

1 Wednesday, 22 January 2025

2 [Open session]

3 [The accused entered the courtroom]

4 --- Upon commencing at 9.04 a.m.

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

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

10 PRESIDING JUDGE SMITH: The record should reflect that all of
11 the accused are present in the courtroom today.

12 Today we will continue hearing the evidence of Prosecution
13 Witness W02183.

14 Madam Court Usher, please bring the witness in.

15 [The witness takes the stand]

16 PRESIDING JUDGE SMITH: Good morning, Mr. Strohmeyer.

17 THE WITNESS: Good morning, Your Honour.

18 PRESIDING JUDGE SMITH: We continue with questions from the
19 Judges. Judge Mettraux will have some questions for you.

20 JUDGE METTRAUX: Thank you, Judge Smith.

21 WITNESS: HANSJOERG STROHMEYER [Resumed]

22 Questioned by the Trial Panel: [Continued]

23 JUDGE METTRAUX: And good morning, Mr. Strohmeyer. I'd like to
24 follow up on one particular issue that you were asked about by the
25 parties, and most of my questions will pertain to the PGoK or PGK,

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1 the Provisional Government of Kosovo.

2 My first question is really a clarification. Am I right to
3 understand that from the point of view of the United Nations, this
4 provisional government did not have a lawful existence? Did I
5 understand your evidence correctly on this?

6 A. That's correct.

7 JUDGE METTRAUX: And does it mean, therefore, that, again from
8 the point of view of the United Nations, you did not regard the
9 decrees or decisions that were adopted by this provisional government
10 as having any legal validity? In other words, they were not law in
11 Kosovo from your point of view?

12 A. That's correct.

13 JUDGE METTRAUX: And would the same be true of appointments made
14 by the PGoK? You did not regard these as legally valid or relevant
15 to your own mission?

16 A. Correct.

17 JUDGE METTRAUX: Now, am I right also to understand, and if I
18 misunderstood your evidence, please say it in your own words, but
19 that you - the United Nations - were being careful in the way you
20 approached these individuals not to give any legitimacy or the
21 perception of legitimacy to this provisional government?

22 A. I mean, we were -- we were -- I mean, we weren't careful in
23 engaging with those individuals, but we were careful not to engage
24 them in any potential government function. There was a question
25 posed to me in the course of the statement whether I had ever heard

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1 of anyone referring to Mr. Thaci as prime minister. We certainly --
2 that would be one of those examples. We would not refer to him as
3 Mr. Prime Minister.

4 JUDGE METTRAUX: And that was my next question. I looked at the
5 records of the meetings you held with -- I mean, "you" meaning
6 KFOR/UNMIK with Mr. Thaci and Mr. Ceku, and they seem to be always
7 referred to as UCK leaders or representatives. Can we understand
8 from this that when you were talking to Mr. Thaci or Mr. Ceku, you
9 were addressing them in their capacity as leaders of the KLA not as
10 ministers of any would-be government; is that correct?

11 A. That's correct.

12 JUDGE METTRAUX: Now, you were asked, in particular by
13 Mr. Misetic, about your knowledge of the time, circumstances, and
14 place of creation of this provisional government. Do you recall
15 these questions?

16 A. Yes, I do.

17 JUDGE METTRAUX: I want to see or to show you a few documents
18 and see whether you can assist us a bit further with this.

19 Can the Registry please bring up Exhibit P1138, please.

20 So first, Mr. Strohmeyer, I'll tell you what that is, or
21 purports to be, so that you can situate yourself. This is a document
22 or manuscript that's attributed to Jakup Krasniqi. It's titled "The
23 Formation of the General Staff of the KLA." And it was found, we are
24 told, at the home of Mr. Krasniqi. Do you understand?

25 A. Yeah.

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1 JUDGE METTRAUX: Could we please go to the last page of the
2 document, that's page 11 in the English and the same in the Albanian,
3 please. It's SPOE00231437. And I'll ask you to focus on the first
4 full paragraph in that document which starts with the words: "At the
5 time when Kosovo ..."

6 Do you see that?

7 A. Yes.

8 JUDGE METTRAUX: Now, the second part of that first sentence
9 says the following:

10 "... the KLA General Staff gives the authority to the
11 Prime Minister selected under the Rambouillet Accord, Hashim Thaci,
12 to form the Kosovo Government of National Unity, which was called the
13 QPK ..."

14 Now, do you see that?

15 A. Yes.

16 JUDGE METTRAUX: And my first question to you is in your
17 interactions with Mr. Thaci, did he tell you, as this document
18 suggests, that it was he who had been given the responsibility to
19 form the provisional government?

20 A. Likely, but I don't have any specific recollection of this
21 anymore. This would have been in the -- in the Grand Hotel, but I
22 don't have any specific recollection of this.

23 JUDGE METTRAUX: I'll come to the Grand Hotel in a second.

24 Can we then go to page 8 of that same document, go a bit back
25 and forth. It's SPOE00231434.

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1 And in the English, Mr. Strohmeyer, I'll ask you to look at the
2 middle of the page, a large paragraph starting with the words:

3 "Another very important meeting ..."

4 Do you see that?

5 A. Yes.

6 JUDGE METTRAUX: So here the document is referring to a meeting
7 of 27 and 28 February 1999 which is described in these terms:

8 "Another very important meeting for the KLA was that of 27 and
9 28 February 1999, which was held after the return of the KLA
10 Delegation from the Rambouillet International Conference: in this
11 meeting four matters of vital importance at that time were discussed,
12 namely: a) the General Staff was informed about the course of the
13 Congress; b) the KLA Delegation to go to the USA was discussed - in
14 fact it never went there; (c a final decision as to the
15 Commandant-General of the KLA was taken, and d) The candidate from
16 the KLA ranks for the position of Prime Minister of the Provisional
17 Government was selected."

18 Now, my question is similar to the previous one. When you met
19 with Mr. Thaci and discussed the idea of the provisional government,
20 was it mentioned to you that the candidate for prime minister had
21 been selected by the KLA General Staff? Is it something that was
22 mentioned to you?

23 A. No. I mean, I -- in some form, and I think in one version of my
24 statement, that may have been mentioned at some point, that I had a
25 recollection that people were referring to him as prime minister. We

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1 did not. But the specific circumstances, how this was arrived at,
2 I'm not even sure whether I had that knowledge at the time.
3 Certainly, I don't recall it right now.

4 JUDGE METTRAUX: Now, the document goes on to say the following:

5 "The Provisional Government was to be formed to lead the country
6 after the Rambouillet Conference ended. The agreement reached at
7 Rambouillet had provided for Jakup Krasniqi to be the Prime Minister
8 of the Provisional Government, but no Government was formed: this
9 matter was not made public."

10 Now, I'll stop there for a second. Did you become aware -- and
11 I thought I understood you to say so yesterday in response to
12 Mr. Misetic. But did you become aware that following the Rambouillet
13 discussions, three parties had reached an agreement for the formation
14 of a government at the time? This was the LDK, the LBD, and the KLA.
15 Were you aware of the existence of such an accord?

16 A. I may have been, but I don't honestly recall this. I -- what I
17 can tell you is that there was not a lot of discussion among us about
18 Rambouillet because, in our impression, and this goes to your very
19 early question, there was no continuity between Rambouillet and
20 our -- the post-10th June situation, because 1244 had created an
21 entirely new situation, and including some of the same Member States
22 who were witnessing these things at Rambouillet, then in the Security
23 Council resolution decided on a different regime.

24 So we did not go too much into -- this was important for the
25 general understanding of the background and how people would arrive

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1 at ambitions and so on, but it was not something that we said,
2 "Because of Rambouillet, we have to interpret 1244 in a certain
3 direction." So that was not --

4 JUDGE METTRAUX: Yeah, it's fully understood, and I'm grateful
5 for that. And just for the record, I'll mention Exhibit 1D69 here.

6 Now, the document we're looking at continues in those words:

7 "We also informed the members of the General Staff of the talks
8 which had taken place about the formation of a government, but no
9 government was formed: even if it had been this would not have done
10 any harm to the Albanian people and to the political processes. At
11 the end of it all the war had been waged in order to form a national
12 government, and if such a thing were achieved at Rambouillet this
13 would be a great victory for our war of liberation. At Rambouillet
14 the head of the Kosovo delegation had been Hashim Thaci. The
15 agreement reached at Rambouillet between the Kosovo Delegation and
16 the Serbian Delegation was supported by the KLA General Staff and had
17 nominated Hashim Thaci as Prime Minister."

18 Now, is this account, again, consistent with what you've told us
19 before, that Mr. Thaci had been introduced by some or described by
20 some as being prime minister of a provisional government?

21 A. I believe so, yes.

22 JUDGE METTRAUX: And I'll mention here also Exhibit P645 for the
23 record.

24 Are you aware, Mr. Strohmeier, that in early April of 1999, so a
25 month or six weeks before your arrival on the ground, the KLA had

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1 formally announced the formation of a provisional government and
2 outlined its composition?

3 A. I want to say no. I may have had some information at the time,
4 but, as I explained, I think on the first day, in -- while I was -- I
5 was in Mr. de Mello's department in New York at the time and dealing
6 with some aspects of what we called the Kosovo crisis, but I wasn't
7 that deeply involved that I would have followed the events of this
8 detail.

9 JUDGE METTRAUX: But you told us a few times yesterday and the
10 day before and again today, if I understood correctly, that at some
11 stage you met with Mr. Thaci at the Grand Hotel in Prishtine where he
12 would have presented you with some sort of an organigramme of that
13 provisional government; is that right?

14 A. That's correct.

15 JUDGE METTRAUX: I want to show you another document then and
16 ask you about it and whether it resembles in any way what you were
17 presented with.

18 And I'll ask the Registry to please bring up Exhibit 1D70, 7-0.
19 So what we have --

20 MR. MISETIC: I just wish to point out it's not an organigramme.

21 JUDGE METTRAUX: Thank you, Mr. Misetic.

22 The document we have in front of us here, sir, is titled
23 "Communiqué of the Government of Kosovo." It's dated and located
24 Prishtine, 2 April, that would be 2 April 1999, and it was published
25 in *KosovaPress*. Now, I'll give you a second to read it for yourself

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1 and then I'll ask you a question.

2 And if the Registry could scroll it down a little bit so that
3 the witness can read the entire document. Thank you.

4 Just a couple of points here. If we can scroll it back up,
5 please. So do you agree, Mr. Strohmeyer, that according to this
6 document, the prime minister or the person who is described as
7 prime minister of the government of Kosovo is Mr. Hashim Thaci?

8 A. Yes, according to this document.

9 JUDGE METTRAUX: And there is a number of positions that are
10 announced in this entity, including a vacant deputy prime minister
11 position for the LDK; is that right?

12 A. Correct.

13 JUDGE METTRAUX: And the document goes on to explain that the
14 LDK has not made a proposal for personnel for that purpose; correct?

15 A. Correct.

16 JUDGE METTRAUX: And if you look at the various ministership,
17 you can see that there is quite a number of members or individuals
18 who are identified as members of the KLA; is that right?

19 A. Correct.

20 JUDGE METTRAUX: Now, my first question, to the extent, of
21 course, you can remember, is whether the structure that is being
22 described here corresponds in any way to what you recall Mr. Thaci to
23 have presented to you as an organigramme, if anything?

24 A. I honestly -- I don't really remember details of the paper that
25 were shown to us. I mean, as I said, it was -- when I said

1 "organigramme," I meant it was presented to us - or that's at least
2 in my memory - as the structure of a government with different
3 ministries and so on. And I said, I think, in my testimony before
4 that I remember it being a very short one-page or not much more, a
5 very short document. So it may very well be the document that I have
6 in front of me here, but I couldn't say this with -- with any
7 certainty.

8 JUDGE METTRAUX: Do you recall whether the organigrammes
9 contained any names of people who were supposed to fill these
10 government positions?

11 A. I don't really. I'm sorry.

12 JUDGE METTRAUX: Now, we'll go back to the previous government
13 in a second. But you've been asked a number of times to explain what
14 your understanding of Mr. Thaci's position was at the time and also
15 asked to give your opinion on what Sir Jackson, Mike Jackson, had
16 said about it.

17 And when asked that same question, General Jackson said that his
18 understanding of Mr. Thaci's role and power was comparable -
19 paragraph 30 of the statement - was comparable to that of the
20 commander-in-chief. And he described Mr. Ceku as the most senior
21 military man within the KLA at the time and as Mr. Thaci's
22 subordinate.

23 So would this description and opinion of Mr. Jackson be
24 consistent with your own understanding of what Mr. Thaci and
25 Mr. Ceku's roles were at the time?

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1 A. Your Honour, if I could just elaborate for one second on this,
2 because I want to be accurate. I mean, I -- as I think I stated, and
3 I've seen from the documents, that Mr. Thaci signed the undertaking
4 as commander-in-chief.

5 So I, from our interactions, because they were more on a
6 civilian side, did not think of Mr. Thaci necessarily in terms of a
7 commander-in-chief in terms of military command. Mr. Jackson,
8 however, had a different reality and different conversations in a
9 more military environment, and so it may -- that may have been the
10 aspect of Mr. Thaci that was much more -- or stood out much more for
11 General Jackson.

12 For us, it was just very clear -- at least for me it was very
13 clear always that Mr. Thaci was, on all matters, political -- I mean,
14 when we had conversations around the composition of the KTC, the
15 applicable law, when we scheduled meetings on disgruntlement around
16 the police force and the inclusion of the UCK into the police force,
17 it was always scheduled with Mr. Thaci, and then on one occasion he
18 brought Mr. Ceku with him.

19 So for us that was the reality. Mr. Thaci was the go-to person,
20 I think, as I said it yesterday. And at some point in all of this,
21 of course we had heard, and I'm sure beyond me there were people who
22 were aware of the whole Rambouillet history, that there was some
23 background to this.

24 In terms of Mr. Ceku, as I also said, for us -- for me, it was
25 clear, functionally, what you described. Functionally, it was clear

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1 that he was the senior-most military sort of at -- at -- the next,
2 technical level, who we had to interact with. I mean, that's how --
3 he was our interlocutor. And that means first and foremost
4 General Jackson's interlocutor, and then, when I was there, mine at
5 those early JIC meetings. Mr. Thaci wasn't there. And then the
6 meeting that we had, I believe on the 2nd or 3rd July 1999, on the
7 formation of the police force, I think Mr. Thaci told us that we
8 should -- for all continuing conversations on the formation of the
9 police force, that Mr. Ceku was our go-to person.

10 I have not seen him give commands, but that for me is a gesture
11 that suggests a certain level of -- I tell you -- I mean, that's what
12 I do in my office when I say, "For these matters, please deal with
13 that person," that identifies or reinforces the perception of this is
14 the leader in that circumstance and that's the person who follows
15 through on some of the more technical or specialised aspects.

16 So that's -- sorry for being a bit lengthy, but that's the
17 impression both of the relationship of those two but also the
18 functions that they presented -- in which they presented themselves
19 to me at least.

20 JUDGE METTRAUX: Do you know who appointed Mr. Ceku to his
21 position as chief of the General Staff of the KLA?

22 A. I don't.

23 JUDGE METTRAUX: Would that, in your view, be relevant to
24 establishing who's the boss and who's the subordinate, if that was
25 established?

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1 A. Certainly.

2 JUDGE METTRAUX: Can we please go back to P1138 for a second,
3 and page 8, please. And if the Registry could scroll down a little
4 bit on the page. Thank you.

5 I'll ask you to look at the last paragraph, Mr. Strohmeier.
6 This document attributed to Mr. Krasniqi goes on to say the
7 following:

8 "Some developments in the KLA General Staff took place during
9 our stay in Rambouillet which showed signs of being a rebellion. The
10 situation created was analysed thoroughly in the meeting and we
11 reached the conclusion that the interests of the war for freedom and
12 for the independence of Kosovo stood above every personal interest of
13 each individual and member of the KLA General Staff."

14 Now, during your encounter or encounters with Mr. Thaci or in
15 other circumstances, did you become aware that there had been, to use
16 the words here, a sort of a rebellion within the KLA leadership
17 during Rambouillet?

18 A. I personally wasn't, no.

19 JUDGE METTRAUX: Can you look at the bottom of the page of what
20 I've read to you in the footnotes. You will see that what I've read
21 to you is sourced to two different sources. One are the minutes of
22 the KLA General Staff meeting of 27, 28 February 1999, and the other
23 one is another publication of Mr. Krasniqi. Do you see that?

24 A. Yes.

25 JUDGE METTRAUX: I want to show you something and ask you to see

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1 whether you can comment on it, and that's Exhibit P1431.

2 And so that you know what you're looking at, Mr. Strohmeier,
3 those are handwritten notes of certain meetings, and this document,
4 like the previous one, was found at the home of Mr. Krasniqi we are
5 being told.

6 And I'm particularly interested in the next page, please.

7 You can see here it's at least a partial recording of the
8 meeting or a meeting of the General Staff of 27 February 1999 in
9 Divjake. Do you see that?

10 A. Yes.

11 JUDGE METTRAUX: And it discusses, among other things, the
12 General Staff position on the election of the commander. And I'll
13 ask you to look at the little record under the name of Fatmir. Do
14 you see that?

15 A. Yes.

16 JUDGE METTRAUX: Now, the first thing I'll ask you is do you
17 know or are you familiar with anyone with the first name Fatmir who
18 was a member of the General Staff at some stage, including in
19 February 1999?

20 A. I don't recall that, no.

21 JUDGE METTRAUX: Now, the Fatmir in question says:

22 "I propose that we set up the government as soon as possible, in
23 order to minimise the problems within the KLA."

24 Do you see that?

25 A. Yes.

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1 JUDGE METTRAUX: My question is when you talked to Mr. Thaci and
2 he presented that organigramme to you, did he tell you why it was
3 important for them to create a provisional government for Kosovo?
4 Did he explain to you what were the reasons they were doing that?

5 A. I mean, as I said, I mean, I don't have much recollection of
6 this, but I do believe it was around basically -- it may have very
7 well been around Rambouillet, but I don't at all recall any
8 references to the kind of -- kind of statement that Mr. Fatmir or the
9 Fatmir person made.

10 So, I mean, in the conversation I don't recall that it was --
11 that we had any conversation around the government being formed as a
12 necessity to keep the KLA together.

13 JUDGE METTRAUX: So is it fair to say that Mr. Thaci did not
14 share with you what the internal dynamic of the KLA was at the time
15 when they were trying to sell that provisional government to you?

16 A. I'm pretty certain of that, yeah.

17 JUDGE METTRAUX: Can we go back to Exhibit P1138, please. And
18 to the last page, please.

19 I'll ask you again to look at the large middle paragraph towards
20 the second half. It says:

21 "The Provisional Government of Kosovo was not the government
22 formed by any single party ..."

23 Do you see that? It says this:

24 "The Provisional Government of Kosovo was not the government
25 formed by any single party" --

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1 A. Yeah.

2 JUDGE METTRAUX: -- "above all it was a government which emerged
3 from the war, from the blood which had been shed and on the basis of
4 an agreement which smelt of blood. The war and the blood which had
5 been shed were the principal factors which sent the Kosovo Delegation
6 to Rambouillet and Paris."

7 And then if I skip the next part, it goes on to say:

8 "After the creation of the Provisional Government, the political
9 control of the country passed to it, while the operational and
10 military activity remained the task of the General Staff."

11 Now, what I want to ask you about these writings is whether this
12 corresponds, in effect, to what Mr. Thaci and Mr. Ceku were trying to
13 sell to you. In effect, still from your description, their
14 attachment to the agreement in Rambouillet; whereas you, the
15 United Nations, had drawn a line under that arrangement. Is that a
16 fair summary?

17 A. Yes, if it means, again, that this was Mr. Thaci in that
18 meeting, and I think I expressed this as a sentiment, and that's the
19 sentiment we took back, that they had an idea of the way forward that
20 would revolve and focus, from their point of view, on the Provisional
21 Government of Kosovo. Whereas they had envisaged a more assistance,
22 support role for the United Nations for that provisional government.
23 And as I said, there was no hostility per se against the
24 United Nations, but it was about the specific role.

25 JUDGE METTRAUX: Understood. I have two other very short sets

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1 of queries for you. The first one is this: Do you recall being
2 asked by Mr. Misetic, I think it was, about the presence at one or
3 more meetings that you attended of so-called operational zone
4 commanders? Do you recall those questions?

5 A. Yes, I do.

6 JUDGE METTRAUX: Now, I've looked at the record that we have, in
7 particular the one that I think that was used, 1D212 or 1D212.2. My
8 question for you is this: At these meetings that you attended, or
9 meeting or meetings, where operational zone commanders would have
10 been present, did they say anything during the meeting? Because the
11 record, at least the one I was able to look at, they are not recorded
12 as saying anything. The interlocutor at that meeting was Mr. Ceku.

13 So my question to you is did they engage or were they being
14 engaged in these discussions that you were having in your presence?

15 A. Not in my recollection. Your Honour, if I -- specifically, the
16 very first meeting I have -- I recall pretty well, and it was -- in
17 fact, it was in a -- in a relatively empty warehouse. There was a
18 horseshoe set up of tables. But Mr. Ceku received and greeted both
19 General Jackson and then me outside of that building and led us into
20 the building. So we were having a quick chat outside, the three of
21 us, and then we went inside.

22 And, again, I said, this all took place in a friendly and very
23 constructive atmosphere. And I was basically at that -- well, at one
24 end of this. And it was throughout the first conversation, but also
25 the second conversation, that it was just the three of us, basically,

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1 speaking, so the -- it was very clear. It was Mr. Ceku, Mr. Jackson,
2 they had the main roles in this, and they would sometimes call on me
3 or I would signal if there was a point that required clarification.

4 So it was the three of us, in my recollection, who were
5 speaking. No one else. Which also explains maybe a little bit why I
6 don't have a very specific recollection of who else may have been at
7 those meetings because I don't think they had any speaking roles.
8 And the same also went for Mr. Jackson's staff or my staff members.
9 I mean, my UNMIK colleagues who had accompanied me.

10 JUDGE METTRAUX: Thank you. And one small clarification. When
11 you leave Kosovo sometime in late August 1999, I understand, was, to
12 your understanding, the demilitarisation process of the KLA completed
13 by that stage or was it still ongoing?

14 A. It was still ongoing in my view.

15 JUDGE METTRAUX: And, lastly, you were asked questions by
16 Mr. Dixon for Mr. Veseli about the doings and the whereabouts of
17 Mr. Kadri Veseli during your time in Kosovo. Do you recall those
18 questions?

19 A. I do.

20 JUDGE METTRAUX: Now, under Resolution 1244, was the KLA
21 authorised to continue running an intelligence agency?

22 A. Your Honour, as I explained yesterday, in our view, it was very
23 clear that there were no quasi-state functions to be performed by
24 anyone, and that's -- whether that's the PGK or the KLA or any other
25 group. And that meant for us you cannot apply executive powers like

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1 arrest, detention, adjudication, I mean, judicial processes, but also
2 you cannot form or perform ministerial functions or services that
3 would support a government or a state under normal circumstances.

4 So all of this, in our view, without this being specifically
5 applied now to an intelligence service, all of this was clear to us
6 was not in line with our understanding of Resolution 1244.

7 JUDGE METTRAUX: Thank you. Those were my questions. Thank
8 you.

9 PRESIDING JUDGE SMITH: Thank you.

10 Any follow-up questions from the Prosecution?

11 MS. IODICE: No, Your Honour.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. MISETIC: Yes, thank you, Your Honour.

14 Further Cross-examination by Mr. Misetic:

15 Q. Good morning again, Mr. Strohmeyer.

16 A. Good morning.

17 Q. I just have some follow-up questions to the questions that were
18 asked of you by the Judges as well as the answers that you've given
19 yesterday and today.

20 Now, yesterday in answer to a question from Judge Barthe -- if I
21 could just find it. You were asked:

22 "Did you personally meet members of the provisional government
23 who at the time of the meeting were not members or representatives of
24 the KLA, who were, in particular, members of the LDK or LBD and who
25 spoke on behalf of the Provisional Government of Kosovo?"

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1 Do you remember that question?

2 A. Yeah.

3 Q. Okay. Now, yesterday, I believe, or the day before, you were
4 shown the minutes of a meeting of the JIC where you were present, and
5 General Ceku at one point - and this is at Exhibit 1D212, paragraph
6 31, page SPOE00000430 - according to the minutes says the KLA has
7 appointed a minister of justice and he would like the UN to work with
8 that minister of justice. Do you remember that passage?

9 A. I don't know. Probably, yes. In the -- in the -- was it the
10 22nd or the -- the 29th.

11 Q. The 29th.

12 A. Yes, vaguely.

13 Q. Okay. Now, you were shown by His Honour Judge Mettraux an
14 exhibit, 1D0070.

15 MR. MISETIC: If we could have that back on the screen, please.

16 Q. And you see on the screen there at number 5, this is the
17 communiqué announcing the members of the Provisional Government of
18 Kosovo. And at number 5 is the minister of justice Hydalet Hyseni of
19 the LBD.

20 Now, do you recall whether you ever met a person -- given that
21 you were the legal adviser to the UN and he was the minister of
22 justice of the PGoK, whether you ever met a person named Hydalet
23 Hyseni?

24 A. I don't recall meeting that person. And while I cannot --
25 again, I don't recall from today's perspective. But I think, given

1 what I explained earlier, we would have been advised, probably, and
2 highly cautious to meet with self-styled ministers of a provisional
3 government that we obviously did not recognise or considered as in
4 contravention to Resolution 1244.

5 So if I met that person, I would not have met him as minister of
6 justice. Maybe in a different circumstance or different occupation.

7 Q. Okay. But my point is the KLA was directing you to someone who
8 was a member of the LBD party, and you say it may be, however, that
9 the UN did not want to meet with him because it did not want to
10 recognise any official position for that person; correct?

11 A. Mr. Defence Counsel, I don't have the exact text of the
12 transcript now of 29 June in front of me, but if what you read out to
13 me doesn't give a name and an affiliation of a party, it refers to a
14 minister of justice had been appointed. So even if that was said in
15 that meeting, that did not mean that I had any clear idea of what
16 party or what individual was behind that.

17 Q. Okay. I'll turn to a different question. You were asked --
18 actually, in an answer you provided to Judge Barthe yesterday, you
19 said:

20 "For us, there was no continuation from Rambouillet that led to
21 1244 and [beyond]. For us, 1244 was a game-changer. So we -- if the
22 Member States had wanted the decision of Rambouillet to enter into
23 reality, then they would have had to craft or draft a different type
24 of resolution, which they didn't ..."

25 That was your answer yesterday; correct?

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1 A. Correct.

2 Q. Okay. I'd like to take a look at 1244.

3 MR. MISETIC: Which is, if we could have, please, on screen,
4 1D78, please.

5 Q. And this also relates to a question that Judge Mettraux asked
6 you about the legality of the Provisional Government of Kosovo this
7 morning.

8 MR. MISETIC: It's in the Prosecution queue.

9 Now, this is Security Council Resolution 1244. If we could go
10 to page 3, paragraph 11, please.

11 Q. Now, the Security Council:

12 "Decides that the main responsibilities of the international
13 civil presence will include:

14 "(a) Promoting the establishment, pending a final settlement, of
15 substantial autonomy and self-government in Kosovo, taking full
16 account of annex 2 and of the Rambouillet accords ..."

17 And if we could turn the page, please:

18 "(e) Facilitating a political process designed to determine
19 Kosovo's future status, taking into account the Rambouillet
20 accords ..."

21 And as you saw, the paragraph I read previously says the
22 international civil presence must also take into account annex 2.

