

1 Wednesday, 22 May 2024

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

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

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

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

11 PRESIDING JUDGE SMITH: Good morning, everyone.

12 I note that the accused are present in court today with the
13 exception of Mr. Krasniqi, who is appearing by videolink.

14 Today we will resume the testimony of Prosecution
15 Witness W03881.

16 Madam Court Usher, please bring the witness in.

17 Does the Prosecution still have additional questions?

18 MS. IODICE: Yes, Your Honour, about ten minutes --

19 PRESIDING JUDGE SMITH: Thank you.

20 MS. IODICE: -- max.

21 PRESIDING JUDGE SMITH: Thank you very much.

22 [The witness takes the stand]

23 PRESIDING JUDGE SMITH: Good morning, Witness. Are you hearing
24 okay?

25 THE WITNESS: [Interpretation] Good morning, Your Honour. Yes, I

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1 can understand you.

2 PRESIDING JUDGE SMITH: Thank you.

3 Witness, today we will continue your testimony. As indicated
4 yesterday, please try to answer the questions clearly with short
5 sentences. If you don't understand a question, feel free to ask
6 counsel to repeat the question or tell them you don't understand and
7 they will attempt to clarify.

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

10 Please also speak into the microphone and wait five seconds
11 before answering a question and then speak at a slow pace to allow
12 the translators to keep up.

13 Please stop talking if I ask you to do so and if I raise my
14 hand, as I indicated yesterday, please stop also because these
15 indications mean that I need to give you an instruction.

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

18 We continue now with the questions from the Prosecution to your
19 left.

20 Madam Prosecutor, you have the floor.

21 MS. IODICE: Thank you, Your Honour.

22 WITNESS: JOHANN FRITSCH [Resumed]

23 [The witness answered through interpreter]

24 Examination by Ms. Iodice: [Continued]

25 Q. And good morning, sir. During your SPO interview, you talked

1 about the KLA uniforms that you saw.

2 MS. IODICE: And the reference is at P1191.2.

3 Q. I would like now to show you a video.

4 MS. IODICE: Could the Court Officer please bring up ERN
5 068357-01.

6 And, Your Honour, a part of this exhibit has been admitted as
7 P00503.

8 PRESIDING JUDGE SMITH: Thank you.

9 MS. IODICE:

10 Q. I will play this video from the beginning, and I will pause at
11 different parts and ask you some questions.

12 [Video-clip played]

13 MS. IODICE: If we could pause at 18 seconds, please.

14 [Video-clip played]

15 MS. IODICE:

16 Q. Witness, did you observe the black type of uniform that you can
17 see on this still?

18 A. Yes, relatively often in those days.

19 Q. Was that -- which formation was wearing that uniform?

20 A. With regard to this photograph, I am not certain. I think it
21 was a kind of police or military police of the KLA.

22 Q. Thank you.

23 MS. IODICE: And if we could now continue until 00:46.

24 [Video-clip played]

25 MS. IODICE:

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1 Q. Sir, is this an example of mixed uniforms that you saw the KLA
2 wearing?

3 A. Yes. There were many very different mixtures of partial
4 uniforms. Some were wearing all black. Some were wearing
5 camouflage. Some were wearing a mix of civilian or military
6 clothing, also from different kinds of armies. Mostly, however, they
7 were wearing the black eagle on a red background as an insignia.

8 Q. Thank you.

9 MS. IODICE: And if we could now continue and stop at about
10 01:00, 1 minute.

11 [Video-clip played]

12 MS. IODICE:

13 Q. Do you recognise this person?

14 A. Yes, that was Colonel Bescht, the deputy commander of the
15 Multinational Brigade South that was led by the German Federal Army.

16 Q. Thank you.

17 MS. IODICE: And if we could now continue until 01:34.

18 [Video-clip played]

19 THE INTERPRETER: [Voiceover] "We have just agreed that from
20 midnight today no more arms may be borne in the city of Prizren, not
21 by the KLA nor by anybody else. And, hence, we have the authority to
22 hand over and take weapons from anybody."

23 MS. IODICE:

24 Q. Sir, did you observe -- in this image, did you observe while you
25 were in Prizren KLA soldiers patrolling the streets?

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1 A. Yes, that was during the first days after we entered the
2 country; i.e., after 13th and 14th June, and for a relatively short
3 period of time.

4 Q. Thank you.

5 MS. IODICE: And if we could now play the rest of the video.

6 [Video-clip played]

7 THE INTERPRETER: [Voiceover] "Whatever weapons we have now,
8 automatic weapons, it is not important. We do not have heavy
9 weapons. Since the foreign forces have entered, they can also
10 maintain order with the help of the military police."

11 MS. IODICE:

12 Q. And at the end of the image -- sorry, at the end of the video,
13 there were several men in uniform. Does that reflect your
14 recollection in terms of the mixed uniforms you saw?

15 A. Yes, that reflects exactly what I saw.

16 Q. Thank you. Going back to the previous answer when you said, at
17 line 23 of today's transcript -- 25 of today's transcript, that you
18 saw the KLA soldiers patrolling the street during the first days, in
19 your assessment, why were they patrolling the streets?

20 A. When the KFOR forces entered Kosovo, the Yugoslav side had to
21 withdraw according to the agreement, to withdraw from Kosovo within
22 just a few days. So the KFOR forces were entering Kosovo, and for a
23 short period of time there was a kind of vacuum. And this vacuum,
24 the KLA wanted to fill it. It started at the border with Albania,
25 and they were also conducting patrols in the city. However, these

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1 were stopped by KFOR forces within just a few days.

2 Q. Thank you.

3 MS. IODICE: And, Your Honour, with your leave, I would like to
4 show the witness a prior statement. I would like to call up ERN
5 120510-120513.

6 PRESIDING JUDGE SMITH: Leave is granted for you to show the --

7 MS. IODICE: Thank you.

8 PRESIDING JUDGE SMITH: -- exhibit. I'm sorry, the statement.

9 MS. IODICE: And if we could go to page 2, paragraph 3.

10 Q. Witness, when I showed you this video during our meeting, you
11 stated:

12 "This video shows KLA members patrolling the streets in a
13 display of authority, until NATO/KFOR stopped this after agreements
14 were reached."

15 Does this refresh your recollection about what you observed in
16 Prizren at the time?

17 A. Yes. The armed presence of KLA members and the patrols, that's
18 something that happened during the first few days. After a short
19 period of time, the agreement with KFOR entered into force, the
20 agreement to disarm KLA. After that, we only saw a small number of
21 armed KLA members that were the personal security element of certain
22 commanders or leaders. And as far as I know, KFOR still tolerated
23 this kind of armed behaviour.

