

1 Monday, 11 September 2023

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE SMITH: Madam Court Officer, you may call the
7 case.

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

11 PRESIDING JUDGE SMITH: Today we will conclude the testimony of
12 Witness 04408. I note that the accused are all in court with the
13 exception of Mr. Krasniqi, who is appearing via videolink with
14 permission.

15 Madam Court Officer, please bring the witness in.

16 MR. TIEGER: Mr. President, before you do, may I simply note
17 that there's a pending request for leave to add documents to the
18 presentation queue. I wouldn't normally postpone the arrival of the
19 witness for that purpose, but there is one objection to that and I
20 wanted it noted.

21 PRESIDING JUDGE SMITH: What's the objection?

22 MR. TIEGER: Well, first of all, I wanted to note the timing.
23 These documents came in about 9.00 last night after a full weekend.
24 I was here twice for the purpose of reviewing such documents. They
25 didn't arrive until late. Notwithstanding that, we don't object to

1 any but one. That is DHT01486-DHT01488, which is a summary of a
2 witness who's already testified and has, I think, no genuine
3 evidential value can be obtained from putting a summary to the
4 witness.

5 In addition, I note there are practical limitations also because
6 it's not even in Legal Workflow.

7 PRESIDING JUDGE SMITH: Yes, it is -- Mr. Mustafa's summary.

8 MR. KEHOE: A summary that was published by the SPO and filed by
9 the SPO.

10 PRESIDING JUDGE SMITH: Yes.

11 MR. KEHOE: And we had a series of questions as to whether or
12 not certain things were consistent with understanding of what
13 Mr. Demaci's role was, et cetera. We had a litany of those cases
14 from the Bench. This is consistent with that.

15 Is this -- this is what the SPO has said about Mr. Remi's
16 comments concerning Mr. Demaci, and our simple presentation is
17 consistent with what happened with the Judges' questions: Is this
18 consistent with your understanding with him as a figurehead or your
19 understanding of him as his role?

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 We will allow that document to come in.

22 The only other question I had is about the Rambouillet document.
23 I'm not sure what the relevance of that is. No one up here mentioned
24 the Rambouillet conference at all.

25 MR. KEHOE: [Microphone not activated]. Which document are

1 you referring to?

2 PRESIDING JUDGE SMITH: Now you're going to make me find it.

3 MR. KEHOE: That's fine. If I can go into private session while
4 we talk about this because I think it's something that -- if I think
5 it's the document that we're referring to, it's a document that
6 Mr. Tieger and I discussed, and if it was going to be discussed, it
7 should be in private session.

8 PRESIDING JUDGE SMITH: DHT01485. Is that what you're talking
9 about?

10 MR. KEHOE: I do believe that that is the intercept. If we --
11 can we go into private session here, Judge, so I can speak freely.
12 Is that DHT01485, Judge?

13 PRESIDING JUDGE SMITH: 1485, correct.

14 MR. KEHOE: If we can go into private session, I can address
15 this, because I think that counsel rightfully asked us if we were
16 going to talk about this document, to do it in private session.

17 PRESIDING JUDGE SMITH: And that's all right. We're not going
18 to talk about it now. But there's no objection by SPO. Am I correct
19 about that?

20 MR. TIEGER: There was no objection on the basis of the timing.
21 I had understood -- and, by the way, in connection with the
22 discussion with the previous document, no objection to documents that
23 go to the issue raised in connection with Mr. Demaci.

24 I had understood this document, based on my very, very brief
25 reading this morning, to be part of that. I'm looking at it more

1 carefully now. Obviously, I leave it to the Court. But as I say,
2 there was no objection on the basis of timing, and there's no
3 objection if it genuinely relates to the issue of Mr. Demaci.

4 PRESIDING JUDGE SMITH: We'll just go ahead and try to get
5 started. It seems like we will probably end up seeing most of these
6 documents anyway. So that's all for now. If it gets to the point
7 that it's beyond the scope of the Judges' questions, I'll bring it up
8 or somebody else will.

9 Mr. --

10 MR. EMMERSON: Just -- since we're discussing new material, I
11 haven't heard any objection, but we have added to our queue, as a
12 result of some of the questions, the United Nations Security Council
13 Resolution 1244.

14 PRESIDING JUDGE SMITH: Yeah, there was no objection raised to
15 that. So for now we'll go on.

16 You may bring the witness in.

17 [The witness takes the stand]

18 PRESIDING JUDGE SMITH: Good morning, Mr. Abrahams.

19 THE WITNESS: Good morning, Your Honours. Good morning.

20 PRESIDING JUDGE SMITH: Today we're going to conclude your
21 testimony with your cross-examination -- or, actually, with
22 additional questions from the Defence based upon questions asked of
23 you by the Judges.

24 I remind you to please try to answer the questions clearly with
25 short sentences. If you don't understand a question, feel free to

1 ask counsel to explain or to repeat the question, and they will try
2 to clarify or repeat as need be. Also, please remember to try to
3 indicate the basis of your knowledge of the facts and circumstances
4 upon which you will be questioned.

5 I remind you you're still under the obligation to tell the truth
6 as stated by you in your solemn declaration. Also, remember to speak
7 into the microphone and to speak slowly for purposes of translation.
8 If you feel the need to take breaks, please make an indication and
9 accommodation will be made.

10 First of all, I know that Mr. Emmerson and Mr. Kehoe intend to
11 ask some questions.

12 Mr. Roberts, do you have any questions as follow up from the
13 Judges?

14 MR. ROBERTS: No, Your Honour.

15 PRESIDING JUDGE SMITH: All right.

16 And, Mr. Ellis, do you?

17 MR. ELLIS: I'm not intending to, Your Honour, no.

18 PRESIDING JUDGE SMITH: Okay. And I understand something could
19 arise and we'll take that into consideration at the time.

20 We will now continue with the testimony of Witness 04408. The
21 Panel allows the Thaci Defence and the Veseli Defence to examine the
22 witnesses to address issues raised with the witnesses during
23 questions of the Panel.

24 In light of the scope and the duration of such questioning, the
25 Panel considers that one hour per Defence team will be sufficient to

1 re-cross or re-examine the witnesses. So that will be the
2 restriction, one hour each, and I'm sure that's adequate for you.

3 All right. You may proceed. You have one hour. I'll try to
4 remind you when you get about five minutes till.

5 MR. KEHOE: Yes, Your Honour. Thank you.

6 WITNESS: W04408 [Resumed]

7 Further Cross-examination by Mr. Kehoe:

8 Q. Good morning, Mr. Abrahams. As His Honour just described, we're
9 going to be talking about some of the questions asked by the Judges.
10 So if there's a bit of a skipping around on particular issues, bear
11 with me, because we're not going to have a full panoply of questions.
12 Just on issues that were raised by the Judges and those that -- and
13 our questions that emanate from those. Okay?

14 A. Thank you.

15 Q. Okay. So let me start, if I could, and this is Judge Barthe's
16 question. Judge Barthe asked you.

17 MR. KEHOE: And, counsel, this is on page 7570, lines 13 to 20.

18 Q. Judge Barthe asked you whether Mr. Thaci or Mr. Limaj -- and
19 we're talking about the 10 November meeting. Whether Mr. Thaci or
20 Mr. Limaj mentioned that one of the detainees, one of the two Serbian
21 journalists was suspected of being involved in criminal activities in
22 the Serb Republic of Krajina and/or in Bosnia in 1991 and 1992. And
23 your answer was:

24 "No, that did not come up ..."

25 Do you recall that, sir?

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1 A. Yes, I do.

2 MR. KEHOE: If we can, let us take a look if we can put up
3 Exhibit 300 on the screen. That's P300, my apologies.

4 Q. Now, you've seen this document before. It's Exhibit P300. And
5 it purports to be statement No. 3 allegedly from the military police
6 directorate of the Kosovo Liberation Army. And I'll just read the
7 pertinent part starting at the top:

8 "On Sunday 18 October of this year at around 15:00 hours the
9 Kosovo Liberation Army Military Police patrol met a Yugo Florida
10 vehicle with registration plates from Belgrade near Margure village
11 without 'Press' signs with a driver and a passenger Vladimir Dobricic
12 and Nebojsa Radosevic. After the sign was given for them to stop,
13 they stopped after a delay, thus allowing them to hide their
14 identities. This also led to doubts about their identity; that is,
15 not believing that they are journalists and that the purpose of their
16 visit is espionage.

17 "They were stopped and were sentenced to pre-trial detention for
18 the purpose of investigating their real identity and the purpose of
19 their travel."

20 Would you agree with me, Mr. Abrahams, that this statement,
21 P300, suggests that the two so-called journalists were detained
22 because they had not identified themselves as press and were believed
23 to be hiding their identities?

24 A. Well, I agree with you that, based on this statement, that is
25 the claim made by the military police directorate.

1 Q. And it also suggests, does it not, that the -- they were
2 suspected of engaging in espionage?

3 A. That is the allegation made by the police directorate, yes.

4 Q. Now, just putting my case to you. The ICTY investigators
5 concluded that Mr. Dobricic was involved in the commission of war
6 crimes in Croatia in 1991 and that he had done so while using Tanjug
7 press credentials in Croatia.

8 My question for you is: If Human Rights Watch knew this
9 information in October and November 1998, you would have had doubts
10 as to whether Mr. Dobricic was actually engaged in journalistic
11 activity at the time he was stopped by the KLA; isn't that right?

12 A. By "this information," to what are you referring precisely?

13 Q. Well, based on this information. Based on --

14 A. Contained here?

15 Q. -- this information contained here, you would have had doubts as
16 to whether Mr. Dobricic was actually engaged in journalistic activity
17 when he was stopped by the KLA; isn't that right?

18 A. It would have formed part of our understanding of the entire
19 case. Whether we believed these allegations or not would be -- would
20 be -- it's -- this is the statement of the police directorate. So --

21 Q. Well, let's just change the dial a little bit. So had you known
22 in October 1998 that Mr. Dobricic had been involved in war crimes in
23 Croatia using Tanjug credentials, you would have found it much more
24 likely, would you not, that he was engaged in the conflict in Kosovo
25 as a participant; isn't that right?

1 A. So there are two elements to that. The first is this knowledge
2 about his purported crimes elsewhere would feed into our analysis.
3 Yes, it would. And also our critique of this process was focused on
4 the due process elements of the proceedings or -- as they may have
5 been, proceedings or not proceedings. And if there had been evidence
6 of this person or both of them committing wrong-doings in Kosovo or
7 elsewhere, then that could have and should have come out in the trial
8 that purportedly took place.

9 Q. And it, likewise, would have made it much more likely that when
10 he is there, Mr. Dobricic, in Kosovo, with Tanjug credentials, after
11 he had been involved in war crimes using Tanjug credentials, that it
12 would be more likely that he was involved in the conflict in Kosovo,
13 isn't it?

14 A. But that should have come out in the trial that may have or may
15 not have happened.

16 Q. Now, sir, Judge Barthe asked you some questions about the
17 meeting that you had with Mr. Limaj and Mr. Thaci - and I'm referring
18 to page 7569, lines 18 to 25 - where you noted that Mr. Thaci was
19 speaking with most authority. Do you recall that?

20 A. Yes, I do.

21 Q. And the fact of the matter was that Mr. Thaci had introduced
22 himself as a political directorate spokesperson, did he not?

23 A. My recollection and my testimony is that he introduced himself
24 as the head of the political directorate.

25 Q. And you understood the political directorate as an entity that

1 was interfacing with internationals; right?

2 A. As part of their obligations or responsibilities. And I did not
3 know the full extent of their responsibilities.

4 Q. But he wasn't the person who was the military person in the
5 room, right? He was in the political side, right?

6 A. That is how he presented himself. Correct.

7 Q. And he wasn't the legal side. You testified that that was
8 Limaj; right?

9 A. That is correct.

10 Q. So he is just there talking as a political person as far as you
11 knew; right?

12 A. Based on his presentation of the position he held, that is how I
13 took it to be at the time. Yes.

14 Q. And the information that he may or may not have -- let's put up
15 Exhibit 378.

16 MR. KEHOE: If I may, before we do that, let's put up 375.

17 Q. Now, 375 is the Human Rights Watch press release that you folks
18 came out with. If we can just take a quick look at it. And I
19 believe it -- now, this is a Human Rights Watch press release of the
20 18th.

21 MR. KEHOE: If we can just scroll down a little bit. Get the
22 right paragraph. If I may, it should be the third paragraph.

23 Q. It says, according to the information that you have, that these
24 individuals went missing on October 18th. Do you see that?

25 A. Yes, I do.

1 Q. Okay. Now, let us go back to Exhibit 378. And we'll talk a
2 little bit about this, but I just -- later on, but I just want to
3 talk about it preliminarily.

4 Now, this is an article that came out on 1 November 1998, some
5 nine days before you sat down with Mr. Thaci and with Mr. Limaj, and
6 it's talking about the military court. And it notes that the trial
7 was conducted on 30 September 1998. Do you see that?

8 A. Yes, I -- I do see it.

9 Q. I'll just read it for you:

10 "The Military Court of the Justice Directorate of the KLA
11 General Headquarters, based on the request of the Military
12 Prosecution and in conformity with its working norms, in the trial
13 conducted on 30 September 1998, against" Mr. Radosevic and
14 Mr. Dobricic.

15 So them noting that the trial took place on 30 September 1998.

16 Now, you know as a fact based on -- well, as a fact, from your
17 own press release, P375, that these two individuals didn't even go
18 missing until 18 October; right?

19 A. Correct.

20 Q. So this particular press release, for what it's worth, has
21 complete information about one of the most important elements in
22 this, which is when these two individuals were detained; is that
23 right?