23 MR. MISETIC: So if we could please go to page 6 in the
24 document, which is Annex 2, to the bottom at paragraph 8.

25 Q. "A political process towards the establishment of an interim

1 political framework agreement providing for substantial
2 self-government for Kosovo, taking full account of the Rambouillet
3 accords and the principles of sovereignty and territorial integrity
4 of the Federal Republic of Yugoslavia and the other" - if we could
5 turn the page - "countries of the region, and the demilitarisation of
6 the UCK."

7 Now, my first suggestion to you, Mr. Strohmeyer, is in fact that
8 the contrary is true, that the Security Council obligated you to take
9 into account the Rambouillet accords as the international civil
10 presence; correct?

11 A. No, it's not correct, Mr. Defence Counsel. The Security Council
12 resolution obligates us to take into account, take full account, of
13 the Rambouillet accords. It doesn't ask us to implement the
14 Rambouillet accords.

15 Q. Well, that's not my question.

16 A. No.

17 Q. I said --

18 A. But --

19 Q. -- it asked you to take into account the Rambouillet accords.

20 A. It asks us to take into account the Rambouillet accords, yes.

21 Q. Yes. And then yesterday I showed you a code cable where there
22 was a discussion of the composition of the Kosovo Transitional
23 Council where the Special Representative of the Secretary-General had
24 decided that the formula for the Kosovo Albanian composition of the
25 KTC would be based on the provisional government decision reached at

1 Rambouillet; correct?

2 A. Correct.

3 Q. So the SRSG, in fact, was taking into account the provisional
4 government agreement as per his obligation to do so under 1244?

5 A. Absolutely.

6 Q. Okay. So my suggestion to you is that this was a much more
7 complicated and, let's say, a not so black-and-white issue as to what
8 terms of Rambouillet would apply and wouldn't apply and how the civil
9 presence would interact with the Rambouillet agreement. Would you
10 agree?

11 A. Sorry, not -- I'm not necessarily agreeing with that. And if
12 I -- if I may just explain why that is.

13 I think it asks us to take into account, and I think the act
14 that you just referred to, the KTC, was one such way of taking this
15 into account. But I think the resolution, particularly paragraph 11,
16 makes very clear the tasks that we had to perform, number one, and
17 that did not -- I mean, the logic of paragraph 11 did not suggest
18 that we had to build upon or build around the institutional framework
19 conceived of or prepared in Rambouillet.

20 The second thing is I think it also, in that same paragraph that
21 you just read out to me, says to take into account the integrity and
22 sovereignty of the Federal Republic of Yugoslavia, and that, as I
23 explained on the applicable law, was a very central point, that it
24 would have been -- at that point, it was considered still a part of
25 Serbia just under international administration, and it would have

1 been difficult to simply accept a separate government for Kosovo as
2 was decided in Rambouillet.

3 But all these -- the implications, the political implications,
4 of course, needed to be taken into account, which, you just referred
5 to yourself, the SRSG did.

6 MR. MISETIC: If we could go back a page in the document,
7 please. If we could scroll down to the bottom, to paragraph 8.

8 Q. What the Security Council there says is you are to pursue "a
9 political process towards the establishment of an interim political
10 framework agreement providing for substantial self-government for
11 Kosovo, taking full account of the Rambouillet accords and the
12 principles of sovereignty ..."

13 So what it's saying is in this interim period before a final
14 resolution of Kosovo's status is reached, you are to come up with an
15 interim political framework that will take into account the
16 Rambouillet agreement; am I correct?

17 A. Well, it says "an interim political framework agreement, taking
18 full account of the Rambouillet accords and the ... territorial
19 integrity -- sovereignty and territorial integrity of the Federal
20 Republic of Yugoslavia ..."

21 Q. Yes.

22 A. So both of them were sort of orientation points for our
23 interpretation.

24 Q. Yes. Now, you are a lawyer and a judge, and so you know that
25 sometimes you have written documents -- not sometimes, most of the

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1 time you have written documents where two lawyers can look at the
2 same document and come up with different interpretations; is that
3 fair?

4 A. That's fair.

5 Q. So looking at the provisions that I just read to you, you may
6 have had a different interpretation of the document than the
7 representatives of the KLA and the PGoK had, but they also could have
8 had an interpretation that the Rambouillet agreement to create the
9 Provisional Government of Kosovo was, in fact, allowed or part of the
10 process incorporated into 1244. Whether you agree with him or not,
11 it could still be considered a good faith position to take. Would
12 you agree?

13 A. Yes, initially, in the first meeting or meetings or so, that
14 could have been the position. We then -- as I also explained, there
15 were a number of occasions where we continued to explain why these
16 things were in -- some of those creating of institutions and so on,
17 PGK, were in contravention of our interpretation of 1244, which was
18 at that point supported more broadly by the UN, including the
19 Security Council.

20 Q. Yes. And as that -- those discussions were happening over time,
21 that's when the KLA started its self-transition into the KTC;
22 correct?

23 A. Correct. I mean, that's -- and I think in one of my
24 statements -- in one of my testimony, I say that over time I had the
25 impression that they were coming to terms with the fact that the PGK

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1 as such wasn't going to happen but that it was the KTC, in fact, that
2 was going to be that political centre of gravity.

3 Q. Thank you.

4 MR. MISETIC: Mr. President, I see the time.

5 PRESIDING JUDGE SMITH: We'll give you a ten-minute break,
6 Witness.

7 THE WITNESS: Thank you.

8 [The witness stands down]

9 PRESIDING JUDGE SMITH: We're adjourned for ten minutes.

10 --- Break taken at 10.01 a.m.

11 --- On resuming at 10.11 a.m.

12 PRESIDING JUDGE SMITH: Please bring the witness in.

13 [The witness takes the stand]

14 PRESIDING JUDGE SMITH: All right. Mr. Misetic.

15 MR. MISETIC: Thank you, Your Honour.

16 Q. Mr. Strohmeyer, yesterday you were asked by Judge Barthe:

17 "... do you remember FARK or, rather, the conduct of FARK
18 members ever being mentioned as a reason, not as one of the primary
19 reasons but as a reason, of concern for the security in Kosovo at
20 all?"

21 Do you recall that question?

22 A. I don't recall exactly the wording anymore, but the -- I -- I
23 remember receiving a question on the FARK.

24 Q. Yes, do you know if FARK wore KLA uniforms?

25 MS. IODICE: Objection, beyond the scope.

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1 PRESIDING JUDGE SMITH: No one mentioned -- well, I guess you
2 did mention FARK.

3 Overruled. Go ahead.

4 THE WITNESS: If you could just repeat the question again?

5 MR. MISETIC:

6 Q. Do you know if FARK had its own uniforms or whether they wore
7 KLA uniforms?

8 A. I don't remember.

9 Q. Okay. So if FARK members were wearing KLA uniforms, would you
10 have been able to distinguish whether they were FARK or KLA soldiers?

11 A. I personally would not have.

12 Q. Okay. Next question. You were asked questions on page 153 of
13 the transcript yesterday, 152 to 153:

14 "Q. In paragraph 92 of your statement, it is recorded that
15 Mr. Thaci -- that you said that Mr. Thaci 'promised to do whatever he
16 could - including issuing an official statement - to dissolve KLA
17 detention centres.' Is this correct? Can you remember --"

18 You say:

19 "Yeah."

20 Now, that relates to a code cable that you've seen. Do you
21 recall that?

22 A. Yeah.

23 Q. Okay. That code cable -- if I can just ... just one second,
24 please.

25 [Specialist Counsel confer]

1 MR. MISETIC: Let me call up a different document, then.

2 SITF00172903 to 00172904. It's in the new queue that was released.

3 Q. Do you see that's a code cable from the 13th -- or, sorry, a
4 daily sitrep from 13 July 1999.

5 MR. MISETIC: And if we go to page 2 of this document, please.

6 Q. The incident that was allegedly brought to Mr. Thaci's
7 attention, if you'll recall, was about Serbs and Roma being released
8 from a detention centre near Prishtine. And if you look under
9 "Military" in this document, if we scroll down, it says:

10 "KFOR at UNMIK's request have attempted to find five sites where
11 the UCK are allegedly detaining prisoners. Three sites could not be
12 found for lack of information. At one site bodies were found that
13 were at least two weeks old. A fifth site was found in Pristina
14 where three Serbs and four Gypsies were found. Those detaining them
15 were not in uniform and were let loose as the detainees were
16 unwilling to testify against them."

17 Now, do you recall that in the incident with this detention
18 centre that the people who were detaining these people were not in
19 uniform?

20 A. I don't have -- I don't recall.

21 Q. Okay.

22 MR. MISETIC: Mr. President, I tender this document into
23 evidence.

24 PRESIDING JUDGE SMITH: Any objection?

25 MS. IODICE: Yes, Your Honour. The witness could not comment on

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1 it.

2 PRESIDING JUDGE SMITH: The document will be admitted.

3 SITF00172903 to 00172904.

4 THE COURT OFFICER: Thank you, Your Honours. This will be
5 admitted and assigned Exhibit 1D00242, and it's classified as
6 confidential. Thank you, Your Honours.

7 MR. MISETIC: Thank you.

8 Q. Turning your attention to questions that were asked by
9 Judge Gaynor, and this is related to the question of
10 commander-in-chief. You told Judge Gaynor at transcript page 159
11 that you were surprised that Mr. Thaci signed the undertaking as
12 commander-in-chief; is that correct?

13 A. Yes.

14 Q. Why were you surprised?

15 A. As I also said this morning, for us, we -- for me, certainly,
16 but I do think for most of us on the civilian side, we looked at
17 Mr. Thaci as the political leader who we would interact with. For me
18 personally, as I also noted before, Mr. Ceku was the person in charge
19 of all operation matters. And so when I saw that -- not that
20 Mr. Thaci had signed the undertaking but that he had signed as
21 commander-in-chief, I was surprised because I would have expected
22 either someone else signs or it's more in a political leadership
23 function. That's the cause of my surprise.

24 But it may just be, as I also tried to explain this morning, the
25 specific perspective or the vantage point that I had at the time,

1 which was different over those of General Jackson or possibly even
2 the SRSg.

3 Q. Okay. Would it be fair to say that your surprise was because
4 your experience with Mr. Thaci did not suggest that he had a military
5 function?

6 A. I did not interact with him in a way on -- on any of those
7 military discussions that I was involved in in the beginning. So I
8 didn't conclude from any of the other interactions with Mr. Thaci
9 what his possible role may have been in the military field.

10 Q. You were asked -- sorry, you said at transcript page 160 of
11 yesterday's provisional transcript that Mr. Ceku never said to you at
12 these JIC meetings that you should check with Mr. Thaci; correct?

13 A. That's correct.

14 Q. And he also never said to you that he needed to check with
15 Mr. Thaci; correct?

16 A. I don't recall any of that, no.

17 Q. Okay. My final question is something you were asked by
18 Judge Mettraux about whether your knowledge of who appointed
19 General Ceku would indicate to you who had authority over whom.

20 MR. MISETIC: And if we could please call up DHT04009 to
21 DHT04017-ET. And it's the same in Albanian -- or, no, sorry, the
22 Albanian version is SPOE00053060 to 00053071. And if we could go to
23 page 5.

24 Q. This is an interview with Agim Ceku and he discusses how he was
25 appointed chief of the General Staff. And Zeri is a newspaper in

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1 Kosovo. And the question is:

2 "Was the procedure for your election as Chief of the
3 General Staff of the KLA done in Kosovo or earlier?"

4 And Mr. Ceku responds --

5 MR. MISETIC: And I'll wait for the Albanian, sorry. Page 68 in
6 the Albanian version, please. That's good. Thank you.

7 Q. I'll read it again. The question put to Mr. Ceku is:

8 "Was the procedure for your election as Chief of the
9 General Staff of the KLA done in Kosovo or earlier?"

10 And Mr. Ceku responds:

11 "During the contacts we had, such a thing was mentioned. There
12 were tendencies for me to engage in a leadership position even
13 without being in Kosovo. But I did not accept this assessment. Even
14 my activity has never been public. Only a very narrow circle knew
15 about it. I did not want to make it public that I am in contact with
16 the KLA, and to stay outside of Kosovo. I insisted that the
17 decisions about my concrete commitment be made in Kosovo. Then, we
18 stayed at the General Staff for a few days and my work was discussed
19 for a long time and the decision to appoint me Chief of the
20 General Staff of the KLA was made by the entire General Staff, not by
21 one person."

22 Now, in your interactions with General Ceku, do you recall
23 whether he informed you of this, that he had been appointed by an
24 entire body known as the General Staff?

25 A. Sorry, I have no recollection whether he told me that he was

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1 appointed by the entirety of the General Staff. But now just reading
2 this paragraph, you know, some of these things prompted -- and I do
3 sort of remember that in one of the conversations with him, you know,
4 he referred that he hadn't always been in Kosovo and so on, so we
5 were talking about some of those related things, but not to my
6 knowledge about any of the internal processes inside the KLA.

7 And I, generally speaking, whether for Mr. Ceku or otherwise, I
8 do not recall, and I don't think I have been privy to, any
9 conversations that dealt with the internal command and control
10 structures, as I said before, of the KLA. So the conclusions that I
11 drew, that we drew, were based on the interactions that we had or the
12 information that we would share among each other.

13 But I can also, I mean, in hindsight now, 25 years later, I
14 cannot with certainty exclude that at some point I may have also
15 heard about aspects of who was appointed when, but I have no
16 recollection of that.

17 Q. Would this appointment, though, be consistent with your
18 understanding that Mr. Ceku was acting on behalf of the military side
19 of the KLA and Mr. Thaci was acting on behalf of the political side?

20 A. As I said before, that is -- that was my general impression.
21 That's how we interacted with them.

22 Q. Thank you.

23 MR. MISETIC: Mr. President, I tender this one page of
24 Mr. Ceku's Zeri interview into evidence, and the cover page, sorry.
25 And that's --

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1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 MR. MISETIC: Yes, you're correct. So the first page is
3 DHT04009, which is the cover page, and then DHT04013, in English; and
4 SPOE -- and, sorry, in Albanian, the cover page is SPOE00053060 at
5 page SPOE00053068.

6 PRESIDING JUDGE SMITH: Any objection?

7 MS. IODICE: No, Your Honour.

8 PRESIDING JUDGE SMITH: DHT04009 and 04013 in English and
9 Albanian is admitted.

10 THE COURT OFFICER: Thank you, Your Honours. Those two pages in
11 the English and corresponding Albanian will be assigned
12 Exhibit 1D00243, and it's classified as confidential. Thank you,
13 Your Honours.

14 JUDGE METTRAUX: Mr. Misetic, I have a question for you, if I
15 may. You're not proposing to show the witness the decree of 28 April
16 1999 on this point?

17 MR. MISETIC: No, I prefer Mr. Ceku's own account.

18 JUDGE METTRAUX: Thank you.

19 MR. MISETIC: Yes. I'm reminded that the article is in the
20 public domain, so it should be public, I believe.

21 PRESIDING JUDGE SMITH: No objection. It will be public.

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

23 Q. Thank you, Mr. Strohmeyer, for being here for three days and for
24 answering our questions.

25 MR. MISETIC: And, Mr. President, I thank you for the time.

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1 PRESIDING JUDGE SMITH: All right.

2 Mr. Dixon.

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

4 Further Cross-examination by Mr. Dixon:

5 Q. Mr. Strohmeyer, just a few follow-up questions. Firstly, in
6 relation to a question that was put to you by His Honour
7 Judge Mettraux. A specific question was asked:

8 "Now, under Resolution 1244, was the KLA authorised to continue
9 running an intelligence agency?"

10 And you explained about no quasi-state functions in your answer.

11 Can I clarify with you, though, that this resolution certainly
12 did not prohibit a national civilian intelligence services liaising
13 with each other, those that existed in Kosovo and those abroad. They
14 could continue to cooperate and have contacts and share information.
15 That's right, isn't it?

16 A. Again, you mean international services of Member States?

17 Q. Yes, with those in Kosovo who were involved in the sector. Much
18 in the same way as you were liaising on the civilian side with those
19 in Kosovo, the international intelligence agencies were doing the
20 same. As far as you know, nothing prevented that from happening?

21 A. To engage with individuals in Kosovo?

22 Q. Yes.

23 A. No. No, it ...

24 Q. And also nothing in the Security Council resolution prevented
25 training to take place. In fact, that was the whole purpose, was to

1 try and provide skills and training for the future. This being an
2 intelligence sector I'm asking about. I know it was happening in the
3 civilian and military sector as well.

4 A. Well, that for me is a different conclusion, Mr. Defence
5 Counsel. I mean, training is towards an institution. It's towards
6 an end. Engaging with individuals on information and observation is
7 a different story. Of course, we would say everyone who operates in
8 this area has a right to engage with individuals as long as they are
9 not identifying themselves as carrying out a function of authority.

10 So I would have been very surprised that the establishment -- or
11 a training towards the establishment of an intelligence service would
12 fall -- would be conducted outside of the framework of 1244.

13 Q. But my question is -- I understand what you're saying is that
14 the Security Council resolution certainly didn't prohibit the process
15 towards establishing provisional bodies in the future. In fact, it
16 used that language, and that was the whole purpose. You were there
17 for an interim period to assist and train so that in the future there
18 could be provisional bodies and then final bodies taking over.

19 A. Yes, via UNMIK and a transparent process or a process. So if
20 there was an UNMIK process in place towards the establishment of
21 genuine Kosovar intelligence services, of course, we would have also
22 supported training for those purposes.

23 Q. Yes. And the resolution wasn't there to prevent that happening.
24 It was there to, in fact, facilitate that so there could be a
25 transition over time, of course, to provisional institutions and then

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1 final institutions. That's right, isn't it?

2 MS. IODICE: Objection, asked and answered.

3 PRESIDING JUDGE SMITH: Overruled.

4 Answer the question.

5 THE WITNESS: The Security Council resolution doesn't suggest
6 any specific institutional setup. It doesn't say: You need to have
7 these types of institutions and not other institutions. So I think
8 it conceived that whatever during the transition phase, this interim
9 phase, this transition phase that we would administer, was agreed and
10 negotiated as part of forming an authority or a service, that that
11 was acceptable to that final settlement. We would have also
12 accepted, in an organised way, transparently via UNMIK, the provision
13 of training and everything else.

14 But what I -- so it's not about whether it's written in the
15 Security Council resolution to have an intelligence service or not.
16 It is whether this is something that came out of the processes and
17 the frameworks that we were conducting or working towards.

18 Q. Yes, I mean, that's precisely my point. It wasn't specific. It
19 was left open and flexible so these things could develop. It didn't
20 prohibit any of those processes. It was there to encourage them.
21 Isn't that right?

22 A. No, it's not right. I mean, it's not to encourage to say if it
23 wasn't part -- if it wasn't done by UNMIK, then others can fill the
24 gap and --

25 Q. No, I wasn't saying that.

1 A. -- create their own institutions. So if UNMIK wasn't dealing
2 with the set up or the development of an intelligence service,
3 therefore it was okay because it wasn't precluded that someone else
4 would do so. I would say that is not -- that is not consistent with
5 our understanding of 1244.

6 Q. Yes, I agree entirely. My point was that under the framework of
7 the resolution, the international institutions, in particular UNMIK,
8 the General Assembly Member States, would oversee a process of moving
9 towards provisional institutions in time. Not that it would be done
10 separate via those locally, but it would be done as part of the
11 international community's undertaking.

12 A. Well, the Member States oversaw through the Security Council,
13 and otherwise the Member States contributed towards that. So, again,
14 I just want to -- I'm not entirely sure what your -- the question is
15 going towards, but I -- that's what I'm trying to make clear.

16 Even if Member States individually felt that they would like us
17 to aid and support the set up of intelligence capabilities inside
18 Kosovo, then in my view that would have only been consistent if those
19 Member States had run this through a process that was agreed,
20 approved with -- in fact, probably not only UNMIK but also KFOR at
21 the time. So it needed to be an agreed process. Otherwise, we would
22 have probably also seen this as a challenge to 1244.

23 Q. Yes, that's exactly my point, though, that it was an agreed
24 process. It was happening. As you said before, you weren't
25 necessarily aware of those processes, but that was going on, and it

1 wasn't prohibited by the resolution. It was, in fact, understood as
2 being part of the transition process.

3 A. Well, I'm not sure I agree with that final part of your
4 conclusion that it was -- because it was not prohibited, it was part.
5 I mean, I can only -- maybe I'm not understanding your question, so I
6 apologise for that. But if you're inferring that a Member State,
7 because it wasn't expressly prohibited, or a group of Member States,
8 could simply go and develop its own relations with assets or
9 capacities, capabilities inside Kosovo, then I would say that that is
10 not consistent with Resolution 1244.

11 Q. Yes. And, in fact, you didn't know of any of those processes
12 going on or whether they were happening --

13 A. At least I don't --

14 Q. -- as you've said before?

15 A. At least I have no recollection today of those.

16 Q. Yes. And I think we are in agreement in that the resolution
17 does make it very clear that you are in charge of the transitional
18 process. You said yesterday that this was unprecedented at the
19 executive level. So there is no disagreement with that in terms of
20 what the resolution provides.

21 My point is that, within that context, there were processes
22 going on, and that was happening on the civilian side, the military
23 side, and the intelligence side, to look to build towards a
24 provisional structure in the future which would become a final one.
25 That was the tenor of the resolution, wasn't it?

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1 MS. IODICE: Asked and answered.

2 PRESIDING JUDGE SMITH: Sustained. [Microphone not activated].

3 He's answered that question at least three times.

4 MR. DIXON: Well, can we then --

5 PRESIDING JUDGE SMITH: In the negative.

6 MR. DIXON: Yes.

7 Q. Well, can we agree on this, that your role on the civilian side
8 was certainly not to be there forever? You were there to enable a
9 provisional process to take place locally over time?

10 MS. IODICE: Objection, beyond the scope.

11 PRESIDING JUDGE SMITH: Overruled.

12 Please answer the question, then we'll move on.

13 THE WITNESS: Mr. Defence Counsel, our role was -- and I think
14 it was a transitional role. It was made clear that we were there to
15 provide the frameworks, the institutions, and so on, develop the
16 institutions, obviously, together with the ideas and proposals and
17 realities of Kosovo, and that we would, of course, work with Member
18 States, the EU, other international organisations in making this
19 happen.

20 I don't think that we had a certain idea at the beginning of how
21 long that transition would take, and so it was -- it was not sort of
22 a sense that we were doing all of this and in six months someone else
23 would take over. I mean, we did think that this was going to be a
24 multiple-year process, and I don't mean that in a one- or two year, I
25 mean that to mean as a longer-term process.

1 Q. Yes. I'll come on to timing later, but if I could just go to
2 one further question asked by His Honour Judge Mettraux, and that was
3 at pages 14 and 15. You were asked lots of questions about decisions
4 of the General Staff at the time or before that.

5 It's right, isn't it, and I think you've clarified this already,
6 that you have no particular information about who was involved in any
7 of those decisions and how those decisions were reached?

8 A. You mean the internal KLA [Overlapping speakers] ...

9 Q. That's right, yes.

10 A. No, I did not.

11 Q. And you have no information yourself on how people in the
12 General Staff or around them were communicating with each other at
13 that time in relation to those decisions or other matters?

14 A. Not what would have been shared with us by our interlocutors
15 themselves. But I didn't have any detailed knowledge of
16 communication structures and hierarchies, I mean, beyond what
17 presented itself through the impressions -- through the interactions
18 that we had.

19 Q. Yes. Thank you. I'm going to come on to the questions asked
20 now by Judge Barthe. At page 146, line 7, you were asked questions
21 about the alleged organised process of the human rights violations
22 that we've focused on, and you gave your answer at page 148. We
23 don't need to go through it all for time. But you said that it
24 wasn't necessarily a declared policy, but there was this enabling
25 environment created.

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1 And then you were also asked about other non-state actors, and
2 you answered that the -- in part of your answer, that the KLA was the
3 only one there looking at establishing so-called parallel
4 institutions.

5 Do you remember those answers?

6 A. Yes.

7 Q. Now, just some questions arising from that.

8 MR. DIXON: If I could have, please, on screen SITF40009162 to
9 163, please.

10 Q. This is an interview done with the head of mission,
11 Mr. Daan Everts of the OSCE, in June, the end of June when you were
12 there. This was just before he was coming in to post. Do you see
13 that there?

14 A. Yes.

15 Q. And there's a heading there: "'Struggle against feelings of
16 revenge'" and then the paragraph:

17 "Revenge. That is the big danger in Kosovo now ..."

18 And these are his words:

19 "'I think that we can build in enough warranties against that on
20 an institutional level', says Daan Everts, the Dutch diplomat who
21 will lead the reconstruction of a new society in Kosovo. 'But on an
22 individual level it will certainly not be easy to control feelings of
23 revenge, that have been existing after a hundred year of oppression.'

24 "Nevertheless he starts his ... function in a positive mood."

25 Do you see that there?

1 A. I'm not seeing the "positive mood."

2 Q. That's the next line, if we just go up a little bit.

3 So he was coming in at the same time as you. This is his
4 assessment. I know you've downplayed revenge to some extent, and you
5 focused in your answers yesterday on this enabling background or
6 culture.

7 Do you accept what he says here, that, at the individual level,
8 it was very difficult to control these feelings of revenge on the
9 ground?

10 A. Look, I -- this is an opinion -- this is a view that Mr. Everts
11 expressed for himself, and I don't think it's up to me to comment on
12 his observations. What I tried to explain yesterday is that we
13 understood that even individually there was no great love lost
14 between individuals. I also accept the fact that there were
15 individual acts and responsibilities for revenge. Our impression,
16 however, was not that these were just random acts of violence. And
17 so I can only speak to my observation that my -- my sense at the time
18 that I was there was that it was not only random acts of -- acts of
19 violence.

20 So I don't really have much to say about Mr. Everts and his
21 early observation, but he seems to suggest that there is both an
22 institutional level that we could deal with as well as an individual
23 level.

24 But I also, just to be clear, I've never disputed that there are
25 individual feelings of retribution, of -- and so on. But my

1 recollection from the interactions in those early weeks that I had
2 with Kosovo Albanians was that I did not get the sense that every
3 person we spoke to was out for blood or revenge, even if they were
4 happy to see the Serbs leave and so on. But I did not get a sense
5 that everyone was -- that the biggest problem was that everyone in
6 Kosovo was out for revenge, and, therefore, even the more organised
7 actors were overwhelmed with that situation. That was not my
8 impression.

9 Q. Well, can we just look at what General Jackson said about this.
10 I'm just going to read out a portion of his statement so we don't
11 have to bring it up. But at paragraph 76 for those following,
12 087358, he says -- and you can read it on the screen, I'll do it
13 slowly:

14 "But there are some very unpleasant attitudes among some Serbs
15 against Albanians, including in some cases believing them to be
16 subhuman. While one cannot condone the Kosovar Albanian reaction as
17 they came out of their dreadful time, one can sort of understand a
18 desire for revenge. Please do not think I am condoning it. I do
19 not. Far from it. But I am providing that context. Kouchner," he's
20 referring back to the Special Representative, "aided I hope by me,
21 had to erode this sense amongst some Albanians - not necessarily the
22 KLA per se - that violent revenge was a legitimate response to what
23 had happened to them."

24 You see there what General Jackson's assessment was of the same
25 time period. We have that word there "per se" again. I remember you

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1 used it in relation to the Serbs, not all bad guys per se. He's
2 saying "not necessarily the KLA per se." So not making a
3 generalisation about who's responsible, but saying amongst some
4 Albanians there was this profound sense of revenge given the
5 background. Do you agree with his assessment from the same time
6 period?