24 Q. Thank you.

25 MS. IODICE: That concludes my questions for the moment, and I

1 would like to tender the remaining of the video. And that is the
2 first -- it was already admitted -- portion 0:10 to 0:54 was already
3 admitted, so I would like to tender the first ten seconds and then
4 from 0:55 to the end and the relevant transcript which is already
5 fully contained within P00503-ET.

6 PRESIDING JUDGE SMITH: Any objection to the additional amount,
7 exhibit?

8 MS. TAVAKOLI: No.

9 MS. O'REILLY: No.

10 MR. ROBERTS: Nothing, Your Honour.

11 MR. BAIESU: No.

12 PRESIDING JUDGE SMITH: All right. The video in full will be
13 admitted, those portions that have not previously been admitted.

14 [Trial Panel and Court Officer confers]

15 THE COURT OFFICER: Those portions will be added under
16 Exhibit P00503.

17 PRESIDING JUDGE SMITH: Thank you.

18 Thaci Defence.

19 The Defence will now have some questions for you, Witness.

20 Cross-examination by Ms. Tavakoli:

21 Q. Good morning, sir. My name is Nina Tavakoli and I represent
22 Mr. Thaci.

23 A. Morning.

24 Q. Now, you deployed to Kosovo on 14 June 1999 and remained there
25 until 3 August 1999; is that right?

1 A. Yes.

2 Q. And your role involved -- because often you were accompanying
3 the press, your role involved quite a lot of travel, didn't it? You
4 travelled around Prizren and I think also up to Prishtine; is that
5 right?

6 A. Up to Prishtine and also to different other locations within
7 Kosovo.

8 Q. Now, you've said that the head of German KFOR was
9 Brigadier-General von Korff and his deputy was Colonel Bescht; is
10 that right?

11 A. General von Korff was the commander of the Multinational Brigade
12 South, and Colonel Bescht was his deputy. For the national German
13 forces, there was Brigadier-General Harff who was in the lead.

14 Q. And in your role, did you spend time with any of those two men?

15 A. I spent, in the months that I spent in Kosovo, a lot of time
16 with both General von Korff and Colonel Bescht. Harff I only met a
17 couple of times.

18 Q. Thank you. Now, when you arrived, KFOR arrived in Kosovo, you
19 were welcomed by the people, weren't you?

20 A. Yes. And they were friendly. Yes, it was a friendly greeting.

21 Q. I think there was a chant, wasn't there: NATO, NATO, KLA, KLA?

22 A. NATO, KLA, yes. Many people chanted that throughout a number of
23 days. They were very friendly. They really welcomed us. That part
24 of the population that had been waiting for us, that is.

25 Q. And there was a lot of celebratory gunfire at that time as

1 people were shooting in the air; is that right?

2 A. A lot. That wasn't my first time in the Balkans, and I know
3 that this is something that happens regularly in that region.

4 Q. So there's quite a lot of guns in the Balkans; is that right?

5 A. Yes.

6 Q. Now, the Yugoslav military was still present when you arrived
7 because, under the agreement, there was a staggered withdrawal of
8 their troops; is that right?

9 A. Yes. Parts of the Yugoslav People's Army, or what was left of
10 it, were there, but also other security forces. One of the main
11 tasks that we had during the first few days after we arrived was to
12 go in between the fighting groups and prevent any further
13 confrontations, so between the civilian Kosovar population and the
14 leaving forces of the Yugoslav People's Army.

15 Q. And the KLA was still there at that time, and they were still
16 armed because the demilitarisation agreement agreed by General Sir
17 Mike Jackson and the KLA wasn't signed until 21 June. That's right,
18 isn't it?

19 A. I think on the 20th or 21st June. Before that, there were many
20 armed KLA members, but we tried to de-arm them also while we were
21 disbanding the checkpoints. But KLA members remained recognisable
22 due to many different elements of clothing and because they were
23 mostly wearing the logo of the KLA, the Albanian eagle.

24 Q. Thank you. We'll go on to that. Now, I know that there was a
25 deal cut in Prishtine to disarm the KLA, but the agreement that would

1 ultimately bind them is that agreement signed by the head, by
2 General Sir Mike Jackson on 21 June, wasn't it? Thank you.

3 Now, would you agree with Colonel Bescht who said about that
4 security situation at the beginning, he said this, and the reference
5 for the record is 077406, page 4:

6 "The security situation was tense from the start. This was
7 expressed audibly by the constant shots being fired. Also at night.
8 The KLA were fighting amongst themselves at the time as well as with
9 the Serbs."

10 A. Yes, the situation was very tense, and parts of the Kosovar
11 population were very angry with the leaving Yugoslav soldiers. The
12 soldiers who were Serbian/Yugoslav and were leaving, they were
13 afraid, some of them. There was a very low threshold for violence,
14 and our task was to not allow any further confrontations, and we
15 achieved that by a massive military presence, even though we took a
16 while to establish this presence all over the region.

17 Q. Thank you. And I'm going to go on to that low threshold for
18 violence shortly. But just before that, this local population that
19 you speak about, at the time that you entered Kosovo, these civilian
20 Kosovan Albanians who were forced out by the Serbs were returning at
21 that time back in great numbers. I think you told the SPO -- and the
22 reference -- sorry. The reference for the record is P01191.2 at
23 page -- lines 16 to 17.

24 You told them that, at times, more than 20.000 people returned
25 across the border. Do you remember that, saying that?

1 A. Yes. If you allow, I would like to elaborate. I arrived in
2 Macedonia with my men in March, and we established refugee camps
3 there and operated them, refugee camps for people who had fled
4 Kosovo.

5 When we entered Kosovo, there were many thousands of Kosovo
6 Albanians who were still in Albania or Macedonia. And some of them
7 got into their vehicles and followed our column directly across the
8 border.

9 Q. Now, you wrote a diary at the time, each evening you told us
10 yesterday, to record your experiences in Kosovo. That's right, isn't
11 it?

12 A. Yes, it is a diary about what I had seen during the day.
13 Sometimes it's just a short, rough description, sometimes very
14 detailed, and it also contains my thoughts about this time.

15 Q. And through our time together this morning I'd like to take you
16 to some of those passages.

17 MS. TAVAKOLI: So, firstly, please could we pull up on the
18 screen the document 071142 to 071313. It's the same ERN in German.
19 And I'd like page 071220.

