually confusing
18 picture of a chaotic period in the history of this small nation amid
19 events which upended the lives of every family in Kosovo. The
20 central challenge, of course, for any judicial tribunal in these
21 circumstances will be to sift the facts from the rumours and to
22 separate hard evidence from recirculating allegations which have
23 acquired the status in some people's minds of assumed facts.

24 I'm going to abide in these remarks by your injunction to avoid
25 repeating the contents of the Defence pre-trial brief for Mr. Veseli.

1 You already know that the Defence fundamentally disputes the
2 Prosecution's characterisation of the KLA as having been from the
3 outset a top-down organisation or one that was either led, managed,
4 or micromanaged by individuals who came to be known as members of the
5 General Staff.

6 Witness after witness in the previous ICTY proceedings have
7 characterised the power structures within the KLA as essentially
8 horizontal rather than vertical, with both zone commanders and,
9 indeed, even local commanders, local area commanders, exercising very
10 high levels of autonomy and considering themselves to be - and being
11 - operationally entirely independent of each other and of the
12 General Staff.

13 That is why, as the ICTY has held, to describe the body that
14 called itself the General Staff as a General Staff in any
15 conventional sense is entirely misleading.

16 Of course, in a guerrilla army, rapidly thrown together in the
17 spring of 1998 and made up almost entirely of poorly armed and
18 untrained Albanian civilians, attempts were made by those presenting
19 the KLA to the outside world to make it appear more organised, more
20 unified, and more effective than it really was. Propaganda was used
21 by all sides, including the KLA.

22 But the materials available to you include not only the
23 judgments and findings to this effect of the various ICTY cases
24 relating to the conflict in Kosovo, but also the transcripts of the
25 evidence given by prosecution or defence witnesses, but primarily

1 prosecution witnesses, in those proceedings.

2 Just to give you a flavour of the reality or otherwise of the
3 Prosecution's submission that this was, from the very beginning, a
4 top-down organisation.

5 Colonel John Crosland was the British military attaché to the UK
6 embassy in Belgrade. He was called to give expert evidence by the
7 Prosecution in the Haradinaj trial. Colonel Crosland testified that
8 in the spring of 1998 when the Serbian serious offensive began, the
9 KLA numbered only about 30 or 40 active members inside Kosovo using
10 what he memorably called shoot-and-scoot tactics. Having been in
11 Kosovo himself at the time, and with access to high-grade
12 intelligence, he testified about the aftermath of the Serbian attacks
13 on the KLA strongholds in Prekaz and Gllogjan in March 1998.

14 He described the build up of Serbian forces as both regular
15 Serbian military and irregular paramilitary formations flooded into
16 western Kosovo, and described a tidal wave of fear spreading very
17 quickly across the countryside as local village defences, which had
18 existed long before the conflict and were an essential part of
19 Albanian rural community life, tried to organise themselves into
20 something resembling a coherent line of defence against the advancing
21 Serbian forces and what they expected to be a repeat of the Bosnian
22 ethnic cleansing campaign escalating, indeed, to a risk of genocide.

23 Another witness who gave evidence to the ICTY, and who is due to
24 give evidence before you, is Bislim Zyrapi. He became chief of the
25 KLA General Staff and he is the witness relied upon by the

1 Prosecution to produce and comment on many of what was described
2 yesterday as the KLA regulatory documents - the codes, the
3 descriptions of conduct, and so forth, that were shown by the
4 Prosecution to you yesterday.

5 But as the SPO must know, Mr. Zyrapi has testified on multiple
6 occasions about those documents here in The Hague, giving evidence to
7 the effect that those regulations were purely aspirational and never,
8 in fact, put into effect. They were drafts that bore no relation to
9 the realities on the ground according to the SPO's own witness to
10 those documents.

11 They were created, said Mr. Zyrapi, as part of a plan to
12 professionalise the KLA at the end or towards the very end of 1998,
13 in order to convert it from the chaotic guerilla force that had just
14 been utterly routed by the Serbian spring and summer offensives into
15 something resembling an army capable of defending a civilian
16 population against what was expected to be a long military campaign
17 liable to involve substantial levels of ethnic cleansing.

18 Of course, no one at that time, November, the end of the year
19 1998, could predict if and when NATO forces would, in fact, reach the
20 point at which they would be prepared and reach the decision to
21 intervene against Serbia to prevent another Bosnian genocide from
22 materialising.

23 No one that is, except, perhaps Kadri Veseli, because it was his
24 role to liaise directly with the intelligence personnel not only of
25 Albania but also of certain NATO Member States who were, of course,

1 watching the position inside Kosovo very closely, indeed. And for
2 that purpose, he spent one of the key periods of the conflict outside
3 Kosovo altogether liaising at an intelligence level with the
4 intelligence services of those state entities.

5 You know from the Veseli pre-trial brief that when you're
6 looking at the case of Mr. Veseli, the indictment period, or period
7 of armed conflict, I should say, has to be divided into three
8 distinct phases. The first phase then, from the spring 1998 until
9 the late autumn, is the chaotic period during which attempts were
10 being made to establish some sort of network of structures on the
11 ground between zones and village defences, which were then almost
12 immediately overrun by a highly professionalised Serbian military
13 campaign, which targeted not just the KLA but the entire civilian
14 population in its way. Villages were surrounded, bombarded, and then
15 when villages were given a safe corridor to leave, mopping up
16 operations, as they're called, were carried out by MUP forces on the
17 ground, entering the villages, shooting anything that remained in the
18 village alive, burning the crops, looting the houses, often burning
19 the houses as well. That was the first period.

20 At that time, you will hear there was no internal intelligence
21 function operating at the level of the General Staff at all. This
22 was the time of those offensives which largely destroyed even the
23 local organisation or the pockets of local organisation on the
24 ground.

25 The second period was between the end of autumn and the spring

1 of 1999. In the second half of November 1999, you've heard there was
2 a degree of reorganisation with roles, particular individual roles
3 being ascribed to different people as members of the General Staff,
4 and Mr. Veseli was appointed as the head of intelligence. And one of
5 the key questions that this Court is going to have to decide is what
6 that appointment meant in practical terms.

7 The best assistance as to what the intention of that appointment
8 was is derived from what actually happened. As soon, or virtually as
9 soon, as Mr. Veseli was appointed head of intelligence, he left
10 Kosovo to perform his role as head of intelligence and was based
11 outside the country liaising with international intelligence and
12 other agencies until just before NATO made the decision to commence
13 its bombing campaign.

14 So his function is evident from the time scale and from his
15 movements.

16 As he has explained clearly in the pre-trial brief, his
17 intelligence function was focused on liaison outside the country with
18 the intelligence apparatus of Albania and certain NATO Member States
19 in anticipation of what was to come. His function had nothing to do
20 with internal intelligence and nothing to do with tracking down
21 collaborators. He was focused, as I've said, exclusively on
22 international intelligence liaison and that is why he was based
23 outside Kosovo for the approximately six-month period between his
24 appointment as head of intelligence and the commencement of the NATO
25 bombing campaign itself in March 1999.

1 So he wasn't, as the Prosecution implied, based in the Berisha
2 mountains during this critical period. He was focused and operating
3 outside Kosovo for that contribution, important vital contribution to
4 the war effort.

5 The Prosecution told you yesterday of the thousands of people
6 they have interviewed at all levels of the KLA, from simple fighters
7 to zone commanders and even former members of the General Staff.
8 They told you of the length and depth and breadth of their
9 investigations within the KLA itself, as well as amongst others
10 outside the KLA. And yet not a single person they are proposing to
11 call ever saw Kadri Veseli doing anything remotely untoward.

12 Until last week, there was one witness on the Prosecution's
13 witness list, although he was deceased, and although his evidence was
14 on paper, there was one Prosecution witness who made a claim to have
15 seen Mr. Veseli on one occasion in Kukes interviewing a detainee,
16 which might put him somewhere towards the allegations that the
17 Prosecution is mounting here.

18 But it was obvious from the outset, and having seen the
19 witness's later statements of evidence, that this witness was
20 entirely mistaken in his identification of Kadri Veseli, and, indeed,
21 he said so himself. The reasons for that are set out in our
22 pre-trial brief at paragraphs 53(e).

23 Last week, on the eve of the trial, the Prosecution notified the
24 Defence that it now accepts that this witness was, indeed, mistaken
25 in his identification of Mr. Veseli and that the Prosecution is,

1 therefore, no longer proposing to call any evidence in support of the
2 allegation relating to that instance, which you will find referred to
3 at paragraphs 49 and 120 of the indictment. That is no longer
4 maintained.