7 A. So, again, I mean, the same -- I mean, General Jackson had his
8 perspective and his view. I do agree, as I just noted, that this was
9 a situation where, of course, also emotions were running high for
10 very understandable reasons. But to be very honest, we were not
11 necessarily in the business of understanding the motives for some of
12 the acts that were happening every single day, I mean, that's
13 important for us to understand, but we were there to find a measure
14 to stop them and curb them or address them if and when it happened.

15 So we had many of these discussions among ourselves, and some of
16 those views were also expressed by some of my colleagues, and then
17 there were other views. And so I have to -- that's why I'm making
18 the point, from where I was sitting, from my interactions, to my
19 recollection, we knew that there were individual acts. I understood,
20 again, not only that there was no love lost but that people were, in
21 many cases -- I mean, that was sort of, quote/unquote, the whole
22 celebration over the liberation, you know, that there was a sense
23 that this oppressive regime that had existed before was now -- was
24 now gone, and they did not want either the representatives of that or
25 the stakeholders in that to continue their presence in Kosovo. We

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1 understood all of this.

2 And, nonetheless, also for reasons that I tried to explain
3 yesterday, my impression, the impression of some of my colleagues was
4 certainly these were not just random acts of violence. And I'm
5 referring now to these types of things that we've seen over a number
6 of these reports that I was presented with over the last few days.

7 Q. Well, is it right, I mean, they weren't random in the sense that
8 people were returning, finding their houses destroyed, finding
9 bodies, and then in some cases acting in revenge because of what they
10 saw? So it had the appearance of a pattern of being organised
11 because this was happening in a number of places when people decided
12 to take the law into their own hands wrongly. But isn't that an
13 equally understandable interpretation was what was happening on the
14 ground?

15 MS. IODICE: Objection, argumentative.

16 PRESIDING JUDGE SMITH: Yes. He's stated his position, and
17 you're now just arguing with him about the meaning.

18 MR. DIXON:

19 Q. Well, if I can put it this way. You talk about a pattern and
20 being organised. Revenge attacks by some people can also equally
21 look as though they are taking place according to a similar pattern.
22 The same things are happening in a number of different places. Isn't
23 that right, from your experience?

24 A. Mr. Defence Counsel, as I've, again, stated on a number of
25 occasions, I do not exclude now that there were acts of -- random

1 acts of -- acts of violence, that they were revenge, and violence in
2 whatever form, and I never have. Of course, these things happen, and
3 there were probably also a number of those.

4 But I also tried to explain now, on a number of occasions, that
5 the way this was conducted, sometimes systematically identifying or
6 -- or those were some of the informations that really -- there was
7 one neighbourhood, there was overnight a lot of activity. Then one
8 neighbourhood, the next day a lot of the Serbs were fleeing. Then
9 we -- some of -- not me necessarily personally, but colleagues spoke
10 to some of those people packing up and leaving, or they spoke and
11 came to us and said, "Last night they told us: If you're not out by
12 tomorrow" -- so these don't have the hallmarks of random acts,
13 spontaneous acts of violence and retribution. They have the
14 hallmarks of some form of organisation in that respect.

15 And for us, I think I referred yesterday, we had a longer
16 discussion over rules of engagement and performance of different
17 military contingents there. That's why we had such a discussion and
18 went to KFOR a number of times and said, "We need more presence in
19 the street. We need more patrolling at night in particular," because
20 that's when a lot of these things would happen. And as a result of
21 that, we then saw, particularly in Prishtine, which I remember most,
22 more presence of KFOR, more patrolling, particularly at night.

23 So I'm just saying -- giving you some impression -- some of the
24 occurrences that formed or informed our impression that these were
25 not just random acts of individual violence, but there was some form

1 of plan and organisation behind it.

2 Q. I'm not going to go any further other than to get you to
3 confirm, I think you've said it already, that this was your
4 impression, but you didn't yourself conduct any particular
5 investigations into who was responsible? That's right, isn't it? If
6 you could just answer that question shortly.

7 MS. IODICE: Asked and answered yesterday.

8 MR. DIXON: Well, it arises from what he's said now. He's
9 mentioned an incident --

10 PRESIDING JUDGE SMITH: You may answer.

11 THE WITNESS: I personally did not conduct any investigation.

12 PRESIDING JUDGE SMITH: That's the answer. Thank you.

13 MR. DIXON: Okay. Thank you.

14 Q. Moving on swiftly. I only have a few more questions. Going
15 back to that OSCE interview, if you could just look at one other
16 part, please, Mr. Strohmeyer, and this is where it says in the middle
17 of the page:

18 "He mentions quickly the list."

19 And he says "the buildup of a reliable police force" is
20 important and "to prepare for elections."

21 So here there is a recognition of what I was highlighting
22 earlier, that in the future there are going to be elections for local
23 institutions. That's right, isn't it? A short answer, please.

24 A. Yes, of course. I mean, part of the plan was to prepare for
25 elections. I'm not sure we're speaking about a specific timing or

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1 that these were going to happen in a few weeks.

2 Q. Okay. We'll come on to that. Over the page, please:

3 "Everts has been frequently in contact with leading Kosovars."

4 You see that at the top?

5 "'The only one, who I don't know well is Rugova, although I have
6 been speaking a lot to his people. Incidentally, according to my
7 opinion I think that there should be an even-handed approach towards
8 the three major parties, Rugova unjustifiably was selected for
9 special treatment. He visited the Pope and was received by the
10 Spanish King.'"

11 Were you aware that the OSCE were of the view that, in fact,
12 Rugova was somebody who was getting particular special treatment as
13 opposed to anyone else?

14 MS. IODICE: Objection. This is beyond the scope of the Judges'
15 questions.

16 MR. DIXON: It goes to the issue of the parallel structures --

17 PRESIDING JUDGE SMITH: Overruled.

18 MR. DIXON: -- and the KLA being the main body and no one else
19 being around.

20 PRESIDING JUDGE SMITH: The objection is overruled.

21 You can answer.

22 THE WITNESS: I did not know that Mr. Rugova was seeing the Pope
23 and the Spanish king. Maybe actually the visit of the Pope, now that
24 I see it, sort of rings a bell. But I was not in detail informed of
25 his whereabouts or dealings outside of Kosovo.

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1 MR. DIXON:

2 Q. "'This implies a certain unbalance,'" it goes on, "'because one
3 becomes partial; we should not forget that the war has changed the
4 situation drastically. The UCK for instance has become rather
5 popular'."

6 So this seems to suggest that we need to take the KLA into
7 account, not the other way around, that it's the KLA that's dominant
8 and we need to take Rugova into account. Were you aware of this
9 analysis at the time from the OSCE?

10 A. Okay, again, Mr. Everts expresses a view. I mean, I don't think
11 I ever said that the UCK was not becoming more popular or didn't have
12 a backing. So I have no reason to fundamentally disagree. What I
13 can tell you, just as background, that the relationship between
14 Mr. Everts and the rest of the UNMIK leadership wasn't always easy at
15 times. So these are very generous observations that he's entitled
16 to, but we may have had in parts slightly different views or
17 observations among ourselves or at least in the way we would present
18 them.

19 Q. Well, maybe finally we can just agree on this then. He says
20 here:

21 "When elections can be held, will also depend on the question
22 how the creating of political parties will develop."

23 And then refers to the Rambouillet agreement, "'a period of nine
24 months was mentioned'" - that's in fact Article IV(2), so that's
25 actually in the accords - "says Everts. 'I prefer to think of a time

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1 schedule of one [to] two years.'" "

2 So he is envisaging here, going back to your earlier answers,
3 that there would be elections, there would be institutions set up
4 across government in due course locally. That's right, isn't it?

5 A. That's what he says in this interview or press release. I
6 cannot tell you whether that was the general view held at the time in
7 UNMIK. I'm not sure he represents that view. And as I said, there
8 were over some of -- I'm not saying this specific one, but I recall
9 other statements when -- that led to some tensions with Mr. Everts
10 over those statements.

11 So I don't want to pass any judgment on them. All I'm saying is
12 I don't -- I cannot tell you that this reflects, as far as the
13 elections schedule, for example, is concerned, and the timing,
14 whether this reflects the thinking overall in the UNMIK leadership at
15 the time.

16 Q. Well, do you not know what the thinking was in UNMIK at the
17 time? I mean, you were there.

18 A. As far as the election schedule --

19 Q. Yes.

20 A. -- was concerned? I don't remember that, no. I was not
21 involved.

22 Q. Okay.

23 A. Because if I'm not mistaken, the specific setup of the UN -- of
24 the UNMIK presence I think gave a large part of the election
25 preparations and development to the OSCE, so it would have been

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1 understandable that they advance and have an interest in advancing
2 that part of their mandate.

3 Q. Well, finally, without splitting hairs on the exact number of
4 months, you agree that that was the thinking overall, that we are
5 going to move towards that point? You weren't going to be there
6 forever?

7 MS. IODICE: Asked and answered.

8 MR. DIXON:

9 Q. Do you agree with that?

10 PRESIDING JUDGE SMITH: He can answer that.

11 Go ahead.

12 THE WITNESS: Yeah, as I said before, I mean, obviously, we
13 refer to it as a transitional, and Mr. Everts is very clear that we
14 were not for the -- for eternity going to administer Kosovo, and that
15 we would have to hand over, as we had -- as we were in other parts of
16 the world, and have done so, and this is usually by way of organising
17 elections. And elections was very clearly from the outset part of
18 our game plan.

19 MR. DIXON:

20 Q. Thank you very much. Those are my questions.

21 PRESIDING JUDGE SMITH: Thank you, Mr. Dixon.

22 It's time for a half-hour break.

23 MR. TULLY: I overheard that from Judge Mettraux. I have five
24 minutes of questions, Your Honour.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. TULLY: I'll aiming to really keep it down. Thank you.

2 MR. ELLIS: I may do, but I'm grateful for the break now. It
3 will help to clarify that.

4 [The witness stands down]

5 PRESIDING JUDGE SMITH: Thank you.

6 [Microphone not activated].

7 --- Recess taken at 11.01 a.m.

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

9 PRESIDING JUDGE SMITH: Bring in the witness, please.

10 MR. DIXON: Your Honours, while the witness is being brought in,
11 could I just move for the -- Your Honour, while the witness is being
12 brought in, could I just move for the admission of that OSCE
13 interview of Mr. Everts. It's SITF40009162 to 9163. Just those two
14 pages, please.

15 PRESIDING JUDGE SMITH: Any objection?

16 MS. IODICE: No, Your Honour.

17 PRESIDING JUDGE SMITH: No objection is heard. SITF40009162 to
18 9163 is admitted.

19 THE COURT OFFICER: Thank you, Your Honours. And it's admitted
20 with D -- I'll do it again, 2D00040. It's classified as
21 confidential. Thank you, Your Honours.

22 PRESIDING JUDGE SMITH: Thank you.

23 MR. DIXON: Thank you, Your Honours.

24 [The witness takes the stand]

25 PRESIDING JUDGE SMITH: A few more questions, Mr. Strohmeyer.

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1 We're getting close to the end. Please give Mr. Tully your
2 attention.

3 MR. TULLY: Thank you, Mr. President.

4 Further Cross-examination by Mr. Tully:

5 Q. We're very close to the end, Mr. Strohmeyer. I have five
6 minutes of questions. I think they can be answered with "yes" and
7 "no." Please don't let that limit you if you feel you need to
8 explain, but let's try and stick to "yes" and "no".

9 I'm only asking a question about one question you were asked by
10 the Judges, and that was by Judge Barthe yesterday at page 134 of the
11 realtime transcript, and this related to threats of the VJ and
12 Serbian forces and their re-entry into Kosovo. So I'll read out the
13 question in part and I'll skip ahead of the bits that aren't relevant
14 to the question.

15 So at line 16 of 134, Judge Barthe read to you from paragraph 22
16 of Preparation Note 2, and you're recorded as saying you remembered
17 that:

18 "... there was instability and larger security issues relating
19 to Serbian forces wanting to reenter Kosovo along the south-eastern
20 border. There were always tensions in Mitrovice and Kosovo Polje.
21 There was a fear for re-penetration and discussions around the
22 Serbian forces. When the internationals arrived, nobody believed
23 Serbian forces would simply withdraw."

24 And Judge Barthe asked you if you recall saying that last week,
25 and your answer was, in part:

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1 "... maybe Milosevic had announced that Serbian assets or agents
2 would reconnect with assets on the ground. And so that's how I was
3 asked whether I was aware that there were such elements operating on
4 the ground, and I said no."

5 And then further down, Judge Barthe elaborated on the question
6 and said:

7 "My question ... Mr. Strohmeyer, against this background, and in
8 light of what you personally saw and heard, was redeployment of the
9 JNA and the Serbian forces and the resumption of hostilities in
10 Kosovo a concern among members of the international community,
11 including your office, during your time in Kosovo ..."

12 And skipping down:

13 "I understood your testimony on page 26 of our realtime
14 transcript ... to mean that you were not privy to discussions on this
15 issue and therefore cannot recall details. But I assume you can say
16 whether or not there were concerns about Serbian forces being
17 redeployed or not."

18 And then skipping to page 136. Part of your answer says:

19 "There was -- just to say, it wasn't our pre-eminent concern,
20 but there was a concern that pockets or occurrences, particularly in
21 those first days while Serbs were still -- had a larger presence,
22 while the JNA was in part still there ... there was a concern that
23 there could be ... hostility coming from that side."

24 You remember the questions and the answer you gave; yes or no?

25 A. Yes.

1 Q. Okay. So do I -- you don't need to restate the reasons that you
2 gave to the Judge, but do I understand that your answer is that you
3 are confirming, generally speaking, that the re-entry of Serbian
4 forces existed amongst the international community while you were
5 there in Kosovo?

6 A. Sorry, that concerns or fears over that?

7 Q. That concerns of the re-entry of Serbian forces into Kosovo,
8 those fears generally existed, you recall, amongst the international
9 community. That's what I understand your answer to mean at page 136,
10 which is:

11 "... it wasn't our pre-eminent concern, but there was a concern
12 that pockets or occurrences, particularly in those first days while
13 Serbs were still -- had a larger presence, while the JNA was in part
14 still there ... there was a concern ... there could be some hostility
15 ... from that side."

16 A. Yes, in the very early days there was a concern, and I believe
17 yesterday I expressed that we were witness to a shootout and various
18 things. What I do not recall, whether this was -- and that's what I
19 elaborated on, whether there were organised pockets, whether there
20 were plans to redeploy and connect people from Serbia over there. So
21 I was not privy to any of those discussions.

22 Q. That's my next question. So when you say you weren't privy to
23 all of the details, am I right that one of the key details that was
24 missing from the information you had at your disposal was, and in our
25 submission or -- or I'll put it to you that it is a key detail, is

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1 you did not have information about how likely it was for those fears
2 to be realised; is that accurate?

3 A. Yes.

4 Q. Okay. Would you agree with me that Mike Jackson, General Sir
5 Mike Jackson would be a person who would have access to the
6 information which would inform a full-spectrum analysis of whether
7 that was likely or not?

8 A. I would hope so, yes.

9 Q. Yes, thank you.

10 MR. TULLY: Mr. Court Officer, can I please have on screen --
11 sorry, I think we need to go to private session for this. It's a 107
12 document.

13 PRESIDING JUDGE SMITH: Into private session, please,
14 Mr. Court Officer.

15 [Private session]

16 [Private session text removed]

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1 [Private session text removed]

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1 [Private session text removed]

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22 [Open session]

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

24 Thank you.

25 PRESIDING JUDGE SMITH: Thank you.

1 Mr. Strohmeier, this completes your testimony. We thank you for
2 being with us, for sharing your information. It was a long two and a
3 half days, but thank you very much for that. We wish you the best in
4 the future. You may leave the courtroom now. You've satisfied your
5 obligation to the Court.

6 THE WITNESS: Thank you, Your Honour.

7 [The witness withdrew]

8 PRESIDING JUDGE SMITH: I've been told the other witness, the
9 next witness is ready to begin. We will take a ten-minute break and
10 come back to the courtroom at that time and start. So thank you.
11 We're adjourned for ten minutes.

12 --- Break taken at 11.42 a.m.

13 --- On resuming at 11.52 a.m.

14 PRESIDING JUDGE SMITH: We'll now start hearing the evidence of
15 Prosecution Witness W04874.

16 Madam Court Usher, please bring the witness in.

17 MR. MISETIC: Mr. President, just so you're not misled,
18 Ms. Tavakoli will be cross-examining for the Thaci Defence.

19 [The witness entered court]

20 PRESIDING JUDGE SMITH: Good afternoon, Mr. Clark.

21 THE WITNESS: Good afternoon.

22 PRESIDING JUDGE SMITH: The Court Usher will provide you with
23 the text of the solemn declaration which you are asked to take
24 pursuant to our Rule 149(5). Take a look at the document and then
25 read it aloud.

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1 THE WITNESS: Conscious of the significance of my testimony and
2 my legal responsibility, I solemnly declare that I will perform my
3 expert analysis conscientiously and to the best of my knowledge, and
4 that I will state my findings and opinion accurately and completely.

5 WITNESS: JOHN CLARK

6 PRESIDING JUDGE SMITH: Thank you. You can be seated now.

7 Today we will start your testimony which is expected to last
8 approximately two days. As you may know, the Prosecution will ask
9 you questions first, and then the Defence has right to ask questions
10 of you, and members of the Panel might have questions for you.

11 The Prosecution estimate for your examination is two hours. The
12 Defence estimates that it will need close to five hours. As regards
13 each estimate, we hope that counsel will be judicious in the use of
14 their time. The Panel may allow redirect examination if conditions
15 for it are met.

16 Witness, please try to answer the questions clearly with short
17 sentences. If you don't understand a question, feel free to ask
18 counsel to repeat the question or tell them that you don't understand
19 and they will clarify.

20 Also, please try to indicate the basis of your knowledge of
21 facts and circumstances that you will be asked about.

22 In the event you are asked by the SPO to attest to some
23 corrections made regarding your statements, you are reminded to
24 confirm on the record that the written statement, as corrected by the
25 list of corrections, accurately reflects your declaration.

Witness: John Clark (Open Session)

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1 Please also speak into the microphone and wait five seconds
2 before answering a question, and then speak at a slow pace for the
3 interpreters to catch up.

4 During the next days while you are giving evidence in this
5 Court, you are not allowed to discuss with anyone the content of your
6 testimony outside of the courtroom. If any person asks you questions
7 outside this Court about your testimony, please let us know.

8 Please stop talking if I ask you to do so and also stop talking
9 if you see me raise my hand. These indications mean that I need to
10 give you an instruction.

11 If you feel the need to take a break, please let us know and we
12 will accommodate it.

13 So we begin now with the questions from the Prosecution. They
14 are seated to your left. Please give them your attention.

15 Mr. Pace, you have the floor.

16 MR. PACE: Thank you, Your Honour.

17 Examination by Mr. Pace:

18 Q. And good morning, Dr. Clark.

19 A. Good morning.

20 Q. We've met before, but I'll introduce myself again. I am
21 James Pace, a Prosecutor with the SPO, and I'll be asking you
22 questions for the next two hours or so.

23 Could you please first state your name for the record.

24 A. My name is John Clark.

25 Q. What is your date of birth?

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1 A. 5 September 1951.

2 MR. PACE: I'd like to call up 103133-103135. This and the
3 remainder of the items I'll be calling up today are not for public
4 broadcast.

5 Q. Dr. Clark, is that your CV on your screen?

6 A. Yes, it is. Yes.

7 Q. Are its contents accurate to the best of your knowledge?

8 A. Yes. It was compiled four years ago, but it's the same.

9 Q. Are there any additions of significance you'd like to note?

10 A. Nothing of significance, no.

11 MR. PACE: Your Honour, we seek admission of the CV. As with
12 the last expert witness, in line with decision F2787, we propose that
13 this be MFI'd and we'll deal with the admission of all evidence of
14 this expert at the end of examination.

15 PRESIDING JUDGE SMITH: Thank you. Please mark it MFI. We'll
16 consider this at the end of the testimony.

17 THE COURT OFFICER: Thank you, Your Honours. 103133 to 103135
18 will be marked for identification with P01989, and it's classified as
19 confidential. Thank you, Your Honours.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 MR. PACE: Thank you. We can take this down, and instead I'd
22 like to call up 103108-103132, please.

23 Q. Witness, on your screen now are two documents, the one on the
24 right in English and on the left in Albanian. Focusing on the one on
25 the right in English, did you prepare this report?

Witness: John Clark (Open Session)

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1 A. I did, yes.

2 Q. And did you prepare this report following the receipt of a
3 letter of instruction from the SPO?

4 A. Yes.

5 MR. PACE: Let's please take the Albanian version down and
6 instead call up 102430-102442. Thank you.

7 Q. And, Witness, we see the document on the left is a letter of
8 instruction addressed to you and dated 30 July 2021. Is this the
9 letter of instruction on the basis of which you prepared the report
10 which is now on the right of our screens?

11 A. Yes.

12 Q. Do you recall being provided with a number of documents along
13 with this letter of instruction?

14 A. Yes, I was. Quite a number of documents, yeah.

15 Q. And is it correct that this letter of instruction contained both
16 general questions about forensic pathology and specific questions
17 about a number of the documents provided to you?

18 A. Yes.

19 Q. Do you recall reviewing the documents you were asked about in
20 the letter of instruction and making specific reference to such
21 documents in your expert report?

22 A. Yes.

23 Q. Does the expert report contain your independent opinion
24 concerning the matters addressed therein?

25 A. Yes, it does.

Witness: John Clark (Private Session)

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Examination by Mr. Pace

1 Q. Do you recall recently being provided with an opportunity to
2 review and provide clarifications in relation to your expert report?

3 A. Yes.

4 Q. Do you recall noting that there was one issue in the report
5 which you wanted to address?

6 A. Yes. Yes, there was.

7 Q. And is it correct that that issue concerned a seeming
8 inconsistency in relation to the autopsy of one or more individuals?

9 A. Yes, it was some confusion over one particular post-mortem
10 report.

11 MR. PACE: And we can take the document on the left down.

12 And, Your Honour, at this stage, I would ask to go into private
13 session for the well-being of family members of a victim. I estimate
14 I won't need more than five minutes in private session.

15 PRESIDING JUDGE SMITH: Into private session, please,
16 Mr. Court Officer.

17 MR. PACE: Let's keep the -- oh, sorry.

18 [Private session]

19 [Private session text removed]

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Witness: John Clark (Private Session)

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Examination by Mr. Pace

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Witness: John Clark (Private Session)

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Examination by Mr. Pace

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Witness: John Clark (Private Session)

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Witness: John Clark (Private Session)

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Witness: John Clark (Private Session)

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Examination by Mr. Pace

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Witness: John Clark (Private Session)

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1 [Private session text removed]

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5 [Open session]

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

7 Thank you.

8 MR. PACE: Thank you.

9 Q. Witness, now putting aside the issue we just addressed in
10 private session, is the information provided in the expert report,
11 which is still on our screens, accurate and truthful to the best of
12 your knowledge and belief?

13 A. Yes, it is.

14 Q. Does your expert report accurately reflect what you would say if
15 you were examined about the issues or the items addressed therein?

16 A. Yes.

17 MR. PACE: Your Honour, we seek admission of the letter of
18 instruction and expert report. Since the Panel will only rule on
19 admission later, for now we ask for an MFI for each them. And at
20 this stage we also tender the source material related to the expert
21 report into evidence, and those ERNs are set out in Annex 1 of W4874
22 preparation note, which is 124449-124455.

23 As we did last time, we understand the ruling will come at the
24 end. There is no need to MFI the source material at this stage
25 because it's rather lengthy. It will be good to MFI the expert

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1 report and letter of instruction for present purposes.

2 PRESIDING JUDGE SMITH: Are you also offering the prep note?

3 MR. PACE: No.

4 PRESIDING JUDGE SMITH: Any objection?

5 MS. ROWAN: Your Honour, we'll deal with admissibility in due
6 course. No issue with documents being MFI'd.

7 MS. TAVAKOLI: The same for us. Thank you.

8 PRESIDING JUDGE SMITH: All right.

9 MR. TULLY: As for us.

10 PRESIDING JUDGE SMITH: I take it nobody else objects.

11 So the letter of instruction, which is 102430 to 102442, will be
12 granted an MFI.

13 THE COURT OFFICER: It will be marked for identification with
14 P01990, classified as confidential.

15 PRESIDING JUDGE SMITH: And then the pathology report is 103108
16 to 103132, and that will be granted an MFI.

17 THE COURT OFFICER: This will be MFI'd with P01992, classified
18 as confidential. Thank you, Your Honours.

19 PRESIDING JUDGE SMITH: All right.

20 Go ahead.

21 MR. PACE: Thank you.

22 We can keep the expert report on our screens, and next to it
23 let's please call up SITF00414169-SITF00414223-ET. And in this
24 document, let's please turn to the page ending 414178. Thank you.
25 And in the expert report, which is the document on the right, let's

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1 please turn to the page 103114.

2 Q. Now, Witness, we're in open session, so there is no need to name
3 the victim's name. As you can see at this page of your report,
4 you're referring to the item which is on the left of our screens.
5 You can see the victim names are the same and there's also the ERNs,
6 which are the registration numbers. Can you see that on your screen?

7 A. Yes.

8 Q. Now, in this page of your report, at the top, you state as
9 follows:

10 "Six gunshot wounds are described but the trajectories are
11 extremely doubtful, at least for the second and third described
12 below."

13 And then if we can scroll down in the document on the right,
14 please, in response to question 1, you say, in part:

15 "Whatever the exact number of gunshot wounds in this man and the
16 tracks through [which] the body (the latter remaining very
17 questionable indeed) there is no question that his death was still
18 from gunshot trauma i.e. it was violent."

19 Now, Witness, my question is can you explain why there is no
20 question the victim's death was still from gunshot trauma despite the
21 fact that you consider the trajectories extremely doubtful, at least
22 for the second and third ones described?

23 A. Yes. The first gunshot injury was a very straightforward
24 gunshot injury with an entry wound on the left side of the chest,
25 passing through internally in the chest and exiting in the back, and

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1 that was a very straightforward front-to-back gunshot injury,
2 damaging structures in between, and that would have been a fatal
3 injury. So he's died from a straightforward gunshot injury to the
4 chest.

5 What is problematical, however, is the other two injuries are
6 both on the back of the body, and we have, for each of them, the
7 entrance and exit wounds close by, so both on the back, which would
8 be very unusual unless the gunshot was a very shallow angle across
9 the back, which I suppose is possible, but there's little to indicate
10 from the entrance wounds that that was the case. You would expect
11 them to be a sort of slightly odd shape. It may be so, it may be so,
12 but it would mean that he would have to be more or less lying on his
13 side and a couple of very tangential gunshot injuries going across
14 his back. That may be the answer. I don't know. I don't have any
15 photographs to help me there. But whatever, he does at least have
16 one straightforward fatal gunshot injury.

17 Q. Thank you. And, Witness, just so that the record is clear, I
18 see that you have some documents in hard copy on your desk. Could
19 you just briefly tell us what those are so that it's on the record,
20 please.

21 A. Yes. I have my report, which has already been presented. I
22 have copies of the translated versions of the post-mortem reports I
23 am referring to. And I have a number of body diagrams, which I have
24 prepared which just indicate these various injuries.

25 Q. And just for clarity, are the body diagrams you have with you

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1 the same ones that you handed over to myself and my team on Monday?

2 A. Yes.

3 Q. Thank you.

4 MR. PACE: In the report on the left, let's please turn to page
5 ending 414189. And in the expert report, which is on the right,
6 let's please go to page 103117. And we can scroll down in the
7 document on the right, please, to the bottom. Thank you.