20 Q. And if you go to the second paragraph, you're talking here about
21 the return -- what happens with the returning refugees, and you say
22 here:

23 "One has to look closely at property crimes/looting: returning
24 refugees find their houses burnt, their belongings stolen or
25 destroyed. There is a Serbian house or flat nearby. There are

1 household goods ... So the returnees get what they need! Of course,
2 it is illegal, but it is different from the looting by bandits ..."

3 Do you remember writing that?

4 A. Yes, I remember very clearly certain individual things that I
5 saw together with other people, situations where, together with
6 others, I stopped looters and took the things they had taken from
7 them, and we handed over some of them to the military police.

8 Q. And is the suggestion in this passage that the refugees are
9 returning to find that their houses had been burnt and their property
10 has been stolen?

11 A. The people were returning to their cities or villages, well,
12 some of them were left with nothing, nothing but what they were
13 carrying on their bodies. Their houses were burnt down, destroyed.
14 Yeah, they didn't have anything. So some of them went to empty
15 Serbian houses to find the things they didn't have anymore
16 themselves.

17 Q. And who had burnt down the houses and stolen the items? Was
18 that the Serbs as they were departing?

19 A. As far as I know, most of those Kosovo Albanians whose houses
20 were destroyed, burnt down, et cetera, most of those were victims of
21 Serbian violence during the war in Kosovo or during the last days of
22 the Serbian presence there.

23 Q. Thank you. And the Kosovans, it's a bit of a generalisation,
24 but they were fairly poor people at that time. So to lose their
25 homes and their belongings was quite significant?

1 A. We are talking about a situation after a war similar to the
2 situation of Bosnia-Herzegovina at the time. So the consequences of
3 the war, looting, destruction, so the usual patterns you see in a
4 situation like that.

5 Q. Thank you. Now, into the mix with the civilians, you also wrote
6 in your diary --

7 MS. TAVAKOLI: If we could bring that up, please, and that is
8 the same diary at page 071190. And the second paragraph.

9 Q. "Albanian bandits keep crossing the border. They steal,
10 plunder, pillage ..."

11 So Albanian criminal elements were coming in at the same time,
12 weren't they?

13 A. Yes, as far as I can remember this is true. However, these --
14 well, the border crossing points, for example, Morina, to Albania was
15 relatively quickly secured by KFOR forces. So this was stopped
16 relatively quickly. The things you can read here refers to just one
17 or a few days as a rule.

18 Q. Yes, we got the -- helpfully there's the date there of 19 June.
19 Sorry, I should have read that out.

20 Now, you told the SPO - and the reference is P01191.3, at pages
21 28 to 29 - and this is about those first few days, you said:

22 "It was relatively chaotic in the first days. We tried to gain
23 a foothold in all possible areas, to establish security, and at the
24 same time there were incidents, murders, arson everywhere."

25 Do you remember that?

1 A. Yes, I do recall that. The first task for KFOR was to spread
2 through the region in order to ensure the departure of the
3 Serbian/Yugoslav forces. That was the main task during the first few
4 days, and the aim was to prevent further confrontations between the
5 security forces and the Kosovans.

6 At the same time, KFOR forces, including my brigade in the
7 south, had to go to different locations and then spread to the whole
8 territory of Kosovo, and, of course, this took a number of days.
9 During those days, while we were penetrating into all corners of the
10 country, we kept coming across locations where massacres, murders had
11 taken place and destruction had been wrought.

12 Q. Perhaps that's -- I'll shift slightly to go into that perhaps
13 now, then, as you brought it up. So these refugees, they were also
14 returning to find their family and friends had been murdered by the
15 Serbs, and you found their bodies in the mass graves. That's right,
16 isn't it?

17 A. The KFOR forces, that was us, discovered mass graves, but we
18 also discovered locations where the people that had been murdered
19 were still just lying around. They hadn't been buried. And we got a
20 number of information -- well, the local population pointed out a
21 number of locations to us where things like that had taken place.

22 Q. And I would just like to take you through three entries in your
23 diary where you detailed exactly that.

24 MS. TAVAKOLI: In this diary, please, can we go first to page
25 071152, the second paragraph.

1 Q. And this is your entry on 15 June 1999:

2 "In Velika Krusa, our Dutch comrades found a 'crime scene' in a
3 courtyard. I am there at 17:30. The place was largely destroyed.
4 In one courtyard there is a bestial smell of corpses. First, I see a
5 dead dog, then a burnt-out trailer. Parts of a charred corpse. In a
6 small, completely destroyed house lie charred corpses. 20-25 people,
7 from small children to old men. Shot and set on fire. Bullet holes
8 show that the people lying on the floor were still being shot at.
9 The people died at the end of March. When I saw this, I knew exactly
10 why we are in Kosovo: to put an end to this!"

11 A. Yes.

12 Q. And what did you mean you knew exactly why you're in Kosovo, to
13 put an end to that?

14 A. We knew from press coverage and military intelligence what had
15 been going on in Kosovo during the Kosovo war in terms of cruelties
16 or possible cruelties against the Albanian population. But even
17 though you are an experienced soldier and have seen a lot, you will
18 never forget a place like the one I have described here.

19 At that moment, every single one of us realised that it was the
20 right thing for KFOR to come and end the war. You will never forget
21 these things. They will stay with you forever.

22 Q. Thank you. And I've just got two more entries for the Court.

23 MS. TAVAKOLI: If we can go in the diary, please, to page
24 071170.

25 Q. And this is an entry from 17 June, so two days later.

1 MS. IODICE: Your Honour, I object to this line of questioning
2 as it's duplicative of Defence adjudicated facts, in particular fact
3 746 admitted in F01536.

4 PRESIDING JUDGE SMITH: Overruled. Go ahead.

5 MS. TAVAKOLI: And if we could go halfway down that page --
6 sorry.

7 Q. "In the Orahovac area I am travelling with the Dutch. There is
8 a strong smell of corpses near the hospital. We cannot go forward,
9 however, because the road is unpaved and not checked for mines.
10 Immediately afterwards, a Dutch officer shows us children's bones on
11 a rubbish dump. Animals have dragged some ribs of a two- to
12 three-year-old child to the roadside. They (the Serbs) killed
13 children and threw the bodies on the rubbish. We cannot get close
14 the remains of the 6 other bodies because the area is not checked for
15 mines. The military police will probably use a crane to reach the
16 bodies from above. The bodies are dismembered by ants, scavengers,
17 packs of dogs ..."