24 A. It mentions the trial, yes. [Overlapping speakers] ...

25 Q. Well, the trial --

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1 A. Yes.

2 Q. But you obviously know, Mr. Abrahams, that the trial couldn't
3 take place on 30 September if these two individuals, according to
4 your own press release, didn't go missing till sometime after
5 18 October?

6 A. That assumes that this is correct. I would have to look more
7 closely at it. I don't know for sure.

8 Q. Well, I mean, let's look back at -- your own press release says
9 that you received information from Tanjug that these two individuals
10 went missing on October 18th; right?

11 A. I would have to look again. I'm sorry [Overlapping speakers]
12 ...

13 Q. Okay. Let's go back to the -- we'll do that. Any time you need
14 to do that, just let me know. P375. Let's go back to that. This is
15 your press release from October 24th. And I'm reading the paragraph
16 beginning with "Nebojsa Radosevic," talking about these individuals
17 went missing on October 18th.

18 A. Yes, no, the date is correct. What confused me was you said
19 that according to Tanjug they went missing on October 18th, and I
20 didn't recall the source of this information being included here.
21 That's what threw me.

22 Q. But you -- I'm sorry, I didn't mean to interrupt you. But you
23 agree with me that Tanjug is the one that they didn't go -- they went
24 missing on October 18th?

25 A. Well, they're -- no, I'm just -- I think this is a minor point,

1 but you had said according to Tanjug, and that's what --

2 Q. I understand.

3 A. -- threw me off. But the date is October 18th, correct.

4 Q. Okay. So going back to 378. You have a trial that is
5 conducted, according to this article in P378, of some 19 days before
6 that and, assumingly, the trial probably didn't take place, if any,
7 on the day that they were detained; right?

8 A. That's assuming this information is correct.

9 Q. Well, with regard to this information, the information is
10 totally wrong, isn't it?

11 A. Which information are you --

12 Q. The information --

13 A. -- referring to?

14 Q. The most important information to you as to when these
15 individuals were detained.

16 A. Well, I don't know that because I don't know if this ARTA text
17 is accurate.

18 Q. Well, let's continue on. This is also the document that
19 includes the military court of justice conducting this trial while,
20 at the same time, Mr. Thaci is telling you about civil structures and
21 establishing civil structures and that it takes a while to establish
22 those civil structures; right?

23 A. He -- they both -- both of our interlocutors talked about the
24 challenges of building structures, civil and military, in the midst
25 of an armed conflict.

1 Q. Well, but the individual that talked about the establishment of
2 the civil structures, as you testified, and I can pull the transcript
3 out, was Thaci, wasn't it?

4 A. I would have to look back, but he -- he certainly -- you don't
5 have to pull it up. I know the time is an issue. But he definitely
6 spoke about the challenges of building civilian infrastructure and
7 mechanisms, yes.

8 Q. Okay. So we have a situation with a trial that allegedly took
9 place when these guys -- these two individuals hadn't been even
10 detained yet by a court -- a military court, according to this press
11 release, or according to this communiqué, that was military, and
12 Thaci is talking to you about civil structures and it taking a while
13 to get civil structures established.

14 Was it clear to you before, during, and after that nobody knew
15 what was going on here?

16 A. No, it was not clear to me. I mean, that's a double-negative.
17 Was it clear to me. I was obtaining and publishing the material that
18 was provided to us. I cannot say that this ARTA document or this
19 date is accurate. I don't know. That's -- I can't testify that it
20 was.

21 Q. Well, you pay attention to these communiqués, don't you?

22 A. They are part of our work, yes.

23 Q. And so you paid attention to this communiqué either before the
24 meeting or after the meeting, didn't you?

25 A. I think -- I believe I testified last week that I don't recall

1 whether I had seen this prior to our meeting.

2 Q. Okay. But we will get to that. But given this information and
3 how wrong this information is, and given Mr. Thaci's talking about
4 civilian structures, and this article talking about military
5 structures, you will agree with me that what Mr. Thaci was doing, as
6 this political representative, was trying to put the best foot
7 forward for the KLA to the international community, wasn't he?

8 A. Well, he was certainly trying to put his best foot forward to
9 the international community because legitimacy and international
10 legitimacy for their movement and their struggle was extremely
11 important.

12 Q. And the fact is, as you sit here, he didn't even know which
13 court conducted this case, did he?

14 A. I can't say that with certainty one way or the other. I can
15 only tell you what I was told at that meeting.

16 Q. Well, let's shift gears, and we'll stay with Judge Barthe's
17 questions to you, and we'll move to the meeting that you conducted.
18 By the way, by the way, before we get to that meeting, and -- in that
19 meeting you noted for Judge Barthe, I'm talking about the August
20 meeting, that you didn't have a follow up with Mr. Thaci after you
21 gave him your report; is that right?

22 A. That is correct.

23 Q. Okay. And did you bring up with Mr. Thaci --

24 MR. KEHOE: Let's go put Exhibit 376 on the screen. This is
25 P376.

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1 Q. And we'll get back to the follow up in a second, but just
2 preliminarily we want to talk about this.

3 Do you recall this letter that you sent on December 2, 1998?

4 A. Yes, I do.

5 Q. Now, during your meeting with Mr. Thaci in April 1998, did you
6 ask him if he ever got this letter?

7 A. April 1998 is what you --

8 Q. Excuse me, April -- excuse me, August 1999. My apologies. When
9 you had your meeting with him in August 1999 to give him a copy of
10 the report, did you ask him whether or not he received this letter of
11 2 December 1998?

12 A. I do not recall if I asked that question.

13 Q. Well, that would have been an important issue for you to know,
14 is it not, whether or not he had, in fact, received this letter?

15 A. I do recall that we acknowledged our meeting in November because
16 it was a natural human interaction, good to see you again in very
17 different circumstances, but I do not recall whether we raised this
18 letter or not.

19 Q. Well, this is dated 2 December 1998. Did you know that Thaci
20 had left Kosovo by mid-November and didn't return until March 1999?

21 A. Sorry, which dates are you --

22 Q. Were you aware that Mr. Thaci left Kosovo in mid-November, mid
23 to late November 1998, and didn't return to Kosovo until March 1999?
24 Were you aware of that?

25 A. I'm not familiar with his movements during that time.

1 Q. So when you wrote this letter, you didn't do any follow up to
2 see if, in fact, Mr. Thaci had received this, did you?

3 A. We sent this letter and did not receive a reply, but -- and that
4 was the communication.

5 Q. My question is very simple: You did not do any follow up after
6 you sent this letter to ensure that Mr. Thaci received this letter,
7 did you?

8 A. Not as far --

9 Q. Yes or no?

10 A. Not as far as I know.

11 Q. Now going back, if we may, to the questions of Judge Barthe in
12 your August 1999 meeting. And pardon me, if I get some of these
13 dates --

14 A. There's a lot of dates.

15 Q. A lot of dates. A lot of dates. And at page -- this is page
16 7571, line 4 to 8, and then line 12 to 15. Judge Barthe asked you
17 whether your meeting with Mr. Thaci in August 1999 was conducted in
18 Albanian or in English, and you said that your recollection was that
19 the meeting was conducted primarily in Albanian. Do you remember
20 that?

21 A. I do, yes.

22 Q. And you also told Judge Barthe that you and Mr. Thaci were the
23 only individuals at this meeting. Do you recall that?

24 A. Yes, I do.

25 Q. Now, last Tuesday, page 7298, line 2 of the transcript, you

1 testified that you speak Albanian "to a degree, not fluently." Do
2 you recall saying that?

3 A. Yes, I do.

4 Q. So at this meeting that you had, if the meeting was
5 predominantly in Albanian, and you do not speak Albanian fluently,
6 then you can't be certain that there were no misunderstandings during
7 that meeting between you; isn't that right?

8 A. So, I mean, with regards to my Albanian language skills, I have
9 given numerous interviews on Albanian-language television, so my
10 abilities can be judged. That's in the public domain.

11 As for the meeting, and to your question, in my view and in my
12 opinion, I understood the essence of his responses. I understood the
13 core meaning of his responses, and he likewise of mine.

14 Q. Mr. Abrahams, you said that you speak "to a degree, not
15 fluently." Wasn't that your testimony?

16 A. Yes.

17 Q. Okay. So by your own admission, you are not fluent in Albanian;
18 right?

19 A. Absolutely correct. Yes.

20 Q. Okay. And Mr. Thaci, to your knowledge, his knowledge and
21 ability to speak English is extremely rudimentary at best; right?

22 A. Now or at the time?

23 Q. At the time, August 1999.

24 A. I can only say at -- in his English communication at the time,
25 that was my impression, yes.

1 Q. Okay. So given the fact that you are not fluent, he doesn't
2 speak English, you, again, can't be certain that there were not
3 misunderstandings during this meeting?

4 MR. TIEGER: Objection. Asked and answered.

5 PRESIDING JUDGE SMITH: Sustained.

6 MR. KEHOE:

7 Q. Let's move on to the communiqués themselves. And I think that
8 you mentioned -- let's turn to page 7576, lines 23 to 25. And I
9 think that was on Thursday's transcript, by the way. You told
10 Judge Mettraux that you placed a "high value on these communiqués
11 because they are produced by the official structures of, in this
12 case, the armed group." Do you recall saying that?

13 A. Yes, I do.

14 Q. Now, if we can put Exhibit 378 back on the screen. I told you
15 we would get back to this on a different subject and here we are.
16 Now, again, this is the statement issued by the KLA on November 1st,
17 ten days before, or it a least nine days -- ten days before your
18 meeting with Mr. Limaj and Mr. Thaci announcing the so-called
19 journalists had been convicted and sentenced and transferred to
20 Prison No. 7, and that this was published by ARTA. Do you see that
21 up in the right-hand corner that it's published by ARTA?

22 A. Yes, I do.

23 Q. Now, you also said this morning, and you said it last week at
24 page 733 [sic], lines 1 to 2, you don't believe that you saw this
25 prior to the publication of the human rights report in December 1998.

1 Do you recall saying that?

2 A. I don't, but I take your word for that.

3 Q. So you did not see this communication by the KLA prior to your
4 meeting with Thaci and Limaj even though the subject of the
5 communication was the same subject, among others, for which you had
6 sought a meeting with the KLA; namely, regarding the detained
7 journalists. Is that right?

8 A. Well, the purpose of our meeting was multi-faceted, and this was
9 one element of it. And we focused on the case of Mr. Radosevic and
10 Dobricic because it had garnered attention and it was a case of
11 concern into which we could highlight issues related to detention and
12 potential abuse. But it was not the only subject we covered and it
13 wasn't our intention to go there with that sole purpose.

14 But in addition, to present our -- the full panoply of our work
15 on Serbian and Yugoslav abuses, we also asked at that time: If you
16 have information about alleged war crimes by Serbian and Yugoslav
17 forces, we are open to receiving that evidence or information and
18 also allegations of -- well, their conduct writ large with regards to
19 international humanitarian law.

20 So it wasn't only the journalists.

21 Q. But you testified here for several days, right, in response to
22 counsels' questions, in response to Defence questions, in response to
23 the Bench's questions, about this meeting on 10 November 1998
24 concerning these two alleged journalists; right?

25 A. That's correct.

1 Q. And you just told us that this matter had taken -- had received
2 a lot of attention at the time; is that right?

3 A. That is correct.

4 Q. And had received a lot of concern at the time?

5 A. Correct.

6 Q. And that was one of the reasons why you brought that subject up
7 in your meeting that you sought with the KLA; right?

8 A. That is correct.

9 Q. Okay. Yes. But with -- given the fact that you had not
10 received or do not recall seeing this communiqué prior to this
11 meeting or even prior to the publication of the Human Rights Watch
12 report, at least this communication was not important to you; isn't
13 that right?

14 A. No, it just means that I can't testify that I had seen it at the
15 time.

16 Q. You didn't see it at the time, and you didn't see it when you
17 said that you made a publication, when, in the end of December, and
18 then another publication again in August 1999; is that right?

19 A. I would have to look back again, but -- then -- I believe we
20 reference this at some point in one of our publications. I'm sorry
21 if I'm conflating the two now, but --

22 Q. As you sit here, do you have any idea where you referenced this
23 communiqué?

24 A. Well, we referenced Prison No. 7, so maybe that's what I'm
25 thinking of, and I just -- I can't recall exactly where that emerged.

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1 It was another --

2 Q. So you got the information about --

3 A. [Overlapping speakers] ...

4 Q. -- Prison No. 7 at some point from this communiqué?

5 A. That, I don't recall.

6 Q. Now, let us change subjects a bit about Adem Demaci, and you
7 were asked several questions by Judge Mettraux about Adem Demaci. Do
8 you recall that?

9 A. Yes, I do.

10 Q. And do you recall that Judge Mettraux asked you whether you were
11 familiar with the release of a Serbian policeman named Goran Zbilic
12 from KLA detention, and you said you weren't familiar. And do you
13 recall that answer?

14 MR. KEHOE: And, by the way, just for reference purposes, I'm
15 talking about page 7579, lines 2 to 6.

16 Q. Do you recall that?

17 A. Just so I answer you accurately, that I was not familiar, was
18 it?

19 Q. You were not familiar.

20 A. Correct. I was not familiar.

21 Q. Okay. Yeah. I didn't mean -- that wasn't -- maybe my --

22 A. I just didn't hear.

23 Q. That's fine. And maybe my negatives were transposed, but you
24 and I are on the same page. That you had not known about that, I
25 believe you responded to Judge Mettraux. That's right?

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1 A. That is correct, yes.

2 Q. And then Judge Mettraux proceeded to read to you a transcript
3 which was a press conference where in talking about the Zbilic
4 matter, that: "However, I am not entitled" -- where Demaci at this
5 press conference said:

6 "However, I am not entitled to interfere in these matters. I
7 can only interfere as a human, a humanitarian, and come up with good
8 proposal. You know very well that it is not up to me."