8 Q. Once again, Witness, we don't need to mention the victim's name,
9 but as you can see, at the page of your report that's on your screen
10 on the right, you're referring to the victim addressed on the
11 document on the left. Can you see that?

12 A. Yes.

13 Q. Now, in your expert report, just before the two bullet points we
14 can see at the bottom of the page, you state the following:

15 "... some of the trajectories appear questionable."

16 And my question to you is would the fact you consider some of
17 the trajectories appearing questionable have any impact on the
18 assessed cause of death for this victim, which is multiple gunshot
19 injuries?

20 A. No, they don't. I mean, he still died of multiple gunshot
21 injuries. It's just that I somewhat question the various tracks, the
22 entrance and the exit wounds.

23 Q. And in your experience, how easy or difficult or on a scale is
24 it to, let's say, track or map the trajectories of gunshot wounds, in
25 particular when there are multiple gunshot wounds?

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1 A. Well, it's not an easy job, particularly with lots of wounds in
2 the same sort of general area. And it's -- although bullets tend to
3 go through a body and out in the same direction, sometimes they can,
4 if they strike bone internally, be deflected or bits break off and
5 can get unusual exit wounds, and that may have been the case here.

6 But I think the bulk of the injuries do match up, but there's
7 just one or two which I would question. But, again, in the end, it
8 doesn't really make a great deal of difference as to the cause death.

9 MR. PACE: We can take both documents down, and I am going to
10 change subjects and change victims fully.

11 Q. Could you tell the Court briefly what livor mortis means.

12 A. Livor mortis, it's not a term that I use, but it's the same as
13 -- the terms are lividity or hypostasis. It's one of the standard
14 changes which occur in a body -- physical changes which occur in a
15 body after death. Briefly, your temperature drops, the blood in the
16 body drains to the lowest point of gravity, and that is livor mortis,
17 lividity, hypostasis. So if you die on your back, you'll get this
18 purple staining of the skin on your back. If you die on your front,
19 you get it on your front. If you die standing up, you'll get it in
20 your legs. It's just the draining of the body. That's what that is.

21 And briefly, the other two changes are rigor mortis, where the
22 muscles become stiff; and then decomposition, when the body starts to
23 degenerate.

24 Q. In general terms, if you can answer that, how soon after the
25 moment of death does the process you just described - in particular,

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1 lividity, hypostasis, livor mortis - generally set in?

2 A. Livor mortis would generally appear possibly three to four hours
3 after death. It's not an immediate phenomenon. It takes a few
4 hours, two, three, four hours or so to show up. And it gives this
5 general purple discolouration, pink or purple discolouration of the
6 skin.

7 Q. And can a forensic pathologist like yourself generally easily
8 distinguish livor mortis, lividity, which sets in, as you said, after
9 death, to, for example, bruising which occurs before death?

10 A. Generally one can because of the distribution. Occasionally
11 there can be some doubt. A specific bruise can look like that. But
12 generally it's reason -- it's straightforward.

13 MR. PACE: I'd like to call up P00858. And there's no need to
14 call up the English translation. We'll start at page SITF00189124,
15 please.

16 THE COURT OFFICER: Your Honours, if I can use the opportunity
17 to correct myself. The ERN 103108 to 103132 should have been
18 assigned the MFI P01991 instead of P01992. Thank you, Your Honours.

19 PRESIDING JUDGE SMITH: So noted. Thank you.

20 MR. PACE: Thank you.

21 And in the document on our screens, I'd like to turn to page
22 SITF00189124, please. Yes. If we could zoom in on the image.
23 Perhaps zoom out a little bit so we can see the full image. That's
24 good. Thank you.

25 Q. And, Witness, for now I'm just going to ask you to take a look

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1 at the images as they appear on your screen. We're going to go
2 through a couple of them, and then I'm going to stop and ask you
3 questions about some of them in particular.

4 So this is the first one.

5 MR. PACE: I'd now like to turn to the next page, 189125. And
6 we can -- that's good over there.

7 Q. I'd like you to take a look at this image for now, Witness.

8 MR. PACE: Let's now go to the next page, please, 189126.

9 Q. And this is the first image which appears. And we can scroll
10 down slowly so that we can see the image at the bottom of this page
11 as well.

12 MR. PACE: And if we can zoom in onto the victim over here.
13 Thank you. Let's now turn to the next page, 189127. And the same
14 there. We'll start with the photo at the top. And we can scroll
15 down slowly. Zoom in a little bit. And scroll down slowly. And now
16 on to the photo at the bottom of the page.

17 And one final page will be the next one, which is the one ending
18 189128. Again, two images. We can zoom in a little and scroll down
19 slowly, starting with the first image. And now on to the second at
20 the bottom.

21 Now, let's stop on this image on our screens at the moment. So
22 for clarity of the record, this is the bottom photograph in the page
23 ending 189128.

24 Q. Witness, could you tell us what you see in this image?

25 A. I see two main things. One is post-mortem lividity, which you

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1 can see there's the general purple discolouration of the inside and
2 towards the back of both thighs. That sort of general pinkish-purple
3 colouration. In addition, however, on the front of the left thigh,
4 towards the bottom of the thigh, there's a much broader purple area,
5 darker purple area, which is clearly bruising and is something which
6 has clearly occurred in life. It's a broad area of bruising which
7 has clearly been caused by some -- something solid striking the body.
8 There's a hint of lines in it that I can see, so it could have been
9 some sort of long instrument which has been used to hit it.

10 But, anyway, it's a large bruise, and it contrasts nicely with
11 the lividity elsewhere.

12 Q. And with the Court Officer's or Court Usher's assistance, could
13 I ask you to mark up only if you could perhaps delineate what you
14 described as the bruise as opposed to the lividity.

15 A. [Marks].

16 Q. Thank you. That's clear.

17 MR. PACE: And, Your Honour, we would in due course tender a
18 screenshot of this for admission for clarity of the record. Perhaps
19 that can be given an MFI.

20 PRESIDING JUDGE SMITH: Please give 189128 an MFI number.

21 THE COURT OFFICER: Your Honours, this will be saved with
22 REG01199, and it will be then MFI'd with MFI P01992. Thank you,
23 Your Honours.

24 MR. PACE: And let's please go up towards the -- oh, sorry, I'll
25 allow the Court Officer to finish the screen capture.

Witness: John Clark (Open Session)

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1 And now on the same page, let's please scroll up to the top
2 photo. Yes, I see the marking remains, so I understand.

3 Q. Just bear with us, Mr. Witness. We're just going to reopen the
4 document.

5 MR. PACE: The page is 189128. Thank you.

6 Q. So we'll focus on this image for now. I think that's good for
7 the moment. And, Witness, can you tell us what you see in this
8 image?

9 A. Well, again, I can see two things, two main things. One is the
10 post-mortem changes particularly in the legs, the lividity in the
11 back of the thighs, and the bending up of the lower legs in position
12 of rigor mortis. So these are just post-mortem changes.

13 On his back, again, there's a better picture but --

14 MR. PACE: If we can perhaps zoom in onto the back for a moment.

15 THE WITNESS: I can -- yeah. I think there was a better
16 photograph, but --

17 MR. PACE:

18 Q. We will get there.

19 A. But, again, you have a mixture of lividity on the back, a kind
20 of purple discolouration. But on top of that, there are at least
21 bruises, if not abrasions, actually scraping of the skin, on the
22 upper half of the back. These darker -- darker areas which are,
23 again, blunt force trauma of some sort. Something hitting the body.

24 Q. And, in brief, could you explain what leads you to assess that
25 as blunt force trauma towards the -- on the back of the victim?

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1 A. Well, I can recognise that as bruising, and probably on top of
2 that some, as I say, abrasion, which is grazing of the skin. And
3 these are both forms of what we call blunt force trauma; in other
4 words, something solid hitting the body or the body hitting something
5 solid as opposed to something sharp, like a knife or a bullet injury,
6 which is a different type. So this is what we call blunt force
7 trauma.

8 Q. In the same document --

9 MR. PACE: There's no need for a screenshot of this. In the
10 same document, let's please go to page ending 189126. And the
11 photo -- yes, this one on the top of the page. That's good.

12 Q. And now, Witness, can you tell us what you see here? I
13 understand this seems to be similar to what we were just looking at,
14 but perhaps this is the more clear one that you were referring to.

15 A. Yes, and there's something extra here which we can see. I mean,
16 there's -- clearly the whole of the upper half of his back,
17 particularly on the right side is very discoloured, and that to me
18 looks like deep bruising. But you may notice in the middle part of
19 the back, on either side there are diagonal lines. There's two
20 diagonal, parallel lines on the right side, and then two vaguer ones
21 on the left-hand side running diagonally. These are what we call
22 typically call tramline bruises, and they are indicative of somebody
23 being struck by some long, usually rounded object, like a bit of wood
24 or even a rifle barrel or some -- something rounded, police
25 truncheon, something like that, and it typically creates this

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1 parallel bruising, which we call tramlines.

2 Q. And with the assistance of the Court Usher, could you delineate
3 on the image on your screen which exactly -- which parts you're
4 describing now as the tramline bruising.

5 A. I'll just draw circles around them. So that's one. And the
6 other one is over there.

7 Q. Thank you.

8 MR. PACE: And we'll tender this item in addition to the ones
9 we're tendering later, so a screenshot of this, please.

10 PRESIDING JUDGE SMITH: Do you want an MFI number attached to
11 that?

12 MR. PACE: Yes, please.

13 PRESIDING JUDGE SMITH: 189126 will be given an MFI number.

14 THE COURT OFFICER: Thank you, Your Honours. These markings
15 will be saved as REG01200 and will be MFI'd with P01993. Thank you,
16 Your Honours.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 We have a 1992 already. You're going to put them together?

19 [Trial Panel and Court Officer confers]

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 MR. PACE: Thank you. And if we could go to one last image or
22 revisit one last image from the same document, and that is at page
23 189124, please. Yes, thank you. And if we can zoom in on the image.
24 Scroll down a little bit. That's good.

25 Q. And, Witness, can you tell us what you see in this image?

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1 A. Yes. The main thing I can see is a couple of, at least two,
2 linear bruises, so lines of bruising, across the upper part of the
3 chest. You can see these dark areas where the shirt is pulled apart.

4 Q. Can we -- I'm sorry to interrupt.

5 MR. PACE: But can we zoom in on the chest area of the victim,
6 please. Thank you.

7 Q. Go on, Mr. Witness.

8 A. Yes, so you can see these dark areas. The lines, they probably
9 are tramline bruises again, I would imagine. It's difficult just to
10 see. But whatever, they're caused by something long hitting the
11 body. There's also a lesser injury on his nose.

12 Q. And focusing on the injuries you described on the chest area, in
13 your opinion could such injuries cause damage to the victim's
14 internal organs?

15 A. Probably unlikely. I mean, there may be other injuries that we
16 can't see underneath there. But at most they might fracture a rib,
17 but it's unlikely that they would damage any of the internal organs.

18 Q. And in the photograph we see - if we zoom out a little bit in
19 this one - that the victim is seated. Could you tell us whether
20 anything in this, and, more importantly, the other photographs that
21 we looked for this victim today, indicates whether or not the victim
22 may have been seated when he died or shortly thereafter?

23 A. Yes. Thinking back on the distribution of the lividity and the
24 rigor mortis, that fits entirely with him having remained in that
25 chair after death, and so everything becomes fixed in that position.

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1 So, yes, he -- if he has not died in the chair, he has been in the
2 chair after death as the post-mortem changes develop.

3 Q. So to be clear, if he didn't die in the chair, would it mean
4 that he was moved to the chair shortly after, or is that something --

5 A. Yes. That would be the logical explanation, yes.

6 Q. And, again, based on the various photographs of this victim that
7 you reviewed today, is there anything that you saw that could
8 indicate when the victim died, at least relevant to when the
9 photographs were taken?

10 A. I would think he's been dead at least a number of hours. He's
11 not just immediately dead. It could be several hours. I don't think
12 it's -- it's not several days because there's no decomposition signs.
13 So I don't know, it could be one, two days. It could be marginal --
14 it could be less than that, maybe.

15 MR. PACE: We can take this document down.

16 Q. And I just have one final and unrelated question for you,
17 Mr. Witness. Could you briefly explain what is meant by a tapered
18 projectile?

19 A. I'm not sure if I can. But I imagine -- it's not a term I would
20 use. I imagine it's a projectile which is coming to a sort of point
21 at one end.

22 Q. And when it comes to terms that you do use in your practice, are
23 there any particular terms you would use to describe a projectile
24 that is, as you said, coming to an end at one point?

25 A. I would just -- a projectile with a pointed end, simple as that.

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Cross-examination by Ms. Rowan

1 Q. Thank you.

2 MR. PACE: No further questions, Your Honour.

3 PRESIDING JUDGE SMITH: I take it, Ms. Rowan, you are going to
4 be first.

5 MS. ROWAN: Yes, Your Honour. I anticipate it will be the same
6 order as it was in the last expert instance. Thank you.

7 PRESIDING JUDGE SMITH: Go ahead.

8 Cross-examination by Ms. Rowan:

9 Q. Mr. Clark, good morning.

10 A. Hello.

11 Q. Well, afternoon now.

12 A. Yeah.

13 Q. I know that when you met with the SPO last week, one of the
14 first and understandable things that you asked the SPO was if they
15 knew the Defence line of questioning, because I'm sure you're anxious
16 to know where we might be going for the rest of the day. So perhaps
17 if I could start there and let you know the --

18 A. Yes, it was just a general --

19 Q. Of course.

20 A. General interest.

21 Q. Yes. So what I'd like to discuss with you this afternoon is,
22 first of all, look at the instructions that you received from the
23 Prosecution, so what you were asked to do by them and what you
24 weren't asked to do.

25 A. Yes.

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1 Q. A little bit about pathology as a science, and ask you to help
2 us with a little bit more in relation to terminology, which is
3 something you've been asked to do by the Prosecution already.

4 A. Yes.

5 Q. And then I would just like to go through your report with you --

6 A. All right.

7 Q. -- and to look in a little bit more detail at some of your
8 findings and expand a little bit more on some of the observations
9 that you have made.

10 A. Good.

11 Q. All right. So firstly, then, in terms of your instruction, is
12 it right, Mr. Clark, that you were initially instructed by the
13 Prosecution in this case in 2021?

14 A. Yes.

15 Q. And while in your professional career you are somebody who's had
16 a lot experience in the Balkans, you had not had involvement in any
17 of the cases that you were asked to examine by the Prosecution; is
18 that right?

19 A. No.

20 Q. And as you were asked by the Prosecution, it's right that you
21 were provided a package of material that accompanied your
22 instructions?

23 A. Yes.

24 Q. And that package of material related to ten deceased persons and
25 the reports concerning their ten deaths; is that right?

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1 A. Yes, I think it was ten. Yes.

2 Q. We've also dealt with an eleventh deceased today --

3 A. Right.

4 Q. -- that we'll also come on to deal with. But just for clarity
5 of the record, you did not conduct any of those original autopsies --

6 A. Not at all.

7 Q. -- is that right?

8 A. No.

9 Q. You weren't present when any of those autopsies were conducted?

10 A. No.

11 Q. You played no supervisory role in any of that work when it was
12 being done or after the fact?

13 A. No.

14 Q. And --

15 THE INTERPRETER: Interpreter's note: We kindly ask the
16 speakers to make a pause between question and answer. Thank you very
17 much.

18 MS. ROWAN:

19 Q. Mr. Clark, that would be my one of many warnings I'm sure I will
20 receive for going too quick this afternoon, but I will try to slow
21 down.

22 Was it made clear to you, Mr. Clark, that -- in terms of the
23 instruction that you had received, that the Prosecution, in the
24 course of this case, won't be calling the pathologists whose reports
25 we've looked at but they've asked you to look at those reports

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1 instead? Is that your understanding of what's taking place?

2 A. Yeah, that wasn't specifically made clear --

3 Q. Yes.

4 A. -- but it's my understanding of the point.

5 MS. ROWAN: Perhaps then if we could have your letter of
6 instruction, please, not for public broadcast. We now have an MFI
7 for it as 1990, please.

8 Q. Mr. Clark, as that's being brought up, the questions that I will
9 be asking you in relation to this letter very much focus on the black
10 letter of the letter itself. I appreciate that when you answered the
11 questions in your report, where you felt it necessary, you, of
12 course, provided an opinion that you thought was required of you.
13 But what I would just like to focus on is exactly what you were asked
14 specifically to do by the Prosecution.

15 Do you have a copy also of this letter with you or are you
16 working with us on screen?

17 A. No, I only -- I don't have that with me.

18 Q. Okay.

19 A. I'm working on the screen.

20 Q. No problem. So you can recognise that as the letter when you
21 were initially instructed, and we can see the date in the top
22 left-hand corner?

23 A. Yes.

24 Q. And it sets out in general terms there, we see at point II where
25 you were asked to set out your independent opinion in relation to the

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1 questions that were set out in Annex 1; is that right?

2 A. Yes.

3 Q. Just pausing there for a moment. Was it explained to you at any
4 stage during your dealings with the Prosecutor in this case that your
5 role in these proceedings is as an independent expert?

6 A. That was the implication, yes.

7 Q. Yes. And you understood that to be the case --

8 A. Yes.

9 Q. -- as you ordinarily would be?

10 A. Yes.

11 PRESIDING JUDGE SMITH: Ms. Rowan, you have to slow down. You
12 have to give a pause.

13 MS. ROWAN: Yes.

14 Q. Of course, everything that we say, Mr. Clark, is being
15 interpreted, and because we both speak in English, I forget to pause
16 to allow the interpreters to catch up with us.

17 All right.

18 MS. ROWAN: Mr. Clerk, could we please have page 3.

19 Q. And, Mr. Clark, we'll see here the first task that you were
20 given by the Prosecution was just to help define some medical terms
21 and also just assist with how pathology works in general.

22 A. Yes.

23 Q. Is that right?

24 MS. ROWAN: And then if we go over the page, please. Thank you
25 very much.

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1 Q. And you were then asked, with reference to the material that you
2 had been provided, to answer some specific questions by the
3 Prosecution.

4 MS. ROWAN: If we could go one more page, we can see an example
5 of that.

6 Q. We'll see here an example of some specific questions that you
7 were asked by the Prosecution; is that right?

8 A. Yes.

9 Q. And then when we see your report, your report follows that
10 structure and those questions as provided by the Prosecution; is that
11 right?

12 A. Yes.

13 Q. Yes. So what you do in your report is you answer the questions
14 that you were asked by the Prosecution?

15 A. Indeed.

16 Q. Indeed. Now, in terms of what you were not asked to do by the
17 Prosecution in this report, is it right that you were not asked by
18 them to comment on the quality of the underlying work that you were
19 looking at?

20 A. I think, as I recall, if you go back to page 1 of the
21 instructions --

22 Q. Of course, that would be of the PDF.

23 A. The report --

24 MS. ROWAN: Mr. Clerk, if you could assist, please. It ends
25 430. And if you could scroll down, please. Perhaps if we zoom out

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1 and scroll down.

2 Q. Mr. Clark, if you can stop us where you need it to be. Is it
3 that last line of that paragraph under the bullets:

4 "If there is [any] additional information beyond the scope of a
5 question that you believe would" --

6 A. Yes [Overlapping speakers] ...

7 Q. -- "provide additional clarity" --

8 A. Yes.

9 Q. -- "please feel free to include it."

10 A. Yes, and I used that quite widely.

11 Q. You did. And it's why I had stated at the outset what I am
12 asking questions about is the black letter of the instruction as
13 opposed to the answers that you did go on to provide.

14 A. Yes.

15 Q. I just want to be clear on the record what you were explicitly
16 asked to do.

17 A. Exactly.

18 Q. Yes.

19 A. And -- yes.

20 Q. No, pardon me, please continue.

21 A. Yes. But I took it from that that if I felt that other matters
22 were -- merited commenting on --

23 Q. Yes.

24 A. -- I was allowed to do that.

25 Q. And you did do that, in fact?

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1 A. I did do that.

2 Q. Yes. But in terms of the questions that you were asked about
3 your analysis of those underlying reports --

4 A. Yes.

5 Q. -- that were, of course, conducted by others --

6 A. Yes.

7 Q. -- one exercise you were not explicitly asked to conduct by the
8 Prosecution was to comment on the quality of those autopsies. Is
9 that correct?

10 MR. PACE: Objection, Your Honour. Asked and answered. The
11 witness also explained, and counsel is making an artificial
12 distinction between what is and is not black letter.

13 PRESIDING JUDGE SMITH: Sustained.

14 MS. ROWAN:

15 Q. Mr. Clark, you were not asked to perform a second autopsy on
16 these persons; is that right?

17 A. No.

18 Q. You were not asked, in terms, if you agreed or disagreed with
19 the conclusions and/or findings contained within those autopsies?

20 A. No.

21 Q. You were not asked to confirm the veracity of those findings in
22 your opinion?

23 A. Not specifically, no.

24 Q. No.

25 A. No.

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1 Q. You were not asked, in terms, whether or not you would adopt
2 those conclusions or findings as your own; is that right?

3 A. I think in the sense that I was being asked to comment on the
4 findings and any other matters I felt relevant that I had that right
5 to make comments such as I did.

6 Q. Yes. And where you felt it necessary to express your opinion on
7 the findings as you found them, you did so to the best of your
8 ability in the report?

9 A. Exactly.

10 Q. Yes. In terms of whether or not -- pardon me. Let me start
11 again. The Prosecution didn't ask you in your letter explicitly
12 whether or not you would take issue or challenge the findings in the
13 reports?

14 A. No, they didn't.

15 Q. And they did not ask you to outline to them in your report any
16 errors, omissions, or issues that you identified in the course of
17 your analysis; is that right?

18 A. No, not specifically. No.

19 Q. You do, in fact, do that.

20 A. I do.

21 Q. But you weren't asked to do that.

22 A. Well, I --

23 Q. It's not a criticism. It's just to be clear on what you were
24 and weren't asked to do.

25 A. Yes, but I think we've already covered that --

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1 Q. Yes.

2 A. -- I was -- I felt I was permitted to do that and I thought it
3 would be helpful --

4 Q. Yes.

5 A. -- to do so.

6 Q. No, Mr. Clark, to be clear, there is no criticism coming from
7 this side of the courtroom. It's just to be clear on what you were
8 and weren't asked to do, so we know where we're beginning and then
9 we'll get to where we're going.

10 A. Okay. That's fine.

11 Q. Now, in your report --

12 MS. ROWAN: We can take down the letter of instruction. Thank
13 you very much.

14 Q. In your report, as we've established, you do follow that order
15 of questioning that you were given by the Prosecution. And at the
16 beginning of each section for each deceased person, you provide a
17 summary, is that right, of findings?

18 A. Yes.

19 Q. Again just to be clear, that summary, are we correct to
20 understand that that summary is not a summary of your findings, but
21 that is a summary of the findings contained in the autopsies that you
22 looked at?

23 A. It's my interpretation -- summary interpretation of the findings
24 on the autopsy, yes.

25 Q. It's the summary of the findings as you understood them to be?

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1 A. Yes.

2 Q. In terms of the material that you were provided by the
3 Prosecution, just looking at photographs. Photographs are something
4 that would commonly accompany a written autopsy report; is that
5 right?

6 A. Yes.

7 Q. And as part of the material that you were provided with, you
8 were provided with photographs?

9 A. Not for the five/six shooting cases, no photographs at all.
10 There were some scene photographs, but no autopsy photographs --

11 Q. Yes.

12 A. -- and I'm not sure if any were taken, but anyway.

13 Q. Mr. Clark, you anticipated my next question. For some of the
14 autopsies, would you agree that the quality of the photographs was
15 poor?

16 A. Certainly in the second cases I looked at the quality of the
17 photographs was very poor.

18 Q. Yes.

19 A. I mean, the -- well, you've got to take two things: The quality
20 of the photographs or the quality of the reproduction.

21 Q. Yes.

22 A. You know, if you photocopy a photocopy of a photocopy, it loses
23 everything.

24 Q. Yes. And many of the photographs with which you were provided
25 were not digital images or original images, but they were multiple

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1 photocopies of those original images.

2 A. Yes.

3 Q. And we don't know how many times they had been copied.

4 A. No, I have to say I paid little attention to the photographs.

5 Q. You found them to be of little assistance; is that right?

6 A. Yes, generally. Yes.

7 Q. And then as you mentioned, we do, in this case, have a
8 collection of a number of deceased persons --

9 A. Yes.

10 Q. -- who were examined together.

11 A. Yes.

12 Q. And for those we have no autopsy photos.

13 A. Not that I understand. I'm not sure if there were or not.

14 Q. Certainly not provided to you.

15 A. No, no.

16 Q. What were provided to you were a number of crime scene
17 photographs?

18 A. Yes.

19 Q. Yes.

20 A. Yes.

21 Q. For a number of the autopsy reports, would you agree that a
22 number of the autopsy reports were limited in their content?

23 A. No, they weren't bad autopsy reports. We all -- we all just
24 write -- all write different styles of reports. There was a lot of
25 information in them. It wouldn't necessarily be the style that I

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1 would produce, but, you know, they were reasonable. There were some
2 -- some information was lacking. What I found lacking was the -- was
3 interpretation.

4 Q. Yes. And you identified a number of issues that you found in
5 interpretation in your report; is that right?

6 A. Yes, yes. But the findings as such were documented reasonably
7 well.

8 Q. And for your purposes in terms of the analysis you concluded,
9 you were content that there was sufficient information within them
10 for you to be able to adequately comment on the contents?

11 A. Yes. At least --

12 Q. Yes.

13 A. Well, to comment on them, yes.

14 Q. To the extent to which you were invited to do?

15 A. Yes, indeed.

16 MS. ROWAN: Your Honour, perhaps that's a convenient time.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MS. ROWAN: Thank you.

19 PRESIDING JUDGE SMITH: We'll give you a lunch break now.

20 THE WITNESS: Thank you.

21 PRESIDING JUDGE SMITH: We'll be back at 2.30. You may stand
22 down. Please don't discuss your testimony with anybody outside of
23 the courtroom.

24 THE WITNESS: Thank you.

25 [The witness stands down]

1 PRESIDING JUDGE SMITH: We're adjourned until 2.30.

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

3 --- On resuming at 2.33 p.m.

4 PRESIDING JUDGE SMITH: We're having a bit of a debate as to
5 whether I said the Status Conference would begin at 4.00 or 4.30. My
6 intention was to be right after the hearing at 4.30. Does anybody
7 have a different remembrance?

8 MS. ROWAN: Your Honour, we actually went looking for some
9 e-mails this morning trying to answer the same question, and I
10 understand that the answer we came to is Your Honour had said 4.00,
11 and we've been working on that assumption.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MS. ROWAN: I've been told one exists. I don't know who was
14 responsible for sending it.

15 PRESIDING JUDGE SMITH: [Microphone not activated] ... 4.00.
16 Thank you.

17 MS. ROWAN: Very well. Thank you.

18 PRESIDING JUDGE SMITH: Yes.

19 MR. PACE: Your Honour, if I may, to be fair, that's also our
20 recollection, that you said 4.00. However, this witness is on the
21 stand. The witness immediately after him, he needs to testify
22 tomorrow. He is not available at another time, not next week. And
23 also we have a special language interpretation for that witness. So
24 if we could, in fact, gain an extra half hour today and finish at
25 4.30, and start the Status Conference then, that would be ideal.