18 Do you remember writing that entry?

19 A. Yes, that was one of many days during which we found similar
20 things. And usually we would inform our military police in
21 situations like this, and then members of Scotland Yard and other
22 police organisations came to Kosovo to conduct a massive
23 investigation of these situations. There were also doctors who
24 conducted post-mortems after the mass graves were opened. So this
25 was no longer a KFOR task. It was an international task that was

1 taken on by other organisations.

2 Q. And I think you said -- your reference to Scotland Yard, that --
3 and that's your diary entry on 16 July. We don't need to bring it
4 up. But you said there:

5 "According to British experts, more than 10,000 Kosovars were
6 murdered by the Serbs or otherwise lost their lives during the ethnic
7 cleansing."

8 That's what the British told you; is that right?

9 A. If I wrote it down like that, then I took that from British
10 sources.

11 MS. TAVAKOLI: We can perhaps bring it up just for the record
12 because then I can tender it. But that is at the same diary but not
13 for public viewing, please, 071282.

14 Q. So this second paragraph, you say here:

15 "According to British experts ..."

16 Do you see that?

17 A. Yes.

18 Q. Now, you also -- Bescht said, would you agree with this, in
19 terms of the mass graves - and he said that at, for the record,
20 077406, page 18 - that they were all Kosovars who were in those mass
21 graves. Do you agree with that?

22 A. This entry was almost exactly one month after KFOR entered
23 Kosovo. At that point in time, it was already usual that we received
24 information from international press but partly also via the German
25 Federal Army, press releases, for example, and others. And I assumed

1 that these figures mentioned here were received by us via these
2 channels - press releases or statements by organisations who were
3 busy processing what happened. These are not figures I could give by
4 myself.

5 Q. Thank you. And it wasn't just you that saw these graves, I
6 think KFOR -- KFOR kept a war diary, didn't they? The German
7 contingent kept a war diary.

8 A. Definitely the German contingent did via the national channel
9 give reports to the German command. And I assume that the Dutch
10 artillery battalion which was with us and, later, also about 120
11 Russian soldiers and, even later, other nations did that in a similar
12 way.

13 Q. Thank you. And the diary, it was signed off -- we've been given
14 a copy of it by the Prosecutor's Office. It was signed off by the
15 head of German KFOR, Brigadier-General von Korff. That would be
16 normal, wouldn't it?

17 A. You mean the operative journal of the German brigade?

18 Q. Yeah. The document that we've got, it's called a -- well,
19 they're calling it a war diary.

20 MS. TAVAKOLI: If we could perhaps bring it up.

21 Q. And Bescht has said, just if it helps - and that's at reference
22 077406, Part 1 - that it was kept to log every minute of the
23 operation and everything that was observed there was recorded very
24 precisely stating the date and time.

25 MS. TAVAKOLI: Now, if we could bring that up. It's

1 SITF00225092 to SITF00225184. And the German has a different number,
2 which is SITF00224836 to 00225261. And perhaps it would help --

3 THE WITNESS: [Interpretation] May I say something, Your Honour,
4 about this diary?

5 PRESIDING JUDGE SMITH: Yes.

6 THE WITNESS: [Interpretation] This diary contains all the
7 knowledge by the military police, this includes reports about patrols
8 and reconnaissance troops, everything that is done and reported by
9 the battalions and by the troops as well as information, findings
10 from the military intelligence service because of their individual
11 reconnaissance measures.

12 This is basically the essence of all the information the brigade
13 receives during one day. All of that is included in this diary.

14 MS. TAVAKOLI:

15 Q. Thank you. And I just want to take you through a number of
16 entries of - I'll try and go as quickly as I can - just to get you to
17 see if they accord with your understanding of the situation that KFOR
18 found on its arrival.

19 MS. TAVAKOLI: So the first entry, please, is at page 277. It's
20 the same in the German. Oh, actually, it's a different page in the
21 German. Sorry. It's SITF -- the ERN in the German, sorry, is
22 SITF00225117. And if we can go to the entry 151612Bjun. So on the
23 English it's 277. If you go down to the 15th. There's the pages at
24 the bottom. If you pen down, it's 277. Sorry, there's no ERNs.
25 Here. There we go.

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Cross-examination by Ms. Tavakoli

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1 Q. 15 June:

2 "Telephone call G3 to KFOR

3 "KFOR informed Ops Brig requires ICTY. (Report of mass graves
4 at Velika Krusa ..."

5 Do you see that?

6 A. Yes.

7 MS. TAVAKOLI: And then if we move, please, next to page 277 --
8 oh, sorry, it's the same page actually. We can stay there. Again on
9 15 June. Yeah, right at the bottom of the page, please. Keep going
10 down. Yeah. Stop.

11 Q. "Mass graves

12 "Report from Inf. Bn.

13 "At DM 854 897 a mass grave with approx. 40 bodies ... 4 days
14 old.

15 "At DM 848 877 (Albanian cemetery) a mass grave with approx. 20
16 bodies ... 4 days old."

17 PRESIDING JUDGE SMITH: Madam Defence counsel, is there some
18 doubt that there were mass graves? I don't know how that's relevant
19 to the questions going on here.

20 MS. TAVAKOLI: I can stop now, but the point is I just wanted to
21 establish the situation that Kosovan refugees were facing --

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MS. TAVAKOLI: -- when they came back.

24 PRESIDING JUDGE SMITH: The Kosovo refugees weren't facing the
25 mass graves. The people that were discovering them --

1 MS. TAVAKOLI: Yeah.

2 PRESIDING JUDGE SMITH: -- were facing them. This is way off
3 base. Please refocus your cross-examination. Thank you.

4 MS. TAVAKOLI: All right. We'll end it there.

5 Q. So the diary reflected what you saw; is that right?

6 A. In my diary is written what I myself saw. When I did not see it
7 myself, I generally wrote down where I got the information from, in
8 my diary.

9 Q. Thank you. And would it be fair to say - this is the point -
10 that on returning to find their houses burnt, their property stolen,
11 and their loved ones dead, some Kosovan Albanians took revenge?

12 A. Yes, this is also something we had to notice. Partially, we had
13 to prevent it. But during those days and in the first weeks after
14 the liberation of Kosovo, there were certain aggressive events up to
15 murders, up to arsons, on the side of the non-Serbians.