5 The position of the Prosecution is that it is unnecessary
6 formally to amend the indictment to reflect this. That, obviously,
7 is a matter for them to consider. But they do not seek to maintain
8 it and do not propose to call any evidence in support of it. I think
9 it's a drafting reason, because it's not a separate count. It's an
10 incident in a count and, therefore, say the Prosecution, they don't
11 need to amend the indictment. Although, it might be helpful to the
12 Trial Panel to know that allegation was not being pursued.

13 But Your Honours can, however, at least mentally, cross out that
14 aspect of those paragraphs, 49 and 120, of the indictment because the
15 Prosecution has unambiguously confirmed that it will not be leading
16 any evidence in support of that accusation. It was a mistake.

17 But once that evidence is gone, once that allegation is removed,
18 there is literally no one, out of the thousands of witnesses
19 interviewed by the Prosecution, who claims to have seen Kadri Veseli
20 do anything even remotely untoward in this case. There is no witness
21 claiming to have seen him present at time when any crimes alleged to
22 have been committed. There is no evidence that he ever authorised or
23 instigated any crime or any criminal policy, that he ever received in
24 his capacity as head of intelligence any report of any crime being
25 committed, or that he ever played any part at all in the events

1 leading to the commission of a crime. There is no witness evidence
2 on those subjects at all.

3 Nor is there any evidence whatsoever that he failed to take
4 steps within the scope of a superior-subordinate relationship to
5 prevent any crime or to punish those responsible. This is all
6 absent.

7 The same is true for the documentary evidence relied upon by the
8 Prosecution. There is simply no probative documentary evidence even
9 relevant to Mr. Veseli. With one exception, which I'm going to turn
10 to in a moment, there is not a single document in the entire case,
11 despite the thousands of witnesses the Prosecution have investigated,
12 all of the great plethora of material seized and available to the
13 Prosecution from the ICTY and all the EULEX trials and all of the
14 other proceedings, there is not a single document in the entire case
15 that bears his signature.

16 There is no evidence of him ever having given any written, or
17 for that matter oral, orders to anyone. And there is no evidence of
18 him ever having received a written or oral report from anyone,
19 whether in relation to collaborators, internal intelligence, or
20 anything else. There were no documents seized from his home. And
21 there is quite literally no documentary evidence of any kind
22 concerning his role.

23 The one exception I mentioned refers to a meeting on 31 October
24 1998 in Tirana. For the record, it's ERN 061168. You've been shown
25 it twice: Once during the Prosecution's opening, and once during

1 Mr. Kehoe's opening remarks. This was cited, a meeting in Tirana,
2 concerning the integration of FARK forces; that is, the military
3 group associated with the Bukoshi government and the LDK. It's an
4 agreement for them to join with the KLA in a single fighting force in
5 Kosovo.

6 So this was not evidence of any kind of persecutory policy.
7 This was evidence of an agreement reached with the Bukoshi government
8 in exile that the two forces should combine their strengths together.
9 And Mr. Veseli was one of the counter-signatories to that. Once
10 again, it's obviously significant that this was a document signed
11 outside Kosovo in Albania's capital, Tirana.

12 Far from supporting the idea that Mr. Veseli was part of a
13 conspiracy to persecute supporters of the LDK, the one document that
14 bears his signature attests to the voluntary incorporation of FARK
15 into the KLA as a single fighting force. One of the fallacies at the
16 heart of the Prosecution's case, which seems to be based on the views
17 of a relatively small number of individuals, is that the notion that
18 the KLA leadership conspired together to target supporters of the LDK
19 for persecution. But as you will hear, that is an entire
20 misconception of the situation on the ground because the majority of
21 KLA fighters were, in fact, members or supporters of the LDK. These
22 were not two separate groups. They were utterly intertwined. Of
23 course there were conflicts, there were differences, like there would
24 be in any series of political movements joining forces, but the
25 notion that there was a persecution policy against the LDK is utterly

1 belied by the fact that most KLA members were LDK supporters.

2 So in the many thousands of hours that the Prosecution has spent
3 interviewing witness evidence, they haven't turned up a single
4 eyewitness or a single document that can be relied upon to show that
5 Mr. Veseli played any role in furtherance of the joint criminal
6 enterprise they allege to have existed. Yet, the Prosecution is
7 seeking to hold Mr. Veseli vicariously liable for the criminal
8 conduct of individuals on the ground who committed crimes he knew
9 nothing about and had nothing to do with.

10 You will wait in vain for evidence implicating Mr. Veseli during
11 this trial, or showing that he was a party to a joint criminal
12 policy, or that he ever did anything at all to further the purposes
13 of the alleged joint criminal enterprise, or that he ever had any
14 effective control over zone commanders, local commanders, or fighters
15 on the ground.

16 In framing its case against Mr. Veseli, the Prosecution has
17 fallen into the elementary category error of assuming that the mere
18 fact of his appointment as head of intelligence towards the end of
19 November 1998, without more, can be equated with a leading role in a
20 unified internal intelligence network aimed at identifying
21 collaborators. They haven't even asked themselves at the outset, or
22 in any way set out to prove, what type of intelligence function he
23 could have been performing when he was outside Kosovo clearly
24 liaising with the intelligence services of other states.

25 In his pre-trial brief, Mr. Veseli has spelt out clearly why

1 that, we would say, lazy equation, based on a name alone, is not a
2 valid basis to draw any inferences about Mr. Veseli's actual role.

3 When he left Kosovo, it wasn't to depart the conflict. It was
4 to further the interests of the conflict but with international
5 partners. Identifying, detaining, and mistreating alleged
6 collaborators inside Kosovo was no part of his function at any time.

7 As Mr. Whiting and Ms. Lawson emphasised in their opening
8 statements yesterday, the Prosecution brings this case, and as
9 against each and every defendant, the Prosecution must prove the
10 allegations beyond a reasonable doubt. In the case of Mr. Veseli,
11 that necessarily involves disproving beyond reasonable doubt the
12 defence that is clearly set out in his pre-trial brief. That is the
13 case they have to meet.

14 He says he was concerned exclusively with external, that is
15 international, intelligence functions, and that is why he left Kosovo
16 as soon as that role was given to him. Why else would he have done
17 so? If the Prosecution cannot disprove that, and there's nothing in
18 the evidence served so far which comes close, then Mr. Veseli, of
19 course, is entitled to be acquitted, as he should be.

20 Merely pointing to the fact that he was given a role named head
21 of intelligence is, obviously, nowhere near sufficient to get the
22 Prosecution even off the ground. They must prove to the requisite
23 standard of proof exactly what that role involved and exactly why
24 they've considered themselves able to say to you that the adoption of
25 that title or the conferring of that title proves that he was, in

1 fact, involved in a domestic programme, indeed running, according to
2 the Prosecution, a domestic programme designed to penetrate through
3 the zone commanders right down to the level of an individual being
4 picked up in a local area of Kosovo because, for whatever reason, the
5 person who's picked them up believes them to be a collaborator.

6 With the greatest of respect, once a full understanding, and it
7 will emerge, of what was going on in Kosovo at the time and what was
8 not, will make that idea as ridiculous as the organ trafficking
9 allegations. The role of the General Staff was nothing like a
10 general staff in a conventional army, and it's fanciful to pretend
11 that it was. It's also fanciful to pull out documents that were in
12 draft form, never put into effect, and purely aspirational, "This is
13 what we would do if we got our act together," as Mr. Zyrapi would
14 explain, as the Prosecution must know he's going to say because he's
15 said it so many times before. To jump from that to an allegation of
16 this nature is, in our submission, entirely illogical and
17 impermissible.

18 But outside that easy assumption there is nothing for the
19 Prosecution to rely on. It rests on that assumption based on the
20 name of his role. And it's that kind of easy assumption, or as we
21 would perhaps, I hope not pejoratively, put it, lazy equation that
22 generates the all-pervasive habit of myth-making that has so often
23 characterised analysis of the conflict in Kosovo.

24 So where, one might ask, is the actual evidence of Mr. Veseli's
25 involvement in a joint criminal enterprise to ill-treat

1 collaborators? Where is the evidence of his actual role?

2 Well, someone must have been liaising with the intelligence
3 services of Albania and of NATO Member States, and they must have
4 been doing that outside Kosovo. If the Prosecution is setting out to
5 prove it wasn't Mr. Veseli doing that liaison, then who does the
6 Prosecution say it was doing that intelligence liaison with the
7 intelligence services of those states?

8 And if it was Mr. Veseli, then how can that role be connected to
9 an alleged conspiracy to detain and mistreat collaborators inside
10 Kosovo? Perhaps one might think Mr. Veseli, because he was in
11 Albania a lot of the time, was a frequent visitor to the two
12 detention sites identified by the Prosecution on the Albanian side of
13 the border, but there is nothing at all to that effect. Nothing
14 anywhere in the evidence to suggest he had any involvement whatsoever
15 in the identification or detention of alleged collaborators.