1 PRESIDING JUDGE SMITH: If nobody objects, that's perfectly all
2 right with me.

3 MS. TAVAKOLI: The only thing I would say is I don't think that
4 the Defence --

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MS. TAVAKOLI: The only thing I'd say is I don't think the
7 Defence bar has any questions, or very few, for the witness that's
8 coming tomorrow, but I'm in Your Honours' hands.

9 MR. PACE: It's more that for the current witness the estimates
10 are still around four hours of total cross for the Defence.

11 MS. ROWAN: If it assists, were we to finish at 4.00 p.m. today,
12 I would think that we could comfortably finish both witnesses by
13 tomorrow afternoon.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MS. ROWAN: Yes.

16 PRESIDING JUDGE SMITH: When will you be finished do you think?

17 MS. ROWAN: I will try to be finished by 4.00. That was what I
18 was aiming for.

19 PRESIDING JUDGE SMITH: Okay. We're going to go till 4.30 then
20 just to try to get it all in. I'm sorry for the confusion that I
21 caused, but I'm old.

22 MS. ROWAN: It happens.

23 Could I ask Your Honour's indication if we'll take a break at
24 3.30?

25 PRESIDING JUDGE SMITH: [Microphone not activated].

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1 MS. ROWAN: As usual? Thank you.

2 PRESIDING JUDGE SMITH: You may bring the witness in.

3 Yes, *[REDACTED]* Pursuant to In Court Redaction Order F2849RED., did
you have something?

4 [Trial Panel and Court Officer confers]

5 [The witness takes the stand]

6 PRESIDING JUDGE SMITH: All right. Mr. Clark, Ms. Rowan will
7 continue with her questions at this time. Thank you.

8 MS. ROWAN:

9 Q. Good afternoon, Mr. Clark.

10 A. Good afternoon.

11 Q. Mr. Clark, you are the first pathologist that we have come to
12 testify, and as such, I would like for you to assist us by going back
13 to basics a little bit --

14 A. Okay.

15 Q. -- and helping us understand some of the terminology that we're
16 going to go on to use. If you could assist in that respect.
17 Pathologists, it's an obvious question, are medical doctors; that's
18 right?

19 A. Yes.

20 Q. And your specialty concerns the mechanism of either injury or
21 death; is that right?

22 A. Well, it's a subspecialty -- a pathologist in general is
23 somebody who has made the study of diseases and illnesses and
24 particularly why people die. And a subset of that is forensic
25 pathology whose specialty is establishing how people die and various

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1 other circumstances.

2 Q. And that is your subspecialty?

3 A. That's my subspecialty, yes.

4 Q. And can you explain to us what we mean when we say "mechanism of
5 death"?

6 A. Well, mechanism of death is the -- to me would be the physical
7 way in which somebody dies, so the cause of death. I suspect what
8 you're going to ask me now is about manner of death. Manner of death
9 is different. And I feel that that is not for the pathologist to
10 determine. That's for others to determine.

11 So cause of death would be something like a head injury or a
12 gunshot injury to the chest. Manner of death would be whether this
13 is an accident, suicide, homicide, or whatever.

14 Q. Mr. Clark, you've anticipated at least three of the following
15 questions I was going to ask you.

16 A. There you have it.

17 Q. Thank you for breaking that down. So we have, just to recap,
18 mechanism of death and then manner of death.

19 A. Yes.

20 Q. The mechanism of death being what you study in your subspecialty
21 of pathology?

22 A. Yes, I would call that the cause of death.

23 Q. The cause of death?

24 A. Cause of death.

25 Q. And that's the expression that we've mostly today.

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1 A. Good. Yes.

2 Q. So we can stick to cause of death --

3 A. Cause of death.

4 Q. -- if that's the term that you prefer --

5 PRESIDING JUDGE SMITH: You're talking over each other and going
6 too fast again. I don't want to interrupt you all the time --

7 MS. ROWAN: Yes.

8 PRESIDING JUDGE SMITH: -- just please bear it in mind.

9 THE WITNESS: Sorry.

10 MS. ROWAN: I'm conscious of that, Your Honour, sorry.

11 Q. And as you've identified, ordinarily manner of death is a
12 question for somebody else.

13 A. Yes.

14 Q. Yes. What is an autopsy report? What does an autopsy report
15 contain?

16 A. Well, an autopsy is simply an examination of somebody's body
17 after death. And from that, pathologist will look at external
18 findings and then internal findings and, from that, will produce a
19 report listing all these findings. And usually would also bring in
20 some conclusions at the end which bring the findings together.

21 Q. So in terms of two of those aspects you just mentioned, an
22 autopsy report would, you would expect, contain both the findings and
23 the conclusions of the pathologist.

24 A. Yes.

25 Q. Both of those would be expert opinions, would you agree? The

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1 pathologist's opinions.

2 A. Well --

3 Q. They're opinions as to what they found?

4 A. The findings are not necessarily an expert. Being an expert
5 means an opinion. So the basic part of the pathologist report is
6 just a recording of the findings. Then you would bring in your
7 expertise to determine -- to comment on what these findings mean.

8 Q. You're right. So you would outline your findings of fact and
9 you would comment upon them, bringing in your expertise to form
10 conclusions based upon those findings?

11 A. Yes.

12 Q. And you would expect those to be recorded in an autopsy report?

13 A. Yes.

14 Q. And that is the purpose of the autopsy report, largely?

15 A. It is, yes.

16 Q. Yes. Now, we look at around ten autopsy reports in this case.
17 Some of the most common injuries that we're going to go on to look at
18 are either blunt force trauma or gunshot wounds.

19 A. Yes.

20 Q. It might seem like a very obvious question, but what's a gunshot
21 wound?

22 A. A gunshot wound is a wound caused by a bullet -- well, not
23 necessarily a bullet. A projectile from a firearm which could be a
24 bullet or it could be pellets which strike the body and cause injury.

25 Q. Now, looking at blunt force trauma, you touched upon a

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1 definition of this earlier --

2 A. Yes.

3 Q. -- and you had described blunt force trauma earlier to be when
4 something hits the body or the body hits something.

5 A. Yes.

6 Q. When something hits the body, for example, if somebody is
7 punched, that could cause a blunt force trauma?

8 A. Yes.

9 Q. Somebody could be hit with something? I could pick up a jug
10 from beside me and hit somebody with it, that would be a blunt force
11 trauma potentially?

12 A. Generally, yes. Yes.

13 Q. If you fall to the floor, you can be caused blunt force trauma
14 by the impact upon the floor?

15 A. Indeed, yes.

16 Q. So there are a number of ways in which the body can suffer a
17 blunt force trauma?

18 A. Exactly.

19 Q. And in order to examine or to conclude how that might have been
20 caused, somebody in your field would need to examine the injury
21 itself to try and explain how that blunt force trauma specifically
22 was caused?

23 A. Yes. I mean, often there's no answer. A bruise is a bruise,
24 and you can think of a hundred ways in which that bruise could be
25 caused. All we can say is that that's a bruise that's, you know --

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1 it's a fresh bruise, it's not three or four days old. It could have
2 been caused in countless ways.

3 Q. And a bruise is the main but not the only indicator of a blunt
4 force trauma or the only thing that would result from a blunt force
5 trauma; is that right?

6 A. No. Just -- well, I -- very briefly?

7 Q. Yes.

8 A. We tend to think of three types of injuries caused by blunt
9 force trauma. One is an abrasion, which is kind of grazing of the
10 surface. Just scraping off the surface of the skin.

11 Q. So just pausing there. Dealing with abrasions, you say that it
12 is a scratching of the surface of the skin.

13 A. Yes.

14 Q. Now, in terms of how that could be caused, that's caused when an
15 item is brought into contact with the skin; is that right?

16 A. It's usually when it's a rough surface which scratches against
17 the skin.

18 Q. A good example might be, we're in the Netherlands, somebody's
19 coming to work on their bicycle, falls off, and scratches part of
20 their skin across the pavement. That might well cause an abrasion --

21 A. Indeed.

22 Q. -- with the contact of their skin against the pavement; is that
23 right?

24 A. Indeed, yes.

25 Q. Okay. So that's abrasion. That's one form. The next one you

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1 were going to identify?

2 A. The second one is a bruise.

3 Q. Yes.

4 A. That's crushing of the skin which crushes blood vessels
5 underneath the skin and causes these tiny little blood vessels to
6 burst and you get a bruise. So it's more a kind of -- a more general
7 force.

8 And the third one is what's call a laceration, and that's when
9 that skin actually splits open. And usually a laceration is over
10 bone, because there's -- if you punch somebody, say, in the arm, then
11 the skin will give. If you punch somebody in the head, then it can't
12 give and it splits open -- well, it can split open over the bone.
13 The same with the back of the hands or the shin.

14 Q. Yes. And you touched there your eyebrow. A good example of
15 that type of laceration being caused might be when we see boxers in a
16 ring, we see their faces bleed, and that can be as a result of the
17 blunt force trauma they cause each other to the face can cause the
18 skin on the face to break and bleed.

19 A. Yes.

20 Q. Is that right?

21 A. Yes. If that same punch had been to the arm, it's only going to
22 cause a bruise.

23 Q. Yes.

24 A. But because it's over bone, which can't give, then it could
25 split open.

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1 Q. So we can see bruises, abrasions, and lacerations all present on
2 a body when it has suffered a blunt force trauma?

3 A. Yes, and it could all -- they could all occur at the same time
4 in the same impact.

5 Q. We could have all. We could have one.

6 A. Yes.

7 Q. And there's also potentially a fourth that could be caused by
8 blunt force trauma, and that's a bony injury?

9 A. Yes, if you like -- if you like, yes. We tend think about
10 external injuries and internal injuries --

11 Q. Internal injuries.

12 A. -- but you're right.

13 Q. And could you explain to us how that might take place or how
14 that might occur, how a blunt force trauma could cause a bony injury?

15 A. Generally it has to be quite forceful, a blunt force trauma. So
16 if somebody was in a road accident, for instance, they would -- they
17 could suffer fractured ribs or a fracture of the limb bones, femur,
18 tibia, et cetera. If somebody was struck over the head, something
19 heavy, that can strike -- that can fracture the skull. If somebody
20 had fallen on the back of their head, that could cause a fracture at
21 the back of the head, underneath, underneath the external bruise or a
22 laceration.

23 Q. But a bony injury, as you've identified, would tend to indicate
24 that the blunt force trauma was of a significant or a more
25 significant degree of force in order to enable it to cause that type

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1 of injury?

2 A. Well, yes. I mean, you would never really produce a fracture
3 from, say, a punch.

4 Q. Yes.

5 A. It would have to be something a lot more forceful than that.

6 Q. Thank you for your assistance with those.

7 Skeletal remains. Most but not all -- well, about half of the
8 bodies that you were asked to look at in this case were skeletal
9 remains; is that right?

10 A. Yes.

11 Q. And it is possible to perform an autopsy on skeletal remains.
12 That's, of course, true; yes?

13 A. Very much so. Yes.

14 Q. And pathologists deal with both fresh corpses and with skeletal
15 remains alike.

16 A. Yes.

17 Q. But in terms of limitations, would you agree that you are, as a
18 pathologist, more limited when you are dealing with a skeleton than
19 when you are dealing with a fresh corpse in terms of the findings
20 that you might be able to make?

21 A. Very much so, yes.

22 Q. Yes. Because when, of course -- again it might seem obvious,
23 when you are dealing with a fresh body, you have the skin, the
24 internal organs, the soft tissue, which gives you the opportunity to
25 examine a far broader array of possible injuries or illnesses than

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1 you have the capacity to examine when you only have the opportunity
2 to look at bone.

3 A. That's right. Yes.

4 Q. And what does it -- what are the implications of you being
5 unable, as a pathologist, to examine internal organs when you are
6 looking to determine cause of death?

7 A. Well, if you -- in general, most people who die are going to die
8 from some natural disease or conditions which will affect the soft
9 tissues of the body. And also if we want to take samples of blood
10 for analysis, et cetera, we need the soft tissues for that. So if
11 all these are absent, then we've lost a lot of our usefulness, if you
12 like, to determine how people die.

13 But when we're looking at trauma, trauma often affects bones,
14 and bones will remain. Where soft tissues will disappear, bones will
15 remain, and so we can still see any trauma which is in the bones and
16 we can start to analyse that.

17 Q. Yes. And when looking at skeletal remains, that is where the
18 attention focuses on seeing whether or not you can identify trauma to
19 those bones that you have the capacity to examine.

20 A. Yes, that's all we can go on.

21 Q. Yeah.

22 A. If it's just skeletal remains, we've got to look at the bones,
23 yes.

24 Q. And had that body in life suffered injury otherwise than to its
25 bones, you would be unable to determine that from the skeletal

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1 remains ordinarily?

2 A. Sorry, I didn't follow that. To the --

3 Q. That's my fault. If there had been an injury --

4 A. Yes.

5 Q. -- other than to the bones --

6 A. Yes.

7 Q. -- that would not be visible to you when examining the skeletal
8 remains; is that right?

9 A. Yes, yes.

10 Q. And you mention natural disease. If, for example, a person had
11 died as a result of heart failure, for example, again without the
12 capacity to examine the heart, the size of the heart at the time of
13 death, again, you wouldn't be able to identify that as a cause or a
14 contributory factor because of the absence of the soft tissue.

15 A. That's correct. Yes.

16 Q. Now, as you mentioned, the focus then on skeletal autopsies
17 focuses on the bones. But would you agree that analysing the bones
18 in those circumstances is also something that can be quite difficult
19 depending on how old the bones are, because, of course, bones can
20 degrade over time?

21 A. Yes, it's not so much how old the bones are, because bones tend
22 to stay much the same unless they're centuries old. The difficulty
23 with trauma with bones is that it could be caused in a number of
24 ways. It could be, again, blunt force trauma, just like, say, an
25 accident or fall or something like that. Or it could be perhaps

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1 bullet injury. It's going to cause fracturing as well. Or shrapnel,
2 you know, from an explosion. They can all -- they will all damage
3 bones.

4 Now, a lot of the times we can distinguish them. A bullet going
5 through bone or striking bone causes a characteristic pattern, and we
6 can begin to recognise that. If a bone is caused by, say, a blow or
7 a fall or whatever, that tends to be a fairly clean fracture with no
8 bits missing, and we can recognise that as blunt force trauma and not
9 - and not - as a bullet injury.

10 But it's not always as easy as that.

11 Q. Yes. And it is more difficult than it would be had you the full
12 corpse to examine.

13 A. Very much so, yes.

14 Q. And just touching briefly, before we move off, clothing.

15 Clothing can be something that can inform pathological findings; is
16 that right?

17 A. Yes, it can. Yes, yes.

18 Q. And is that because sometimes in clothing, when one is dealing
19 with injuries, for example, caused by either stab wounds or gunshot
20 wounds, for example, one can be assisted by markings in the clothing
21 that may relate to those injuries; is that right?

22 A. Yes, that's right.

23 Q. And, of course, again, clothing, not always, but is something
24 that is often missing when dealing with skeletal remains.

25 A. Yes, that's right. Or it can be damaged after death as well and

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1 that creates problems.

2 Q. To such an extent that it may be that it's so degraded that you
3 cannot properly draw any conclusions or findings from it?

4 A. Yes.

5 Q. Depending on the manner in which it may have been buried or
6 exhumed?

7 A. Yes.

8 Q. Turning to your report, Mr. Clark, where I'd like to start - and
9 perhaps if we could have it on screen with us, please - is at page
10 14.

11 Mr. Clark, I'd like to keep us in public session as much as
12 possible, so what I intend to do is not name any of the persons that
13 we're dealing with. But please do let me know if you're not
14 following, and we can go into private session and use the
15 identifiable names for the persons concerned.

16 MS. ROWAN: Oh, the P number would assist. Could I please have
17 page 14 of MFI 1991, please.

18 Q. And, Mr. Clark, if you're following in hard copy, you will see
19 that's your summary.

20 PRESIDING JUDGE SMITH: Is this broadcasted?

21 JUDGE BARTHE: Hopefully not.

22 MS. ROWAN: I understand the Prosecution wishes for it not to
23 be.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MS. ROWAN: Yes.

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1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 MS. ROWAN: Thank you, yes. Not to be publicly broadcast.

3 Thank you.

4 THE COURT OFFICER: Your Honour, this is a confidential document
5 so we won't be broadcasting it. Thank you.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MS. ROWAN: Thank you. If we could have page 14 on screen,
8 please.

9 Q. Mr. Clark, just to orientate us on what we're looking at. You
10 had mentioned before that one of the aspects that your report deals
11 with is a collection of five bodies that were both found and examined
12 together; is that right?

13 A. Yes.

14 Q. And this page of your report, what we will be looking at now in
15 a moment, is some general comments that you have made, is it right,
16 that relate to those bodies as a collective or that body of
17 pathological work as a whole; is that right?

18 A. Yes.

19 Q. Now, just dealing briefly before we come on to the detail of
20 your comments, it's right that for these bodies that you received
21 autopsy reports but no autopsy photographs?

22 A. Yes.

23 Q. Yes. And you did receive some photographs but those photographs
24 were crimes of scene photographs that included clothed bodies only,
25 is that right, lying *in situ*?

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1 A. Yes.

2 Q. Would you agree that that, of course, causes some limitation to
3 your ability to examine the injuries those persons suffered with the
4 absence of the photographs?

5 A. Yes, it did.

6 Q. Again, it may seem obvious as to why, but when only looking at
7 photographs of clothed bodies, you, unfortunately, don't have the
8 opportunity to examine the wounds themselves, the size, location,
9 colour of any of those wounds; is that right?

10 A. Yes.

11 Q. The injuries as attributed to these bodies were described in
12 writing in the autopsy reports though; that's correct?

13 A. Yes.

14 Q. And as you mentioned a moment ago when answering questions
15 earlier, you largely relied, is it right, on the written descriptions
16 that you were provided with as a result of the lack of utility in the
17 photographs?

18 A. Yes, that's all I could go on. Yes.

19 Q. Now, these five reports, it's right that they were all conducted
20 by the same pathologist, a Mr. Dobricanin; is that correct?

21 A. For some reason, I -- I'd assumed that she was female, but I may
22 be entirely wrong.

23 Q. I had assumed she was female, but I have been corrected that
24 that is not the case.

25 A. Well, I apologise --

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1 Q. Yes.

2 A. -- in my report [Overlapping speakers] ...

3 Q. No.

4 A. But for some reason I thought it was a she, but there we are.

5 Q. That makes two of us, Mr. Clark. I'm informed otherwise, that
6 it's a Mr. Dobricanin --

7 A. Makes no difference in the end, but ...

8 Q. Yes. Well, Dr. Dobricanin, perhaps if we use that, it's more
9 appropriate in any event. Dr. Dobricanin conducted these five
10 autopsies; is that correct?

11 A. Yes.

12 Q. And these five autopsies were conducted in April 1998 in Kosovo
13 by Serbian authorities; is that right?

14 A. Yes.

15 Q. Yes. This was not at the stage at which there was international
16 intervention in pathological work in Kosovo?

17 A. No.

18 Q. No. Did these predate --

19 A. Yes.

20 Q. -- that point?

21 A. Yes.

22 Q. Then perhaps turning to page 14. I'm not going to deal with all
23 of the bullet points that you outline here. But it's right that when
24 making these general observations, that at this point you do point
25 out some irregularities that you had noticed in the underlying

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1 reports; is that fair?

2 A. Yes.

3 Q. Now, I count it to be bullet point number 4, the bullet point
4 beginning: "Returning to the injuries ..."

5 Perhaps if we can just deal with this here. It's right,
6 Mr. Clark, that one of the points that you raise here, and it's dealt
7 with in this bullet point that we're going to look at, is the
8 tracking of some of the gunshot injuries; is that right?

9 A. Yes.

10 Q. And you touched upon this briefly earlier this morning, but one
11 of the things that you had observed when looking at this body of work
12 as a collective, as in your opinion, some of the track marks recorded
13 in the underlying autopsies appeared to you to be illogical, and
14 you've recorded that here; is that right?

15 A. Yes.

16 Q. And you will also note that what compounded that lack of clarity
17 was that there were, of course, no accompanying diagrams of those
18 purported injuries that you could examine; is that right?

19 A. Yes.

20 Q. And you give two examples of the type of illogical findings that
21 you had identified here. We'll come on to deal with them in a bit
22 more detail --

23 A. Yes.

24 Q. -- later, but the examples you give is for one of the deceased
25 persons a gunshot wound was noted as entering and exiting through the

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1 forehead. And in another deceased person, a gunshot wound, which you
2 discussed earlier, is noted as entering and exiting through the back.
3 And in your view, those seem to be illogical findings for you and you
4 point that out here.

5 A. Yes. There were two -- for the one in the back, there were two
6 similar injuries. Yes.

7 Q. And what I intend to do is -- when we come on to those specific
8 individual reports is actually take you to your own diagrams to deal
9 with those specific findings, but just focusing on the summaries for
10 now.

11 Could we just pause in relation to the language that you've used
12 here. You've described to us that those appear to be illogical. How
13 should we understand your description of them as being illogical?
14 Would it be fair to say that by "illogical" you mean these may not be
15 correct, these findings, because they lack logic, in your opinion,
16 and therefore may not be correct?

17 A. Well, the -- at face value they appear illogical; in other
18 words, that an entrance and exit wound are very close to each other,
19 which is odd. Now, that can sometimes happen. But I'm surprised
20 that the pathologist made no comment.

21 I mean, if I had seen a case and I was convinced that, yes, this
22 was an entrance and that was an exit, I would think that's unusual, I
23 better explain that. It may be that he is correct, the pathologist
24 is correct.

25 Q. Yes.

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1 A. But I'm surprised that there's no recognition that this is --
2 this is unusual and no kind of explanation for it.

3 Q. Yes. And it's right - and we can come on to look at those
4 findings in a bit more detail - that what would appear on its face to
5 you to be something highly unusual to observe --

6 A. Yes.

7 Q. -- when a pathologist comes across something in their findings
8 that would be considered ordinarily to be highly unusual, you would
9 expect that to be noted and discussed?

10 A. Yes.

11 Q. For a whole variety of reasons, that is something that should be
12 contained, in your opinion, in the report, is an explanation and a
13 description of that finding?

14 A. Yes. I would certainly do that. It would be my practice.

15 Q. Yes.

16 A. Other pathologists may work under different systems and it's not
17 expected of them --

18 Q. Yes.

19 A. -- but that's what I would have thought.

20 Q. Yes. So it is, of course, possible that these findings are
21 correct, albeit that they appear highly unusual and illogical?

22 A. Yes.

23 Q. But it's equally possible that these findings may also be
24 incorrect, and that is an explanation for their illogical appearance?

25 A. That's possible, yes. Yes.

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1 Q. Now just then turning to bullet point 5. You deal here with the
2 time taken -- oh, pardon me.

3 MS. ROWAN: I'm being told we don't have on screen what we need
4 to be looking at. Could we please go down on the right-hand side and
5 for the fifth bullet point for those following, please.

6 Q. Now, Mr. Clark, you deal here with the time taken to conduct the
7 autopsies; is that right?

8 A. Yes.

9 Q. Now, something you've mentioned earlier is, of course, tracking
10 bullet wounds, particularly when there are multiple bullet wounds
11 present, is not an easy exercise.

12 A. Sometimes it's not easy.

13 Q. Yes. And it is something that can be time consuming if -- if
14 sought to be done correctly, it can take some time to do?

15 A. Yes.

16 Q. Can involve quite a lot of figuring out and trial and error --

17 A. Yes.

18 Q. -- to do it?

19 A. Yes.

20 Q. Now, you had noted that, in this case, for these five bodies, in
21 your opinion it was particularly surprising that Dr. Dobricanin
22 conducted all five of these autopsies in what must have been half a
23 day? In your view, that was surprising; is that right?

24 A. Yes. I mean, in these cases I would have thought a minimum
25 would be a couple of hours to --

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1 Q. Yes.

2 A. -- each one to do. And for one pathologist to do one after the
3 other is surprising. But, you know, some people do great things. I
4 mean, after four or five, if you're dealing with multiple gunshot
5 injuries, your mind -- you know, you begin to forget things, and
6 you've kind of lost -- it becomes all the more difficult.

7 I mean, he, obviously, managed to do this and felt comfortable
8 doing it. I would just -- I think it's surprising.

9 Q. And you mentioned two, three hours. Is that the estimate that
10 you would give for the -- for an autopsy of this nature to be
11 conducted with due care and attention should take approximately two
12 to three hours?

13 A. I would have thought so. I mean, I suppose the fact -- if we're
14 assuming no photographs were taken, that would speed things up,
15 because taking photographs slows the matter down.

16 Q. Yes.

17 A. It's necessary, I think necessary. But that would speed things
18 up by not taking photographs.

19 Q. Yes. But the speed at which these autopsies were, obviously,
20 conducted was something you felt sufficiently significant to comment
21 upon?

22 A. I did.

23 Q. Yes.

24 A. And in my understanding, there may have been six. I don't
25 know --

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1 Q. Yes.

2 A. -- six cases, but I only looked at five.

3 Q. Pardon me -- yes.

4 A. So, yeah, it's surprising, yes.

5 MS. ROWAN: Now, could we turn the page on the left-hand side,
6 please. We're just going to go over to page 15, and it is the sixth
7 bullet point, please. And in the Albanian, we will need to go in the
8 previous page because we need the bullet point before. And if we go
9 over in the English. Thank you. It's the top bullet point in the
10 English, and we'll need to scroll down to the last in the Albanian.
11 Thank you.

12 Q. Top bullet point, Mr. Clark. We're looking at here, again,
13 something that again surprised you in this report that you thought
14 worthy of note, which was that -- you note that you were surprised
15 that there were no bullet or bullet fragments found at all in any of
16 the bodies that were the subject of these autopsies; is that right?

17 A. Yes. I mean, here's a group of men with up to, I don't know,
18 20, 30 bullets going through their bodies. I'm just surprised
19 that -- and, you know, hitting bone. At that stage, I'm surprised
20 that there would be no bullets or bullet fragments still in some of
21 the bodies. Having said that, if the bodies had not been x-rayed,
22 because that's how you would best pick them up, you might not pick
23 them up, because bullets are notoriously difficult to find just
24 physically unless you know where to look.

25 Q. But in a circumstance such as this, when dealing with this

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1 volume of gunshot wounds and this number of bodies, you would expect
2 to find at least one bullet, at least one fragment, across the course
3 of all of these autopsies. And is it fair to say that you were
4 surprised that the case was that there was a total absence of that?

5 A. Yes.

6 Q. I believe elsewhere in your report, when commenting on this in
7 an individualised setting, you had described your response to this
8 that you thought it was astonishing but which is a fairly strong --

9 A. Yes.

10 Q. -- phrase --

11 A. Yes. Yeah.

12 Q. Is that a correct way of understanding this, that considering
13 the number of bullet wounds that we are talking about, it is quite
14 astonishing that this pathologist doesn't note any bullet being found
15 or any particle of a bullet being found in the bodies themselves?

16 A. Yes, it's surprising. Maybe I'll take away from astonishing.
17 I'll say surprising. Very surprising. But if they were -- if he was
18 not making efforts to look for these, say by x-rays, and was relying
19 solely on just physically finding them, because, you know, when a
20 bullet fragments, it can go into very small pieces, then, yeah, you
21 might not find them. But it's surprising. And just given by my past
22 work with looking at large numbers of people who have been shot and
23 the number of bullets and bullet fragments we did still find in
24 people --

25 Q. Yes.

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1 A. -- including high-velocity ammunition, it's just -- it's
2 surprising there's nothing here.