9 And bear with me a moment. And then Judge Mettraux asked you if
10 that is consistent with what Demaci told you when you met with him,
11 that he did not have decision-making power over the fate of these
12 individuals. And your response, and I quote, this is at page 7579,
13 line 21, to 7580, line 5 -- counsel is --

14 PRESIDING JUDGE SMITH: [Microphone not activated]

15 MR. TIEGER: Okay, yeah. Sorry.

16 MR. KEHOE: Okay.

17 Q. That your response was:

18 "This is consistent. I left the meeting with Mr. Demaci in
19 which this was discussed with the distinct impression that he did not
20 have the authority to release ... people."

21 MR. TIEGER: I just wanted to note, although I'm obviously
22 trying to follow this quickly, that I think the preface contains an
23 inaccuracy, and that is it suggests that this comment was about the
24 detention and release of Mr. Zbilic. And my recollection, as I'm
25 trying to find it quickly now, is that it was about the detention of

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1 Mr. Dobricic and Mr. Radosevic.

2 PRESIDING JUDGE SMITH: Can we [Microphone not activated].

3 MR. KEHOE: It's about -- this particular -- this particular
4 reference back and forth is about Zbilic. And he does say the same
5 thing, similar things with regard to the two journalists.

6 PRESIDING JUDGE SMITH: Could we just wait a moment and see if
7 they can find their reference.

8 JUDGE METTRAUX: It's at page 3 of 061427-11-TR-ET Revised,
9 under timestamp 00:10:53 and 00:11:08.

10 MR. KEHOE: I will say, Judge, that there is a mixing here, but
11 for the purposes of the next questions --

12 PRESIDING JUDGE SMITH: No, he's just giving you the -- where it
13 is.

14 MR. KEHOE: Oh, okay. I can tell you, Judge, that for the
15 purposes of my questions in this regard, it really doesn't make a
16 difference.

17 MR. TIEGER: How --

18 MR. KEHOE: He started with Zbilic, but he said he didn't know,
19 but then it carries on talking -- counsel was 100 per cent right, it
20 goes on talking about the two -- actually, Judge, if you look at
21 Judge Mettraux's transcript, and, unfortunately, this is the
22 temporary transcript, Judge Mettraux says at line 4:

23 "Can we then go to page 3 of that record, and I'll ask you to
24 look, sir, under timestamp 10:53. There is a question by a
25 journalist ... :

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1 "'Following Goran Zbilic's release, families and relatives of
2 Nebojsa Radosevic and Kico Dobricic are voicing doubt that the two
3 are ... alive, despite your statements to the contrary."

4 So, in fact, he's talking about all of them.

5 PRESIDING JUDGE SMITH: Anything further from the Prosecution?

6 MR. TIEGER: No, Your Honour.

7 PRESIDING JUDGE SMITH: All right. Thank you.

8 Go ahead with your question.

9 MR. KEHOE: Thanks, Judge.

10 PRESIDING JUDGE SMITH: You may have to start it --

11 MR. KEHOE:

12 Q. Let's go back here. So we're then talking about that

13 Judge Mettraux read the comments by Demaci. And when he said:

14 "However, I am not entitled to interfere in these matters. I
15 can only interfere as a human -- a humanitarian and come up with good
16 proposals. You know very well that it's not up to me."

17 Then Judge Mettraux asked you if that is consistent with what
18 Demaci told you when you met him and that he did not have the
19 decision-making power over these individuals. Now, your response --
20 and your response is at page 7579, line 21, to 7580, line 5:

21 "That is consistent. I left the meeting with Mr. Demaci in
22 which this was discussed with the distinct impression that he did not
23 have the authority to release these people."

24 Do you recall your testimony?

25 A. Yes.

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1 Q. Well, let me just show you something concerning the authority of
2 Mr. Demaci in the case of Mr. Zbilic and ask you the same question
3 that Judge Mettraux asked you, namely, whether it's consistent with
4 what Mr. Demaci told you when you met with him.

5 MR. KEHOE: And I would like to put up DHT01486, and I'm going
6 to focus on DHT01488.

7 Now, before we put that on the screen, when this was filed, Your
8 Honours, it was filed confidentially. I don't know if that
9 confidentially still applies because this relates to Mr. Mustafa's
10 testimony which has already happened. So in the spirit of caution, I
11 just raise that. I have no objection to it being put on the screen.
12 I leave it to my colleague across the well for his comments.

13 PRESIDING JUDGE SMITH: Any objection to broadcasting this
14 particular document?

15 MR. TIEGER: No, Mr. President.

16 PRESIDING JUDGE SMITH: All right.

17 Go ahead.

18 MR. KEHOE:

19 Q. So let us turn to this document. And I am talking about
20 paragraph 12. And it notes -- and this is the -- this is a summary
21 by the Prosecution of the evidence of Zone Commander Rrustem Mustafa,
22 obviously talked about as Commander Remi, and this is what they had
23 to say. Paragraph 12:

24 "The witness," the witness being Remi, "will also testify about
25 the detention of Zoran Zbilic, member of the Serbian Security

1 Service, in November 1998 in Llapashtice. The GS was informed of his
2 detention and let W04746," is Mr. Remi, "decide what to do with him.
3 Adem Demaci then intervened for Zbilic's release, after William
4 Walker and Shaun Byrnes from OSCE became interested in this case.
5 Demaci's word carried a lot of weight at the time, and therefore
6 [Remi, Rustem Mustafa] decided to release the detainee."

7 Now, in addition to this comment about -- where the Prosecution
8 notes that Demaci's word carried a lot of weight, including Remi's
9 decision to release the detainee, that Judge Mettraux raised with
10 you, let me read for you what Remi actually said and testified to in
11 this courtroom.

12 MR. KEHOE: And this is the transcript from 13 July 2023, page
13 5614, lines 11 to 14.

14 MR. TIEGER: Your Honour, before we move -- I'm sorry, counsel.
15 But in the interest of accuracy, this is not a comment about -- by
16 the Prosecution about how much weight Mr. Demaci's word carried or
17 didn't carry. This is a summary of what Mr. Mustafa was expected to
18 say. And there's a difference.

19 PRESIDING JUDGE SMITH: That's correct.

20 MR. KEHOE: [Microphone not activated]. You're right, counsel.
21 And to the extent I misspoke, I apologise.

22 Q. So he testifies that Demaci's -- that Demaci's word carried a
23 lot of weight, and let's see what he actually -- or he noted to the
24 Prosecution that it carried a lot of weight, and let's see what he
25 actually testified to.

1 MR. KEHOE: Again, this is at page 5614, 13 July, lines 11 to
2 14.

3 Q. And we're talking about the release of Zbilic.

4 "Q. So can you please explain what involvement Adem Demaci had
5 in the release?

6 "A. Adem Demaci was an authority for us and we obeyed his words
7 and, therefore, we released the person."

8 Now, is this consistent with what Mr. Demaci told you when you
9 met him?

10 A. No.

11 Q. Now, Judge Mettraux also put to you a portion of the press
12 conference where -- this is the Demaci press conference with Rugova
13 that Judge Mettraux was talking about. Where Demaci claimed he
14 appealed to the General Staff for the release of Mr. Zbilic. Do you
15 remember that?

16 A. Yes, I do.

17 Q. And let us turn to that, if you can see. Now, as you can see
18 from the summary of the SPO evidence, it was Remi's decision to
19 release Zbilic. Do you see that?

20 A. There's nothing on my screen.

21 MR. KEHOE: Can you put the document back up.

22 Q. Look at the last line. In that line, Remi -- in this summary,
23 it was Remi who decided to release the detainee, not the
24 General Staff. Do you see that?

25 A. I see this, yes.

1 Q. Now, was that, again, consistent with your understanding of
2 Demaci's role and his position?

3 A. Yes.

4 Q. So here is Demaci. He would tell a commander, a military
5 commander of the Llap zone, one of the operative zones, and that
6 commander, according to his testimony in this Court, obeyed his words
7 and released Zbilic; right?

8 A. So, I do not have insight into the relationship between
9 Mr. Demaci and Mr. Mustafa. What I do note here is that, based on
10 this text, that Mr. Mustafa held Mr. Demaci in high regard, that he
11 received his request, and then himself decided to release the
12 detainee. So in my view, this is consistent that Mr. Demaci had a
13 moral authority, a reputation, and made interventions on which
14 military members, members of the KLA, decided.

15 Q. Let us continue on this, sir, and we have a bit more to get
16 through. And, by the way, you also -- Judge Mettraux also showed you
17 a portion of the press conference where Demaci stated "it's not up to
18 me on matters of detention." Do you recall that?

19 A. Yes, I do.

20 Q. Well, that was quite similar, was it not, to what Mr. Thaci told
21 you when he told you that it would -- and I'm talking about page
22 7523. That it was -- that it would be improper to interfere with
23 civilian judicial authorities. He basically said the same thing as
24 Demaci, didn't he?

25 A. Mr. Thaci said that they had to respect the independence of the

1 judiciary. They could not interfere. And also - also - that an
2 early release before the sentence had been completed would undermine
3 KLA authority.

4 Q. Okay. So it would be -- Thaci's telling you that it was
5 improper -- it would be improper for him to interfere in judicial
6 proceedings and that he, like Demaci, had no authority over
7 detentions; isn't that right?

8 A. He said that they would not intervene because of the two reasons
9 that I just mentioned.

10 Q. And because it would be improper for him to intervene; right?

11 A. Because they needed to respect the judicial processes.

12 Q. That is --

13 A. That was his statement, yes.

14 Q. That is akin to what Demaci told you, wasn't it?

15 A. Slightly different.

16 Q. Well, basically, the same idea, wasn't it?

17 A. In Demaci's case, I took it to mean that he lacked authority,
18 not that he was unwilling to intervene.

19 Q. Well, and then Thaci, as a political representative, is telling
20 you it's improper for him to intervene; right?

21 A. That was Mr. Thaci's statement, correct.

22 Q. Well, let's go on. You also noted in your response to questions
23 by Judge Mettraux that -- you were asked whether Demaci was acting
24 under the authorisation of the General Staff, and your answer was
25 that this was consistent with what -- your understanding. Is that

1 right? That was on page 7581, lines 4 to 15. Do you recall that?

2 A. I'm very sorry. I'm not trying to be difficult. I just -- I
3 don't recall that.

4 Q. Okay. So you don't recall telling that -- to Judge Mettraux
5 that Demaci -- when Demaci said that he was acting on the
6 authorisation of the KLA, that that was consistent with your
7 understanding of how Demaci was acting; is that right?

8 MR. TIEGER: I would suggest, in this case in particular, it
9 would be useful to be more specific about the reference which
10 contains elements that may assist the witness in understanding
11 what --

12 PRESIDING JUDGE SMITH: It would assist the Bench as well.

13 MR. KEHOE: Yes. I'm just trying to move through this in the
14 interest of time, Judge.

15 JUDGE METTRAUX: If it helps, Mr. Kehoe, it's page 7 of the
16 transcript of the press conference, and it was at page 7581 of the
17 transcript of last week.

18 MR. KEHOE: Thank you, Judge Mettraux.

19 Q. On page 7, in the translation, Demaci said:

20 "No, I have authorisation from the KLA General Staff."

21 And you were asked the question by Judge Mettraux about this
22 particular comment, and that you noted -- the question is:

23 "Is that consistent with your understanding that Demaci would be
24 acting, at least in this particular context, under the authorisation
25 of the KLA General Staff, or is that conflicting with your

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1 understanding?"

2 And you said:

3 "No, this is consistent."

4 MR. TIEGER: Your Honour, that's precisely the nature of the
5 objection. Counsel mentioned "in this particular context." The
6 context was not mentioned here. And you can find that on page 7851
7 at lines 9 through 10 of the transcript. And that's basically the
8 issue.

9 MR. KEHOE: But be that as it may, we are talking --

10 PRESIDING JUDGE SMITH: Just a second. We will find that
11 reference in our analysis of these questions. So thank you for
12 pointing them out to us.

13 MR. KEHOE:

14 Q. In line 17, as Judge Mettraux wrote, he quoted the document. It
15 said:

16 "... I have authorisation from the KLA General Staff, to form
17 the Assembly, to form the government, to form the negotiating group."

18 Do you recall that question?

19 A. Yes, I do.

20 Q. Okay. And then when the Judge asked you whether or not that was
21 your understanding that the -- that Mr. Demaci was operating with the
22 authorisation of the General Staff, and you said yes?

23 A. That's correct. I believe then and still believe now that
24 Mr. Demaci's political representation in -- with an office in
25 Prishtine would not have occurred without the authorisation of the

1 General Staff -- or at least of the KLA at the time, KLA writ large.

2 Q. Tell us, Mr. Abrahams, which specific individuals in the KLA
3 General Staff was Demaci obtaining authorisation from?

4 A. I do not know the answer to that question.

5 Q. So when you're saying that he's operating -- when Demaci's
6 operating upon the authorisation of the KLA in response to questions
7 by Judge Mettraux, you can't tell us the individuals that he was
8 obtaining that authorisation from; is that right?

9 A. What I can tell you is that there is no way he would have been
10 allowed to function in Prishtine with that position, and it was never
11 contradicted by anyone in the General Staff or otherwise. But if
12 you're asking me about the individuals who were involved in those
13 conversations and decisions, I do not have information about that.

14 MR. KEHOE: Let's go to the next document, ERN 01167 at 68 in
15 the Albanian, and in the English 061168-061168 at 061168. If we
16 could put that on the screen.