16 What about the communiqués? Well, these too certainly had
17 nothing whatever to do with Mr. Veseli. He never wrote any of them.
18 There is nothing to suggest he approved them in advance in any way.
19 None were found in his possession. But most importantly, they had
20 all - all of them - all of the ones that the Prosecution rely on,
21 this is not an area of new evidence, they've all been considered in
22 full by the ICTY on multiple occasions. And as Mr. Misetic has
23 pointed out, the ICTY has consistently characterised them as war
24 propaganda on which no reliance could safely be placed as the basis
25 for a finding of fact. And above all, in the sense that they refer

1 to reprisals against collaborators, they were referring to a military
2 strategy against those perceived to be posing a military threat.

3 You will, obviously, want to examine carefully those that were
4 issued during the indictment period. Not those that were issued in
5 2004 and 2005. Those that were issued during the indictment period.
6 But as you do, I would ask you to bear in mind throughout that there
7 is nothing whatsoever to connect Mr. Veseli or the role that he
8 played carrying out intelligence functions outside Kosovo with those
9 documents.

10 More generally, during the Prosecution's opening, you may have
11 noted the relatively limited references that were made to the
12 evidence concerning what the Prosecution say was the actual role of
13 Mr. Veseli. I'd invite you -- I mean, I'm sure you will re-read the
14 transcript of the SPO's day of opening. But the references to
15 Mr. Veseli's role consisted, for the most part, of hypothesis
16 unsupported by any citations to the evidence in support.

17 The Prosecution did single out one handwritten document alleged
18 to have been found in the possession of Mr. Krasniqi, I believe. It
19 was presented to you as slide B31. And I think its full reference is
20 SPOE00227535. It was displayed on the screen by Mr. Halling, written
21 in a manuscript. And there was a section of it which Mr. Halling
22 took you to which purported to describe the function of KLA
23 intelligence. No mention of Mr. Veseli, but of what a KLA
24 intelligence function should involve.

25 In fact, it's a single page taken out for the purposes of

1 exhibits from a manuscript handwritten notebook. But the provenance
2 of it is entirely unknown. There's no evidence to suggest it was
3 written by Mr. Krasniqi or, indeed, who it was written by. No one
4 knows who wrote it, when it was written, where it was written, or for
5 what purpose it was written. It is entirely devoid of evidential
6 worth in the absence of that material. It is worthless, in the true
7 sense, a worthless piece of evidence, and yet it occupied such a
8 prominent position in the Prosecution's analysis of its own case that
9 it was pulled up on the screen by Mr. Halling and identified and
10 quoted from in that passage.

11 The very fact that that document, that unprovenanced document,
12 that piece of paper that might as well as have been picked up from a
13 rubbish bin off the streets of The Hague, evidentially, that
14 document, the very fact it was singled out by the Prosecution to
15 describe its case against Mr. Veseli as regards the intelligence
16 function, is the loudest and clearest possible testimony to the fact
17 that there is no actual evidence implicating Mr. Veseli in any of the
18 conduct alleged by the Prosecution relating to this claimed joint
19 enterprise.

20 This note, scribbled by an unknown writer, who knows when or
21 where or why, doesn't even mention Mr. Veseli's name.

22 The other piece of evidence highlighted by the Prosecution in
23 its opening, if it can properly be called evidence, was that
24 Mr. Veseli, it is said, was given his *nom de guerre*, Luli, at the KLA
25 enclave in Jabllanice. You'll remember a deal was made about that,

1 because we heard a bit about the Jabllanice cowshed in which people
2 were being detained at various point in time. And the point was made
3 that at some point in time it is said Mr. Veseli's *nom de guerre* was
4 invented at Jabllanice.

5 Jabllanice is a small village deep inside the Dukagjin zone in
6 western Kosovo. It's been the subject of detailed examination in the
7 Haradinaj case. It is a place where it is known that a number of
8 individuals were detained and severely abused, and at least one,
9 possibly more, lost their lives.

10 What the Prosecution does not and cannot allege is that
11 Mr. Veseli was ever involved in any of those events, that he was even
12 aware of the detention of any person at Jabllanice at any time, or
13 that he was ever physically present in the village at a time when any
14 person was detained there.

15 But as Mr. Misetic said, that particular instance is worthy of a
16 rather deeper dive at this early stage because it tells us quite a
17 lot about the Prosecution's case theory. Particularly, its case
18 theory on joint criminal enterprise and command and control. And we
19 would suggest Jabllanice is a very important case for Your Honours to
20 consider.

21 The commander at Jabllanice was a man called Lahi Brahimaj.
22 Mr. Brahimaj was convicted by the ICTY in the Haradinaj trial and
23 sentenced to a term of imprisonment for the crimes of abuse,
24 violence, torture, and so forth, that he and his immediate
25 subordinates at Jabllanice committed against certain people held

1 prisoner there.

2 Mr. Brahimaj's cousin was Ramush Haradinaj, and Ramush Haradinaj
3 was the overall zone commander of the Dukagjin zone at that time. He
4 was, therefore, the commanding officer over Lahi Brahimaj and the
5 Jabllanice enclave. He, on the evidence, visited Jabllanice on a
6 number of occasions. And Lahi Brahimaj was certainly, at least
7 nominally, under his command. Yet, two successive trial chambers of
8 the ICTY held in terms that despite being the zone commander, if you
9 like, the line manager, Mr. Haradinaj was not party to a joint
10 criminal enterprise with Lahi Brahimaj to detain and mistreat the
11 prisoners abused at Jabllanice by Mr. Brahimaj and his men.

12 And yet here, as Mr. Misetic pointed out, the Prosecution is
13 relying on those same acts of abuse by Mr. Brahimaj and his men.
14 Undeterred by the findings and analysis of the ICTY, the Prosecution
15 is now claiming that because Mr. Veseli was a member of the
16 General Staff, he should be held vicariously liable for what
17 Mr. Brahimaj did. But the effect of the ICTY judgment in Haradinaj,
18 and it hasn't been appealed, this is the second, this is the retrial
19 in Haradinaj, is that any joint criminal enterprise to mistreat
20 prisoners at Jabllanice was confined to those KLA members who were
21 under Mr. Brahimaj's immediate command there. That was the joint
22 criminal enterprise. It was a Jabllanice JCE.

23 It was not a joint criminal enterprise that extended as far as
24 the zone commander. So how, one might reasonably ask, could it have
25 extended to Mr. Veseli simply because he was a member of the

1 General Staff with no additional evidence whatsoever? Those are
2 precisely the sorts of questions Your Honours will need to ask,
3 regrettably, when evaluating each of the crime sites on the
4 indictment. How does the Prosecution connect this to the individuals
5 in the dock?

6 You can't bypass the zone commander and then say it's a top-down
7 organisation where everyone is doing what they're told by the person
8 above them, and yet here we have a situation where there isn't --
9 there is a JCE found, which we're going to rely on, but we're going
10 to leap-frog the command levels in between and stick to our story.

11 I mean, you'll see these types of, if I may respectfully say,
12 Janus-faced means of analysis marbled through at various aspects of
13 the Prosecution case.

14 I'm very close to finishing. I'm just conscious I'm a minute
15 over time, but I'll be finished in one or two minutes.

16 In her closing remarks yesterday, Ms. Lawson stressed that the
17 Prosecution was not simply relying on the pattern of detentions, the
18 instances of mistreatment to prove its case. But at least so far as
19 Mr. Veseli is concerned, it is difficult for them to sustain that
20 position because they have no other independent evidence pointing to
21 his guilt on which they could rely.

22 It follows that it will be of vital importance for Your Honours
23 to examine that alleged pattern in its numerical context, its
24 comparative context, its temporal context, and its geographical
25 context. The numbers who were actually detained, the numbers that

1 were actually mistreated, particularly during the periods of intense
2 fighting, the distribution of these incidents over the 15 months or
3 so of the active conflict, and thereafter, once the conflict had
4 ended, and across various parts of Kosovo, as well as, noted by the
5 Limaj trial chamber, the myriad possible motives that may exist for
6 those on the ground who committed the crimes, none of whom are going
7 to be in the dock or giving evidence to you.

8 All of those variables, and they are massive, will need to be
9 very carefully assessed and critically examined. There is a, I think
10 Mr. Kehoe put it, simple and simplistic approach that the Prosecution
11 takes. You, I'm sure, won't be seduced by so superficial an
12 analysis. If they want to make this case, then they need to prove
13 it.