16 Q. And in terms of who were the perpetrators, you told the SPO -
17 and the reference here is at P0019.5 [sic] at page 9 - it is in the
18 context of arrests. I'll just read it to you, but you said, from
19 approximately 20 June, "the number of arrests significantly increased
20 ... looters, rapists, robbers ... brought to the newly set up MUP
21 prison ... Also following hostage taking and other crimes."

22 And you were asked:

23 "Were those who were brought there civilians?"

24 And you said:

25 "It was a motley collection, as far as I know ... usually

1 civilians or people in civilian clothing."

2 Do you remember saying that?

3 A. Yes, I recall that what we arrested as perpetrators, partially,
4 and took to prisons were partially people in civilian clothes and
5 partially people in that mix of uniform and non-uniform and people in
6 uniforms. And these arrests increased rapidly after a number of days
7 so that the former MUP prison in Prizren had to be used by us in
8 order to find a place for arrested perpetrators.

9 Q. So would it be right to say that there were some civilians
10 perpetrating these crimes?

11 A. At least from the outside, it was not always visible what the
12 status of a person was. But the mass of the uniformed persons or
13 partially uniformed persons were recognisable as fighters. But
14 during the time, these uniforms or partial uniforms kept disappearing
15 from the streets.

16 Q. Thank you. And were you aware that the UN High Commissioner of
17 Human Rights reported in September that KLA uniforms were available
18 for sale for about 50 Deutschmarks, and people who weren't KLA were
19 buying them and wearing them?

20 A. I do not know that.

21 Q. But if it's right that you didn't have to be in the KLA to have
22 a uniform, it follows, doesn't it, that if people are wearing KLA
23 uniforms and committing crimes, they're not necessarily KLA?

24 A. I cannot say anything about that. I cannot say anything about
25 that. You can buy all over the world uniforms from the military, and

1 you can put them on. But whether this is true, what the Mrs. Lawyer
2 says, I cannot say anything about that.

3 Q. Thank you. Now, I want to go move back now to the KLA. Now,
4 you told the Prosecutor's Office - and the reference for that is
5 P00191.4 at page 7 - that at the same time that you were deploying
6 and were trying to secure order, the KLA in Prizren also tried to
7 take over power. They were setting up checkpoints. Do you remember
8 that?

9 A. Yes.

10 Q. And you also told the SPO - and that's at P00191.2, page 12 -
11 that you didn't know if -- you were asked if it was an organised
12 attempt, you said you didn't know, sometimes it was simply chaotic.
13 Do you remember that?

14 A. I can remember that statement. It was partially a situation
15 that the information management or the communication within the KLA
16 was not something you would expect from a modern army. And on the
17 other hand, it was also visible on the pictures available in the
18 media, and I saw that myself, that it was visible that people in
19 uniform and KLA leaders who were treated with a high degree of
20 respect gave orders to their people and that these orders were
21 followed.

22 Q. And I think the other description you gave - and that is at
23 P00192.2 - that they didn't behave like a regular army at the border
24 crossing, more like a gang of partisans. Do you remember describing
25 them as that?

1 A. Yes.

2 Q. Now, I'd like to read you a statement by Colonel Bescht about
3 this attempted takeover by the KLA to see if you agree with it. And
4 he says:

5 "There was a power vacuum. The civil" -- the reference, sorry,
6 is 077406, Part 1, page 8.

7 "There was a power vacuum. The civil and administrative bodies,
8 including the police and the military, had left. The MUP was no
9 longer present. Even after the agreement they still had to leave.
10 The KLA naturally tried to fill this power vacuum" and "to make their
11 presence known. They felt that they were the liberation army and of
12 course wanted to show this to their people. From their point of view
13 this is understandable, but this was at odds with our mission there."

14 A. The behaviour that was described, the behaviour of the KLA or
15 the fighters of the KLA, was like that. There was the attempt to --
16 and that was especially after the first days after entry of KFOR and
17 after the Yugoslav Army leaving, they tried to fill this vacuum, this
18 power vacuum, also at the checkpoints, and that was then prohibited
19 by the KFOR, but that took some time.

20 Q. And I think the point I'm trying to get at is perhaps it was
21 natural for them. They saw themselves as the victors. You know,
22 they'd spilt their blood fighting the Serbs and they wanted to claim
23 that. Would you agree that to some extent it was natural that they
24 wanted to assert themselves at that point? Whether it was allowed is
25 a different point.

1 A. Could you kindly give or repeat the question more precisely?

2 Q. What I understand Beschta to be saying here when he says "the KLA
3 naturally tried to fill the power vacuum. They felt that they were
4 the liberation army, and, of course, wanted to show this to their
5 people," my question is: From a human perspective, whether or not
6 they were allowed to fill the vacuum legally, it was perhaps natural
7 that, having seen themselves as the victors, they wanted to claim
8 that victory. Would you agree with that?

9 A. That was simply a fact. To assess that was not in my power at
10 the time, and I do not want to do that today neither.

11 Q. Thank you. Now, you said that relatively quickly the KLA
12 complied with your demands. That's right, isn't it?

13 A. Well, when checkpoints were disbanded and when the KLA was
14 replaced at the crossing at Morina, as far as disarmament is
15 concerned, there were as far as I know no bigger problems. The
16 agreements, if I remember correctly, were adhered to largely apart
17 from certain problems, and I do not remember how important they were.

18 Q. You've documented some of these issues in your diary. There's
19 about four entries about that.

20 MS. TAVAKOLI: Do you want to take a break or shall I go on?

21 PRESIDING JUDGE SMITH: If this is a convenient time.

22 MS. TAVAKOLI: It's fine, yeah.

23 PRESIDING JUDGE SMITH: Witness, we'll give you about a
24 15-minute break, and then you'll come back to the courtroom and
25 continue the cross-examination. Remember not to speak with anyone

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1 about your testimony here in the courtroom.

2 THE WITNESS: [Interpretation] Yes, Your Honour.

3 [The witness stands down]

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 --- Break taken at 10.05 a.m.

6 --- On resuming at 10.21 a.m.

7 PRESIDING JUDGE SMITH: Madam Usher, you can bring the witness
8 in.

9 [The witness takes the stand]

10 PRESIDING JUDGE SMITH: All right. Witness, we continue with
11 Ms. Tavakoli's questions for you.

12 MS. TAVAKOLI:

13 Q. Thank you, sir. I just want to, as I said before the break, ask
14 you a series of questions about the KLA and their activities when you
15 arrived. And I want to use a mixture of your diary and the war
16 diary.