17 Q. Now, Mr. Abrahams, you can take a quick look at this, but this
18 is a draft agreement which the KLA and the FARK agreed to unify into
19 one formation. And it is dated 2 November 1998. They agreed to
20 unify into one formation. As I say, this draft agreement is eight
21 days before you met with Mr. Thaci and Mr. Limaj.

22 If you look to the bottom of the page, it says the agreement
23 will only enter into force if it is approved at a subsequent meeting
24 in which Adem Demaci will be one of the participants. So from this
25 document, Adem Demaci was to be one of the people deciding whether to

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1 affirm an agreement to unify military formations. Now, is that
2 consistent with your understanding of Mr. Demaci's role?

3 A. Yes. I mean, I never have said that Mr. Demaci was irrelevant,
4 unimportant or not influential. But I do still believe he was
5 largely in a role as public representative with internationals, like
6 myself, diplomats, and also the Albanian public who held him in high
7 regard. And that doesn't mean he wasn't part of conversations. And
8 what I would argue in this case is an internal Albanian negotiation
9 in which he could, and apparently did - it's the first time I'm
10 seeing this document - play a role.

11 Q. And he played a role by -- this document saying that it is not
12 coming into -- well, not coming into effect until he endorses and
13 approves it; right?

14 A. That's correct.

15 Q. And in endorsing and approving this joining of two military
16 forces, that is not the role of a figurehead, is it?

17 A. I don't think it's inconsistent with my characterisation of his
18 role.

19 Q. Okay. Didn't you tell -- didn't you tell Judge Mettraux that
20 you thought that he was a figurehead? Didn't you say that?

21 A. I believe that was -- those were his words. And my response has
22 been, and my view consistently has been, that he was an important
23 figure in Kosovo Albanian society, but he did not have strong
24 influence and decision-making abilities or authority over military
25 matters.

1 In my view, you know, this conversation was very much an
2 internal Albanian political discussion clearly with security
3 relevance. I'm not suggesting it had no security relevance
4 whatsoever. And Mr. Demaci apparently played a role.

5 Q. In the interest of time, let me move ahead and show you another
6 document, which is DHT01485, and we're talking about DHT01485.

7 MR. KEHOE: And, Your Honour, this is a document, in
8 consultation with counsel, that has to be discussed in closed
9 session.

10 PRESIDING JUDGE SMITH: [Microphone not activated]

11 MR. KEHOE: Private session, Judge.

12 PRESIDING JUDGE SMITH: Private session.

13 MR. KEHOE: Private session, my apologies.

14 PRESIDING JUDGE SMITH: Please take us into private session,
15 Madam Court Officer.

16 [Private session]

17 [Private session text removed]

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Further Cross-examination by Mr. Kehoe

1 [Private session text removed]

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Further Cross-examination by Mr. Kehoe

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Further Cross-examination by Mr. Kehoe

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1 [Private session text removed]

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10 [Open session]

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

12 MR. KEHOE:

13 Q. So in the context of going to this office and giving this to
14 him, you have said in that report, concerning the actions of UNPROFOR
15 and KFOR - and I point you to 379, page 22513 - that the overall
16 "response of the international community to attacks on minorities in
17 Kosovo has been belated and inadequate." You went on to say:

18 "As of July 22, few of the 1,800 regular international civilian
19 police and the 1,000 special international civilian police authorised
20 by the UN have been deployed, although a number of officers from the
21 International Police Task Force (IPTF) in Bosnia ... have been
22 temporarily seconded ...

23 "Despite these efforts, the findings of this report makes clear
24 that the current ad hoc arrangements for policing are woefully
25 inadequate to meet Kosovo's public order requirements."

1 That's your criticism of UNMIK.

2 You then went on to the next page and noted that:

3 "KFOR's overall record on preventing the abduction, detention,
4 and murder of Serbs and Roma is also poor."

5 Right?

6 A. Very much correct, yes.

7 Q. So in that -- during this period of time when you're going to
8 see Thaci, you have a disastrous situation on your hands because
9 UNMIK and KFOR can't control what's going on; right?

10 A. NATO forces came in with firepower prepared to face Serbian and
11 Yugoslav forces, and they did not prepare or intervene adequately in
12 civilian policing functions or military policing functions. And the
13 UN as well had far too few police to manage this situation. It was
14 one of our main critiques of the international organisations, a gross
15 failure of a predictable -- a predictable problem.

16 Q. And through June, July, and August, the person on the Kosovo
17 side that's out there condemning violence is Hashim Thaci, isn't he?

18 A. He made public statements condemning some of the singular or the
19 most egregious attacks.

20 Q. You mentioned Gracko being one of them?

21 A. That's correct.

22 Q. And he was also up in Mitrovica to diffuse the crisis in
23 Mitrovica in late June 1999, when the Serbs were on one side of the
24 river and the Kosovo Albanians were on the other side of the river
25 and they were about to have a conflict. And it was Hashim Thaci who

1 went up there and diffused that crisis, didn't he?

2 A. No, I'm not familiar with that particular incident.

3 Q. You're not familiar with that?

4 A. No.

5 Q. You are familiar, are you not, that in addition to condemning
6 violence on numerous occasions, that it was Thaci who was out there
7 consistently calling for a multi-ethnic society and for the Serbs not
8 to leave, didn't he?

9 A. Mr. Thaci made public statements to that effect, yes.

10 Q. And he did that continuously throughout this period of time both
11 in the international and in the local Albanian media, which you noted
12 before you were processing and reviewing; right?

13 A. He made public statements condemning violence, yes.

14 Q. And he -- but I'm saying he did it not only in an international
15 setting, he did it in a local setting as well, didn't he?

16 A. I believe, yes. Yes.

17 Q. Okay. So you would agree with me that he was the only person --
18 leader in Kosovo at the time condemning violence, trying to prevent
19 violence, and calling for a multi-ethnic society. He's the only one
20 in the Kosovo Albanian side out there publicly making these
21 statements, isn't he?

22 MR. TIEGER: Objection. That's a compound question. You should
23 break it down to its elements.

24 MR. KEHOE: In the interest of time, Judge, I'm trying to --

25 PRESIDING JUDGE SMITH: Just answer the question, if you can.

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1 THE WITNESS: I can, Your Honour, and the answer is no. He made
2 statements condemning some of these singular incidents, but there
3 were other Kosovo Albanians who absolutely were discussing -- were
4 condemning revenge, were calling for respect for human rights, that
5 the new Kosovo from -- which they knew -- in the past, Albanians knew
6 repression and violence, that they could build a new future without
7 that. And there were definitely other Kosovo Albanians making that
8 point.

9 PRESIDING JUDGE SMITH: Time.

10 MR. KEHOE: I -- just one last question, Judge?

11 PRESIDING JUDGE SMITH: A very short one.

12 MR. KEHOE: Very short one.

13 Q. And the person who was out there who was involved in the
14 provisional government was, in fact, Hashim Thaci, not Rugova, not
15 Bukoshi, he was the one, in conjunction with others, that were making
16 these statements to stop violence, a multi-ethnic society, and
17 separating people who were in conflict; right?

18 A. No, there were others out there --

19 Q. I'm agreeing with you.

20 A. Oh.

21 Q. I'm agreeing with that. It's Hashim Thaci, in conjunction with
22 a handful of others, who were out there who was saying this to stop
23 violence, multi-ethnic society, and [Overlapping speakers] ...

24 PRESIDING JUDGE SMITH: Mr. Kehoe, you're saying that for a
25 second time, and your time is up.

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Further Cross-examination by Mr. Emmerson

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1 MR. KEHOE:

2 Q. Mr. Abrahams, thank you very much. Have a safe trip home.

3 A. Thank you.

4 PRESIDING JUDGE SMITH: Mr. Emmerson, you have the floor.

5 Further Cross-examination by Mr. Emmerson:

6 Q. I'm beginning to ask you some questions, and this is for the
7 record, arising out of the questions and answers you gave to
8 questions asked by Judge Mettraux at page 7576, line 23. It's been
9 mentioned in passing by Mr. Kehoe. You were asked about the
10 significance that you and Human Rights Watch attached to the accuracy
11 of communiqués and statements purportedly issued by the KLA, and your
12 answer was:

13 "So we would place a high value on these communiqués because
14 they are produced by the official structures of, in this case, the
15 armed group. So statements produced by the parties to the conflict
16 are, for us, considered important information without any doubt."

17 Now, I just want to probe with you what that means in terms of
18 "important information without any doubt," and, in particular, the
19 high value that is placed by Human Rights Watch on those statements
20 because they appear to emanate from official structures.

21 And for the sake of an example, could we call up the document
22 that's been looked at recently. That is, P378, which is the
23 communiqué about the two journalists, which appears to have been
24 written by somebody who didn't know that their detention happened for
25 the first time almost three weeks after the communiqué says they

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1 were, in fact, put on trial.

2 So it's in that context I wish --

3 MR. TIEGER: I'm sorry, but that's a comment. If there's a
4 question, he can ask it.

5 MR. EMMERSON: There is certainly a question.

6 MR. TIEGER: But to embed it in commentary is not appropriate.

7 MR. EMMERSON: Well, I'm sorry --

8 PRESIDING JUDGE SMITH: Go ahead with the question, please.

9 MR. EMMERSON: Yes.

10 Q. So I want to ask you, you are a specialist for Human Rights
11 Watch in humanitarian law; is that right? In the application of
12 humanitarian law standards?

13 A. Investigations into violations or alleged violations of
14 international humanitarian law.

15 Q. So as an expert in humanitarian law, you are familiar with
16 military structures and practices generally?

17 A. Well, first of all, I'm not a lawyer, so I refer to our legal
18 teams for the details and the specifics, and I investigate apparent
19 or alleged violations.

20 Q. But presumably you know of typical structural issues, at least
21 with conventional armies?

22 A. Can you explain what you mean --

23 Q. Well, yeah, I will explain.

24 A. -- by "structural."

25 Q. Do you know -- can you give for us a working definition of

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1 psyops or psychological operations as they're known?

2 MR. TIEGER: I am going to object. I think this is -- at this
3 moment it seems to be beyond the scope of the Judges' questions.

4 PRESIDING JUDGE SMITH: It is beyond the scope of the Judges'
5 questions.

6 MR. EMMERSON: Well, with respect, it's not, because I am asking
7 about the weight that is applied to these communiqués, which I am
8 showing to suggest to the witness are an example of psychological
9 operations.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. EMMERSON: Well, it's clear that the witness has testified,
12 in answer to Judge Mettraux, that Human Rights Watch attach
13 importance to authorised statements from what they perceive to be a
14 party to the conflict.

15 PRESIDING JUDGE SMITH: And what does that have to do with
16 psyops?

17 MR. EMMERSON: Because psyops is very specifically a procedure
18 and a responsibility, and which, for example, the United States has
19 divisions, which is designed to produce information to create an
20 impression that isn't true. That's what it is. And having that --

21 PRESIDING JUDGE SMITH: Let's establish whether this witness
22 knows anything about that, because he's already said he doesn't
23 really deal with issues like that. But you go ahead.

24 MR. EMMERSON: Well, he said he didn't deal with the law --

25 PRESIDING JUDGE SMITH: [Microphone not activated].

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1 MR. EMMERSON:

2 Q. But this is a question of -- you know, surely, when you're
3 taking into account, as you've said, the reliability of statements
4 and communiqués, that all military formations operate psychological
5 operations, as they're called.

6 A. Yes, I am aware of that.

7 Q. Well, let me put a working definition to you. And forgive the
8 rudimentariness of the source, but it's the first paragraph of the
9 Wikipedia definition of psyops, and see if this is what you would
10 understand psyops to mean:

11 "[PSYOPS] are operations to convey selected information and
12 indicators to audiences to influence their motives and objective
13 reasoning and ultimately the behaviour of governments, organisations,
14 groups, and large foreign powers."

15 Does that sound familiar to you as a good working definition of
16 psyops?

17 A. Well, I -- as an investigator, I try not to rely on Wikipedia,
18 but in this case I would agree with this definition.

19 Q. Exactly. I try not to rely on it, but it seems like such a good
20 definition. I mean, you know that, for example, that within a
21 conventional military, like the United States military, there is a
22 special operations command which encompasses the 4th and 8th PSYOPS
23 Divisions in the army, and the 193rd Special Operations Wing in the
24 airforce.

25 A. I am not familiar with the precise units, but clearly psyops are

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1 a part of, at least, the US military.

2 Q. There's that old expression: The first casualty of war is
3 truth. But we're really talking about the old concept of war
4 propaganda to create an impression.

5 A. Propaganda is a part of conflict. [Overlapping speakers] ...

6 Q. And nowadays it's called psyops, essentially.

7 A. I agree.

8 Q. So when in, for example, as we see it every day, you know, there
9 are statements saying, for example, Ukraine is winning despite the
10 fact that it hasn't made any progress in the last week or so, that
11 you have to take with a pinch of salt, don't you?

12 A. I agree.

13 Q. And you have to factor that in. So when you say you place a
14 high value on the communiqués because they come from an official
15 source, and they're, therefore, considered important information
16 without any doubt, you're not saying, are you, that you treat them as
17 accurate. Just that it's important to your overall analysis to note
18 that the statement has been made?

19 A. Thank you --

20 Q. Is that correct?

21 A. -- for that question. When I said it's important information,
22 that is because it emanates from one or another party or an official
23 source, be it NATO or anyone else involved, but that is distinctly
24 different from accuracy in --

25 Q. Because it may be designed to manipulate the readership in order

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1 to gain an impression of the strength of your forces or the depth of
2 your organisation which is misleading; is that correct?

3 A. It may and may not be accurate.

4 Q. Exactly. But that's the reason why it may be inaccurate, is
5 because those who have issued it are trying to create an impression
6 that they think is going to affect either the enemy or a third party
7 in their tactical decision-making?