14 The Prosecution's case rests on the proposition, carefully
15 managed so that you saw all the dots appear at once, not over time in
16 their appropriate order, but pile them all on the same time,
17 concertina them into one slide, and then put a dot in the middle
18 where the General Staff sometimes used or some of them sometimes used
19 the headquarters, and it's all graphically presented as though it was
20 a real case. But in reality, the Prosecution, to make their case
21 good, they have to rest on the proposition that the crimes were
22 either so frequent or so numerous or so closely characterised by
23 similarities of motive, of identification, and so forth, that they
24 can only have been the result of a policy adopted by the
25 General Staff.

1 You're not going to find the policy anywhere. We would say
2 you're not going to find it anywhere because it didn't exist. You're
3 not going to hear any evidence from anybody saying there was a
4 policy, because otherwise we'd know about it from the Prosecution.
5 You're not going to find a document implying the policy. So unless
6 they've got evidence against each one individual in the dock that
7 says, well, we can infer you must have been involved because there's
8 this additional evidence in relation to you, this case doesn't get
9 off the ground.

10 We've had men in -- two years in custody with another at least
11 two years in trial on the basis of a case which lacks substance
12 altogether. They will, I will concede, require you to look very
13 carefully whether their rather vaguely presented idea of patterns and
14 inferences really stands this proper critical scrutiny that a
15 criminal court will give it to the appropriate standard of proof. We
16 say Your Honours will, of course, have to examine it critically and
17 with care, but where the facts of particular cases have been proved
18 in judicial proceedings here or in Kosovo, you will at least have a
19 solid basis of facts on which to base your findings about that
20 particular instance.

21 But the true extent of the crimes, which we say are very
22 significantly inflated by the Prosecution, and in some respects the
23 numbers -- it's difficult to see how they reach the conclusion
24 because they include people in respect of whom findings to the
25 contrary have been made, but that's all a matter for the manner in

1 which the case unfolds. But the true extent of the crimes and the
2 inferences that can safely be drawn to the criminal standard of proof
3 from their commission is, obviously, a matter very much for the Court
4 to determine having heard all the evidence.

5 But what can be said from the outset is the Prosecution has
6 disclosed and served no evidence whatsoever linking Mr. Veseli to
7 that pattern of crimes or to the alleged JCE beyond the fact that in
8 late November, just before he left Kosovo to do his job at an
9 international intelligence liaison, he was appointed head of
10 intelligence, only returning just before NATO pressed the button.

11 The fact that his role was called head of intelligence is no
12 substitute for evidence, Your Honours.

13 PRESIDING JUDGE SMITH: Thank you, Mr. Emmerson.

14 We will now hear the opening statement from the Selimi Defence.
15 Mr. Roberts, the floor is yours. You have one hour.

16 MR. ROBERTS: Thank you, Your Honour.

17 As I mentioned just before the break, it would be Mr. Selimi,
18 with your leave, who will speak first for about 15 minutes, and then
19 I will take up the rest of the hour.

20 PRESIDING JUDGE SMITH: So you want Mr. Selimi first?

21 MR. ROBERTS: Yes, please, Your Honour. Thank you.

22 PRESIDING JUDGE SMITH: Mr. Selimi, you have the right to make
23 an unsworn statement, and you may do so now. And please confine
24 yourself to -- I'm sorry, you said 15 minutes? Pardon?

25 THE ACCUSED SELIMI: [Interpretation] Maybe less.

1 MR. ROBERTS: Maybe less. But, yes, 15 minutes, Your Honour.

2 PRESIDING JUDGE SMITH: Thank you.

3 THE ACCUSED SELIMI: [Interpretation] Honourable Trial Panel,
4 honourable people present in and out of the courtroom. Almost two
5 and a half years have elapsed since I was notified that an indictment
6 against me was filed by Kosovo Specialist Chambers. Obviously, I
7 didn't expect this. Notwithstanding how the events unfolded, we are
8 now here faced with an indictment that we rightly continue to
9 consider unfounded on true facts and arguments.

10 Therefore, I plead once again not guilty to the charges brought
11 forward in this indictment.

12 In early 1990s, I was a student in the University of Prishtine
13 in the faculty of philology, Albanian language, and literature. Like
14 everywhere else in Kosovo, violence escalated in the University of
15 Prishtine as well. I remember when they expelled us from the
16 dormitories. I was at the dormitory number 2, when, on 16 March
17 1990, armoured vehicles and armed policemen near the student centre
18 could be seen taking Albanian students out. We could no longer enter
19 university facilities, faculties, the canteen or the library.

20 Albanians were fired from their jobs. There were no Albanian
21 policemen, no Albanian doctors, no postmen or civil servants.
22 Albanian youth were not allowed to play football in stadiums or gyms.
23 The only Albanian-language television was shut down along with
24 newspapers that had been published until then. Violence against
25 Albanians was escalating. Albanian youth were being drafted into the

1 Yugoslav Army. They were not being sent to serve in the army but to
2 be killed. This is exactly what happened to many young men who were
3 returned in metal caskets.

4 I remember it as if it were yesterday when my peer, Jetullah
5 Desku, was drafted to the armed services and after a while was
6 returned in a coffin. His family was told he had committed suicide.

7 PRESIDING JUDGE SMITH: Mr. Selimi, please slow down a little
8 bit for the translators.

9 THE ACCUSED SELIMI: [Interpretation] Certainly.

10 I, as I said earlier, I was 19 age years, and I was studying in
11 the high school Luigj Gurakuqi in Kline. Luigj Gurakuqi was a
12 patriot -- Albanian patriot writer by the end of 19th century and
13 beginning of 23rd century, and Serbia changed the name of the school
14 and his -- that same year, they started to poison the students in my
15 school. You can find the images of young people suffering, close to
16 death because of that organised poisoning against Albanian students
17 in our schools. I could see my peers suffering in agony because of
18 this mysterious poisoning against Albanians.

19 This hunting against Albanian youth did not stop systematically
20 to make them leave Kosovo. So in the early 1990s, many of my peers
21 had to abandon -- were forced to leave the Kosovo that they loved so
22 much. At the time, I had two options: Either stay in Kosovo and
23 wait to be poisoned, arrested or murdered, or be forcibly conscripted
24 in the murderous Serbian army, or to avoid the situation, to leave
25 Kosovo and join my family members somewhere in Germany or in the

1 Netherlands. I could seek asylum as many other Albanians from Kosovo
2 did.

3 Between these options, I chose a third path. Instead of joining
4 my family members who were in exile, I joined an even larger family.
5 I joined the Jashari family in Prekaz. I left behind my dreams, my
6 studies, and I became part of the Kosovo Liberation Army.

7 At the time, the KLA was an army only nominally, but it didn't
8 have many members. We had our will but we had only few people and
9 weapons. Being part of the KLA meant being an enemy of Serbia, and
10 you could get yourself killed, or at least arrested, like my brother
11 Asllan, who was arrested and sent to Serbia's horrible prisons, or
12 like my friend Besnik Restelica, who was strangled during tortures at
13 the premises of Prishtine's investigation office.

14 I was already being sought after by Serbia. I was being
15 followed by them to get me arrested or killed. An indictment was
16 filed against myself in the Serbian courts. Part of that indictment
17 was as well Adem Jashari as well as some other fighters were part of
18 it. I could no longer stay in my family and at my home, and this is
19 the reason why, together with my uncle, Muje Krasniqi, on 10 October
20 1996, I fled my home.

21 It is from that day onwards that I spent most of the time with
22 the Jashari family. There, I was staying with Adem, Shaban, Hamez.
23 I was staying there with the children of that family. I was staying
24 with Fitim, Besim, Kushtrim, Igball, and all the other children of
25 that family. All these children's names that I just mentioned to you

1 were later killed by a Serbian attack against the Jashari family.

2 And that happened on 5 March 1998 when a Serbian attack was launched
3 on the Jashari family in Prekaz.

4 On the attack day, I was not there with them. This is why I'm
5 still alive today. Otherwise, I would have suffered the same fate as
6 those that were killed that day during those three days of epic
7 resistance of the KLA in Prekaz.

8 In that battle, Adem Jashari and his family fell heroically
9 during their resistance.

10 We, the friends of Adem Jashari that survived, stood against the
11 entire Serbian army. We were very few, very few boys and girls, men
12 and women, poorly armed, without uniforms, and disorganised. We were
13 left fighters without a commander.

14 Everything we could do was to follow Adem Jashari's path, die
15 fighting or fight to win. Some did the former, that is, dying while
16 fighting; whereas others did the second, namely, they survived and
17 fought up until the victory of the country.

18 It was in those painful days of Kosovo that we kept up with our
19 resistance, doing what we knew and doing what we could. We wanted to
20 have a well-equipped army, but we didn't achieve it. We didn't
21 manage to equip it as we wanted to. We wanted to have a
22 well-organised army, but we couldn't organise it as desired. We
23 strived to defeat Serbia, but we couldn't do it without external
24 assistance.