17 MS. TAVAKOLI: If we could go to your diary, please. So that is
18 071142 to 071313. It's the same ERN in German. So 071162. And it's
19 the last paragraph.

20 Q. And it says here you wrote on 16 June 1999:

21 "The KLA has assured that there will be no obstruction by them
22 at the border and elsewhere. In general, the KLA people do what we
23 want. So far, they seem to have kept all their promises. Through
24 the preparations, the local leaders of the KLA are also known. The
25 brigade commander talks to them, orders are given to them ---"

1 So you record here that, in general, the KLA do what you want.

2 Do you remember saying that?

3 A. Yes.

4 MS. TAVAKOLI: If we could now go to the next diary entry,
5 please, that's 071197.

6 Q. At the last line:

7 "In the afternoon, two British comrades and two KLA men die
8 while defusing a mine."

9 Is it right that the KLA were assisting KFOR with demining?

10 A. I cannot say anything about that. This entry was made by me on
11 the basis of an information apparently I received at the brigade. I
12 do not know any more about it or I cannot recall it.

13 Q. All right.

14 MS. TAVAKOLI: If we move on then to the entry -- if we can take
15 this off the screen.

16 Q. Then you also travelled across Kosovo, you said before. Now, at
17 the end of June you told the SPO - and the reference for that is
18 P01191.4 - that at the end of June you drove to Prishtine, on 30 June
19 I think it was, and you were asked if you had any interactions with
20 the KLA, for example, driving through their checkpoints, and you
21 responded:

22 "No, if there had been checkpoints of the KLA we would have
23 disbanded them."

24 Do you remember saying that?

25 A. Yes.

1 Q. And then at Part 5 -- perhaps the explanation for this is at
2 Part 5, sorry, P01191.5, page 12, that that trip was on 30 June, and
3 you told the SPO that demilitarisation was in full swing by then.

4 Do you remember that?

5 A. Yes.

6 Q. And then in August, you were then asked by the SPO what the
7 situation looked like in August. And here we have P01191.4, at page
8 8. And in August, you said that by then, the KLA were no longer
9 carrying out tasks; i.e., checkpoints, patrols, all done by NATO
10 troops.

11 Do you remember saying that?

12 A. Yes.

13 Q. So, basically, they were complying with your request. That's
14 what the diary records. Is that right?

15 A. As far as I remember, the demilitarisation took place without
16 major problems.

17 Q. Thank you. Now I want to move -- and then, sorry, one --
18 actually, it's fine.

19 Then there's --

20 MS. TAVAKOLI: Can we please pull up, in terms of the diary,
21 which is 071142 to 071313, and at page 071228. And this is at 29
22 June 1999, the first paragraph.

23 Q. You say:

24 "Certain groups of the KLA may not want to hand over their
25 weapons. Cooperation between KFOR and KLA is good, but the KLA is

1 not a centrally led organisation like some are expecting."

2 Can you explain what you meant by that, please?

3 A. This entry is again an entry which was made in the moment, and
4 what I meant to say was that the KLA was not an organisation which
5 was similar to a strictly organised Western army. There were
6 different groups within them and regional differences.

7 Q. Thank you.

8 MS. TAVAKOLI: And if we could now go to the same diary, I think
9 it's the next page actually, and it's the third paragraph.

10 Q. And this is a diary entry from 30 June. And you say here:

11 "The KLA has moved into the assembly areas on schedule and is
12 sticking to the agreements. The KFOR leadership also seems to see it
13 that way. Even our," and it's illegible, "are supported by the KLA
14 commanders. But who can guarantee for [the] radicals?"

15 Do you remember what you meant by that, "the radicals"?

16 A. This was after the liberation. Radicals, undisciplined men, KLA
17 members, could possibly commit certain attacks. That's what I meant,
18 that the KLA leadership was not in a position, and that is my opinion
19 on that, to control each and every man.

20 Q. Thank you. Now, turning to the cooperation. We're moving from
21 your diary now to -- I want to go to the KFOR war diary just to see
22 if a few entries about what the KLA were doing accord with your
23 understanding. I can do that very quickly.

24 MS. TAVAKOLI: So the diary is -- so it's SITF00225092 to
25 SITF005184. And the German is SITF00224836 to 00225261. And the

1 first page I want to go to is 291, and it's -- the ERN in the German
2 is SITF00225131. And it's 181125 down the side. There. Stop.

3 Thanks.

4 Q. And if you can look at the bottom entry, 18 June, sitrep --
5 sorry, the second from bottom:

6 "Sitrep from KFOR Recce

7 "In talks between senior Muslim figures and KLA commanders at
8 Dragas, both sides solemnly agreed not to carry out reprisals on one
9 another."

10 Do you have any recollection of that?

11 A. No. I only know that in the so-called Dragash tip there live
12 Muslims, and we were paying particular attention to that, because not
13 only Muslim parts of the population, but if I remember correctly,
14 there were also so-called Gorans which are part of the Serbian
15 ethnicity, and therefore this area was of special interest to us.

16 Q. But if one of your colleagues has written that in their war
17 diary, there's no reason to doubt its veracity; is that right?

18 A. These entries are based on information stemming from the brigade
19 itself and from other parts of KFOR.

20 Q. Thank you.

21 A. And I assume that this information, as it is usually the case,
22 was verified. It is usual to check information, whether by
23 intelligence or in another way, to verify this information and only
24 to include verified information.

25 If the information was not verified, there needs to be a certain

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1 remark added to it.

2 Q. Thank you. And I've just got two more references for you on the
3 same page.

4 MS. TAVAKOLI: And that is at page 285 of this document. And
5 that is SITF00225125 in the German. Sorry, they're on the same
6 reference entry. And it's 171040Bjun. Yeah, it's the second one
7 down. No, no, please stay where -- the English is right. If you go
8 up a bit more. On the English, can you move to the top of the page,
9 please? Thank you.

10 Q. So it's the second entry, and it says here:

11 "Report from Ops Info:

12 "The area of SMAC DM7783 and Novake DM 8083 largely vacated by
13 Serbs although KLA Officer Tscholaku made earnest attempt to persuade
14 the Serbian population to remain."

15 And now just a bit lower:

16 "Refugees were repeatedly and emphatically informed that KFOR
17 wants the population to remain and that also the KLA for its part has
18 signalled its agreement for them to remain."