8 A. That is one of the reasons that it might be inaccurate.

9 Q. And you've told us, in the testimony you gave on Thursday, that
10 as you saw matters at the time, it was difficult to discern whether
11 the units on the ground had a relationship or what any relationship
12 was to a central command as you saw it at the time; correct?

13 A. That's correct.

14 Q. And we went through the fact that it was, as you described it,
15 strong -- characterised by strong regionalism dominated the
16 organisation. You talked about how the zones raised their own funds
17 and bought their own weapons. You told us that the level of
18 organisation and central command was only really put right by about
19 March 1999.

20 A. It was a process.

21 Q. Exactly.

22 MR. EMMERSON: Can we call up P378 back onto the screen.

23 Q. We've already touched, in this case, on records showing that,
24 for example, in the Dukagjin zone, when it was being set up, they
25 appointed a commander for chemical and biological warfare and a

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1 commander of an anti-tank division. But these were purely, as you
2 will -- I am sure you can testify, pyrrhic names, they're empty
3 names; correct?

4 A. I'm not familiar --

5 Q. No, but --

6 A. -- with that, with those appointments. That's the first I've
7 heard of it. But I --

8 Q. Sure, but we have the documentation.

9 A. I would say were those to have been created, I never saw
10 evidence of the existence --

11 Q. Of the any such --

12 A. -- of either of those forces.

13 Q. But they might -- would you agree, from your specialist
14 expertise, they might in fact be names and titles given to people to
15 create the impression that the KLA was better organised and better
16 equipped than it really was?

17 A. That is possible, yes.

18 Q. I mean, is that something you saw any evidence of?

19 A. In general, the KLA was trying to present itself as a -- as the
20 legitimate defence for -- and force for the independence, fighting
21 for the independence of Kosovo. There's no question about that. And
22 so presenting themselves as a credible and serious fighting force was
23 part of that -- of that interest and campaign.

24 Q. Even when, as you told us last week, they were primarily "a
25 disorganised collection of armed villagers, often built around family

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1 structures, without a clear chain of command." That was your
2 testimony. And you would say even in such circumstances, they would
3 be trying to convey the impression of an organised armed force.

4 A. Correct.

5 PRESIDING JUDGE SMITH: Mr. Tieger.

6 MR. TIEGER: Your Honour, it seems to me the repeated traversing
7 of ground covered by the witness already in relation to matters that
8 don't appear to directly concern the comment about communiqués falls
9 outside the scope of questions.

10 PRESIDING JUDGE SMITH: Overruled. Go ahead.

11 MR. EMMERSON: Thank you. Thank you.

12 Q. So let us look at this document for a moment. We know -- you've
13 already dealt with Mr. Kehoe with the fact that it claims a trial
14 happened on 30 September, and all of the other evidence and the
15 indictment alleges that the two people concerned had not, in fact,
16 been detained at that time, whatever the exact difference of time is.
17 That's a clear, on the face of it, inaccuracy.

18 But what I want to ask you about is the context of that. So:

19 "'The Military Court of the Justice Directorate of KLA General
20 Headquarters, based on the request of the Military Prosecution ...'"

21 Now -- and in conformity with the trial, certainly inaccurately
22 recorded as to the date.

23 Now, with the military court, this is dated -- I think it's a
24 November date on it, is it? Yes, the very first -- 1 November. The
25 military court of the justice directorate of the KLA. Well, let's

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1 just talk about the justice directorate of the KLA. Would it
2 surprise you to learn that there was no such thing?

3 A. So, first of all, I feel obliged to point out the date, the
4 30 September. It's not on the face of it an inaccuracy. It's an --
5 on the face a discrepancy.

6 Q. Fine.

7 A. There --

8 Q. I don't know what the difference is, but carry on.

9 A. Well, the difference --

10 Q. I wasn't asking you about the date. I was asking you about the
11 --

12 A. No, but you mentioned -- you did mention the date --

13 Q. Sure.

14 A. -- so I then [Overlapping speakers] ...

15 Q. I don't understand the difference between a discrepancy and an
16 inaccuracy. Do you want to explain?

17 A. Well, there are two different dates and we need to understand
18 why.

19 Q. Is that an inaccuracy or a discrepancy?

20 A. That is a discrepancy.

21 Q. I see.

22 A. You are claiming this is inaccurate and I don't know that to be
23 the case.

24 Q. So they might have had a trial before they were arrested. Is
25 that what you're suggesting?

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1 A. No. This is suggesting that they had the trial before they --
2 or this is suggesting that they were -- the trial was conducted on
3 September 30th. I don't know that to be true.

4 Q. So one possibility is that whoever wrote this didn't have any
5 accurate information, and that seems to be clear. Didn't have --

6 A. That's possible.

7 Q. -- accurate information. That's not really the issue. It's
8 part of a document that's been constructed referring to a justice
9 directorate of the KLA general headquarters on 1 November.

10 A. Yes.

11 Q. Now, apart from your conversation with Mr. Limaj, who also, for
12 whatever reason, used some reference to himself being a legal or
13 justice official, the --

14 A. I believe head of the legal directorate, I believe.

15 Q. Well -- but which I think you said is interchangeable with
16 justice?

17 A. Judicial, I remembered. It's either head of the judicial
18 department or head of the legal --

19 Q. Either way, if, as independent evidence will prove, there was no
20 such thing at that time, would that be consistent with what you
21 consider falls within the definition of psyops?

22 A. That they -- that they claimed to have a judicial directorate
23 but, in fact, there was no judicial directorate, is that --

24 Q. And a military prosecution when none existed.

25 A. Well, first, I don't know if the judicial directorate existed --

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1 Q. No, I understand.

2 A. -- or not, but I will --

3 Q. That's a matter of other evidence but --

4 A. I will leave that to this process. And if they had claimed
5 there was a judicial directorate and there turns out not to have been
6 one, there may be -- there are different possible explanations for
7 that, of which psy --

8 Q. [Overlapping speakers] ...

9 A. Of which psyops might be one.

10 Q. Exactly. It would be, within the terms of what we agreed was a
11 working definition, conveying selected information. Selective, in
12 this case, misleading, if that hypothesis is correct, to create the
13 impression that the KLA was stronger and more organised than really
14 it was. That would be how it would fall within that type of
15 activity.

16 A. Yes.

17 Q. And you know, it's -- we can call it fancy names like psyops,
18 but it's as old as war itself, isn't it?

19 A. I agree.

20 Q. I mean, you don't have to be the United States military to try
21 to create the impression that you're better organised, stronger, more
22 technically better armed, you present a more formidable opponent. Do
23 you agree?

24 A. I agree.

25 Q. And in the context of Kosovo in 1998, that might have two

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1 functions, I'm going to suggest to you: One, to make the Serbs think
2 they had a real enemy, do you agree, a stronger enemy than they
3 actually had?

4 A. I agree.

5 Q. But more importantly, perhaps, or certainly as importantly, to
6 make NATO countries like America and the UK think this is a
7 sufficiently organised group for us to back and put our resources,
8 our training, and our military support behind. It's not just a
9 rabble of, as you described it, a disorganised collection of armed
10 villagers, with no clear chain of command. It's not just that. It's
11 actually something with a proper structure, so we actually can deal
12 with these people. Is that right? It would serve that purpose as
13 well?

14 A. Well, certainly getting the support from Western military powers
15 was a primary goal.

16 Q. A key -- key KLA objective.

17 A. Without any -- any doubt. And showing themselves to be reliable
18 partners. Also in -- with respect to stability, security, and human
19 rights, and democratic values would be important.

20 Q. And you already observed that, in some respects, they may --
21 your opinion is that they made statements of adherence to
22 humanitarian law that were not 100 per cent reliable; is that right?

23 A. That is my testimony in this Court. That it --

24 Q. So it must follow, mustn't it, from what you said, that the
25 statements about their organisation are equally unreliable,

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1 potentially?

2 A. I don't draw that conclusion.

3 Q. Well, let me put it another way. As you've told us, when you're
4 looking at communiqués and documents, you have to adopt a high degree
5 of caution because of the risk that they are, in fact, a
6 manifestation of psychological operations, of psyops, and you take
7 that into account?

8 A. We receive information from all parties to the conflict with
9 this -- as that being the stated position that requires
10 interrogation.

11 Q. Exactly. And corroboration.

12 A. And corroboration. Of course.

13 Q. Did you ever find any corroboration or come across any that, in
14 November 1998, there was a justice directorate of the KLA general
15 headquarters with an operational military court and a military
16 prosecution other than your conversation with Mr. Thaci and
17 Mr. Limaj? Did you find any independent corroboration?

18 A. So we encountered members of the military police. I --

19 Q. That's not what I asked you, though.

20 A. Well, but it is part of the --

21 PRESIDING JUDGE SMITH: Let him finish his question first,
22 please -- or his answer.

23 THE WITNESS: Part of the military judicial mechanisms or
24 apparati would include the military police. And I personally did
25 encounter members of the military police who showed us identification

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1 as such, as being members of the military police.

2 MR. EMMERSON:

3 Q. Could I ask you to pause there. Did you look at that
4 documentation?

5 A. You mean the --

6 Q. Examine their documentation, the people claiming to be military
7 police?

8 A. How do you mean "examine"? What's your definition --

9 Q. You said they presented you official documentation. Did you
10 look at it?

11 A. I did.

12 Q. Who issued it?

13 A. I do not recall at this time.

14 Q. So it doesn't really help us, does it?

15 A. I think it does because they -- multiple people had this
16 identification and presented themselves as such.

17 Q. Issued by the same authority?

18 A. That I do not -- if I did not examine all of them, then --

19 Q. I mean, it could just be something that somebody produces to say
20 "I'm in charge here," couldn't it?

21 A. I did not --

22 Q. Within your context as you described it of --

23 A. I did not take it to be as such. We saw consistent conduct
24 in -- at KLA checkpoints that suggested to us a degree of regularity
25 and consistency, which, in our analysis, meant orders that were

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1 coming down.

2 Q. You said they were consistent at the end but not at the
3 beginning; is that right?

4 A. Over time we saw an evolution manifested or reflected in a more
5 systematic or consistent conduct --

6 Q. Over -- over -- so you --

7 PRESIDING JUDGE SMITH: Mr. Emmerson, just a second, you're
8 cutting him off again.

9 MR. EMMERSON: I think he's finished.

10 PRESIDING JUDGE SMITH: Were you finished?

11 THE WITNESS: In this case I probably I was, Your Honour.

12 PRESIDING JUDGE SMITH: Please do a short pause --

13 MR. EMMERSON: Sure.

14 PRESIDING JUDGE SMITH: -- afterwards.

15 MR. EMMERSON:

16 Q. But my question is: You noticed less consistency at one early
17 point, and then you've made the point in your evidence and your
18 statements that at a later point it seemed to you more consistent
19 and, if you like, organised?

20 A. Over time we noted a higher degree of organisation.

21 Q. Can we try to pinpoint those two poles of evolution. When would
22 you say the period of disorganisation, because you've told us about
23 KLA disorganisation and reorganisation by March 1999, and when the
24 period that you observed more organisation?

25 A. Sure. Well, my first research trip to Kosovo in 1999 would have

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1 been June, if I'm not mistaken. If I'm not mistaken, June 1998.

2 Excuse me.

3 Q. Yes.

4 A. 1998, apologies. And at that time in our travels, there was a
5 higher degree of disorganisation, including some KLA members without
6 uniform, and differences in different parts of the area. And then by
7 September we noticed a difference, that there was more uniformity,
8 there was more consistency. That is when, for example, we were
9 presented with military police, in Drenica I recall specifically. By
10 then the orders for journalists were being -- and for human rights
11 investigators were being distributed, and we noted a higher degree.

12 Q. So that, I suppose you'd agree, consistent with what Mr. Thaci
13 was telling you in the meeting, that the organisation was trying to
14 set up those institutions and make them operative; is that right?

15 A. Well, I -- sorry. I'm pausing. I never disagreed and took as
16 accurate, based on my observations, that the KLA was developing its
17 structures and emerging from a disparate rebel group into a more
18 organised military force.

19 Q. But you think that happened by September 1998 at the back end of
20 the Serbian summer offensive? I thought you told us it was March
21 1999 in your testimony?

22 A. No, this is -- I think it would be artificial to identify
23 specific points in time.

24 Q. Fair enough.

25 A. This is a dynamic evolution.

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1 Q. But by the first -- I mean, thank you on the military police or
2 people manning checkpoints and so forth. But by 1 November, or
3 indeed since then, did you find any evidence of corroboration that in
4 November 1998, or in fact in September 1998, according to the press
5 release, there existed a justice directorate of the KLA general
6 headquarters which operated a military court under the responsibility
7 of a military prosecution? Did you find independent evidence to
8 corroborate that claim apart from the meeting with Mr. Thaci and
9 Mr. Limaj?

10 A. So our information was based on what was told to us. We were
11 refused permission to visit --

12 Q. Yes.

13 A. -- detainees, so we were not able to verify whether there was --
14 the detention facilities or where they were located or the existence
15 or non-existence of a judicial --

16 Q. And you --

17 A. -- directorate.

18 Q. -- never found anything after that time to suggest that a
19 justice department --

20 A. Correct, but --

21 Q. -- existed in November of -- or September, November 1998?

22 A. I'm sorry --

23 Q. You never at any time since then came up with any corroboration
24 that there was a justice department in existence in November 1998?

25 A. When you say "came up with," you mean --

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1 Q. You never came across --

2 A. -- in our -- do you mean in our primary investigations?

3 Q. I mean -- let's go back to where we started. You agreed with me
4 that given the risk that the -- the organisation or those issuing the
5 statements might be intending to deliberately overplay the degree of
6 their organisation in order, in part, to acquire support and present
7 a more organised picture than they were, than they -- actually was
8 the reality. And I think you agreed with me that because of the
9 scepticism that you would need to bring to bear in reading those
10 documents, you'd be looking for independent corroboration of the
11 truth of what they say before forming a conclusion; is that right?