3 Q. And as we're just pausing there, you mentioned your previous
4 experience. Looking at a collection of autopsies of persons killed
5 in a fashion such as this is not something with which you're
6 unfamiliar. What I mean by that -- perhaps I can ask the question a
7 better way. Given the experience that you had in the Balkans --

8 A. Yeah.

9 Q. -- and the experience that you've had in your career, for you,
10 your career has involved numerous autopsies on persons who have been
11 shot multiple times; is that correct?

12 A. Yes, that's right.

13 Q. And so you have extensive experience in dealing with either
14 individual bodies or groups of bodies who have been subjected to
15 multiple gunshot wounds?

16 A. Yes, that's right.

17 Q. And your surprise that you have expressed in court today is
18 based in that direct experience?

19 A. Yes.

20 Q. Yes. And considering that you are a forensic pathologist, you
21 would expect, would you agree, bullets often to be something that you
22 are, in fact, looking for because they have an identified forensic
23 purpose, and a pathologist would often intentionally be looking for
24 the bullets as they have a forensic value?

25 A. Yes, they have a purpose -- well, one, that proves it's a bullet

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1 injury from a pathology point of view. Second, finding the bullet
2 can help others identify the weapon. So there is a purpose in
3 specifically trying to find bullets and bullet fragments.

4 Q. So would it be fair to say that you would ordinarily expect a
5 pathologist, when dealing with gunshot wound injuries, ordinarily to
6 be intentionally looking for bullet or bullet fragments?

7 A. Yes. I mean, it's -- not all mortuaries will have x-ray
8 facilities, because that's the main thing you would be using
9 initially.

10 Q. Yes.

11 A. Not all mortuaries will have that and that's nobody's blame.
12 And unless you do an x-ray beforehand it might be difficult to find
13 them.

14 Q. Yes. But we, obviously, don't know whether or not this
15 pathologist was assisted by an x-ray or not?

16 A. There's no indication --

17 Q. Yeah.

18 A. -- whatsoever, no.

19 Q. And whether or not one has the assistance of an x-ray or not, it
20 would not change your view that that is ordinarily something that you
21 would expect a pathologist to look for in any event?

22 A. Yes.

23 Q. All right. Now --

24 THE INTERPRETER: Interpreter's note: We kindly ask the
25 speakers to make a pause between question and answer. Thank you.

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1 MS. ROWAN:

2 Q. Mr. Clark, your final bullet point, it's a long one. If we
3 could break it down. What you deal with in this final bullet point
4 is the global findings of bruising; is that right?

5 A. Yes. This -- this is a -- something that worried me a little
6 bit -- quite a bit. Particularly in the first case that I dealt
7 with, it's sort of set out there more. And this is a description of
8 discolouration -- in addition to the gunshot injuries. So we dealt
9 with them. This is -- I can only assume it's meant to be -- assumed
10 to be bruising, quite widespread bruising in the back of the body,
11 particularly in the arms, the front and back of the hands, and
12 elsewhere. The wording is odd.

13 Q. Could I just ask you to pause for a moment just to step back,
14 because I'm conscious we're dealing with this as a broad topic
15 affecting all of the bodies you dealt with.

16 A. Yes.

17 Q. You touched upon it there. There appears to be, is it fair to
18 say, a common finding across all of the autopsies that each and every
19 body looked at was -- had on it hematomas or bruising that the
20 pathologist attributed to blunt force trauma?

21 A. Yes.

22 Q. Yes.

23 A. But --

24 Q. Now, we'll go into your issues with that as a finding. But is
25 that a correct description of what the pathologists say they found?

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1 And we'll look at what might be problematic about that now in a
2 moment.

3 A. That was my understanding --

4 Q. Yes.

5 A. -- of what the pathologist was saying. The wording is odd. It
6 said that, I think, the -- it talks about the -- if we go back -- if
7 I could find the report.

8 Q. Yeah, I think I know the quote you're looking for. I'm looking
9 for it myself. It's:

10 "... the skin is purplish and there is blood in the subcutaneous
11 tissue."

12 A. Yes.

13 Q. Yes.

14 A. Now, you could accept that as being he might be talking about
15 lividity --

16 Q. Mm-hmm.

17 A. -- that we touched earlier. But lividity is already mentioned
18 earlier in the report --

19 Q. Yes.

20 A. -- which implies that this is something different. And there's
21 also a -- in the conclusion, there's a comment on this in --

22 Q. On causation?

23 A. -- conclusion, which implies that what he is actually meaning
24 when writing about this discolouration is actually bruising.

25 Q. Yes.

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1 A. That's the implication.

2 Q. So just pausing there so we have this clear. From how you read
3 the underlying reports, the pathologist has made findings of
4 lividity, made findings of this purplish discolouration, and has gone
5 on then to conclude or make conclusions as to causations of that
6 purplish discolouration. And so, therefore, we can see a clear
7 distinction being drawn, it appears, between those two forms of
8 discolouration being found on the bodies; is that right?

9 A. Yes. That's right, yes.

10 Q. And it is for that reason you don't believe that this is a
11 description of lividity, because otherwise it would be described as
12 such as the pathologist did elsewhere?

13 A. Yes.

14 Q. And one would not attribute blunt force trauma as a cause of
15 lividity as it isn't a cause of lividity?

16 A. It's not a cause of lividity, no.

17 Q. Yes. So that wouldn't make sense.

18 A. No.

19 Q. That wouldn't be right.

20 A. Yes.

21 Q. Yes.

22 A. That's right.

23 Q. And so I do intend to take you, Dr. Clark, in due course to that
24 specific finding on one of the bodies. But just properly looking at
25 this in the round in terms of the kind of broader comments that you

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1 make here, the language that you use is that it's very questionable
2 and that, even if genuine, the interpretation as to potential cause
3 is very limited. And then you end this paragraph by also saying
4 that:

5 "... some doubt has to be raised about the alleged bruising and
6 its interpretation."

7 Now, perhaps if I could just pause there for a minute without
8 looking at -- before looking at the why. But in terms of the two
9 issues, am I right to understand your concerns as having a twofold
10 nature? The first concern being whether or not the findings of
11 bruising are, in fact, genuine at all.

12 A. Yes.

13 Q. And then, secondly, if, in fact, genuine, what can be said in
14 terms of interpretation as to causation.

15 A. Yes, exactly.

16 Q. Okay. So we have those two kind of competing concerns to deal
17 with; is that right?

18 A. Yes.

19 Q. So the first of those concerns, would it be fair to say, is
20 relatively straightforward, and we'll come on to the specifics. But
21 would it be fair to put it in this way: That as a result of what you
22 have seen in the autopsy reports and your analysis of them, you query
23 whether or not these bodies had bruises upon them as described?

24 A. Yes.

25 Q. So did the bruises exist at all is up for question --

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1 A. Exactly.

2 Q. [Overlapping speakers] ...

3 A. Yes.

4 Q. Now, that's a little bit more straightforward. The second issue
5 then is about interpretation --

6 A. Yes.

7 Q. -- and you explain in this paragraph the detail of that. So
8 just looking at that, you say in our first paragraph here:

9 "The apparent bruising described in each of the men is very
10 questionable ... even if genuine, the interpretation as to potential
11 cause is very limited. No dimensions are given for any of the
12 bruises, nor any comment as to how ... they may have -- they may have
13 been as judged by colour change."

14 A. Sorry, "how old they may" --

15 Q. "How old," I knew that I did something wrong in that sentence.
16 Thank you.

17 "The distribution was primarily to the back of the body and
18 limbs, with none at all on the head, only a small number [to] the
19 chest, and no accompanying abrasions or lacerations as [may] be
20 expected with bruising over bony surfaces such as the back of the
21 hands and the front of the lower legs. Bruising of the palms of the
22 hands is also extremely uncommon, [and] yet described in each man."

23 What I would like for you to do is help us break that down a
24 little bit. Firstly starting with dimensions. You mentioned that
25 there is an absence of dimensions; is that right?

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1 A. Yes. That's -- that's perhaps not so important because the
2 pathologist has described a generalised area. And, you know, to say
3 there is bruising on the upper half of the back, it's not added to by
4 giving actually measurements, you know. We can all visualise what
5 the back -- side of the back is.

6 Q. But what we might mean is we don't have a description of size or
7 shape, so --

8 A. No.

9 Q. -- in terms of the -- how much of the back might have been
10 covered --

11 A. Yes.

12 Q. -- by the bruising --

13 A. Yes.

14 Q. -- whether they were circular or linear --

15 A. Yes.

16 Q. -- or tracked like we saw earlier.

17 A. Yes.

18 PRESIDING JUDGE SMITH: Please don't answer -- you have to ask
19 the full question, and you then answer it once. Your back and forth
20 and back and forth is not working, and it's very difficult for the
21 translators.

22 MS. ROWAN:

23 Q. Mr. Clark, we don't have those kinds of details provided to
24 enable us to know size, shape, location, very, very specifically in
25 terms of these bruises; is that correct?

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1 A. Yes.

2 Q. What we are also missing is information as to colour; is that
3 right?

4 A. Yes.

5 Q. Of the bruise. Colour is important because colour allows
6 pathologists to date the injury; is that right?

7 A. Yes.

8 Q. Now in terms of, then, secondly, distribution. The distribution
9 on the bodies of this purported bruising you note is unusual; is that
10 right? Where it is said to have been found, you note, on the back
11 and on the limbs.

12 A. It's all very -- it's all in the back. It's all very
13 symmetrical. It doesn't sound -- it's not particularly convincing as
14 bruising.

15 Q. Why not?

16 A. Well, bruising tends to be, as we saw in an earlier picture --
17 narrows it down -- it's in a specific area. You know, it forms its
18 own shape. If you've been -- somebody's been hit by something, it's
19 going to cause a localised bruise. This is all just general -- would
20 appear to have been entire confluent bruising of the whole of the
21 back of the body in some of these people, which is most unusual
22 indeed.

23 Q. And not something that you would expect to see?

24 A. No.

25 Q. No.

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1 A. And the fact that there's an absence of -- I mean, if that is
2 genuine bruising, it's clearly very extensive. And with such
3 extensive bruising, I would then expect to find additional blunt
4 force injuries like abrasions or lacerations, but none of these are
5 described at all.

6 Q. Yes. Because had someone been bruised to that extent, would you
7 agree that would be a very significant injury --

8 A. Yes.

9 Q. -- to have taken place worthy of significant note or commentary
10 within the autopsy report?

11 A. Yes.

12 Q. And, again, that makes -- the significance of that would make it
13 all the more unusual or unlikely for such an injury to be absent
14 accompanying abrasions or lacerations?

15 A. Yes.

16 Q. And this is certainly not -- again, a pathologist looking at
17 bruising, were it to be genuine, in this form as described, it would
18 be highly unusual for a pathologist to see that; is that right?

19 A. Yes.

20 Q. And, again, like we said with the unusual gunshot tracking, when
21 a pathologist comes across something very unusual, that would tend to
22 therefore lead to additional comment in the autopsy explaining why
23 there's an unusual finding in it and providing the details of that
24 unusual finding?

25 A. Yes.

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1 Q. And that's absent?

2 A. Yes.

3 Q. One of the other manners of distribution that you had commented
4 upon being very unusual, or in the terms that you used, extremely
5 uncommon, was bruising on the palms of the hands; is that right?

6 A. Yes.

7 Q. As a starting point, that's an extremely uncommon injury to see
8 in persons?

9 A. Yes.

10 Q. In one person?

11 A. In anyone, yes.

12 Q. Let alone five persons?

13 A. Yes.

14 Q. Yes. And you again note that that is something that you would
15 not expect to see as it's unusual?

16 A. Yes.

17 Q. And not to repeat where we've been before, but were a
18 pathologist to have found that injury, you would expect additional
19 comment because it would be unusual?

20 A. Yes.

21 Q. And particularly a pathologist, when examining a collection of
22 bodies, all of whom appear to have a very similar and distinct
23 unusual injury, would perhaps give a pathologist more motivation to
24 comment upon that unusual finding?

25 A. Yes.

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1 Q. Which again is absent?

2 A. Yes.

3 Q. So that's the distribution, as you've noticed. And then, as
4 you've helpfully explained to us already, we talked about how
5 lacerations and abrasions can be caused by blunt force trauma, and
6 we've dealt with how that comes about. Now, it's right that in all
7 of these underlying autopsies where all of this unusual bruising is
8 noted, in none of those instances is there notes of accompanying
9 abrasions or lacerations?

10 A. No, there's none.

11 Q. And that is unusual?

12 A. Yes.

13 Q. It's unusual in one person. In addition, it's unusual for a
14 collection of persons; is that right?

15 A. Yes.

16 Q. Going back to what we were speaking about in relation to the
17 dimensions or the significance of these injuries. As you mentioned a
18 moment ago, these injuries are described as very large bruising
19 across large parts of the body, as you've said, involving -- that
20 would, if genuine, have involved significant force?

21 A. Yes.

22 Q. Therefore likely to have involved an instrument or instruments?

23 A. Yes.

24 Q. And in those circumstances, it would therefore be even more
25 likely that were blunt force trauma of that nature to be genuine, for

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1 it to be accompanied by lacerations or abrasions?

2 A. Yes, at least some of them. Yes.

3 Q. At least some.

4 A. Yes.

5 Q. And here we have none.

6 A. None, no.

7 Q. Now, the second paragraph, we've touched on this, but just to
8 deal with it finally. I'll just read this for the record:

9 "The allegation would appear to be that the bruising was caused
10 by blows from a solid heavy object, but with no comment given as to
11 when this might have occurred or its significance. If it is being
12 suggested that these men were beaten prior to having been shot or in
13 the days beforehand, it seems remarkable that there were not at least
14 some injuries to the head and other parts, and that the injuries were
15 all so symmetrical, unless the beating was sophisticated and
16 specifically targeted."

17 That remains a correct reflection of your view?

18 A. Yes.

19 Q. Again, you note that finding as being remarkable in your
20 opinion; is that right?

21 A. Yes.

22 Q. Now, no comment, as you've observed here, was given by the
23 pathologist as to when these beatings may have occurred; is that
24 right?

25 A. Yes.

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1 Q. Would you agree that it ordinarily would be something that a
2 pathologist would comment upon when a finding of blunt force trauma
3 is made? Age? Age is something that should be commented upon for
4 blunt force trauma?

5 A. Yes. Yes, in general terms, one would say this is a fresh
6 injury or perhaps a few days old or older.

7 Q. And age, particularly of blunt force trauma, is highly
8 significant when dealing with cause of death. Would you agree?

9 A. If it's related to the cause of death, yes.

10 Q. Exactly. Because if it's an old injury, that is a relevant
11 factor when looking at cause of death?

12 A. Yes.

13 Q. And one may be examining a body with a view to determining a
14 cause of death, and it is not uncommon for bodies to have old
15 injuries in any form, whether it be bruising or internal --

16 A. Yes.

17 Q. -- or bony?

18 A. Yes.

19 Q. So a key role of a pathologist is to identify when an injury is
20 found the age of it, and then go on to make a finding as to
21 relevance, or otherwise, in terms of cause of death?

22 A. Yes, if it's relevant to the cause of death. Yes.

23 Q. Yes. It may well not be.

24 A. No, exactly.

25 Q. You may be examining a stab victim who fell and grazed their

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1 knee three days before and it has no relevance whatsoever on the
2 cause of death.

3 A. Yes. Of course.

4 Q. But were you to find that and you were conducting the autopsy,
5 you would expect that injury to be noted and aged?

6 A. Yes.

7 Q. None of these bruises were aged in the autopsy?

8 A. No.

9 Q. We dealt with the symmetry of the injuries, but perhaps just
10 before we move off to deal with the lack of injuries to the head.
11 You also noted that as an unusual finding; is that right?

12 A. Yes.

13 Q. No bodies were said to have any injury to their heads; is that
14 right?

15 A. That's right.

16 Q. And considering particularly the allegation made in the
17 conclusion of this report that these men were the subject of a
18 beating, you found that to therefore be a highly unusual finding in
19 those circumstances; is that right?

20 A. I'm not sure the pathologist actually said the person was -- was
21 a beating. But I think his wording was subject to -- let me find it.
22 I'm sorry, I've lost the page.

23 Q. No, I'm trying to assist also, Mr. Clark, and I'm failing.

24 A. Oh, yes.

25 Q. Between the two of us, perhaps over the break we'll find the

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1 exact wording used.

2 A. I've found it. This is conclusion 8 on the first autopsy
3 examination. It describes -- the injury described under paragraphs
4 11, 12, and 13 of the finding are hematomas. There's an implication
5 there that's a bruise --

6 Q. Yes.

7 A. -- caused by a heavy blunt mechanical object in full swing. So
8 all he is saying is that they are caused by -- been caused by
9 something heavy hitting the body. He doesn't actually use the word
10 "beating" --

11 Q. Yes.

12 A. -- to be clear. That's my interpretation.

13 Q. It's an implication but it's not the terminology used?

14 A. Yes, exactly.

15 PRESIDING JUDGE SMITH: Ms. Rowan, we're going to need to give
16 him a break.

17 MS. ROWAN: Yes.

18 Q. Yes. Just perhaps one question before we break on something you
19 just said, Mr. Clark.

20 PRESIDING JUDGE SMITH: One.

21 MS. ROWAN: Yes.

22 PRESIDING JUDGE SMITH: Yes.

23 MS. ROWAN:

24 Q. Mr. Clark, you noted the use of the term "hematoma." Now, that
25 is significant because a pathologist wouldn't describe lividity as a

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1 hematoma. So we know from the use of the word hematoma we're talking
2 about a bruise.

3 A. A bruise, yes.

4 Q. Thank you.

5 PRESIDING JUDGE SMITH: We'll give you a ten-minute break,
6 Witness, then we'll come back to the courtroom and finish up this
7 afternoon.

8 [The witness stands down]

9 PRESIDING JUDGE SMITH: We're adjourned for ten minutes.

10 --- Break taken at 3.31 p.m.

11 --- On resuming at 3.42 p.m.

12 PRESIDING JUDGE SMITH: Please bring the witness in.

13 [The witness takes the stand]

14 PRESIDING JUDGE SMITH: All right. Ms. Rowan.

15 MS. ROWAN:

16 Q. Mr. Clark, to round out, then, the issue of bruising in this
17 summary. As you had said in your report, in your last line we can
18 see there, the second paragraph of the second bullet point:

19 "All in all, some doubt has to be raised about the alleged
20 bruising and its interpretation. Once again, the lack of post-mortem
21 photographs makes it very difficult to resolve the issue."

22 So just standing back and looking at your opinion on this
23 bruising, as we discussed at the beginning, it's right to say that
24 you doubt whether or not this finding of bruising at all is accurate;
25 is that right?

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1 A. Yes.

2 MR. PACE: Objection, Your Honour. Asked and answered. When
3 the witness says something two minutes ago, there's no need to go
4 back to it again. It's on the record.

5 PRESIDING JUDGE SMITH: Sustained.

6 MS. ROWAN:

7 Q. Mr. Clark, what I was hoping to do was to just draw a connection
8 between this concept that you raise of doubt. So you talk about
9 doubt, that some doubt has to be raised.

10 A. Yes.

11 Q. And what I want to just make sure that we have clear for the
12 record is what you are doubting. And when you say that some doubt
13 has to be raised, am I correct in understanding that what you doubt
14 is the accuracy of the finding?

15 A. Yes.

16 Q. Thank you. And that doubt arises from all of the autopsies
17 you've looked at and your experience and specialty as a forensic
18 pathologist?

19 A. Yes.

20 Q. And you note here the absence of photographs. And is it right
21 to understand that the reason that that is mentioned is because you
22 cannot resolve the doubts and the questions that you have without
23 those photographs and as such they remain?

24 A. Yes. If I'd had photographs, I could be a lot more convinced
25 one way or the other -- sorry, one way or the other for that.

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1 Q. All right. Could we now perhaps go, please, to the first of
2 these five bodies.

3 MS. ROWAN: And we will find him on page 4, please, in the
4 English.

5 Q. Now, Mr. Clark, again, I'm not going to use the name of the
6 person whose autopsy we're going to discuss, but you'll be able to
7 see it displayed on screen or if you're following us in hard copy.
8 And we can see this person's name halfway down the page.

9 MS. ROWAN: And if we could scroll out, please. If we could
10 scroll out a little bit in the English. And if we could just pause
11 there.

12 Q. Now, the first question, Mr. Clark, that you were asked in
13 relation to this body was actually on a different topic. The first
14 question you were asked was about violent death. But because we have
15 been discussing the topic of bruising, I'd like to just stay on that
16 topic for this body and take that out of turn.

17 Is it fair to say at the outset that all of those general
18 observations that we have just gone through in relation to those
19 bruising findings apply to this individual autopsy?

20 A. Yes.

21 Q. And this part of your report where you go on, as requested by
22 the Prosecution, to answer specific questions, would it be fair to
23 say that we should, when reading your responses to those questions,
24 bear in mind those general observations that you have made about the
25 bruising?

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1 A. Yes.

2 Q. Do they come -- could we describe them as a caveat to the
3 answers you give in relation to the bruising?

4 A. Yes.

5 Q. So when the Prosecution asks you questions about the injury --
6 so, for example, one of the questions you were asked is question 2:

7 "What information in this report could have led the pathologist
8 to conclude there were injuries caused by 'a heavy blunt mechanical
9 object in full swing' ... Could you give an example of what kind of
10 object this may have been?"

11 Now, that's a conclusion you referred us to earlier. You, of
12 course, go on and answer that question. And we have a second
13 question here:

14 "Is there any indication in the report indicating when the
15 injuries may have been sustained [and then] when the death may have
16 taken place?"

17 And you give us answers to those questions in your report. Is
18 it right to understand your answers as coming with the caveat: If
19 this bruising is genuine --

20 A. Yes.

21 Q. -- these are my answers to the questions?

22 A. Yes.

23 Q. And that we should not interpret or understand your answers to
24 those questions as being a concession or acceptance that any of that
25 bruising is, in fact, genuine or you conclude or find it to be so?

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1 A. Yes, that's right. I mean, the caveat is my earlier opinions
2 we've discussed.

3 Q. Yes.

4 A. It -- you know, it may be bruising, and I've tried to answer the
5 question if it was genuine bruising, this is my views. But always at
6 the back of my mind is that this may not be bruising at all.

7 Q. Yes. And we can actually see a good example of how you've dealt
8 with this caveat. And perhaps if we can just look at that.

9 MS. ROWAN: If we can have page 5, please, question 2. Thank
10 you very much.

11 Q. And we can see here in response to the question about the heavy
12 blunt mechanical object, you give the following answer in the second
13 paragraph:

14 "Prof Dobricanin describes multiple areas of presumed
15 bruising ..."

16 And then you give the wording used in the report:

17 "... ('the skin is purplish and there is blood in the
18 subcutaneous tissues') involving the upper part of the back, around
19 the shoulders and on the arms and legs, including the front and back
20 of both hands and feet. No dimensions are given and there is no
21 mention of any associated abrasions or lacerations which might have
22 been expected with such extensive injuries but, if the bruising was
23 genuine, then it is correct to describe it as blunt force trauma ..."

24 Is that a correct --

25 A. Yes.

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1 Q. That remains your opinion?

2 A. Yes.

3 Q. And we can see here how you have sought to articulate that
4 caveat in that answer; is that right?

5 A. Yes.

6 Q. And should we read into subsequent answers about bruising that
7 same caveat for the other bodies also?

8 A. Yes.

9 Q. Now, you were also asked about unburned gunpowder particles; is
10 that right? We can see that on page 6, please.

11 MS. ROWAN: Perhaps if you can just follow along, we can have
12 the question beside us.

13 Q. We can see at the top of page 6 you were asked the following
14 question by the Prosecution --

15 THE INTERPRETER: Counsel is kindly ask to slow down when
16 reading from reports for the purposes of interpretation. Thank you.

17 MS. ROWAN:

18 Q. Question 4 at the top of page 6, we'll see you were asked the
19 following:

20 "What does the following mean/imply: '[t]races of unburned
21 gunpowder particles were found around torn pieces on the jacket that
22 match the described entrance wounds by applying a chemical method
23 using diphenylamine and concentrated sulphuric acid' ..."

24 You remember being asked that question by the Prosecution?

25 A. Yes.

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1 Q. What we are talking about here, is it right, is something more
2 commonly known as gunshot residue or GSR?

3 A. Yes.

4 Q. Now, GSR, or gunshot residue, is a term used to describe
5 particles; is that right?

6 A. Yes, it's again a wider -- it implies that when a gun is fired,
7 everything that comes out of the end of the barrel --

8 Q. Yes.

9 A. -- which can be flame, soot, unburned powder, and, of course, a
10 missile. But we're talking about the -- generally, we're talking
11 about the soot and the unburned powder.

12 Q. And the particles themselves, they can come in two separate
13 forms. We find GSR occurring either as three elements of lead,
14 antimony, and barium, or as a combination of two elements, antimony
15 and barium. And it exists in two different forms; is that right?

16 A. Well, this is not my field of expertise --

17 Q. Of course.

18 A. -- I'll say that, so I'm not going to argue with you about the
19 details of the components. But you're right, antimony, lead, and for
20 the powder you're talking about nitrocellulose and nitroglycerin. So
21 the GSR will contain some or all of these.

22 Q. Yes. It can contain two or contain three and still be
23 determined to constitute GSR?

24 A. Yes.

25 Q. And we can find GSR, as you've already noted, from firearms?

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1 A. Yes.

2 Q. They produce it?

3 A. Yes.

4 Q. But it can also -- those particles in that composition can also
5 be found in items such as fireworks?

6 A. Yes, because that's an explosion with gunpowder [Overlapping
7 speakers] ...

8 Q. Exactly. But it's not unique to a firearm?

9 A. It's not unique to a firearm, but --

10 Q. Very common to one?

11 A. It's common to a firearm --

12 Q. Yes, yes.

13 PRESIDING JUDGE SMITH: Ms. Rowan, you have to slow down.

14 You're interrupting the question and the answer.

15 MS. ROWAN: Yes, my apologies.

16 THE WITNESS: At the same time, as I understand it, this test
17 that's talked about --

18 MS. ROWAN:

19 Q. Yes.

20 A. -- diphenylamine and sulphuric acid, it's detecting a thing
21 called nitrates, which is the components of -- well, part of
22 nitroglycerine and nitrocellulose. But other substances contain
23 nitrates as well.

24 Q. Yes.

25 A. So you can get false positives. Although it may be genuine

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1 gunshot residue, you would have to be very careful that you were not
2 picking up things like fertilisers or paint even, which could produce
3 false positives with this.

4 Q. Exactly. Because what this type of test is looking to identify
5 is not those very specific particle elements of gunshot residue.
6 It's looking at something broader; is that right?

7 A. Yes.

8 Q. And you note that to be nitrates. Now, that is something that
9 is found in a wider variety of things --

10 A. Yes.

11 Q. -- than GSR?

12 A. Yes.

13 Q. You mentioned in your report, and you've just alluded to it
14 there, this test, as mentioned in the autopsy report, because that is
15 what it looks to identify, it is known and understood by those in
16 your field, or by you, to therefore be unreliable at times or not
17 specific to gunshot residue?

18 A. Yeah. I mean, it's a good indication, but there would have to
19 be caution in interpretation of it and excluding other potential
20 causes. So it could be a genuine detection of gunshot residues, but
21 there has to be some caution in its interpretation.

22 Q. Yes. It clearly has capacity to have some utility, but you
23 would urge caution around attributing too much weight to any findings
24 that rely upon it?

25 A. Yes.

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1 Q. Would that be fair? And then just before we move off GSR. The
2 particles that make up GSR and, as you've mentioned, also nitrates
3 can be found also naturally occurring in the atmosphere? Lead,
4 antimony, barium can be found naturally occurring in the atmosphere?