19 Do you remember anything along those lines?

20 A. No.

21 Q. But, again, if it's in there, it would be verified unless
22 there's a mark; is that right?

23 A. That is what I assume, yes.

24 Q. Now I would like to go to the events at the MUP building on 18
25 June, please.

1 MS. TAVAKOLI: We can take that off the screen.

2 Q. Now, you told the SPO - and the reference here is P01191.2, at
3 page 21 - that when on arrival, when you arrived, and your words were
4 it was "almost chaos." Do you remember that?

5 A. Yes.

6 Q. And you said this, the same reference:

7 "Outside there were a lot of civilians walking around, around
8 the prison, and there were a lot -- there were also a lot of, a lot
9 of armed or uniformed and civilian Kosovars that we removed from the
10 prison."

11 Do you remember saying that?

12 A. Yes.

13 Q. And you were asked then how the troops behaved when you arrived,
14 and that's the same reference but at page 25, and you said:

15 "Generally, these troops complied when something was demanded or
16 ordered by or from our side generally."

17 Do you remember that?

18 A. Yes, I do.

19 Q. And then you went on to say at page 36, the KLA were kicked out
20 of the building and they complied. There was no dispute or threat of
21 dispute. Do you remember that?

22 A. Yes, I do. The building was evacuated relatively quickly. The
23 KLA members left it. And as far as I remember, they were disarmed so
24 that we were able to release the illegal prisoners and search the
25 building. And the results, of course, can be found in the diary

1 or -- yes, the diary.

2 Q. Thank you. And you also told the KLA that -- told the KLA. You
3 also told the SPO - and the reference there is P00191.3, at page 36 -
4 that disarming the KLA went, and in your words, "without incidents."
5 Do you remember that?

6 A. In or around the MUP building, yes.

7 Q. Thank you. Now, we know from earlier that you took photographs
8 of the dead man who was found; correct?

9 A. Yes, upon the order of the military police.

10 Q. And you arrived after he'd been taken, so you don't know exactly
11 why he was taken, do you?

12 A. According to what KLA members said in front of the prison, all
13 those who we liberated, also the dead man, were either Serbs or
14 collaborators.

15 Q. Thank you. And do you know a Sergeant Dirk Menzel? Do you
16 remember him?

17 A. Was that the medical officer who examined the dead man?

18 Q. No. I think, and I stand to be corrected, that he was one of
19 the officers at the MUP building at the time. If I could just read
20 you -- he was there -- if I just read you what he said. And the
21 reference here is 072882, Part 2, page 14, and he's asked about who
22 the prisoners are, and he says:

23 "... according to the statement there on site with the locals or
24 something, that's supposed to be, yes, who were policemen there or
25 [who] worked in administration for the Serbs. That was the statement

1 on the spot."

2 Then he's asked:

3 "Who gave you that statement?"

4 And he says:

5 "I don't remember that either."

6 And he's asked:

7 "You just said 'locals.' What did you mean by that?"

8 And he said:

9 "Yes, the individuals who have acted in part as interpreters
10 there. Everyone has that, you see in the pictures there are ...
11 crowds of people. And from these crowds there is [also] always
12 information, unreliable information. Yes, whatever. It is yes --
13 and some of them are always ready to talk, and some of them speak
14 German and then something like that just comes out of the crowd."

15 And then he goes on to say:

16 "Out of this crowd. Out of this... It's always with them, there
17 are always onlookers. And you don't even have to ask, they just
18 reveal things like that."

19 Then he's asked in what language the statements are communicated
20 to him, and he says:

21 "Most likely in German."

22 And he laughs. And he says:

23 "So, yes, yes. That is then to be understood partly, like
24 Chinese Whispers. Someone hears that in front, then it goes around
25 quickly ..."

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1 And then he's asked:

2 "Is this unreliable information?"

3 And he says:

4 "Yes, definitely."

5 So he thinks the information that he was given that the people
6 were policemen or worked in administration for the Serbs was
7 unreliable because it was like Chinese whispers. Could that be
8 possible?

9 A. When I took over the term "collaborators," I was basing it on
10 conversations I had after the action on the spot with people from the
11 KLA. A number of them spoke German. Well, German with an Austrian
12 or Swiss tinge, some of them.

13 Q. The reality is, though, because you got there after the event,
14 you -- and you're not KLA, or whoever took these people, you don't
15 know why they were taken, do you?

16 A. All I can do is tell you what I heard, that they were
17 collaborators.

18 Q. Thank you. And my colleague has just told me that Dirk Menzel
19 was in the air defence battery, just for the record.

20 MS. TAVAKOLI: Now, if we could please bring up P00858. And
21 this is -- I think this is not for the public viewing. And then go
22 to page 16.

23 Q. And this is the autopsy. This is the report by the senior
24 medical officer who did the autopsy. And if you can see there, he
25 found, or she found:

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1 "The bruises found, in my opinion, do not represent a fatal
2 injury, the tablets found indicates a possible cardiovascular
3 condition. In that case, a sudden cardiac death would be quite
4 conceivable."

5 Had you seen that report at the time or since?

6 A. I did see this report. I was present when the medical officer
7 conducted the examination. The dead man was attached to the chair by
8 way of handcuffs with one hand. And after the military police had
9 told me to document the situation, the deceased was released of the
10 handcuff and then examined by the medical officer. I think his name
11 was Schreckenbauer or something like that. He was examined on both
12 sides of his body, front and back, and the medical officer saw
13 bruises and lividity on the body. And I remember him saying that a
14 beating or the visible bruises were not the cause of death but
15 instead probably there was a cardiovascular condition, a sudden
16 cardiac death as a result of the situation, and that was the probable
17 cause of death.

18 Q. Thank you very much. No further questions.

19 PRESIDING JUDGE SMITH: Thank you.

20 Ms. O'Reilly.

21 MS. TAVAKOLI: Very sorry. Shall I tender my documents now,
22 shall I apply to tender them, or at the end?

23 PRESIDING JUDGE SMITH: I'd like to have them tendered at the
24 time you introduce them rather than at the end. If you want to do it
25 now, go ahead.

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1 MS. TAVAKOLI: Sorry, my mistake.

2 PRESIDING JUDGE SMITH: Ms. O'Reilly, we'll have to have you sit
3 for just a moment.

4 MS. TAVAKOLI: Sorry.

5 PRESIDING JUDGE SMITH: Why don't we get on with this, and then
6 you can put together what you have --

7 MS. TAVAKOLI: Thank you.

8 PRESIDING JUDGE SMITH: -- and we'll deal with it at one time.
9 Now, Ms. O'Reilly.

10 Cross-examination by Ms. O'Reilly:

11 Q. Good morning, Witness. My name is Annie O'Reilly, and I'll just
12 be asking you a few questions on behalf of Kadri Veseli this morning.