12 A. So the focus of our work and the purpose of our work is to
13 document and expose violations as we gather the information. And the
14 structure here, it continued to be our concern that the individuals,
15 at least these two individuals, did not have a proper procedure and
16 due process. That was the focus of our work. And the conclusion we
17 came to was that they did not.

18 Q. I'll come to that in a moment. That's not what I'm asking
19 about, the two individuals, although I can follow that up in a
20 moment. My question was, and it's -- I think by implicitly not
21 answering in a positive way, so to speak, you're probably answering
22 in a negative way, but let me put it to you directly.

23 Is it correct that you have no independent evidence and found
24 none of the existence of a justice directorate or military courts and
25 prosecutors in September, October, November 1998?

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1 A. Not that I recall.

2 Q. Thank you. So do you concede that this could be another of the
3 examples of the KLA claiming the existence of structures that do not,
4 in fact, exist? That it could be?

5 A. Could be?

6 Q. Yeah.

7 A. Yes --

8 Q. Thank you. That'll do. For my purposes, that'll do.

9 Let's move on. You mentioned the two individuals. And I think
10 in answer to a question from the Bench, you also said that you didn't
11 know why their lawyer hadn't attended whatever proceedings these
12 were; is that right? You were told that a lawyer had been appointed,
13 but you don't know why they didn't attend.

14 A. I believe what I said, and what I recall from that time, is that
15 the information provided to us - this is the information provided to
16 us - was that they were allowed to contact someone, and that person
17 did not arrive. Either did not want to come or was not permitted to
18 come. But that's the information that was provided to us.

19 Q. Now, as you know, when a lawyer doesn't turn up in any country
20 in a police station to advise somebody before a court proceeding,
21 they have the right to choose whether to wait and delay the
22 proceeding or waive their right for a lawyer.

23 A. Correct.

24 Q. Did these two men waive their right to a lawyer?

25 MR. TIEGER: Just for accuracy. I think the reference, although

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1 not specifically cited, was to the appearance of a lawyer at a trial,
2 not to a detention -- at a police station.

3 MR. EMMERSON: A detention, review, whatever. Doesn't matter.
4 To a proceeding.

5 Q. Now, as you know, an accused person is entitled to waive their
6 right to have a lawyer attend a proceeding; correct?

7 A. They could waive their right.

8 Q. Yeah.

9 A. But they could represent themselves if they wanted --

10 Q. Or they could represent themselves.

11 A. -- as Mr. Milosevic did in his case [Overlapping speakers] ...

12 Q. Exactly. He cross-examined you, I think.

13 A. He did indeed. Less effectively.

14 Q. But let's assume that the -- I don't know, the lawyer was
15 heading -- on his way when he got struck by a Serbian bomb. And it's
16 put to them, "You can either wait three days, or a month, before we
17 find another lawyer, or you can go ahead and represent yourselves."
18 And they say, "We're not going to have a lawyer." We're going to
19 waive our right." Do you know if that happened here?

20 A. I do not know.

21 Q. No. I'm only asking because about the -- the depth of your --
22 I'm not suggesting that is what happened. I'm just asking about how
23 you went about investigating the illegality, as you found it to be.

24 Also, if they were Serbian -- if the allegation is true, that
25 one of them was a Serbian national who was investigated and believed

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1 by the ICTY to have committed war crimes in Croatia, they might have
2 been, would you agree, hostile to the KLA, if that were true?

3 A. It --

4 MR. TIEGER: Sorry, I think now we're getting into areas of
5 speculation, and I object.

6 PRESIDING JUDGE SMITH: Sustained.

7 MR. EMMERSON: Very well.

8 Q. My question, though, is if you didn't know whether they'd waived
9 their right to a lawyer or whether they boycotted the proceedings,
10 how could you conclude that the process did not meet international
11 standards? How could you reach that conclusion so definitively if
12 you didn't know the underlying facts?

13 A. Well, our information, our conclusions were based on what the
14 two individuals told us -- told us about. And we gave them
15 opportunities to explain how the proceedings had advanced. They did
16 not claim that the individuals had waived their rights to counsel.
17 They also did not -- and they also did not argue that these
18 individuals had been accused of crimes elsewhere, and so we reached
19 our conclusions.

20 Q. Yes, I'm just -- it's a very short point, really. I'm just
21 asking, without a proper and thorough investigation of the underlying
22 facts, how were you in a position to make a declaration of illegality
23 and, effectively, tell them that they must therefore be immediately
24 released whatever they may have done? How did you get to that
25 conclusion if you didn't have an opportunity to investigate the

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1 underlying facts?

2 I understand the reasons for it, but how did you think it
3 appropriate to reach a conclusion?

4 MR. TIEGER: I object. That's the same question that was
5 asked [Overlapping speakers] ...

6 PRESIDING JUDGE SMITH: Sustained.

7 MR. EMMERSON: Okay. That's fair enough. I accept that.

8 Q. Last question on this. If they had been spying, as was alleged
9 in the Croatia allegation, you would accept presumably it was lawful
10 to detain them?

11 A. I don't know about the allegation in Croatia --

12 Q. But if the allegation is as it's been described, you would
13 accept that it's lawful to detain them for imperative reasons of
14 security under international humanitarian law?

15 A. If they had reasons to believe that they were conducting
16 espionage, then yes.

17 Q. Thank you. So there's no allegation they were mistreated, we
18 don't know the underlying facts about the trial, and it would have
19 been lawful to detain them if the facts that were put to you were
20 correct? Thank you.

21 A. [Overlapping speakers] ...

22 Q. Okay. Let me move on to another topic. In answer to questions
23 from Judge Barthe, you described what you -- what you identified,
24 what you believed to be six categories of collaborator. Can you just
25 remind us what the six categories are, because it's obviously you who

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1 came up with them?

2 MR. TIEGER: I'm going to object. There should be reference to
3 a specific question --

4 MR. EMMERSON: Yes, I can get that.

5 MR. TIEGER: -- and response because, in fact, the witness said
6 he didn't know if he would identify six categories in particular.

7 MR. EMMERSON: Very well.

8 PRESIDING JUDGE SMITH: That is correct.

9 MR. EMMERSON: Very well. That is correct. The reference is
10 7563, Judge Barthe:

11 "Thank you. And still in paragraph 82, we're still in paragraph
12 82 ... you expressed your opinion, in that case:

13 "'... based on years of research in Kosovo,' it is said, '...
14 that different categories of people, depending on the circumstances,
15 were labelled by the KLA as "collaborators."'

16 "And I believe you distinguish between six categories ..."

17 Whether it's five or six, can you please just repeat them for us
18 in summary form.

19 A. I can, yes. So, again, the taxonomy of collaborators is --
20 can -- is not -- is a spectrum. It's a spectrum. So --

21 Q. I mean, this is your taxonomy, is it?

22 A. Oh, yes.

23 Q. Not coming from anybody else, it's a taxonomy --

24 A. No, it is my --

25 Q. Thank you.

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1 A. It is my analysis. It is my analysis.

2 Q. Yes.

3 A. So I wouldn't put this into six neat boxes. It's not that --

4 Q. Yes.

5 A. -- straightforward.

6 Q. Okay.

7 A. But to repeat myself, the top or the one end of the spectrum are
8 individuals who worked for or were perceived to have worked for the
9 Serbian security forces.

10 Q. Yeah. Second?

11 A. Second or, again, down the spectrum or along the spectrum is
12 those who worked for the state --

13 Q. Yes.

14 A. -- more broadly, not necessarily security services.

15 MR. TIEGER: Counsel, if you just let him finish without
16 assisting with positive or negative responses, please.

17 PRESIDING JUDGE SMITH: I think you inadvertently are saying
18 "yes." You are agreeing with him. And it makes --

19 MR. EMMERSON: I know --

20 PRESIDING JUDGE SMITH: It interrupts the flow of his statement,
21 and it also is difficult for the interpreters.

22 MR. EMMERSON: Very well.

23 THE WITNESS: Proceeding would be individuals who have condemned
24 or criticised or, you know, actively spoken against the KLA.

25 MR. EMMERSON:

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1 Q. Yes.

2 A. Then individuals who were perhaps not actively criticising but
3 not supporting, not actively supporting. For example, not giving
4 money, for example, to the Homeland Calling Fund, or otherwise being
5 supportive by offering their homes, to feed fighters, support them,
6 the military campaign.

7 Q. And are you suggesting that somebody who didn't provide their
8 home was considered by the KLA to be a legitimate target for being
9 arrested, detained, or executed? Is that what you're suggesting?

10 A. What I am suggesting is that a decision not to open your home
11 would place a --

12 Q. A question mark.

13 A. -- a cloud -- yes, over -- over their home because their loyalty
14 to the cause is then considered potentially in doubt.

15 Q. It's just that you -- you used the word "collaborators," and
16 that's a very important word in this case because the Prosecution are
17 alleging a joint criminal enterprise which involves --

18 MR. TIEGER: I don't think it's appropriate for counsel to
19 explain the weight for his questions or the answers. His role is to
20 seek information from the witness and allow the witness to answer.

21 MR. EMMERSON: May I respond, please?

22 PRESIDING JUDGE SMITH: Just go forward with questions that
23 arose from the Judges' questions.

24 MR. EMMERSON: Yes.

25 PRESIDING JUDGE SMITH: We don't need to get into the joint

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1 criminal enterprise here.

2 MR. EMMERSON: Well, with the greatest respect, there couldn't
3 be a question that more clearly arose from the Judges' questions
4 because Judge Barthe put this passage of the statement to him and
5 asked him to endorse it.

6 PRESIDING JUDGE SMITH: [Microphone not activated]

7 MR. EMMERSON: Sorry.

8 PRESIDING JUDGE SMITH: I don't think he used the term "JCE" in
9 his question.

10 MR. EMMERSON: That may well be right but --

11 PRESIDING JUDGE SMITH: So we can ask it without -- you can ask
12 it without that.

13 MR. EMMERSON: Yes.

14 Q. So it's just important that we understand what you mean by the
15 KLA labelled as "collaborators." Do you have an example you can give
16 us of the KLA labelling someone who didn't give up their home for KLA
17 fighters as a collaborator?

18 A. I can give an example.

19 Q. Of that specific situation?

20 A. Well, the example that I will present, if it's helpful to the
21 Court, is a list of individuals who did not give funds. This I am
22 aware of or I can tell you what I --

23 Q. Yes.

24 A. -- experienced and it can be judged for its --

25 Q. By all means.

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1 A. -- accuracy or --

2 Q. Carry on.

3 A. -- credibility.

4 PRESIDING JUDGE SMITH: Mr. Emmerson, please don't break in --

5 MR. EMMERSON: I'm just saying "by all means." Now, come on,
6 this is getting a bit silly, with respect.

7 PRESIDING JUDGE SMITH: It is impossible --

8 MR. EMMERSON: I said simply "carry on."

9 PRESIDING JUDGE SMITH: It is impossible to follow the
10 transcript because your interruptions, inadvertent though I think
11 they are, you constantly say "yes," "yes," "of course," "obviously."
12 Just let him finish the answer. Then you can make your [Microphone
13 not activated].

14 MR. EMMERSON: Okay. I won't argue the toss. The witness was
15 asking me if that was an example we wanted to hear, and I was saying,
16 "Yes, go ahead." And if that's a legitimate reason for interrupting,
17 then I accept it.

18 Q. Go ahead.

19 A. Yes. So in June and July when I conducted investigations, first
20 in Kosovo, then afterwards in northern Albania, because tens of
21 thousands of refugees were fleeing -- or Kosovo Albanians were
22 fleeing or being expelled from the western part of Kosovo. And so we
23 went to Albania. And in Albania, in fact, in the town Bajram Curri,
24 where the KLA had a presence, July 1998, we're speaking, July 1998, I
25 met an individual who was a member of the KLA or he presented himself

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1 as a member of the KLA, and he actually showed me a list. I did not
2 read the list, but he had a list, and he said, "You see? These are
3 the people who are not supporting the cause, and we will remember
4 them." All right?

5 Now, I'm just stating what I experienced in that exchange. You
6 know, it can be valued or devalued, but I did have that experience.

7 Q. Okay. That's the -- this taxonomy, that's the one example you
8 can give us?

9 A. That's the -- no, that is an example I'm giving of a specific
10 case related to people who didn't give financial support.

11 Q. Thank you. I'll come back to that one in a minute. You also
12 gave an example of a person whose family were deemed suspicious or
13 disloyal because the father continued to work in the university
14 when --

15 A. Yes.

16 Q. -- after the time that Albanians were no longer allowed to work.
17 And I'm going to come and ask you about that as well. Any other
18 examples?

19 A. So the taxonomy, if we can refer it -- call it as such, is based
20 on the body of our work.

21 Q. Yes.

22 A. So that means our investigations and our research, our
23 communications and conversations with human rights activists,
24 journalists, UNMIK investigators, KFOR investigators, OSCE
25 investigators, diplomats, and those who were tracking and following

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1 the conflict, and together that is what has informed my analysis.

2 Q. I understand. And we'll look at that in a sec. Of the two
3 examples that you've cited, first of all in relation to the
4 university professor, nothing happened to him adverse; is that right?

5 A. As far as I know, no. No.

6 Q. Right. And in relation to the person who showed you the list --

7 A. Well --

8 Q. -- did he say --

9 A. -- actually, I'm -- I apologise, now I interrupted you. I
10 apologise.

11 Q. That's okay. I don't take objection quite so easily. Carry on.

12 A. The answer to the professor is that I don't know. As far as I
13 know, he was never beaten, detained, or worse, but the pressures upon
14 him and his family are -- in those situations, the pressures can be
15 unseen.