5 A. Well, depends what you mean by the atmosphere. If you mean the
6 air, I don't think it's floating in the air. But it might be in soil
7 and other substances.

8 Q. And perhaps if I use a more concrete example it would be of more
9 assistance. Were you or I to go into a home in which firearms were
10 kept and be in contact with and socialise with persons who had
11 handled firearms, it is possible that as a result of the presence of,
12 A, the firearm, or, B, the person who has handled the firearm, there
13 may be particles of gunshot residue in that environment or in that
14 atmosphere that can then come to be on our persons.

15 A. I think that's true, but I have to emphasize this is not my
16 field of expertise, and I would not want to be --

17 Q. Yes.

18 A. -- quoted positively on that.

19 Q. Yes.

20 A. So I would agree with your general premise, but I'm not an
21 expert on that.

22 Q. Yes. And this is -- these are tests that, in the course of your
23 analysis in this, that you have paid little or no weight to because
24 of the risk, in any event, of false positives?

25 A. Well, it's -- these are not tests that I would --

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1 Q. Yes.

2 A. -- personally be involved with, but just my general reading is
3 there has -- there's some caution.

4 Q. Yes. Now, you were then asked secondly, also in relation to
5 weapons used, you are asked in question 5, we can see on page 6 --

6 MS. ROWAN: If we could scroll down in the English a little bit,
7 please.

8 Q. About the shooter's distance. And you were invited by the
9 Prosecution to comment upon shooter's distance. And is it correct
10 that in your answer there you have noted that there was no burning or
11 soot described on the wounds which would indicate a distance of at
12 least a metre. Is that right?

13 A. Yes. Just -- just -- but it got the -- the whole basis of
14 estimating distance of fire is based on all these other things which
15 come out of the end of the barrel, and they will travel a certain
16 distance. A bullet, obviously, will travel a long way.

17 But the other elements, the smoke -- the flame, the smoke, and
18 the powder will only travel probably at most a metre or so. So if
19 those elements are found on the body, either on the clothing or the
20 skin, then that indicates that gun was fired from less than -- around
21 about less than a metre perhaps, around about a metre. So that's
22 what the basis of that is.

23 Q. Yes. So in the absence of those findings, you're in a position
24 to exclude a shooting range of under a metre, but it is open as to
25 what the distance may have been beyond that?

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1 A. Yes.

2 Q. Yes. And you also just mentioned briefly, and it relates back
3 to the question of GSR, the fact that the chemical tests on the
4 clothing were positive suggested that, if genuine, i.e. not a false
5 positive, then for at least those parts tested the shot may have been
6 reasonably close.

7 Just dealing with that, would you agree that that equally -- the
8 presence of gunshot residue is equally consistent with a shot fired
9 from some distance?

10 A. With a shot fired from a distance you would not get gunshot
11 residue on the person.

12 Q. The gunshot -- by gunshot residue, I am referring to the gunshot
13 residue particles only, so the composition of either lead, antimony,
14 and barium, or two of those three particles, that they may well be on
15 the bullet and may well be found on a body that has been shot. So
16 you could not exclude a distance from further away if there's a
17 presence of gunshot particles on the body?

18 A. I honestly don't know how much of these particles are carried by
19 a bullet, so I can't answer that I'm afraid. But it's my general
20 understanding that you would only get -- you would only get these
21 gunshot residues in a small distance.

22 Q. Now, this is one of the bodies where we have dealt with tracking
23 of wounds also. And we have that in your report in response to your
24 question 5, again, staying on the same page.

25 Now, before we come on to deal with the tracking of wounds, it's

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1 right that when you met Prosecutors earlier this week, you provided
2 them with some diagrams that you created; is that right?

3 A. Yes.

4 Q. And you provided them with a collection of diagrams that you
5 yourself had created seeking to track the gunshot wounds as you
6 understood them to be on these five bodies?

7 A. Yes, I prepared these fairly recently as I was kind of reading
8 up for this case and I thought this will help me if nobody else.

9 Q. Yes. No, well, I think certainly it will help some others, and
10 I'd like for us to have a look at it together if we could.

11 MS. ROWAN: The ERN full range is -- could I keep the English of
12 the report, please, on the right, and could we substitute the
13 Albanian report for the diagram. It's 124715 to 124723.

14 Q. Now, Mr. Clark, when you provided these to the Prosecution, did
15 they ask you to take them through -- for you to take them through
16 these or to explain what they were, or did they simply take them from
17 you?

18 A. I think -- well, there was very little discussion about them.
19 They just took them.

20 MS. ROWAN: Could we please have page ending 717, please. And
21 if we could zoom out, please, so we can see the text at the bottom.
22 We don't need the name of the individual on screen, so perhaps if we
23 can sacrifice that for more imagery of the body and the notes at the
24 bottom, please. Thank you. Yes. And we don't need the head in view
25 as it is not relevant for these purposes.

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1 Q. Mr. Clark, is this one of the diagrams that you had provided?

2 A. Yes.

3 Q. And is it correct that this specific diagram correlates to the
4 person who is the subject of the report we are presently looking at?

5 A. Yes.

6 Q. Now, what we can see here, we can see, is it right, the front of
7 the body depicted on the left-hand side and the back of the body
8 depicted on the right-hand side?

9 A. Yes.

10 Q. And at the bottom we have notes that you have created that
11 correspond to numbers in the images tracking the gunshot wounds in
12 this person as you understand them; is that right?

13 A. Yes. And these are numbers given in the original post-mortem
14 report.

15 Q. Now, Mr. Clark, I think it will be clearer if you take us
16 through them. Could you, by reference to those numbers, describe
17 what we are looking at here, please?

18 A. Well, obviously, the red areas are the bullet wounds, either
19 entrance or exit. Those that I've marked were given -- they were all
20 given a number. Those that I've put a circle around are entrance
21 wounds, and those without a circle around are exit wounds. And this
22 is further listed in the comments below.

23 So, essentially, in this man there's a very straightforward
24 gunshot injury, number 3, on the upper part of his chest which has
25 come out the upper part of the back on the right side. That's gone

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1 through tissues in the chest, so that's fine.

2 There's a second injury on the front of the chest, slightly
3 lower down, which has gone fairly superficially and sort of gone in
4 the front and just come out at the back just behind, not causing any
5 damage, really.

6 Q. Is that 8 as we see it on the diagram?

7 A. That's 8.

8 Q. Yes.

9 A. And it's coming out as 9. Okay? Just behind there.

10 Q. Yes. And we can see 9.

11 MS. ROWAN: For those following, we can see "9" written on the
12 very far right --

13 THE WITNESS: Yes.

14 MS. ROWAN: -- marking an injury on the left-hand side of the
15 lower back.

16 THE WITNESS: Yes.

17 MS. ROWAN:

18 Q. Yeah.

19 A. Then we have an injury on the upper part of the back of the left
20 -- an entrance wound on the upper part of the left arm, upper arm,
21 which is actually going through just the soft tissues of the back of
22 the shoulder and coming out just above the shoulder blade. So that's
23 injury 6 coming out as injury 7.

24 Q. Yes.

25 A. And, finally, we have another entrance wound lower down on the

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1 left arm which is coming in on the outer part of it and exiting on
2 the inner part. So you could read that as four entrance wounds, four
3 separate bullets. I think it could just be three. My --

4 Q. No, no, just pausing there.

5 A. Sorry.

6 Q. What was the conclusion of the pathologist before we come on to
7 your reading of it? Is it correct to understand that the
8 pathologist's report recorded this as four entry wounds; is that
9 right?

10 A. I don't think they actually analysed it. They listed them all.

11 Q. Yes.

12 A. I mean, there's no doubt there's four entries and there are four
13 exits.

14 Q. Yes.

15 A. My suggestion, and it's only a suggestion, is that the -- a
16 bullet has gone through the back of the left upper arm, come out the
17 inner part, and then gone into the chest and come out there. So that
18 could be all just one -- one shot. So it's possible this man was
19 only shot three times.

20 Q. Yes.

21 A. It could be four, but that's -- that's a suggestion I'm making.

22 Q. And is it, in your opinion, more likely that it was three shots
23 with the re-entry as described by yourself?

24 A. I think it probably is.

25 Q. Yes.

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Cross-examination by Ms. Rowan

1 A. My impression is that this man would have his -- he'd been shot
2 towards the front, he'd probably have his arm to the side, in which
3 case a bullet wound goes in there, a bullet wound goes in there, and
4 it could quite easily come out again. Because it's just gone through
5 soft tissue in the arm --

6 Q. Yes.

7 A. -- stuff has a lot of energy, and it could well hit the chest
8 again.

9 Q. And we can see that opinion in your note. If we look at the
10 bottom where it has wound 8 to 9 tracked at the bottom, we can see
11 your note there, can we, at the bottom?

12 A. Yes.

13 Q. "Possible re-entry"; is that right?

14 A. Yes. If you can read that, "possible re-entrance of arm wound."

15 Q. Yes. And then it's of arm wound 4 to 5 we see in brackets?

16 A. Yes.

17 Q. Okay, very well. So this is your opinion as to how the correct
18 tracking of these should appear; is that right?

19 A. Yes. And I think to be fair, the original pathologist, that was
20 his understanding of the tracking as well.

21 Q. Yes.

22 A. This is a fairly straightforward one.

23 Q. Yes.

24 A. My only addition would be is that this is possibly a re-entry
25 wound, taking it down from four to three.

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1 Q. Yes. All right. Thank you very much.

2 MS. ROWAN: We can take down that imagery.

3 Q. And then, finally, before we come back to the start of this
4 report, I just want to deal briefly with a question you were asked by
5 the Prosecution around movement of the body. The last question that
6 you were asked was:

7 "Is there any information in the report indicating [that] the
8 body had been moved or whether the victim was killed where he was
9 found?"

10 And the opinion that you give, is it correct, that in your view
11 he was likely killed where he was found; is that right?

12 A. Yes.

13 Q. And the reason that -- there's a twofold reason that you give
14 for that. One is had he been moved, you would expect more
15 bloodstaining; is that right?

16 A. Yes, if he had been shot somewhere else --

17 Q. Yes.

18 A. I mean, he has eight open wounds on him. Blood is going to leak
19 out somewhere. I would have expected blood to leak out as the body
20 was being moved, which that's not described anywhere. Also, if
21 you -- you know, the scene photographs, for what they are, just seem
22 to be like somebody who's collapsed on the ground.

23 Q. Yes. One of the other features that you mention is that there
24 was no mention of dragging marks on the body.

25 A. Yes.

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1 Q. Would it be correct to understand dragging marks would likely
2 look like abrasions?

3 A. Yes.

4 Q. But one of the features that is unusual in general about these
5 reports is that they describe no abrasions at all, and that's
6 something we've already discussed.

7 A. Yes.

8 Q. And --

9 A. And --

10 Q. And you don't have photos yourself of any parts of these bodies
11 unclothed in order to determine whether or not there is, in fact,
12 abrasions that we may see underneath the clothing; is that right?

13 A. No.

14 Q. And also in terms of the extent of the bleeding on the clothing,
15 given the fact that the photographs of the scene were all taken with
16 the bodies *in situ* and not moved onto their front, it's not possible
17 to see the extent of the bleeding from the back part of the body; is
18 that right?

19 A. Yes.

20 Q. And as such, would it be fair to say that you could not
21 conclusively say -- or, pardon me, conclusively exclude the
22 possibility that these bodies had been moved, but, in your opinion,
23 it is more likely that they did die *in situ*?

24 A. From the information I have, I would suggest they have died
25 where they are. The clothing also does not look as if it's been

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1 dragged along the ground.

2 Q. Yes.

3 A. It's all in place --

4 Q. Yes.

5 A. -- as if somebody's just collapsed suddenly there.

6 Q. Now, to go back to the beginning, before we move off this body.

7 MS. ROWAN: Could we go back to page 5, please, question 1.

8 Q. You were asked, Mr. Clark, this question:

9 "What information in this report could have led the pathologist
10 to conclude '[t]he death was violent' ... and '[t]he most likely
11 cause of death is murder ..."

12 Now, I just want to ask you about the notion of murder. Murder
13 is not a medical term.

14 A. No.

15 Q. It's a legal term.

16 A. Yes.

17 Q. And what is murder and the definition of murder changes
18 dependent upon the country and/or jurisdiction one finds themselves
19 in at any time; is that right?

20 A. Yes.

21 Q. And as you've explained to us at the outset, pathology is
22 concerned with mechanism of death?

23 A. Yes.

24 Q. Murder would be a question of manner of death?

25 A. Yes.

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1 Q. I'm conscious that we're speeding up, so I'm going to pause on
2 purpose.

3 Murder is not a term you would ordinarily expect to find in an
4 autopsy, would you agree? Not ordinarily.

5 A. Yes, it's not a term I would ever have on an autopsy, nor would
6 I put the word "suicide" in an autopsy. Although, I know it -- I'm
7 aware in some jurisdictions it's probably expected of them to --

8 Q. Yes.

9 A. -- talk about manner of death, but ...

10 Q. And we don't know whether or not that was expected of Serbian
11 pathologists at the time when this was completed.

12 A. Yes.

13 Q. But it's certainly, as you say, not a term you would ever use in
14 one that you would write yourself?

15 A. Yes.

16 Q. And --

17 A. And -- sorry, you --

18 Q. No, continue.

19 A. Even, you know, to talk about the cause of death as murder, I
20 mean, that phrase is wrong. It should be the -- as I say, it should
21 be the manner of death, so [Overlapping speakers] ...

22 Q. Yes, you anticipated my next question. Murder isn't a cause of
23 death, is it?

24 A. No.

25 Q. No. Murder is the circumstances of a death?

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1 A. Yes.

2 Q. The cause of death is the mechanism of the death?

3 A. Yes.

4 Q. And that's a pathologist's job to determine?

5 A. Yes.

6 Q. And murder, of course, as we said, can change and can have the
7 very specific legal meaning depending on where you are, and it can be
8 distinguished in certain jurisdictions from other forms of homicide
9 such as manslaughter, justifiable homicide; for example?

10 A. Yes.

11 Q. So we also -- there is also another term that can be used which
12 is -- which is homicide?

13 A. Yes.

14 Q. That can include but is not limited to murder. Would you agree?
15 I appreciate we are straying into inviting comment on what is a legal
16 term.

17 A. Yes.

18 Q. But homicide is the killing of a person by a deliberate act of
19 another?

20 A. Yes.

21 Q. Yes. We'll leave it, perhaps, in those more simple terms.

22 A. Yeah.

23 Q. So it wouldn't ordinarily be the job of a pathologist to descend
24 into, A, homicide, or, B, the different potential forms of homicide -
25 murder, manslaughter, et cetera?

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1 A. Certainly not, no.

2 Q. And you mentioned suicide a moment ago. Of course, other ways
3 in which persons can die are suicide or accident.

4 A. Yes.

5 Q. You mentioned that you wouldn't ordinarily put "suicide" either
6 on an autopsy. Can you just, for completeness, tell us why that
7 would be the case?

8 A. Well, there's enough you can imply in an autopsy report to
9 suggest what the manner of death is, but I would never put "suicide"
10 down because there may be -- even although I find somebody with, say,
11 a ligature around the neck, as is in hanging, who knows what other
12 information that we don't know could come out afterwards, a police
13 investigation, et cetera, et cetera. So we can imply what the manner
14 of death is, but I wouldn't put it in print.

15 Q. And, likewise, you wouldn't use the term "homicide" in print?

16 A. No.

17 Q. So when we see you commenting and answering questions upon
18 murder as asked to by the Prosecution, should we read into, would it
19 be fair, your answer that you remain of the view that commenting upon
20 manner and circumstances of death is not for a pathologist?

21 A. No, but it's --

22 Q. No.

23 A. -- been done here -- I mean, I agree with the sentiment -- I
24 mean, there's nothing to suggest these gunshot injuries were suicide
25 or accident, so that leaves murder. If the pathologist feels obliged

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1 to use that term, that's fine.

2 Q. Yes. But you note that the findings that we see in these
3 autopsies would not be inconsistent with a homicide?

4 A. Yes.

5 Q. Would that be a more correct --

6 A. Yes.

7 Q. -- way of putting your conclusion? All right. So perhaps if we
8 could just stand back then from this autopsy, this one autopsy that
9 we have for this individual. Would it be fair to summarise the
10 position as this for this autopsy individually: That there are
11 doubts in existence, in your opinion, as to the veracity of the
12 finding of bruising. There are alternative findings available, in
13 your opinion, better ones, in relation to projectile trajectory. And
14 we should have a cautious view of the presence of any gunshot
15 residue. Would that be a fair summary?

16 A. I think that's fair, yes.

17 Q. Bearing that in mind, would I be fair to assume that you are not
18 in a position to adopt these findings in this report as your own and
19 swear to their accuracy or reliability?

20 A. Sorry, what -- which report?

21 Q. This pathologist report.

22 A. Oh, the pathologist report.

23 Q. Yes.

24 A. Yes, I -- I certainly couldn't agree entirely with the
25 findings --

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1 Q. Yeah.

2 A. -- unless I was given more information.

3 Q. Yes. You're not in a position today to confirm that all of the
4 findings in this report are correct, accurate, reliable? You're
5 simply not in a position to do that; is that right?

6 A. Yes.

7 MR. PACE: Objection, Your Honour. Asked and answered multiple
8 times.

9 PRESIDING JUDGE SMITH: Overruled.

10 Go ahead.

11 MS. ROWAN: Just checking if your answer was recorded.

12 PRESIDING JUDGE SMITH: He answered already, I believe.

13 MS. ROWAN: I was just checking. Thank you. Yes.

14 If we could move on then to the next report, please, our next
15 report we're dealing with at page 7. Thank you.

16 Q. And we can see at the top of page 7 the person that we are
17 concerned with at the moment. Now, this is an autopsy report that
18 you were brought to briefly earlier by my learned friend for the
19 Prosecution.

20 Fair to say again, Mr. Clark, for this autopsy, that all of
21 those general observations that we have gone through that you have
22 made about these autopsies as a collective, would those general
23 observations and concerns apply to this individual?

24 A. Yes.

25 Q. Now, looking at page 7, please, we have - if we go down a little

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1 bit further - the -- we should -- bear with me one moment.

2 MS. ROWAN: Pardon me, Your Honour. If you just allow me to
3 check a reference, please. My apologies, Mr. Clerk. I just wanted
4 to check a reference. Okay.

5 Q. The first question you were asked relation this body, we can see
6 at page 7, question 1, again, is in relation to gunshot wound
7 trajectories; is that right?

8 A. Yes.

9 Q. And in this instance, this is one of those persons who you were
10 of the view that the gunshot wounds, in your words, were "extremely
11 doubtful"; is that correct? We can see that terminology, for your
12 reference, at the top of your report on the second line.

13 A. Yes.

14 Q. And perhaps if we can follow on screen.

15 MS. ROWAN: If we can just go up a little bit so that those
16 following can have it in view.

17 PRESIDING JUDGE SMITH: Ms. Rowan, before you go further, we
18 have to end this in about five minutes --

19 MS. ROWAN: Okay.

20 PRESIDING JUDGE SMITH: -- because of the next meeting.

21 MS. ROWAN: Yes. I'll make sure that I finish in five minutes.

22 A little bit more, please. Thank you.

23 Q. So that you have the reference I'm looking at, Mr. Clark, we can
24 see here the six gunshot wounds described and the trajectories are
25 extremely doubtful. And you give us a summary of some of the

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1 findings that were contained in the underlying report. Is that
2 right?

3 A. Yes.

4 Q. Now, you were asked about this this morning, and just to remind
5 you of what you had said about this body this morning.

6 "... the entrance and exit wounds were close by, so both on the
7 back, which would be very unusual unless the gunshot was a very
8 shallow angle across the back, which I suppose is possible, but
9 there's little to indicate from the entrance wounds that that was the
10 case. You would expect them to be a sort of slightly odd shape."

11 Now, what I would like to do is use your diagram so we can look
12 at this in a little bit more detail, and I hope we'll be able to do
13 that in five minutes.

14 MS. ROWAN: So can we please have back -- the full ERN range of
15 these diagrams is 124715 to 124723, and the page I'm looking for is
16 718. And if we can have it so that we can have minus the name but
17 plus the notes. Thank you.

18 Q. All right. Mr. Clark, is it right that this is the correct
19 corresponding diagram to this autopsy report?

20 A. Yes, correct.

21 Q. And you had given us the description, as we just were looking at
22 earlier, and as you had said earlier today, it would mean that he
23 would have been lying more or less on his side "and a couple of very
24 tangential gunshot injuries across his back. That may be the answer.
25 [But] I don't know."

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1 Now, when we look at this immediately on its face, we can see
2 that there is one wound on the left-hand side; is that right?

3 A. Yes, there's one very straightforward wound --

4 Q. Yes.

5 A. -- going in the left chest and coming out the middle of the
6 back. There's no issue with that at all.

7 Q. And that is -- is that what we see as being 3 tracked across to
8 4?

9 A. 4, yes.

10 Q. Yes. So you have no injury with the first one that we can see
11 here, 3 tracked across to 4?

12 A. Yes.

13 Q. Now, 4 is the lowest dot that we can see on the left-hand side;
14 is that correct?

15 A. Yes.

16 Q. So what we are dealing with as being extremely unusual is this
17 collection of four wounds on the back all said to be entrance and
18 exit wounds?

19 A. Well, yeah, the --

20 Q. A collection of?

21 A. A combination of entrance and exits.

22 Q. Yes. Now, just standing back and looking at that, perhaps
23 taking it from a very simplistic perspective, it would be, as a
24 starting point, very unusual to see one gunshot wound coming in and
25 out of the back, let alone two, in the fashion that we see here; is

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1 that right?

2 A. I suppose if there's an explanation for one unusual one on the
3 back, the same explanation would apply for two of them. So that's
4 not too unusual. But it's just difficult to see how they would have
5 happened. They're not even going in the same direction. One is
6 going more or less horizontal, that's the 7 to 8; and the other one
7 is going, actually, upwards, 5 to 6. So there's clearly been some
8 movement --

9 Q. Yes.

10 A. -- in between.

11 Q. If we take it perhaps in stages. The first unusual aspect,
12 would it be right in saying, is that it is unusual, as a starting
13 point, to have an entry and an exit wound on the same surface of the
14 body?

15 A. Yes.

16 Q. Not impossible but unusual?

17 A. Unusual.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MS. ROWAN: Thank you.

20 PRESIDING JUDGE SMITH: Witness, you'll have to come back
21 tomorrow at 9.00. We will try to finish your testimony in a
22 reasonable time tomorrow. Thank you for being with us today.

23 THE WITNESS: Thank you.

24 PRESIDING JUDGE SMITH: You're excused now. Please do not speak
25 with anyone about your testimony in court.

1 THE WITNESS: Okay.

2 [The witness stands down]

3 PRESIDING JUDGE SMITH: Ms. Rowan, you're at one hour and
4 45 minutes so far. You're going to have to wrap it up in 15 minutes
5 tomorrow.

6 MS. ROWAN: Your Honour, I'll need at least another hour.

7 PRESIDING JUDGE SMITH: No. We have other witnesses coming.

8 MS. ROWAN: I appreciate that, but Your Honour has maintained a
9 position to the Defence repeatedly that were we to need additional
10 time for relevant questioning --

11 PRESIDING JUDGE SMITH: When it's needed, yes.

12 MS. ROWAN: Yes.

13 PRESIDING JUDGE SMITH: But I don't believe it is in this case.

14 MS. ROWAN: Your Honour, we are dealing in a murder trial with
15 an autopsy --

16 PRESIDING JUDGE SMITH: Ms. Rowan, you're going to have to wrap
17 it up tomorrow. You need to state your case to this man and have him
18 opine based upon that, and we'll move on.

19 MS. ROWAN: No, but, Your Honour, it's important that this is
20 said on the record. This is a murder trial, and we are dealing with
21 the autopsies of ten murder victims. To suggest that it is not
22 relevant or highly significant to cross-examine a pathologist in a
23 murder trial about ten murder victims --

24 PRESIDING JUDGE SMITH: Everyone relied upon your estimate of
25 time spent --

1 MS. ROWAN: Yes.

2 PRESIDING JUDGE SMITH: -- and you are almost to the end of that
3 time.

4 MS. ROWAN: Yes. I can borrow time from my learned friends so
5 that we keep within the Defence estimate, and it makes no difference
6 to the overall time.

7 PRESIDING JUDGE SMITH: You'll have to get it all from them.

8 MS. ROWAN: Your Honour, the Defence, as a collective, had, I
9 believe, six hours down. The Defence, as a collective, will not go
10 beyond that. And in my submission, in circumstances where we're
11 dealing with pathology in a murder trial, six hours is conservative
12 --

13 PRESIDING JUDGE SMITH: I'm very aware of what kind --

14 MS. ROWAN: -- for ten bodies.

15 PRESIDING JUDGE SMITH: I'm very aware of what kind of a case it
16 is.

17 MS. ROWAN: Yes.

18 PRESIDING JUDGE SMITH: I'm telling you you've underestimated
19 your time needed --

20 MS. ROWAN: Yes.

21 PRESIDING JUDGE SMITH: -- and some of the questioning was
22 unnecessary. So you'll have to deal with this tomorrow morning.

23 [Microphone not activated].

24 We're adjourned for five minutes.

25 --- Break taken at 4.26 p.m.

1 [Status Conference]

2 --- On resuming at 4.34 p.m.

3 PRESIDING JUDGE SMITH: This is not intended to be a long,
4 drawn-out matter. I'm especially sensitive to the needs of the
5 interpreters to get away from us all for a while, so we'll try to be
6 finished at 5.00.

7 Let me just ask, first of all, for an update from the
8 Prosecution on witnesses to be called.

9 MR. HALLING: Certainly, Your Honour. We're now in the final
10 steps of our case. The SPO announced, in filing F02833, the 11
11 witnesses anticipated to be heard from February to April 2025. There
12 are around 28 hearing days scheduled during that same time. On
13 reasonable estimates, this is well within Your Honours' target date.

14 Just two principal factors affect this overall timetable that I
15 wanted to mention here. They cut in opposing directions.

16 The first is that we intend at least one more streamlining round
17 to remove further witnesses from the list or reduce them to writing,
18 and we said this before, we intend to report back on this before the
19 conclusion of the current evidentiary block.

20 And the second is that there are certain witnesses that are not
21 formally notified yet by formal filing. This is anticipated to be a
22 limited number after that streamlining, in the range of around five
23 to seven witnesses. And these witnesses are not yet notified for
24 various reasons which we were going to expand upon under agenda item
25 3.

1 The last thing I can say on this is, overall, we fully
2 appreciate the imperative of finishing by April 15th. The caveats
3 still remain, but we also remain confident that we'll do it.

4 PRESIDING JUDGE SMITH: The second question is related, and that
5 is what's your timing on the filing of the remaining 153, 154, and
6 155 applications? Is there a cut-off date beyond which it will not
7 occur?

8 MR. HALLING: There's no cut-off, but I can give the timelines.

9 For Rule 154, actually, all motions for that rule have been
10 filed for every witness that's been notified from now until April.
11 Should the SPO notify any further witnesses from that limited group,
12 and I mean Rule 154, we would file that concurrently with the
13 notification.

14 For Rule 153, we should be in a position to file the application
15 for the remaining Rule 153 witnesses one month from today, which
16 would be Friday, February 21, 2025. Should another witness be
17 converted to Rule 153 in the course of our final streamlining, this
18 application would be filed as soon as possible once that decision was
19 made.