25 We tried to organise ourselves, to arm ourselves, but we didn't

1 manage. We tried to do this in order to survive as the people of the
2 country where we were born. We didn't have barracks, but we had
3 instead the houses of our families and those of other families that
4 provided us with shelter and food.

5 We did not have a military academy, but our parents had taught
6 us how to fight for our country and to protect ourselves. We did not
7 have uniforms, but we invented them. Some of us bought them and
8 others painted some clothing in order for us to look like soldiers.

9 I remember as academic and painter Idriz Berisha painted worker
10 clothes with his brushes so that their clothing resembled the KLA
11 fighter uniforms.

12 Your Honours, war is never good for anyone. We'd have never
13 chosen war as a profession or passion, but it was a necessity. It
14 was necessary for us to survive as a nation and as a society. In the
15 meantime, Kosovo's Albanian population was being subjected to brutal
16 violence and oppression.

17 Serbia committed hundreds of massacres where more than 12.000
18 Albanians were killed, without sparing children, women, the elderly,
19 and disabled. In addition to the murders, the Serb forces raped
20 thousands of innocent Albanian women and girls. They burned down
21 hundreds of thousands of homes belonging to Albanians and violently
22 forced more than a million Albanians to flee Kosovo, which represents
23 more than half of the population. However, we never responded in the
24 same manner.

25 As we are talking about war crimes, let us talk about the ones

1 that really have happened. Let's talk about the massacres. Be them
2 the massacres of Meje, Recak, Izbice, Radoniq, Krushe, Rezalle,
3 Poklek, Qyshk, Makovc, and hundreds of other massacres in which
4 children were killed even in their mother's arms. Let us talk about
5 Dubrava, where Serbia executed more than 100 prisoners. Let's talk
6 about the disappeared, of whom thousands still remain unaccounted
7 for. Let's talk about all those criminals that have committed crimes
8 but are still free out there.

9 In June 1999, NATO and the allied countries intervened to help
10 the people of Kosovo. And after 78 days of bombing, the war was
11 over. Kosovo was finally free.

12 After the war ended, those that took responsibility for order
13 and security were NATO and the United Nations; respectively, KFOR and
14 UNMIK. Together, we tried to work for Kosovo to become a state, for
15 it to hold free elections and build democratic institutions. As a
16 result, this day Kosovo is a sovereign and democratic state.

17 However, after the establishment of this Court, I've been
18 frequently asked if I was afraid of justice. I have always stated,
19 and I still repeat it to the day, I'm not afraid of justice, but we
20 should all be afraid of injustice. In spite of this, I stand today
21 in front of you with full confidence that at the end of these
22 proceedings you'll decide in favour of my innocence.

23 I have to add, and as already highlighted here, my submission is
24 that the differences between us with regards to our political
25 opinions, especially during specific times of heavy political impact,

1 however, they should not and cannot be used as judicial facts against
2 us, the co-accused.

3 In these moments while I'm speaking, and I'm sure my
4 compatriots, the citizens of my country are watching us, I am
5 confident that together we will reveal the truth. And I, together
6 with my fellow fighters, will get back to our country free, because
7 at the end of the day, we have fought for our country and we have
8 worked through our lives for it to be as it is today.

9 Thank you very much for giving me the opportunity to address the
10 Court. Thank you.

11 PRESIDING JUDGE SMITH: [Microphone not activated]

12 MR. ROBERTS: Thank you.

13 Thank you, Mr. President.

14 Good afternoon to Your Honours. Good afternoon to everyone in
15 and around the courtroom.

16 It's my honour and privilege today to make this opening
17 statement on behalf of Mr. Rexhep Selimi, sitting behind me in court.
18 As I mentioned earlier, I expect to speak for no more than 45 minutes
19 and don't intend to summarise the Defence case set out in the Defence
20 pre-trial brief, as directed by Your Honours, and also will seek not
21 to repeat what has already been stated by some of my colleagues.

22 Indeed, there's not really a case for the Defence to summarise
23 at this stage before the SPO has even called its first witness. As
24 you well know, Your Honours' role in making any final determination
25 of criminal responsibility is to make your conclusions based solely

1 upon evidence which relates directly to the material facts as set out
2 in the indictment. No obligation weighs on the Defence to disprove
3 any allegation in the indictment but remains fully on the SPO to
4 remove every allegation beyond reasonable doubt.

5 Yesterday, the SPO publicly accepted that this fundamental
6 principle is interwoven throughout every material aspect of its case.

7 We've also heard the SPO repeatedly assure Your Honours, in both
8 opening and in closing its speech yesterday, through Mr. Whiting and
9 through Ms. Lawson, respectively, that this case is not a prosecution
10 of the KLA. It does not accuse everyone in the KLA, and the KLA is
11 not on trial.

12 However, despite these fine words, it is the actions of the SPO
13 which matter, and specifically the choice of the SPO to file an
14 indictment against Mr. Selimi and his co-accused on the basis of a
15 JCE which, in our submission, allows for the potential inclusion of
16 any KLA fighter as a possible JCE member or tool.

17 It is the SPO which is seeking to hold Mr. Selimi and his
18 co-accused criminally responsible for everything that happened in
19 Kosovo and even in parts of Albania throughout the indictment period,
20 as if the decision to gain and exercise control over all of Kosovo in
21 and of itself renders anyone who believed in that goal responsible
22 for every action committed by others in furtherance of it.

23 This choice by the SPO impermissibly conflates the justness of
24 the decision by the Kosovo Albanian population as a whole to take
25 arms against the Serb forces with what happened during the conflict

1 that ensued. And in these circumstances, it is perhaps no wonder
2 that Mr. Selimi and his co-accused feel a certain obligation to
3 protect the legacy of the KLA when it is so clearly under attack by
4 this Prosecutor.

5 However, the Defence for Mr. Selimi will not fall into that
6 trap. But our sincere assurance that this path will not be pursued
7 vastly differs from ignoring the entire context of the case against
8 Mr. Selimi when that context is vital to understanding and assessing
9 the charges in the indictment.

10 Now, you heard in detail from counsel for Mr. Thaci this morning
11 about the context of the conflict, and I do not intend to repeat what
12 has already been said. However, on a more direct and personal level,
13 you also heard from Mr. Selimi about the impact of the campaign of
14 discrimination and persecution at the behest of President Milosevic
15 on him and his peers on his choices as a young man and on the choices
16 of large numbers of Kosovo Albanians throughout the years before the
17 indictment period.

18 No one who heard the nationalistic rhetoric spewed forth at that
19 time against purported Albanian terrorists and witnessed the litany
20 of crimes committed by Serb forces throughout the former Yugoslavia,
21 from 1991 onwards, from Vukovar to Sarajevo, from Prijedor to
22 Srebrenica, could be left in any doubt as to what would be the
23 inevitable consequence for Kosovo Albanians caught in the murderous
24 path of the Serbian military machine.

25 No one would be in any doubt that a desperate and embattled

1 Serbian president would be more than happy to use whatever means were
2 necessary to demonstrate his hardline credentials and shore up
3 dwindling political support over the bodies of Kosovar Albanians.

4 But despite an indictment that spans 177 paragraphs and a
5 Prosecution pre-trial brief that spans 714 pages, the existential
6 threat faced by Kosovar Albanians at this time is barely mentioned.
7 It was also noticeably and conspicuously absent from the SPO's
8 opening statement yesterday.

9 Massacres of Kosovo Albanians, such as that at Prekaz, were
10 instead simply referred to yesterday as "events." This implicit
11 denial of the existence of the scale of criminality committed against
12 Kosovo Albanians while blaming those same KLA leaders for alleged
13 crimes is not an accident. We would suggest it's nothing more than
14 prosecutorial gaslighting.

15 Armed opposition by Kosovar Albanians to Serbian oppression did
16 not spontaneously occur overnight, as if directed by a controlling
17 mind, as the SPO would implicitly lead you to believe. Instead,
18 after a decade of peaceful Kosovar Albanian opposition to the Serbian
19 campaign of discrimination and harassment, having been roundly and
20 studiously ignored by the international community both at Dayton and
21 beyond, there was a choice to be made: Would Kosovar Albanians
22 continue the policy of peaceful opposition to Serb forces, or would
23 they try a different approach?

24 I would suggest that the choice of what to do when faced with
25 oppression is best encapsulated by Victor Hugo in *Les Misérables* as

1 he describes the choice that has to be made by those facing
2 oppression:

3 "So your desire is to do nothing. Well, you shall not have a
4 week, a day, an hour free from oppression. You shall not be able to
5 lift anything without agony. Every passing minute will make your
6 muscles crack. What is feathers to others will be a rock to you.
7 The simplest things will become difficult. Life will become
8 monstrous about you. To come, to go, to breathe will be so many
9 terrible tasks for you. Your lungs will feel like a hundred-pound
10 weight."