16 Q. Of course they can be. They can be shunned by their fellow
17 Albanians.

18 A. Or worse.

19 Q. And we'll come back to -- yes.

20 A. Or pressured. Or pressured.

21 Q. But you have no evidence of any of that?

22 A. In this case, no.

23 Q. No. That's one example that you've been able to remember. And
24 the other one is the man who showed you the list. Now, first of all,
25 since you didn't look at the list, you presumably have no reason to

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1 suggest anything adverse happened to any of the people on the list?

2 A. I cannot speak to that.

3 Q. And did they -- di the person -- you said the person concerned
4 said, "We won't forget the people who supported us and the people who
5 didn't"; correct?

6 A. That's correct.

7 Q. And from that you deduced that they were identified as
8 collaborators for not supporting?

9 A. No. I deduced that they were people who had been placed under
10 cloud of suspicion or disliked.

11 Q. But you listed them as collaborators according to the KLA. I'm
12 asking you --

13 A. No.

14 Q. It's in your taxonomy of collaborators.

15 A. No. What I -- I gave you an example that was part of the full
16 body of evidence --

17 Q. Yes.

18 A. -- that led to my analysis.

19 Q. It's one of the examples of a taxonomy of collaborators,
20 Mr. Abrahams.

21 MR. TIEGER: Asked and answered now repeatedly.

22 MR. EMMERSON: No, not answered.

23 PRESIDING JUDGE SMITH: It's also argumentative and it has been
24 answered.

25 MR. EMMERSON:

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1 Q. Well, let's just look at the background to this if we can for a
2 moment because -- can you give us the time period when the university
3 professor felt that carrying on as a professor at the university made
4 him, I don't know, unpopular?

5 A. The timeframe is 1998.

6 Q. 1998. After the war or before the war began?

7 A. 1998, yes.

8 Q. After or before the war began?

9 A. That would have been after.

10 Q. After. And I noticed that you say in your witness statement,
11 paragraph 81, that the whole question of collaborators and what they
12 were is something that you first started focusing on in 1996 --
13 sorry, I was checking the date correctly. In 1996 when you first
14 walked -- worked in Kosovo.

15 A. That's correct, yes.

16 Q. And you say some of your ethnic Albanian contacts would say,
17 occasionally, that a person couldn't be trusted, and then you give
18 the example of the university professor. And you said it was enough
19 to besmirch the family. I just want to look at the context. Because
20 I'm going to suggest to you you've shorn all of this evidence, all of
21 this taxonomy of its context.

22 You know the region well, so you're going to be able to answer
23 the questions - excuse me - about the context and chronology.

24 First of all, you know, I think, that in July 1990, the Serbian
25 parliament approved a law which forbade Albanians from working in any

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1 government facility unless they pledged complete loyalty to the
2 Serbian state and for Kosovo remaining part of Serbia?

3 A. Indeed, that is correct. A highly discriminatory law.

4 Q. And almost all Albanians that were working in those
5 circumstances lost their jobs, didn't they?

6 A. A great many.

7 Q. A tiny --

8 A. Yes.

9 Q. -- minority remained?

10 A. I don't know the numbers, but in general --

11 Q. The -- well, a significant majority.

12 A. Agreed.

13 Q. And for the next ten years, unless they could find alternative
14 work, these people had no income to feed their children with?

15 A. Their income was no doubt diminished. I'm not sure whether the
16 parallel structures provided some salary. That is possible.

17 Q. It's possible. But in terms of your knowledge of the situation,
18 they were very significantly financially disadvantaged because they
19 wouldn't pledge allegiance to the Serbian state; is that right?

20 A. That is correct.

21 Q. And around about -- this is around about the time when Serbia
22 revoked Kosovo's autonomy. But then in 1992, they placed a
23 restriction on transactions of Albanian property, didn't they?

24 A. I don't recall that, but --

25 Q. Albanians --

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1 A. -- it's certainly --

2 Q. -- couldn't buy and sell property --

3 A. [Overlapping speakers] ...

4 Q. You don't know that? Not something you're aware of --

5 A. I don't recall that --

6 Q. -- in your studies? No?

7 A. I don't recall that detail. No.

8 Q. Okay. Take it from me, and if I'm wrong, someone will correct
9 me. Then the Serbian state started issuing weapons to the Serbian
10 civilians in Kosovo and making it a serious criminal offence,
11 punishable by immediate imprisonment, for a considerable length of
12 time in some cases, for any Albanian to have a weapon.

13 So does it come as a surprise to you or is it in any sense
14 remarkable that the -- in that context that the Albanian population
15 generally were suspicious of the people who had pledged allegiance to
16 the Serbian state? Is that a surprising situation in your view?

17 A. No, it is not.

18 Q. Does it have anything to do with the KLA?

19 A. Yes. I mean, look --

20 Q. Could you explain that for me? I'm asking what -- causatively,
21 you're suggesting that that has something to do with the KLA. Who is
22 responsible for that degree of bad feeling?

23 A. So, I mean, this is a -- a complex matter that is related to the
24 intersections of the politics, the society --

25 Q. Correct.

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1 A. -- and the movement to struggle against systematic and systemic
2 persecution, and it's very hard to untangle those threads. So, you
3 know, first and foremost, the blame is placed on Serbian and state
4 structures for --

5 Q. For the hatred, is that right?

6 A. -- for the --

7 PRESIDING JUDGE SMITH: Excuse me, you're interrupting again.
8 Finish your answer.

9 MR. EMMERSON:

10 Q. Sorry, I'm just trying to understand what you're --
11 responsibility for what -- you carry on. Start again.

12 A. For the discriminatory policies against the ethnic Albanian
13 population at that time. And so Albanians suffered under that, as is
14 documented by us and others.

15 Now, there is a popular view. There is also the view that
16 the -- the KLA or members or parts of the KLA but -- including
17 statements that were issued, that identified, labelled, and accused
18 people of being traitors, of being disloyal, or of being
19 collaborators in ways that also, in my analysis, could be viewed as
20 inciting violence or opening the door for violence.

21 Q. But just to be clear, you were describing initially not the KLA,
22 but attitudes generally amongst Albanians towards those who remained
23 in the service of the state; is that right?

24 A. The KLA was a movement, an armed movement that also was a part
25 of the Kosovo society.

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1 Q. Exactly.

2 A. And it's impossible to disentangle those two fully.

3 Q. It may be impossible to disentangle them, but it would also be
4 completely misleading to hold one subset of Albanians responsible for
5 this bad feeling when it ran right across Albanian society. Would
6 you agree with that?

7 A. What I would agree with was there was a general feeling, emotion
8 among Kosovo Albanians that labelled all Serbs as guilty or
9 implicitly connected to violations and crimes, and a deep anger with
10 the Kosovo Albanians who, in some way, were either participating in
11 that, cooperating with that or not adequately distancing themselves
12 from that.

13 Q. Last question on this topic, and then, if I may, we'll take the
14 break. Controversially, very recently Human Rights Watch accused
15 Israel of the crime of apartheid in relation to the occupied
16 territories. Would you accept that the Serbian state was guilty of
17 apartheid towards the Albanians?

18 MR. TIEGER: Objection. Beyond the scope. And speculation.

19 PRESIDING JUDGE SMITH: Sustained.

20 MR. EMMERSON: Thank you. We'll take, if we may --

21 PRESIDING JUDGE SMITH: [Microphone not activated]

22 MR. EMMERSON: Okay. Fine.

23 PRESIDING JUDGE SMITH: [Microphone not activated]

24 MR. EMMERSON: All right. I thought I had a little longer than
25 that. By our reckon, 12, I think.

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1 PRESIDING JUDGE SMITH: I wrote it down, 10.12 you started.

2 MR. EMMERSON: Very well. Very well.

3 PRESIDING JUDGE SMITH: I guess you get eight minutes, then.

4 MR. EMMERSON: Thank you.

5 Q. Okay. Just we'll move on to one other topic, if I may. You've
6 levied quite a degree of criticism, particularly about Mr. Thaci, but
7 I think it's implicit as a criticism against the KLA leadership
8 generally, that even after you went to see Mr. Thaci to give him the
9 copy of the abuses against Serbs and Roma reports, which was
10 published on 2 August 1999, he or they didn't respond to you to tell
11 you what they were going to do about it, didn't respond to your
12 recommendations, and didn't take any action, effectively, to
13 investigate, suspend, arrest or prosecute; is that right?

14 A. That's my understanding. Yes.

15 Q. Okay. Let me just get the chronology right. You say in your
16 statement that meeting happened in August. Can you give us a date
17 for it, please?

18 A. It would have been one or maybe two days before the publication
19 of that report.

20 Q. So it wouldn't have been in August then, because it was
21 published on 2nd August. Are you saying that the meeting with
22 Mr. Thaci happened in July?

23 A. No, it could have been 1 August.

24 Q. Oh, I see. Okay. So was it 1 August?

25 A. I don't recall the precise date, but it would have been either

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1 1 August or perhaps 31 July. But usually --

2 Q. But prepublication?

3 A. Pre, yes.

4 Q. Yeah, okay. And I want to just --

5 MR. EMMERSON: Can we just call up, please, Security Council
6 Resolution 1244. It should be DKV0461 to 0468. And it's a recent
7 addition to our queue.

8 Q. Could we please look, first of all, at the date on the first
9 page. That's in the underlying bit, as you can see. You're familiar
10 with this. No doubt very familiar. Is that right?

11 A. I'm familiar, yes.

12 Q. Well, it was governing law when you were conducting your
13 investigations; correct?

14 A. Correct.

15 Q. And you can see it's dated 10 June.

16 MR. EMMERSON: Could we turn over, please, two pages to
17 paragraph 9 and 10.

18 Q. So this is a Security Council's decision effective from 10 June,
19 so that's nearly two months before you met Mr. Thaci and published
20 that report, a month less -- two months less ten days. So the
21 Security Council decides that KFOR will be immediately responsible
22 for the international security presence to be deployed and acting in
23 Kosovo.

24 And if we look at its functions. First of all, (a), KFOR had to
25 ensure the withdrawal of and prevent the return into Kosovo of all

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1 military, police, and paramilitary forces, "except as provided in
2 point 6 of annex 2."

3 Broadly speaking, I think you know that the Serbian police,
4 which was the law and order structure, had to be forced out of Kosovo
5 by KFOR if they didn't leave voluntarily and their return had to be
6 prevented as of 10 June; correct?

7 A. That is correct.

8 Q. So there was no civilian police force at that time; is that
9 correct?

10 A. You mean Serbian civilian --

11 Q. Civilian at all.

12 A. -- police?

13 Q. There was no civilian police force at all. It was just KFOR
14 coming in and forcing out the Serbian police; correct?

15 A. That is correct.

16 Q. There was no civilian police forces or establishments in
17 operation in that period?

18 A. There were UN police forces that --

19 Q. Well, there were KFOR forces. The UN police forces under UNMIK
20 didn't arrive at that point.

21 A. Sorry, what period are you --

22 Q. 10 June onwards.

23 A. 10 June? That is correct.

24 Q. Okay. 9(b), its function, second major function was:

25 "Demilitarising the Kosovo Liberation Army (KLA) and other ...

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1 Kosovo Albanian groups ..."

2 Do you see that?

3 A. Yes, I do.

4 Q. So that means dearming and demobilising; correct? It was the --

5 A. Correct.

6 Q. -- function of the forces of KFOR to prevent the KLA from
7 continuing to operate as an armed force with immediate effect? This
8 is governing -- this is the law governing the time when you're
9 criticising the KLA for not suspending, investigating, and
10 prosecuting.

11 A. Criticising the KLA and also KFOR.

12 Q. Yes, well, you -- that may be, but you're criticising KFOR at a
13 time when the Security Council has said only KFOR can do that job,
14 but you're saying it was somehow shared with the Kosovo Liberation
15 Army's responsibility even though it was KFOR's job to disarm them
16 and expel the police force, Serbian police force?

17 A. So the KLA's demobilisation occurred on September 19th.

18 Q. It finished on September 19th.

19 A. Right. Which means that there were still forces performing
20 their functions up until that point.

21 Q. No, does it mean that, really?

22 A. Well, it -- well, I am not familiar with the precise --

23 Q. Exactly.

24 A. -- trajectory of the demilitarisation, but the formal end or the
25 formal demilitarisation -- or demobilisation was on September 19th.

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1 Q. Sorry, let's be accurate. The end of the process of
2 demilitarisation was formalised on 19 September. It began on 10 June
3 with the Security Council resolution and the entry into Kosovo of
4 KFOR forces.

5 A. Correct.

6 Q. And so it becomes very important to know whether the KLA had the
7 capacity to do what you were demanding of them. But, as you can see,
8 legally they didn't; correct?

9 A. So we believed then, and I believe now, that there was an
10 obligation on the part of this armed group in the very least to
11 investigate what was taking place with strong evidence of incidents
12 and crimes, violations committed by members of the KLA and committed
13 in a way that we felt the onus was on the leadership of that time to
14 take steps.

15 Q. Yes, that's exactly what I'm questioning with you. You have a
16 legal regime requiring demobilisation over a period of June, July,
17 and half of September. So that's two and a half months. Halfway
18 into that -- well, in fact, two-thirds of the way into that,
19 approximately, you issue a report and you bring it to the attention
20 of officials of the KLA, in this case Mr. Thaci, demanding that they
21 investigate, compulsorily, rather than progress with the summon.