20 And for Rule 155, we do have at least one more Rule 155
21 application to file. The timing is harder to predict. And the
22 reason why is because of the special issues regarding witnesses under
23 the next agenda item, which I can go into now or whenever Your Honour
24 chooses.

25 PRESIDING JUDGE SMITH: Yes, you can go into that, because I

1 note already that there are two that are somewhat questionable based
2 upon a recent psychological evaluation, and then you have the one
3 person who's been kind of out of the country for quite some time, and
4 I wonder about those two.

5 MR. HALLING: Yes, and I know who you mean. In the context of
6 this hearing, I can speak in terms of categories, but I can explain
7 what the issues are.

8 PRESIDING JUDGE SMITH: Yeah.

9 MR. HALLING: We understand special issues here to be matters
10 which affect whether or how our outstanding witnesses will be called.
11 And this can affect non-notified witnesses, but it also can and has
12 affected witnesses that have been previously notified as well, and
13 Your Honour just mentioned one of them.

14 There are four issues that I wanted to address in total.
15 Certain witnesses are affected by more than one at the same time.
16 I'll address each in turn, and then make a kind of global comment
17 about what's being done about all this.

18 The first is the matter of uncooperative witnesses, and that
19 would be those that are affected by the climate of intimidation or
20 people who have otherwise expressed opposition towards testifying in
21 these proceedings. Many of the remaining uncooperative witnesses
22 live outside of Kosovo, where the SPO is not able to compel their
23 testimony.

24 The second are medical issues. And this includes people where
25 there's either strong grounds to believe that they are unavailable

1 for medical reasons but the requested concrete proof of that has not
2 yet been received. It also includes people where there are potential
3 risks to a witness's health or well-being if forced to testify which
4 affects the assessment as to whether they should be compelled.

5 The third is that of security affecting certain witnesses. Some
6 witnesses have complex security needs, and this is affecting the
7 calculus of how or even whether to call them.

8 And fourth are witnesses who remain under assessment. Most of
9 our witness assessments have been made by this point, but there is
10 recent evidence which raises the opportunity for further possible
11 streamlining.

12 But what I would like to stress in relation to these is this:
13 For all these issues, there are elements both outside and inside the
14 SPO's control. There is a limit to what we can do to persuade a
15 reluctant witness or to receive requested information. And we also
16 can't count on witnesses coming to court and testifying in a certain
17 way before they do. But what the SPO can do, and what we have been
18 doing, is to pursue an evidential record such that we can say that we
19 have exhausted all efforts within the timeframe of our case, and that
20 we would then be removing witnesses, seeking further relief under
21 Rule 155, or taking any other appropriate action to ensure that we
22 finish on time.

23 So while these issues can affect how the target deadline is hit,
24 we do not currently anticipate it will affect whether it is hit.

25 PRESIDING JUDGE SMITH: And what date do you anticipate for your

1 next streamlining?

2 MR. HALLING: When we say the end of the current evidentiary
3 block, that's next week.

4 PRESIDING JUDGE SMITH: Next week, okay.

5 MR. HALLING: So we hope to be able to give information then.

6 PRESIDING JUDGE SMITH: So we could count on that by no later
7 than next Thursday?

8 MR. HALLING: Yes, we should be able to do that, Your Honour.

9 PRESIDING JUDGE SMITH: And then do you have any questions for
10 the Panel?

11 MR. HALLING: No questions for the Panel.

12 PRESIDING JUDGE SMITH: Okay.

13 Now, on issues of concern for the Defence regarding the
14 remaining witnesses. Any particular concerns you have concerning
15 what you just heard from Mr. Halling?

16 We'll start with Mr. Thaci's Defence.

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

18 With respect to what the Prosecutor has just laid out, first,
19 the date of April 15th was mentioned. Our concern is looking at the
20 calendar and the dates that the Panel has reserved for trial, the
21 last -- we have a three-week block that goes until April 4th. And so
22 I'm not sure what the suggestion is as to how we would get to April
23 15th or how that would be extended, because that would then move us
24 into a four- or five-week block. So our assumption is that the
25 Prosecution's case will end on April 4th given that there is no --

1 there are no additional courtroom days scheduled for those.

2 PRESIDING JUDGE SMITH: Do you want to answer that, Mr. Halling?

3 MR. HALLING: When I gave the 28 hearing days, that was counting
4 all days currently scheduled, which, indeed, run until the 4th, but
5 Your Honour has previously said the target deadline is 15 April,
6 which is --

7 PRESIDING JUDGE SMITH: Well, that was two years ago.

8 MR. HALLING: Right. So this is why I said it this way.

9 PRESIDING JUDGE SMITH: So that answers it. They have
10 calculated up to 4 April.

11 MR. MISETIC: Yes, that's fine.

12 PRESIDING JUDGE SMITH: If there is some emergency situation
13 that we have to fill something in, we'll have to deal with that and
14 find a way to do it.

15 MR. MISETIC: Okay.

16 PRESIDING JUDGE SMITH: I don't want to extend five weeks of
17 trial in there. We'd probably have to take a break and then come
18 back and finish up --

19 MR. MISETIC: Okay.

20 PRESIDING JUDGE SMITH: -- if there is one witness or something
21 like that.

22 MR. MISETIC: Okay.

23 My next concern is that we only have, after this block, two
24 three-week blocks left. If there are other witnesses that the
25 Prosecution is pursuing, we should have some notice well in advance

1 of when these witnesses will come. Because we can't be guessing,
2 with this amount of open witnesses left, as to which one of these
3 might be dropped on us and then dropped on us in that last month
4 within a three-week block. So we have a concern about that and think
5 that there should be, to the extent possible, disclosures of -- as
6 soon as there's a suggestion that may be realistically feasible to
7 have someone brought, that we get as much advance notice of that as
8 possible because otherwise --

9 PRESIDING JUDGE SMITH: It may be helpful next Thursday if we
10 get an update on streamlining, we'll have an idea of how many
11 everyone believes are going to be left, and then we can go from there
12 and ask some questions about it. But I understand your concern about
13 that.

14 MR. MISETIC: Yes, thank you.

15 The third issue that we wish to raise is, as the Panel knows, we
16 still have a pending application, application F02602, with respect to
17 two witnesses that we have asked the Prosecution be compelled to
18 call.

19 We would just invite the Panel, if those witnesses are going to
20 be called, same issue, that we have enough advance notice that they
21 would be called. I would point out, from our perspective, we have
22 had gaps already in this block where we think that that time could
23 have been used to hear important witnesses. To the extent there's
24 going to be a risk of further gaps in the Prosecution case, again,
25 that would militate to hearing important witnesses. I'll leave it at

1 that. But I just wanted to raise it to the Panel's attention.

2 PRESIDING JUDGE SMITH: We're aware of that.

3 MR. MISETIC: Yes. Just from our perspective, we would just
4 appreciate that, to the extent the application is granted, that we
5 get advance notice.

6 PRESIDING JUDGE SMITH: We're working on it.

7 MR. MISETIC: Okay. Thank you.

8 And then I have other issues, but I'll do that when you address
9 the Defence. Thank you.

10 PRESIDING JUDGE SMITH: Anybody else?

11 MR. DIXON: Yes, thank you, Your Honours. Three brief points.

12 Firstly, we would ask that 4 April is set as a fixed last day
13 for the Prosecution to call evidence, and then only in particularly
14 exceptional circumstances should that be extended. We have to have
15 that kind of certainty, and I think it's fair to do that after
16 endless years of the Prosecution being able to sort themselves out.

17 My second point is a similar one which is that, as Your Honour
18 has said, if by next Thursday we can get the latest streamlining,
19 that should include if there are any additional witnesses to be added
20 to the ones we know about already, the five to seven potential ones.
21 And that should then be a fixed list so that we know, as the Defence,
22 for the next two blocks after that what is coming, and that's final.
23 Only then in exceptional cases, where the Prosecution can satisfy
24 Your Honours that it really needs to go beyond that, should it be
25 changed.

1 I think that's the way around to do it as opposed to saying,
2 well, you can just keep it open-ended. Otherwise, there's going to
3 be no definite cut-off.

4 And then, thirdly, we have notified the Prosecution already of a
5 few key witnesses who are coming, to give us as much advance notice
6 as when they're going to come. Not just have them on the list and
7 say that's probably the order, but say this is the time period when
8 they're coming. They're in touch with them now. It's at the end of
9 the case. They must be able to do those things in a much more fixed,
10 certain way.

11 So much, much greater certainty and holding the Prosecution to
12 that is what we ask for as the Defence at this stage. Thank you,
13 Your Honours.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. TULLY: Just one item, Your Honour. And my apologies for
16 not adding it to the agenda earlier. But we addressed the 153, 154,
17 and 155 motions, but we're missing, perhaps, an update on bar tables,
18 because I recognise from October 2024, Mr. Halling said at page --
19 sorry, I'm missing it here. It's early in the transcript. He said:

20 "There are, indeed, a great many items that we would be
21 proposing to call through the bar table, but we don't have relative
22 percentages of these."

23 So if those great many items have been presented or if there are
24 a great many to come, that would be much appreciated.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. TULLY: Thank you.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. HALLING: Yes --

4 PRESIDING JUDGE SMITH: I'm sorry. We need to have an answer on
5 that.

6 MR. HALLING: I can respond to the Veseli Defence items as well
7 if you would like me to.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MR. HALLING: Yes. So, briefly, and just to do the bar tables
10 first because that was Your Honour's question.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MR. HALLING: We continue to actively work through our exhibit
13 list to tender relevant items through the bar table. We have two
14 motions that are very close to completion on the last two KLA zones,
15 which is Pashtrik and Dukagjin. And there are final motions that are
16 being prepared to be filed on remaining General Staff materials,
17 international reports, and certain other residual miscellaneous
18 materials.

19 As to what Mr. Dixon was describing, we see no reason to change
20 what the Panel has already said in relation to the target date or the
21 hearing schedule at this time.

22 And in terms of streamlining and notifications, we can say for
23 ourselves, we understand everything is immediate from here on out.
24 When we streamline a witness, we need to announce it. When we are
25 ready to notify a new witness, we need to announce it. And we will

1 do it straightaway, and we will do it with enough time for everyone
2 to prepare.

3 Not every witness needs the same amount of time to be prepared,
4 and we don't think that there needs to be a concrete deadline set.
5 But we will make sure that there is enough time, with the hearing
6 days that are scheduled, to hear all notified witnesses.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 You may very well need a deadline on bar table motions because
9 it backloads everything, and it's going to get in the way of getting
10 this -- the Prosecution's case fully submitted.

11 MR. HALLING: Yes. All of these motions are expected to be
12 filed by the target date. It's not our understanding that everything
13 needs to have its admissibility resolved, and we understand that we
14 can close -- we would close our case without prejudice to subsequent
15 rulings of the Panel, but we can certainly do that within the
16 timeframe of our case.

17 PRESIDING JUDGE SMITH: And the other thing is we don't need to
18 wait until a Thursday or a specific Thursday in order to make
19 announcements as to dropping witnesses or whatever. So we -- I
20 appreciate your statement that everything will be immediate. And the
21 first person to notify is the Defence.

22 I mean, we'll hear about it eventually and that will be fine,
23 but it's extremely important that this gets to the Defence as soon as
24 possible.

25 MR. HALLING: Understood.

1 PRESIDING JUDGE SMITH: All right. Now this next group has to
2 do with the possible Rule 130 applications, and we're interested,
3 from the Defence, on what kind of timing for preparation and
4 deadlines for filing would you anticipate and be able to deal with?

5 MR. MISETIC: Yes, Mr. President. I have consulted with all
6 four Defence teams, and the Defence teams would request four weeks to
7 prepare Rule 130 applications.

8 PRESIDING JUDGE SMITH: From close of Prosecution's case?

9 MR. MISETIC: Yes.

10 PRESIDING JUDGE SMITH: And will you be filing a consolidated
11 motion, do you think?

12 MR. MISETIC: We did not discuss that, to be honest with you.

13 PRESIDING JUDGE SMITH: That would make things simpler, but it's
14 certainly your case to deal with.

15 MR. MISETIC: Yes. The -- I mean, just off the top of my head,
16 a couple of issues arise. One is there is obviously going to be very
17 specific things to specific accused that may be raised.

18 PRESIDING JUDGE SMITH: Yeah.

19 MR. MISETIC: And then, secondly, things like word limit and
20 things like that would also have to be addressed, but it is something
21 that we can consult and discuss.

22 PRESIDING JUDGE SMITH: Discuss it if you can. We understand
23 the limitations, but if there is a way to do it, that would be good.

24 MR. MISETIC: Thank you.

25 MR. HALLING: And, Your Honour, could we be heard on that --

1 PRESIDING JUDGE SMITH: Yes, you may.

2 MR. HALLING: -- that request?

3 We would have no objection to that request of the Defence. We
4 would also prefer a consolidated motion, if possible. And we would
5 ask for a reciprocal month to respond to that motion.

6 MR. MISETIC: We have no objection to the same amount of time
7 being given to the Prosecution.

8 PRESIDING JUDGE SMITH: Well, we'll have to think both of those
9 over as far as time limits, but thank you for that.

10 MR. DIXON: Your Honour, could I just add one matter on this,
11 and that's when the period would start running from the close of the
12 Prosecution case. Because I think if you look at the rule --

13 PRESIDING JUDGE SMITH: Say that again, I'm sorry.

14 MR. DIXON: We'll have to look at when does the time start
15 running from the close of the Prosecution case, because if
16 Your Honours -- if you look at the rule, which is Rule 129, it does
17 refer to all the evidence that the Prosecution relies upon. So we're
18 going to have get the decisions on the bar table motions, and hence
19 the reason why a date should be set, and earlier than the 15th April,
20 we would argue, so that those could be in and decisions could be made
21 to start the clock running.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 That's a very real issue that we'll try to deal with.

24 Now, the next one is sort of a hypothetical, but how much time
25 do you expect, from the Defence, anyway, to be needed for a Defence

1 preparation between the issuance of the Rule 130 decision and the
2 commencement of a Defence case, if such is necessary?

3 MR. MISETIC: Yes, Mr. President. I can, again, say that I've
4 consulted with all four Defence teams, and we would request ten weeks
5 as long as it's ten working weeks and doesn't include the weeks of
6 the summer recess. And the reasons for that are multiple, but it
7 would include the fact that it's going to be extremely difficult to
8 interview and take statements from witnesses during a summer recess,
9 both because of the availability of the teams, but, more importantly,
10 availability of witnesses during that period.

11 PRESIDING JUDGE SMITH: So ten weeks?

12 MR. MISETIC: Yes.

13 PRESIDING JUDGE SMITH: Does the Prosecution wish to be heard?

14 MR. HALLING: I believe that's more than what was said in the
15 last hearing. We would reserve a position on it until we know the
16 exact moment when these weeks are to run.

17 Incidentally, Your Honours, could we say one last thing on
18 Rule 129, as Mr. Dixon just mentioned, before we continued?

19 PRESIDING JUDGE SMITH: Yes.

20 MR. HALLING: That rule does say it's the witnesses to be called
21 or evidentiary material to be presented. It does not say admitted.
22 And, indeed, in Cases 04 and 05 before this Panel, the SPO closed its
23 case even though there were evidentiary matters still pending. So
24 this is why when I said what I said, that admissibility need not be
25 ruled upon, it's not required under the rule. Obviously, we'll do

1 our best to file these motions as far in advance as possible.

2 PRESIDING JUDGE SMITH: Thank you.

3 MR. MISETIC: If we could just be heard briefly. Obviously, the
4 relevance for us is if you're filing a Rule 130 application and don't
5 know what evidence is or isn't part of the Prosecution case, it makes
6 it potentially difficult.

7 PRESIDING JUDGE SMITH: So the next one is paragraph 8. As you
8 can read, should there be a case to answer, for purposes of planning
9 for trial days, what is the estimated and maximum number of days,
10 team by team, to present Defence evidence?

11 And this is purely optional. I'm not trying to force you into
12 making a disclosure that you don't have to, and you certainly don't
13 have to, but we're trying to figure out what the year is going to
14 entail. So if you feel like sharing that information, do so. If you
15 do not, it's perfectly all right.

16 I'll start with the Thaci Defence.

17 MR. MISETIC: Yes, we have no position to articulate at the
18 moment.

19 PRESIDING JUDGE SMITH: All right.

20 MR. DIXON: Likewise, Your Honours, at the moment we're simply
21 unable to put that position forward.

22 PRESIDING JUDGE SMITH: Okay.

23 MR. TULLY: Likewise. But we will inform you as soon as we have
24 any idea. Thank you.

25 MS. V. ALAGENDRA: We are in the same position.

1 PRESIDING JUDGE SMITH: The same? All right. All right.

2 Any questions for the Panel from the Defence, other than what
3 we've already discussed?

4 MR. MISETIC: It's a question that I don't need an answer to at
5 the moment, because it'll be something I'm sure the Panel may not
6 have considered yet, but the question would be: If there is no
7 Defence case to be put on, and the Defence challenges the sufficiency
8 of the evidence so that there's no case to answer, would the Panel be
9 prepared to move straight to preparation of final briefs and closing
10 argument?

11 PRESIDING JUDGE SMITH: We'll discuss that and answer it. I
12 understand the question, though. Fine.

13 Anybody else?

14 Mr. Tully, are you about to get on your feet or not? Oh, okay.

15 MR. TULLY: I'm stretching my legs, Your Honour.

16 PRESIDING JUDGE SMITH: I don't mean to ignore the
17 Victims' Counsel. Can you enlighten us on the information requested
18 in paragraph 10?

19 MR. LAWS: Certainly, Your Honour. Thank you. Yes. We're
20 working on the basis that we are likely to call three, possibly four,
21 witnesses live. At least one of those will be an expert witness. We
22 will certainly be making applications under Rules 153 and 154 -- I'm
23 so sorry, 153 and 155, I should have said. And we still think that
24 it's realistic to think of our case lasting a week, with the
25 possibility to go into a second week, but we don't see it as two full

1 weeks. We can't predict at this stage how long the cross-examination
2 is going to be, obviously, of the witnesses that we do call. So we
3 think a week is a reasonable estimate at this stage.

4 PRESIDING JUDGE SMITH: Number 11 is requiring you to think out
5 into the future, I realise that, but the expected time needed at the
6 end of a case, if there is a case continuing, to file trial briefs.

7 I'll start with the Prosecution.

8 MR. HALLING: Yes, Your Honour. At least for the moment, we
9 were aiming to file in line with the statutory deadlines specified in
10 Rule 134(b). This could be affected by the proceedings to come,
11 including the brief becoming suddenly due because the Defence case
12 doesn't last as long as what is now anticipated.

13 The only other point that we would mention, if there is an
14 extension of time given to the Defence, just as with the Rule 130, we
15 would ask for a reciprocal extension.

16 PRESIDING JUDGE SMITH: Mr. Laws, did I cut you off? Did you
17 have something else you were going to bring up?

18 MR. LAWS: I was going to deal with it in other matters of
19 concern, in fact --

20 PRESIDING JUDGE SMITH: Yes, go right ahead.

21 MR. LAWS: -- but I'm happy to do it now.

22 Yes, it's only this. Obviously, we're the people most
23 proximately affected by the Rule 130 litigation. And one of the
24 experts in particular is very keen to have a date to work to as soon
25 as possible. And I understand that that's subject to a number of

1 considerations at the moment, but the first of them is, obviously,
2 when the date for the Prosecution to close their case is. And if
3 it's not 4 April because there are going to be outstanding motions of
4 one kind or another, then it would be good to know what that date is
5 going to be as soon as possible, because we can do the maths from
6 there if it is a month for the Prosecution and the Defence each for
7 Rule 130.

8 It makes a big difference because any more significant delay and
9 we hit the summer recess at the end of July, and I should make it
10 clear, that's not a problem at all from our point of view, but it
11 does change things in organising particularly one of the experts that
12 we have.

13 PRESIDING JUDGE SMITH: It would be good if you could work yours
14 in prior to the summer recess.

15 MR. LAWS: Yes. From our point of view --

16 PRESIDING JUDGE SMITH: And it's arguably enough time to do that
17 with 30 days for each side to do a 130 motion. So we'll keep that in
18 mind.

19 MR. LAWS: Your Honour, it's going to depend when the case
20 closes, and then how long Your Honours take to make the decision, but
21 it's certainly not unrealistic to expect us to do it --

22 PRESIDING JUDGE SMITH: An hour.

23 MR. LAWS: In that case, then, end of July looks very likely.
24 Thank you.

25 PRESIDING JUDGE SMITH: Everybody struggles with the amount of

1 time it takes to do these things, and we will too.

2 MR. LAWS: Yeah.

3 PRESIDING JUDGE SMITH: Other matters of concern anybody has
4 that they would like to bring up? Something that's just eating on
5 you?

6 MR. MISETIC: Yes, just briefly, Mr. President. Two things.
7 One, we've raised *inter partes* with the Prosecution, but with respect
8 to the first witness coming into the next block, we've asked the
9 Prosecution to give us, given the volume of evidence that may be
10 involved in the preparation of that witness, to give us one week
11 advance notice of the preparation notes for that witness. We
12 received a response that that may not be possible. And we've asked
13 that -- we've reserved our position on whether he can be called or
14 whether we need more time, and asked the Prosecution to have a
15 witness ready in case we have to apply for extra time depending on
16 the volume of the preparation note. And I just wanted to put that on
17 the record and to your attention.

18 PRESIDING JUDGE SMITH: This is in the next block?

19 MR. MISETIC: Yes, beginning at the February block.

20 PRESIDING JUDGE SMITH: How much time do you need? Can you give
21 them some advance -- some more advance notice?

22 MR. HALLING: We did, actually. The witness would be starting
23 February 10, the week before would be the 3rd, we said the 5th. So
24 that would be at least four full days in advance of the testimony,
25 and this is what we understood the Defence was reserving its position

1 on.

2 This is a big witness, but we don't expect the preparation
3 session to be some order of magnitude different than a witness like
4 W04401 late last year. We think that this is reasonable under the
5 circumstances. But we are looking to see if we can go even earlier
6 than that or if we could maybe put a small witness at the beginning
7 of Monday. So we're looking into everything, but I think what we've
8 proposed is in good faith trying to engage with the Defence's
9 concern.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 I think you ought to re-examine and see if there's a little bit
12 more time you can give to accommodate the case, you know.

13 MR. MISETIC: Thank you. I appreciate Mr. Halling's comments,
14 and yours. And just to be clear, I wasn't suggesting any bad faith
15 on the part of the Prosecution.

16 PRESIDING JUDGE SMITH: No. No, there's not.

17 MR. MISETIC: The second issue is something that arose that
18 hadn't been raised before by the Prosecution concerning witnesses,
19 and it only came to my mind now. But if there are going to be
20 witnesses who they are trying to obtain their testimony for, and
21 there may be a chance that they won't get them and they will have to
22 file applications even potentially under Rule 155 with respect to
23 those, I just want to put on the record now that that may raise
24 issues for us to the extent that those people are not in the
25 jurisdiction of the Defence being allowed to see whether all legal

1 means were used to obtain the testimony of those witnesses before
2 they're tendered under 155. That raises other issues with --
3 regarding witness security, et cetera. And I understand those are
4 competing interests.

5 But I just want to put it on the record, to the extent it's
6 relevant to the Prosecution, to prioritise which people they want to
7 use their best efforts to get their testimony here. That may be an
8 issue we raise should the applications be filed.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MR. MISETIC: Yes.

11 PRESIDING JUDGE SMITH: We'll have to deal with that when it
12 comes up. Thank you.

13 MR. DIXON: Your Honours, we weren't asked about the potential
14 length of the final briefs for the Defence.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. DIXON: And I can say that we have discussed that. We
17 didn't want to take up much time with that today because that is
18 further down the line. In fact, I wanted to ask if we could address
19 Your Honours in writing on that. One, because we believe we will
20 need a much longer time period than the 30 days specified here given
21 the length and complexity of matters. But also, two, for
22 consideration to be given to doing it sequentially, with the
23 Prosecution going first to set out their case, because on a number of
24 key issues, as has arisen in the proceedings, the Prosecution has
25 said they will set out their case in the final brief, and then for us

1 to come afterwards. Not to have the same amount of time. Obviously,
2 we start preparing our briefs, but then adjust it in light of what
3 the Prosecution relies on, ultimately, in order to assist
4 Your Honours so that it's a direct response to what the Prosecution
5 actually relies upon. And then, of course, there's the oral hearing
6 afterwards.

7 But if we could have an opportunity to address that to
8 Your Honours in writing, setting out the reasons, because that would
9 require a change in approach, which we believe will be an effective
10 one and actually help clarify, narrow the issues for Your Honours.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 If you want to file a written position on those issues, you may
13 do so, and the Prosecution can respond five days later, and we'll go
14 from there.

15 MR. DIXON: Yes.

16 PRESIDING JUDGE SMITH: Then we'll have to decide.

17 MR. DIXON: We'll do that. And that will save time. We don't
18 have to discuss it [Overlapping speakers] ...

19 PRESIDING JUDGE SMITH: But you need to do it -- you need to get
20 it done. When are you going to have it ready?

21 MR. DIXON: Yes. That we wanted to get some guidance from Your
22 Honours on. We can look at it as soon as possible. This is
23 obviously further down the line. We have a lot of matters to
24 prioritise now.

25 PRESIDING JUDGE SMITH: [Microphone not activated] ... after next

1 week's testimony, we have a week out of court.

2 MR. DIXON: Yes.

3 PRESIDING JUDGE SMITH: It should be on file in that time
4 period.

5 MR. DIXON: So Your Honours would request that it's at the end
6 of that week, the Friday the end of that --

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 MR. DIXON: Thank you, Your Honours. We will do that
9 accordingly.

10 PRESIDING JUDGE SMITH: Thank you.

11 MR. HALLING: And Your Honours, just to confirm, is our response
12 to that five days or the statutory limit? Because the statutory
13 limit is 10.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. HALLING: No, but just to confirm.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. HALLING: Okay.

18 JUDGE GAYNOR: Mr. Misetic, can you just clarify one point. You
19 said:

20 "If there is no Defence case to be put on, and the Defence
21 challenges the sufficiency of the evidence so that there's no case to
22 answer, would the Panel be prepared to move straight to preparation
23 of final briefs ..."

24 If there's no case to answer, obviously there's no case to
25 answer. So did you mean if there is a case to answer?

1 MR. MISETIC: No, I used that terminology, but what I meant was
2 there are two ways of saying there is no case to answer. One is to
3 file a Rule 130 application, which would require the Panel
4 presumably -- we can litigate that as to what standard you would
5 apply in assessing the evidence. Or we could just say we are not
6 putting on a Defence case, go straight to final argument, and then we
7 get to the --

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MR. MISETIC: Right. We say the Defence rests. But what I'm --
10 just to answer your question directly, it's still to us a
11 no-case-to-answer position to take.

12 JUDGE GAYNOR: Can I just --

13 MR. MISETIC: Yeah.

14 JUDGE GAYNOR: You would skip the Rule 30 stage completely; is
15 that right?

16 MR. MISETIC: Yes.

17 JUDGE GAYNOR: You would not file a motion for no case to
18 answer, is that it?

19 MR. MISETIC: That's correct. That's correct. Thank you.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 We'll do our best to go over this with the transcript and put
22 together some sort of a response, and we'll look forward to what
23 you're going to file.

24 And thank you very much everybody for being here.

25 Interpreters, I'm sorry if it took a little bit longer than we

1 expected, but that's the way lawyers are. So thank you again.

2 We'll see you tomorrow.

3 --- Whereupon the hearing adjourned at 5.07 p.m.

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