11 Even those who had fully supported and subscribed to the policy
12 of non-violent opposition to the Serb authorities led by the LDK came
13 to realise, in early 1998, that there was a point where a different
14 approach was needed. Even where that meant that people who had no
15 military experience had to risk, and often sacrifice, their lives
16 against the overwhelming Serb forces. This point was evidently the
17 Jashari massacre on the 5th, 6th, and 7th March 1998.

18 Now, you have heard from Mr. Selimi how he joined the Jashari
19 family in Prekaz and often stayed at Adem Jashari's house in the
20 months and years before the massacre, but that, by chance, he was not
21 in Prekaz on those faithful days.

22 I remember seeing the massacre on the news in Prekaz, 24 years
23 ago, burning buildings filmed from the air from afar surrounded by
24 hundreds of Serb forces. What those reports don't prepare you for is
25 what it's actually like to visit the Jashari compound and walk

1 through what is left of the charred ruins where the family members of
2 Adem Jashari, including children as young as five, sheltered from the
3 constant shelling over those days. 59 people were murdered by those
4 Serb forces over that three-day period.

5 You heard from Mr. Selimi that war was not a choice that he and
6 his compatriots would ever have chosen had other ways of protecting
7 themselves been reasonably available. Prekaz showed them that there
8 was no other way. War was forced on them.

9 Your Honours, the parallels with the current war in Ukraine are
10 all too obvious. Faced with overbearing force, only through their
11 own courage are Ukrainians able to defend themselves and their
12 families from destruction. Teachers, doctors, accountants, waiters,
13 from all walks of life, with no military experience, have taken up
14 arms to defend themselves and their people.

15 Kosovo in March 1998 is eerily similar to Kiev in February 2022.

16 Now, Your Honours, the core of the SPO case against Mr. Selimi
17 we say is based on a fallacy. It is based on the fallacy that
18 because the KLA was a resistance group in operation before the
19 Jashari massacre, that it must automatically assume direct
20 hierarchical control over the vast swathes of volunteers rushing into
21 Kosovo from abroad or otherwise taking up arms from within the
22 country itself. This appears to be the heart of the SPO's case, that
23 the central or General Staff was pulling the strings and stood
24 somehow behind every minute aspect, decision, or action of anyone
25 opposing the Serb forces in Kosovo.

1 This is what the SPO through Mr. Halling attempted to
2 demonstrate at length yesterday, although also confusingly suggested
3 that the hierarchy which was central to the KLA from the beginning
4 was also exercised flexibly, which appears to me to be somewhat of an
5 oxymoron.

6 Now, the SPO's theory in this regard is deceptively appealing in
7 its simplicity, but Your Honours must resist adopting it as it is
8 universally and demonstrably wrong.

9 Your Honours, we all know the tendency to romanticise the
10 beginnings of a conflict and confuse what certain individuals wish
11 had happened with what actually did happen. As often said, the
12 victory has a thousand fathers but defeat is an orphan. This is
13 never more true than in war. Any fighter memorialising their own
14 deeds or those of their units or their commanders has a tendency to
15 over-emphasise or exaggerate their level of military success or
16 organisation while concurrently minimising their own failures or lack
17 of organisation.

18 The many documents that were relied upon yesterday by the SPO to
19 demonstrate this supposed organisation epitomised this saying. At
20 the very highest, they reflect the aspiration of individuals to
21 organise themselves rather than the reality of facts on the ground.
22 The same is true of those public statements that you saw made in
23 front of and for the benefit of video cameras. Mere projections of a
24 unified command set forth to maintain faith in the KLA, in the KLA
25 struggle, and to bolster an image of the KLA as a well-structured

1 organisation. It simply did not comport with reality.

2 Mr. Whiting for the SPO spoke yesterday about the different
3 puzzle pieces of the SPO case which would come to Your Honours
4 through different witnesses and via documents from a multitude of
5 locations. The problem with trying to assemble puzzle pieces in this
6 manner is that without a proper context or understanding of each
7 piece and how it relates to the others, they often look deceptively
8 similar, and one piece can be placed incorrectly far too easily.

9 When this trial is over, and the SPO sums up the case it has
10 presented, these puzzle pieces will provide you only with a distorted
11 and false final picture.

12 Similarly, Mr. Whiting made reference yesterday to the supposed
13 veil of secrecy that existed both during and after the war which,
14 according to the SPO, appears to make proving the structure of the
15 KLA more difficult. However, what we would suggest is that what
16 Mr. Whiting, through his conspiratorial lens, sees as secrecy is
17 actually simply the absence of evidence. The simplest answer is
18 often the most accurate.

19 The spontaneous uprising in Kosovo in March 1998 after the
20 Jashari massacre was not led and directed in an organised and
21 hierarchical manner by Mr. Selimi and his co-accused as the SPO would
22 have you believe, but from a diaspora flocking into Albania, and then
23 Kosovo, from all around Europe, often with no formal training,
24 limited contemporaneous knowledge of the country they had come to
25 defend, and few direct loyalties to any structure or hierarchy that

1 they were supposed to be serving.

2 These brave men and women, who came from all over Europe and
3 even further afield, were simply united in their belief that the time
4 had come to change tactics and pursue armed opposition. This
5 realisation did not translate into an acceptance that they would be
6 fighting for the General Staff or, indeed, even take orders from them
7 as a matter of obligation.

8 As the evidence of the SPO's own witnesses will reliably
9 demonstrate, there was simply no organised structure to the groups
10 that were formed in the spring of 1998 and no military hierarchy
11 leading up to the General or Central Staff. Volunteers fought where
12 they wanted, generally to protect their homes or families and
13 together with people they knew or trusted. Suggestions of where
14 volunteers should serve was sometimes given but with no concrete
15 expectation that such suggestions would be followed.

16 There were no consequences for individuals leaving the
17 battlefield or returning to their home countries for weeks or months
18 at a time. Uniforms, weapons, and supplies were sporadic at best.
19 You've heard directly from Mr. Selimi moments ago about the creation
20 of camouflage army pants where different colours were painted on by
21 hand on plain-coloured pants.

22 Now, one only has to contrast the KLA with the might of the
23 Yugoslav armed forces at the time, one of the largest ground armies
24 in Europe, with an estimated 100.000 or so active personnel supported
25 by, four times as many, 400.000 reserves. Where the Serbs had

1 planes, tanks, and artillery, the KLA had rifles and homemade bombs.
2 Where the Serbs had battle-hardened soldiers brutalised by the
3 killings fields of Bosnia and Croatia, the KLA had volunteers who had
4 barely picked up a gun before. Where the Serbs had brigades,
5 battalions, and companies separated into a strict and well-organised
6 hierarchy, the KLA had small groups of fighters coalescing around a
7 individual or a specific individual, hastily arranged into a
8 community defence, where necessity rather than careful military
9 planning pushed the pieces into place.

10 Your Honours, this is the real context that the SPO doesn't want
11 you to see. Ignore the balance between the Serb forces and the
12 Kosovar Albanian opposition, ignore the hell that was happening all
13 around, and ignore the confusion and chaos that was happening within
14 Kosovo, and just look in the very specific areas that we want you to
15 look at. Don't see the full picture.

16 So what specific charges does the SPO want you to focus on? How
17 did Mr. Selimi end up here facing charges in 45 different locations
18 over a period over 19 months?

19 We suggest it's impossible to answer this question without
20 examining the origins of the investigations carried out by the Swiss
21 Senator Dick Marty over a decade ago which ultimately led to the
22 creation of the KSC.

23 Now, as Your Honours well know, and it's been mentioned earlier,
24 despite making sensationalist and false claims about organ
25 trafficking, Senator Marty's eventual report actually also doesn't

1 mention Mr. Selimi by name at all. But these spurious claims were
2 used as the basis for continuing investigations against Mr. Selimi
3 and his co-accused, supported, we say, by certain states who had a
4 clear and direct interest in destabilising newly independent Kosovo.

5 Now, although the allegations of organ trafficking were
6 debunked, the investigations lasted for many years and eventually
7 morphed into a duplication of investigations undertaken almost two
8 decades ago by the ICTY and more recently supplemented by those of
9 UNMIK and EULEX in Kosovo.

10 Indeed, perhaps Kosovo can have the dubious honour of being
11 subject to more war crimes investigations than perhaps any other
12 country and any other conflict in the world. Certainly we suggest
13 many more than Serbia who managed to avoid subsequent extensive
14 investigations into the conduct of their forces in Kosovo despite the
15 widespread findings of war crimes and crimes against humanity upheld
16 by the ICTY in Milutinovic and Djordjevic.