22 Do you know, for example, before you criticise the steps that
23 were or weren't taken, do you know whether in relation to any
24 particular crime, you've mentioned one or two big ones that were
25 committed at that time with multiple victims, do you know whether the

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1 authorities of the KLA military police in that area were still armed
2 or had been disarmed and gone back to their villages? Do you know?

3 A. So, first, we don't demand anything.

4 Q. Okay.

5 A. Well, no, you -- you said that I --

6 Q. No, I just wanted you -- I can always add at the end of it: Can
7 you give me a "yes" or "no" answer, please? Do you know?

8 A. Well, regardless of if you ask for "yes" or "no," if you make a
9 statement of what I did, then I feel obliged to --

10 Q. Very well.

11 A. -- correct the matter. And we did not demand this of anyone.
12 We do not demand. We present our information. We remind parties of
13 their obligations, and we make recommendations. And what they do
14 with those recommendations is on them.

15 PRESIDING JUDGE SMITH: Mr. Emmerson, your time is up. If you
16 have one comment -- or one short question --

17 MR. EMMERSON: Well, I wanted to look at a document. That was
18 my final issue but --

19 PRESIDING JUDGE SMITH: Pardon me?

20 MR. EMMERSON: I wanted to look at a different document. If
21 time's up, time's up.

22 PRESIDING JUDGE SMITH: It's up.

23 MR. EMMERSON: Very well. I mean ...

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 Mr. Abrahams, we're finished with your testimony. We would

1 thank you for being with us, for sharing your information with us.
2 You are excused now for -- to go home, and we thank you for being
3 here. The Court Usher will escort you out.

4 THE WITNESS: Thank you, Your Honours. Thank you.

5 [The witness withdrew]

6 PRESIDING JUDGE SMITH: We need a little extra time to get ready
7 for the next witness. We're going to take a 40-minute break at the
8 request of the people doing that.

9 So we'll see you back at - what is that? - ten minutes till.

10 [Microphone not activated] 12.00.

11 --- Recess taken at 11.15 a.m.

12 --- On resuming at 11.55 a.m.

13 PRESIDING JUDGE SMITH: We are ready to begin hearing the
14 testimony of Prosecution Witness W03827.

15 Madam Court Officer, you can -- or, I'm sorry,
16 Mr. Court Officer, you can bring the witness in to the screen.

17 MR. MISETIC: Mr. President, I did want to raise one issue, if I
18 may.

19 PRESIDING JUDGE SMITH: [Microphone not activated]

20 MR. MISETIC: We wanted to raise a point regarding disclosure
21 with this witness. We do not know, of course, what the Prosecution
22 intends to use with the witness. However, we are not prepared to
23 examine the witness to the extent either his health comes up or a
24 recording of his EULEX testimony comes up.

25 We have not been disclosed his health documents, so we are not

1 prepared to effectively cross-examine, if that becomes an issue,
2 which I can't know. And, secondly, if it's put to him the audio
3 recording, we have not had time to go through that audio recording,
4 and we have not had time to have an Albanian speaker compare the
5 Albanian answers he gives on the audio with how it was translated.

6 So we are not able to cross-examine on those issues. I wanted
7 to bring that up.

8 PRESIDING JUDGE SMITH: Any intention by the SPO to use that
9 information?

10 MS. MAYER: Your Honour, we understood that there was a concern
11 by the Defence about any differences between the transcript, which
12 was disclosed, and the audio, which we disclosed the first portion of
13 last Friday. We'd intended to disclose both portions last Friday,
14 1 September. Inadvertently, only the first portion was disclosed.
15 The second portion, which is only 40 minutes long, was disclosed last
16 Thursday, 7 September.

17 So if Mr. --

18 PRESIDING JUDGE SMITH: That wasn't my question.

19 MS. MAYER: I understand. I think the context is important
20 because Mr. Misetic, *inter partes*, was actually the one that
21 indicated a concern about a discrepancy that he highlighted. So if
22 he's not concerned about any discrepancies, we're perfectly fine
23 sticking with the transcript that was disclosed. But if there is any
24 concern, the tape itself is -- a different version of the same
25 evidence, and we do have it in the presentation queue available to be

1 played.

2 PRESIDING JUDGE SMITH: So it sounds like at the present time
3 there is no intention to use that audio.

4 MR. MISETIC: Then that's fine. But I would put on the record
5 that we did have a concern, which is just based on the brief ability
6 we had to look through the shortened clip, without having had an
7 opportunity to have an Albanian speaker go through the entire -- I
8 believe it's close to three hours of audio. I can't tell you whether
9 we have a concern about the rest of it.

10 But if it's going to be put him that, you know, is this
11 accurate, either the transcript or the audio --

12 PRESIDING JUDGE SMITH: It sounds like they intend to use the
13 transcript only until there's some question about it.

14 MR. MISETIC: Okay. Then all I would say is if, when once --
15 and, frankly, Judge, in this three-week period, we are in an
16 all-hands-on deck mode, so when we get a chance to breathe at the end
17 of this session of witnesses, we will go back and try and compare the
18 audio and will reserve the right to re-call the witness, if
19 necessary.

20 PRESIDING JUDGE SMITH: All right. We can come back to this
21 later on if need be. But right now, we want to get on with this
22 witness.

23 [The witness entered court via videolink]

24 PRESIDING JUDGE SMITH: I will state, for the record, that
25 Witness W03827 will be testifying via video-conference, as is obvious

1 to us in the courtroom, as granted by the Panel in decision F01776.

2 Back into public session, please. Or are we in public session?

3 Yes, we are.

4 Good morning, Witness, can I confirm whether you have a copy of
5 the solemn declaration.

6 THE WITNESS: [via videolink] [Interpretation] Yes. Yes.

7 PRESIDING JUDGE SMITH: All right. I'm going to read that to
8 you, and I'll ask you at the end if you accept it. Do you
9 understand?

10 THE WITNESS: [via videolink] [Interpretation] Yes, yes.

11 PRESIDING JUDGE SMITH: So here is the solemn declaration:

12 Conscious of the significance of my testimony and my legal
13 responsibility, I solemnly declare that I will tell the truth, the
14 whole truth, and nothing but the truth, and that I shall not withhold
15 anything which has come to my knowledge.

16 Do you understand that solemn declaration?

17 THE WITNESS: [via videolink] [Interpretation] I do.

18 PRESIDING JUDGE SMITH: Do you understand you have an obligation
19 to tell the truth?

20 THE WITNESS: [via videolink] [Interpretation] I do.

21 PRESIDING JUDGE SMITH: And that you won't withhold anything
22 that has come to your knowledge; is that correct?

23 THE WITNESS: [via videolink] [Interpretation] That's correct.

24 WITNESS: W03827

25 [Witness answered through interpreter]

1 [Witness testified via videolink]

2 PRESIDING JUDGE SMITH: So we're going to start your testimony
3 today. The Prosecution will ask you questions first. Counsel for
4 victims will not be asking you questions today. Therefore, once the
5 Prosecution is done, the Defence has the right to ask questions of
6 you, and members of the Panel might also ask questions of you.

7 The Prosecution estimate for your examination is more than 1.5
8 hours, and the Defence estimates that it will need six to seven
9 hours. In regards to each estimate, we hope that the counsel will be
10 judicious in their use of time. The Panel may allow redirect
11 examination if conditions are met.

12 Witness, please try to answer the questions clearly with short
13 sentences. If you don't understand a question, feel free to ask the
14 attorney to repeat the question, or tell them that you don't
15 understand and they will clarify. Also, please try to indicate the
16 basis of your knowledge of facts and circumstances that you will be
17 asked about.

18 If you feel the need to take breaks, please make an indication
19 and an accommodation will be made.

20 So we are ready to begin. We will begin with questions from the
21 SPO, the Prosecutor. And then after that, we will go through the
22 other attorneys.

23 Madam Prosecutor, you have the floor.

24 MS. MAYER: Thank you, Your Honour.

25 Examination by Ms. Mayer:

Witness: W03827 (Private Session)

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Examination by Ms. Mayer

1 Q. Good afternoon, Witness. I know that we've met before, but for
2 the record I'll reintroduce myself. My name is Deborah Mayer, and
3 I'll be asking you questions today for the SPO.

4 MS. MAYER: Consistent with the protective measures ordered for
5 this witness, I request that we move into private session.

6 PRESIDING JUDGE SMITH: Madam Court Officer, please take us to
7 private session.

8 [Private session]

9 [Private session text removed]

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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9 [Open session]

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

11 PRESIDING JUDGE SMITH: Thank you. We're adjourned until 2.30.

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

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

14 PRESIDING JUDGE SMITH: Before we bring the witness in, we will
15 admit the prior statement of the witness under 143(2)(c). We will
16 file a written decision so you have something on which to base
17 further action if you need it within a short period of time, and we
18 will -- are you finished with this witness, then?

19 MS. MAYER: Almost, Your Honour. I just have a few more
20 questions, and then we'll offer the SPO statement as well. I think
21 I've already verified it, but I just want to make sure that the
22 record is clear, that I take him to the beginning of the SPO
23 statement. And on the same basis, we'll offer that as well.

24 PRESIDING JUDGE SMITH: So you're offering a second statement?

25 MS. MAYER: Yes, Your Honour. It's wherein he confirms the

1 veracity of the earlier statement, where it's read back to him line
2 by line -- or page by page, I should say. And I did ask some
3 questions before the break. I just want to make sure that the Court
4 is satisfied that I presented it to him completely.

5 PRESIDING JUDGE SMITH: And do you wish to attempt a
6 cross-examination or to make a cross-examination?

7 MR. MISETIC: Frankly, Judge, I don't see the point, unless the
8 Panel is going to find that we've somehow waived cross-examination --

9 PRESIDING JUDGE SMITH: No, no, no, no. We're not going to do
10 that.

11 MR. MISETIC: Well, then, I don't see the point. I will just
12 point out for the record that I think this is the -- however,
13 precisely the difference between 143 and 155 is that 155 presumes the
14 Defence can't cross-examine and 143 presumes that it can, but we
15 can't.

16 So --

17 PRESIDING JUDGE SMITH: Well, you never know. You never know.

18 MR. MISETIC: Well, if he were to answer our questions, then
19 that would undermine the very basis upon which his statement was
20 admitted. And it would mean he committed perjury.

21 PRESIDING JUDGE SMITH: I'm just making it clear that you have
22 the option to do that.

23 MR. MISETIC: The option to do what?

24 PRESIDING JUDGE SMITH: To cross-examine if you wish to.

25 MR. MISETIC: How do I cross-examine a witness who claims he

1 doesn't remember he was even in [REDACTED] Pursuant to Post-Session
Redaction Order F1823.

2 PRESIDING JUDGE SMITH: Trust me. I'm just telling you you have
3 the option. I'm not making an argument in your favour or against.
4 I'm telling you have the option, which you do.

5 MR. MISETIC: Well, that is precisely what I'm trying to avoid
6 because I don't want it suggested that we're waiving
7 cross-examination. We're objecting to proceeding on this basis
8 because we can't cross-examine him. Now, if you want me --

9 PRESIDING JUDGE SMITH: Understood.

10 MR. MISETIC: -- to go --

11 PRESIDING JUDGE SMITH: Understood.

12 MR. MISETIC: -- through the exercise, I'll go through the
13 exercise.

14 PRESIDING JUDGE SMITH: No, that's your call. It's all your
15 call. I'm just telling you what we're going to do and what your
16 options are.

17 MR. MISETIC: Well, may I consult then?

18 PRESIDING JUDGE SMITH: Sure.

19 MR. MISETIC: Because now it is a confusing situation. Thank
20 you.

21 [Specialist Counsel confer]

22 [Trial Panel confers]

23 MR. MISETIC: Judge, based on the Panel's decision, I will
24 proceed. And if he refuses to answer, I will be asking that you find
25 him in contempt.

1 PRESIDING JUDGE SMITH: [Microphone not activated]

2 MR. MISETIC: Because the basis of your decision is that he is
3 willingly not answering questions. I think that's contempt, and we
4 will proceed to compel him to participate in cross-examination.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 All right. Call in the witness, please, Madam Usher.

7 MS. MAYER: Your Honour, as they're bringing in the witness, I
8 do just want to clarify. This statement was admitted on direct
9 examination where questions were posed to the witness, and the
10 Defence does have their opportunity. And the witness didn't just say
11 "I don't recall." He actually did answer some questions, including
12 denying having said some things, which is --

13 PRESIDING JUDGE SMITH: Yes, he did. You're absolutely correct.

14 MS. MAYER: -- different from "I don't recall."

15 PRESIDING JUDGE SMITH: That was discussed.

16 MR. MISETIC: But then there would be no cross-examination if
17 you accept the answers that the witness gave; right? In other words,
18 he didn't give any --

19 PRESIDING JUDGE SMITH: [Microphone not activated]. I don't
20 think I can make it any more clear.

21 [Trial Panel and Court Officer confers]

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 When you're finished with your -- whatever else you're going to
24 do, offer all the exhibits at once that you wish to enter and we will
25 rule on them again.

Witness: W03827 (Private Session)

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Examination by Ms. Mayer

1 MS. MAYER: I will. Thank you, Your Honour.

2 PRESIDING JUDGE SMITH: [Microphone not activated]

3 [The witness takes the stand via videolink]

4 PRESIDING JUDGE SMITH: Private session, please.

5 [Private session]

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Examination by Ms. Mayer

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Witness: W03827 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W03827 (Private Session)

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Cross-examination by Mr. Misetić

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Witness: W03827 (Private Session)

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Cross-examination by Mr. Miletic

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24 [Open session]

25 THE COURT OFFICER: Your Honours, we are in open session.

1 PRESIDING JUDGE SMITH: Thank you very much. We are adjourned
2 until tomorrow.

3 --- Whereupon the hearing adjourned at 3.06 p.m.

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