17 Now, after this investigation, the unfortunate perception is
18 that such investigations are only successful if they lead to criminal
19 prosecution. Otherwise, they are criticised as an expensive failure.
20 Prosecutions, in turn, require courts. Courts or ad hoc courts may
21 differ in their names. They may be extraordinary, special, or
22 specialist. But unlike domestic criminal systems, they are set up
23 with a specific purpose in mind: To prosecute specific individuals
24 or a specific class of individuals. This was as true for the
25 Extraordinary Chambers in Cambodia responsible for trying senior

1 leader and those most responsible for crimes committed by Khmer Rouge
2 as it was for the Special Tribunal for Lebanon, where the court was
3 established to try those allegedly responsible for the murder of the
4 former Lebanese prime minister.

5 The same applies to the Kosovo Specialist Chambers who were set
6 up to prosecute crimes which relate to the Martyr report. Now, we
7 suggest that the investigation that was carried out and conducted by
8 the SITF, the Special Investigative Task Force, and subsequently the
9 SPO against Mr. Selimi and his co-accused, was never an impartial and
10 independent investigation. It's purported search for truth was
11 inexorably compromised from its genesis. A responsible prosecutor
12 impartially and objectively assesses whether crimes have been
13 committed, who physically perpetrated them, and then determines,
14 based on the circumstances, whether criminal responsibility can then
15 be genuinely and fairly imputed to others based on their own culpable
16 conduct. Guilt must never be pre-supposed.

17 If responsibility stops at the physical perpetrator, or in
18 specific circumstances even at their direct commander, that is
19 normal. There can never be a presumption of guilt for war crimes or
20 crimes against humanity that must always be transferred up the
21 ladder. If such a presumption did exist, then every political or
22 military leader in every conflict would face some criminal
23 responsibility for crimes committed on the ground in such conflicts.

24 The SPO started its investigation with the presumed guilt of
25 Mr. Selimi and worked backwards to attempt to demonstrate how

1 Mr. Selimi can possibly be linked to the various disparate underlying
2 crimes it had identified. It assumed that as crimes were committed
3 during the indictment period, and that Mr. Selimi and his co-accused
4 were in positions of authority in Kosovo during that time, they must
5 inevitably have been responsible for those crimes.

6 This has led to a case which is not simply weak, vague, poorly
7 supported, and ambiguous, but one which is fundamentally incoherent
8 at its very core.

9 Now before even addressing the individual allegations against
10 Mr. Selimi in this case, I just wish to focus briefly on two
11 contextual elements which go to the heart of all charges in this
12 case. And I'm aware that Mr. Misetic addressed similar issues
13 earlier, so I will be brief.

14 Mr. Selimi is charged with ten counts of crimes against humanity
15 and war crimes. If the SPO can't prove the fundamental contextual
16 elements of either, then before this Kosovo court a conviction cannot
17 stand for those crimes.

18 The SPO needs to prove, for crimes against humanity, the
19 existence of a widespread and systematic attack against a civilian
20 population.

21 Now, it has often been said that insanity can be defined as
22 doing the same thing over and over again and expecting different
23 results. Yet, this is exactly what the SPO appears to be doing in
24 trying to prove the existence of a widespread and systematic attack
25 by KLA forces during the indictment period.

1 The ICTY had jurisdiction over Kosovo and investigated it
2 thoroughly. No accused from the KLA was ever convicted of crimes
3 against humanity. The same applies to cases of KLA fighters
4 prosecuted by UNMIK and EULEX. Yet despite the reality, the SPO is
5 trying again with the same allegations rehashed and repeated and
6 hoping for a different result.

7 The same applies to the civilian population at the heart of this
8 case. Now, we heard the SPO attempt in earlier hearings, and fail,
9 to explain the nature of the civilian population that is being
10 targeted by this JCE in its retelling of the Kosovo war. If it
11 cannot even explain its own case succinctly and clearly, how can it
12 convince you of it? There is simply no coherent unifying factor for
13 the disparate alleged crimes underpinning the charges against
14 Mr. Selimi in the indictment. If such a factor did exist, the SPO
15 would not have to perform mental gymnastics to be able to describe
16 it.

17 Now, these different contextual elements - the civilian
18 population, the widespread and systematic attack - are not boxes to
19 tick for the SPO. They are fundamental elements which serve to
20 elevate crimes against humanity to the special category of
21 international crimes to which they belong. It is a very high
22 threshold that the SPO has to meet, and it must bring forth clear,
23 definitive, and reliable evidence in support. It will simply not be
24 able to do so.

25 Similarly, the SPO also charges various underlying crimes

1 against Mr. Selimi as war crimes. Yet, as the name suggests, war
2 crimes need a war, and the SPO also needs to demonstrate the nexus
3 between the underlying crimes and the armed conflict. It's not
4 enough for the SPO, as it seems to want to do, to simply assert that
5 there was an armed conflict throughout Kosovo for the whole of the
6 indictment period and simply expect Your Honours to accept that
7 blanket assertion with no further detail.

8 Each and every crime needs to be both committed during an armed
9 conflict, which the SPO has the burden of proving, and sufficiently
10 connected to it. Now, we suggest that for substantial numbers of
11 crimes alleged in the indictment, it can do neither.

12 Now, assuming, however, that the SPO is somehow successful where
13 others have tried and failed and can therefore somehow prove the
14 existence of underlying crimes, and the appropriate contextual
15 elements I've just mentioned, it must then, and most importantly in
16 relation to Mr. Selimi, identify what his allegedly culpable actions
17 are. This, we say, is where the SPO's problems really start.

18 There are three different but overlapping forms of liability in
19 the indictment: JCE, joint criminal enterprise; superior
20 responsibility; and aiding and abetting.

21 Now at the outset, it is noted that the SPO has explicitly
22 confirmed that there is no allegation in the indictment that
23 Mr. Selimi physically committed crimes as commission in their
24 indictment is limited to JCE. In many ways, this is hardly
25 surprising.

1 If Mr. Selimi was actually charged as a physical perpetrator in
2 this case on the basis of the allegations in the indictment, the
3 charges would not have got past the starting gate. Indeed, many of
4 the allegations in the indictment stand out for their lack of
5 inherent criminality. Prosecuting Mr. Selimi for questioning an
6 individual, returning ID cards, or even purportedly threatening a
7 journalist would almost be absurd if the potential consequences for
8 Mr. Selimi were not so serious.

9 Even on the SPO's case, where Mr. Selimi was allegedly present
10 or informed that individuals were being detained or interrogated by
11 the KLA, which the Defence disputes, the SPO's own witnesses are
12 expected to testify that whoever they thought was Mr. Selimi actually
13 instructed those guards to either release the person concerned or
14 allow them to join the KLA. Suggestions that were conspicuously
15 ignored by those to whom they were addressed.

16 Indeed, this last point fundamentally calls into question the
17 SPO's case in relation to effective control if directions can be so
18 routinely ignored without hesitation or consequence.

19 The Defence recognises that there is one serious and direct
20 allegation against Mr. Selimi; namely, that an individual was beaten
21 in April 1999 in Klecke by a masked individual and that the SPO's
22 case is that this person was Mr. Selimi.

23 Now, Mr. Selimi categorically denies this allegation, which
24 incidentally was hidden from the Defence until a few months ago.
25 When I say "hidden," I mean, it was redacted from the indictment and

1 we were only made aware of it on 27 January. But even on the
2 Prosecution's case, there is a lack of direct identification
3 evidence. It's entirely predicated on supposed references to the
4 nickname of the individual by other soldiers present, a convenient
5 and distinctly weak basis for such a serious charge with no
6 corroboration.

7 So instead of seeking to prosecute Mr. Selimi as a physical
8 perpetrator, the SPO relies exclusively almost on joint criminal
9 enterprise and superior responsibility dictated not, we say, by
10 evidence but by subjective prosecutorial discretion.

11 Now, while Mr. Selimi is also charged with aiding and abetting
12 the crimes in the indictment based on the same allegations as are put
13 forward for JCE, this appears to be barely more than an afterthought
14 by the Prosecution, comprising one generic paragraph in the
15 indictment.

16 JCE and command responsibility are well known before
17 international courts. When used objectively and responsibly, they
18 are potentially able to capture the full level of criminality for
19 international crimes, not just those acts of physical perpetrators,
20 but also those in higher positions supposedly who bore greater
21 responsibility for them. This is the purpose for which they were
22 created.

23 For example, instead of prosecuting only a lower-level physical
24 perpetrator, these modes of liability allow for a prosecution of a
25 person who was supposedly directing that individual. But there's no

1 allegation in the indictment that Mr. Selimi ordered any crimes nor
2 that his act or omissions somehow instigated crimes, or even that he
3 planned them. Instead, the allegations are far more prosaic.

4 It's alleged that Mr. Selimi took part in negotiations with
5 internationals and other Kosovar Albanian armed and political groups
6 in Kosovo and Albania. It's alleged that Mr. Selimi oversaw the
7 delineation of zone boundaries. It's also alleged that he
8 coordinated and received reports about and took part in military
9 operations.

10 Now, reading these allegations, anyone would be forgiven for
11 scratching their heads. Where exactly is the criminality in any of
12 those? What has the SPO suddenly found in these actions to justify
13 the indictment of Mr. Selimi and the deprivation of his liberty for
14 well over two years already with an SPO case that will last at least
15 two more years? What has somehow escaped his predecessors over the
16 last two decades?

17 And what has actually happened is that each and every one of
18 Mr. Selimi's acts and omissions, however minor, however tangential,
19 which are neither criminal in themselves nor otherwise have any
20 causal impact on the underlying crimes alleged by the SPO, are
21 aggregated to try and demonstrate some culpable conduct on his part.

22 Everyone knows the principle that if you throw enough mud at a
23 wall, some of it will stick. In this case, the SPO is throwing
24 everything at Mr. Selimi, whether inside the temporal scope or
25 outside the temporal scope of the indictment or well after it, in the

1 vain hope that enough of it will stick to the JCE it has constructed
2 and will somehow sweep Mr. Selimi along with it.

3 But this is the inherent problem with JCE and superior
4 responsibility. Where the motivation to construct a case against a
5 particular individual is so strong, as it seems to be for the SPO in
6 this case against Mr. Selimi, these forms of liability can be
7 stretched well beyond their natural limits, at least to the extent of
8 confirming an indictment on the basis of these allegations.

9 However the SPO seeks to mix and match the different allegations
10 Mr. Selimi, the evidence simply does not demonstrate that he
11 contributed to a supposedly common criminal plan, even if it assumed
12 that a common criminal plan existed, which the Defence strongly
13 disputes.

14 Indeed, it's not just the contribution of Mr. Selimi to the JCE
15 but, indeed, the alleged criminal plan itself at the heart of the JCE
16 which is a prime example of the flawed approach of the SPO.

17 Now we know from the indictment that the SPO charges that at
18 least between March 1998 through September 1999, the four accused and
19 other members of the JCE shared the common purpose to gain and
20 exercise control over all of Kosovo by means including unlawfully
21 intimidating, mistreating, committing violence against, and removing
22 those deemed to be opponents.

23 Was the purpose to gain and exercise control over all of Kosovo
24 inherently criminal? No. That purpose in and of itself is not. It
25 was entirely legitimate and, indeed, supported, we would suggest, by

1 vast swathes of the international community for Kosovo, especially in
2 light of what had happened across the former Yugoslavia in the
3 preceding decade.

4 The protection of Kosovar Albanians from Serb atrocities and the
5 consequential liberation of Kosovo is why NATO went to war with
6 Serbia in support of the KLA.

7 Instead, because the objective of liberating Kosovo somehow
8 allegedly involved crimes committed by others, not by Mr. Selimi, he
9 is alleged to be part of the JCE in relation to those crimes. No one
10 is suggesting that these crimes were somehow necessary to liberate
11 Kosovo. The SPO has somehow looked back over the course of this
12 entire two-year period, assessed that some crimes were committed by
13 Kosovo forces in the process of liberation, and placed all of those
14 firmly at the door of Mr. Selimi and his co-accused as being the face
15 of the KLA.

16 In this regard, the SPO's submissions yesterday on the motive
17 behind the alleged JCE were illuminating. Now, despite telling the
18 Court the motive was not required to be shown by the SPO, Mr. Whiting
19 took the opportunity to suggest that it could have been to win power,
20 it could have been due to fear, hatred, or even revenge, but it
21 didn't matter because motive was neither an element of the offence or
22 a defence.

23 Subsequently, each Prosecutor in turn proceeded to suggest that
24 the next would inform the Panel about exactly what this true purpose
25 and motive was. But at the end of the entire Prosecution opening

1 statement, none had actually done so. Without an articulated,
2 logical, and clear motive that unifies the disparate accused, the
3 incoherence of the SPO's JCE theory is laid bare.

4 Indeed, the absence of this motive stretches the concept of JCE
5 liability so far as to undermine its very purpose, and, indeed, we
6 suggest calls into question the entire basis of the case against
7 Mr. Selimi.

8 The same concerns apply to the application of superior
9 responsibility, a form of liability, as you well know, originally
10 conceived to punish the Japanese military governor of occupied
11 Philippines, commanding one of the most strictly hierarchical armies
12 in the world, for a litany of crimes committed by men under his
13 command, including resulting in the deaths of 25.000 men, women, and
14 children.

15 But in this case, the same principle has been pulled and
16 expanded to ascribe liability over a collection of isolated and
17 sporadic incidents committed, if at all, by individuals who did not
18 see themselves and simply were not under the control, the effective
19 control of Mr. Selimi or, indeed, any of the other accused in this
20 case.

21 Now, furthering this theme of expanding superior responsibility
22 beyond its natural limits, the SPO has even recently now asserted
23 that each accused somehow fluctuated between being an effective
24 subordinate of their co-accused to being in command and control of
25 that co-accused, swapping between such positions at will.

1 No doubt as the evidence is presented, which position they take
2 will be conditional on whichever suits the Prosecution case at any
3 given time.

4 As will become clear from the SPO's own witnesses, the structure
5 and hierarchy necessary to ground proof of effective control over
6 subordinates simply did not exist in this case. Indeed, in a moment
7 of welcome candour, the SPO recently admitted that one of the reasons
8 it needs so long, two years, to present its case was due to an
9 absence of good evidence on the structure of the KLA, by comparison
10 with the clear and consistent evidence they had in relation to the
11 atrocities committed by Serb forces in Bosnia in other cases they had
12 previously prosecuted before the ICTY. The mask slips, if only for
13 an instant.

14 Sometimes, as we expect this case to demonstrate, the absence of
15 good evidence to support a particular allegation is a pretty good
16 indication that the allegation is, in fact, unsubstantiated. Lack of
17 coherent and consistent evidence on the existence of the KLA
18 structure serves to demonstrate that there was no structure. Lack of
19 evidence of a common criminal plan dictates that no plan existed. It
20 is not more complicated than that.

21 If the SPO had investigated this case objectively and
22 impartially rather than with a specific purpose to target and punish
23 Mr. Selimi and his co-accused, they would have reviewed the evidence,
24 decided that whatever underlying crimes had been committed -- and
25 decided that whatever underlying crimes had been committed, there is

1 simply no case directly against Mr. Selimi. He is bearing the
2 consequences of the SPO's refusal to follow that central principle.

3 To conclude, Your Honours. I've spoken today about the SPO's
4 case against Mr. Selimi against which he must defend himself. From
5 having surrendered early to the police station on the day of his
6 arrest in November 2020 when he was informed of the arrest warrant
7 against him, to his statement in court earlier today, Mr. Selimi has
8 fully engaged in this criminal process despite the inevitable strain
9 of being detained in a foreign country, away from his home, away from
10 his family, and away from the country that he fought to liberate. He
11 has attended every hearing, either in person or remotely, and fully
12 intends to continue to do so throughout the presentation of the SPO's
13 case.

14 As we are confident the evidence will bear out over the next two
15 years, if any of the crimes set out in the indictment period did
16 actually occur, they were isolated and random crimes against
17 individuals which sadly occur in any conflict, and Mr. Selimi simply
18 has no connection to them. Those responsible are at most the
19 physical perpetrators or those individuals who were directly
20 responsible for ordering any of these crimes.

21 Simply put, crimes that are committed in war do not have to be
22 the result of a plan or policy, even if relatively numerous.

23 Mr. Selimi, Your Honours, is responsible neither as a
24 perpetrator, as a member of a JCE, as a superior, or as an aider and
25 abettor of any of the crimes set out in the indictment, and I am

1 confident that the evidence presented in this case will demonstrate
2 this fact to the full.

3 Thank you for Your Honours' attention.

4 PRESIDING JUDGE SMITH: Thank you, Mr. Roberts.

5 Before we adjourn, I want to correct yesterday's record as
6 regards the date of the Further Appearances of the accused before the
7 Pre-Trial Judge. It was my mistake.

8 Instead of 5 October 2022, the record should reflect that the
9 further appearances of each of the accused took place on 10 May 2022.

10 So this concludes today's public hearing. We will resume
11 tomorrow morning at 9.00 to continue with the opening statement of
12 the Krasniqi Defence.

13 I thank the parties and the Registry for their attendance. I
14 also wish to thank the interpreters, stenographers, audio-visual
15 technicians, and security personnel for their assistance.

16 This hearing is adjourned.

17 --- Whereupon the hearing adjourned at 3.50 p.m.

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