13 A. [In English] Morning.

14 Q. We're actually staying on the same topic, happily. And what I
15 wanted to do first was just show you some of the pictures which I
16 believe you said you took that day.

17 MS. O'REILLY: And so the picture that I would like to pull up
18 is 071934, and it's the first page of that document. Apologies, the
19 last three digits are 394, not 934.

20 MS. IODICE: Your Honour, I just want to make sure that this is
21 not publicly broadcast.

22 MS. O'REILLY: Yes. And thank you to the Prosecution.

23 Q. Now, Witness, this is the ID card of the victim we've just been
24 speaking about and a pill box that was found on his body, and you
25 took this picture; is that right?

1 A. [Interpretation] With regard to this particular photograph, I am
2 not entirely certain.

3 Q. Do you recall seeing the ID at any point?

4 A. Yes, I do. As far as I remember, the ID was seized. Yes.

5 Q. Thank you. And now, that box of medication which subsequent
6 investigation notes indicate to us were found on that victim's body,
7 and the reference for that is SITF --

8 MS. O'REILLY: And I think maybe we should just pull this up.
9 SITF00033529, and then the specific page ends in 4128.

10 MS. IODICE: And similarly, this document should be
11 confidential.

12 MS. O'REILLY: If it assists, it's page 600 of the PDF.

13 Q. And so this records the investigator talking to [REDACTED]
14 Pursuant to In-Court Redaction Order F2331RED.

14 [REDACTED] Pursuant to In-Court Redaction Order F2331RED., and at the
15 top it says:

15 "When he was asked about the medicine, which was found on
16 [REDACTED] Pursuant to Post Session Redaction Order F2359.

16 [REDACTED] Pursuant to Post Session Redaction Order F2359. at the scene
17 ..., he answered that this was a medicine for

17 stress relief ..."

18 And then it continues:

19 "[REDACTED] Pursuant to Post Session Redaction Order F2359. had
20 taken this medicine ... occasionally. It is a

20 very common medicine against high blood pressure."

21 Did you know that about the medicine found by the body, Witness?

22 A. No, I did not.

23 Q. And then there's just one last page from the investigation that
24 I would like to see if you could comment on.

25 MS. O'REILLY: And that's at SITF00033529 at page 396 of the

1 PDF. And if we can just scroll down, we'll look at the second
2 paragraph of that e-mail.

3 Q. And it reads -- so the investigator has gone to speak to a
4 pharmacist about this medication, and the pharmacist says -- told
5 them that:

6 "... further that it is given just for prescription from the
7 doctor. The medicine must be taken daily. Failure to do so in the
8 chemist's opinion would result in a heart attack."

9 Now, Witness, that is consistent with what the medic and I
10 believe you have said in your SPO interview, that it appeared that it
11 could have been cardiac arrest that was the cause of death of the
12 victim; isn't that right?

13 A. My entry is based on what the medical officer told us. I'm not
14 a medical doctor.

15 Q. Indeed. Thank you, Witness. And I didn't mean for you to
16 comment beyond your expertise. Thank you very much. Those are my
17 questions.

18 PRESIDING JUDGE SMITH: Thank you, Ms. O'Reilly.

19 Mr. Roberts.

20 MR. ROBERTS: Good morning, Your Honour. I see we have four
21 minutes left. Do you want me to start? I'm quite happy to. Or do
22 you want me to come back a --

23 PRESIDING JUDGE SMITH: How much do you have? Do you know?

24 MR. ROBERTS: I would say probably 20 to 30 minutes, but it does
25 depend significantly on what answers I get from the witness early

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1 on --

2 PRESIDING JUDGE SMITH: We'll take the break.

3 MR. ROBERTS: -- to be honest. It could be significantly
4 shorter, though.

5 PRESIDING JUDGE SMITH: We'll take the break right now.

6 MS. O'REILLY: And could I -- apologies, I did the same thing as
7 my colleague and I forgot to tender the pages that I just used.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MS. O'REILLY: I forgot to tender the pages that I just used and
10 I was wondering if I could do that now.

11 PRESIDING JUDGE SMITH: [Microphone not activated] ... and please
12 try to tender the exhibits at the time they are used. It makes no
13 sense to wait to the end and then pile up a bunch of numbers. Okay?

14 Go ahead.

15 MS. O'REILLY: I take the point, Your Honour.

16 PRESIDING JUDGE SMITH: Go ahead with yours.

17 MS. O'REILLY: Yes, my apologies.

18 PRESIDING JUDGE SMITH: Well, yours are fairly short.

19 MS. O'REILLY: So the two entries were page 600 of that document
20 and also page 396.

21 PRESIDING JUDGE SMITH: And that is SITF00033529? Is that
22 correct?

23 MS. O'REILLY: That's correct, Your Honour.

24 PRESIDING JUDGE SMITH: Okay. Page 396 and page 600?

25 MS. O'REILLY: Indeed. Thank you.

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1 PRESIDING JUDGE SMITH: All right. Any objection?

2 MS. IODICE: Your Honour, yes to the first page, but I would
3 like to maybe state the reason without the witness present.

4 PRESIDING JUDGE SMITH: We're about to take a break. Is there
5 something special about this that you can't speak to it?

6 MS. IODICE: It's just that it appeared to be a statement from a
7 different witness.

8 PRESIDING JUDGE SMITH: Yes, it is a statement from a different
9 witness. That has nothing to do with this witness. He doesn't have
10 to leave the room. State your objection.

11 MS. IODICE: Yes. We object on the basis that the rules for
12 admission of statements should be followed.

13 PRESIDING JUDGE SMITH: Thank you.

14 MS. O'REILLY: It's not necessarily being tendered for the truth
15 of its contents. It's relevant to the matter at hand. And I would
16 note that the doctor is being tendered by the Prosecution via 153, so
17 we won't have an opportunity to cross-examine.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Go ahead, Ms. Tavakoli. Are you ready to make your tender at
20 this time?

21 MS. TAVAKOLI: No, sorry. Can I just --

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 We're going to give you a half-hour break at this time, and then
24 you'll come back to the courtroom for additional questions. You may
25 leave the courtroom now.

1 THE WITNESS: [Interpretation] Yes, Your Honour.

2 [The witness stands down]

3 PRESIDING JUDGE SMITH: We're adjourned until 11.30.

4 --- Recess taken at 10.59 a.m.

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

6 MS. IODICE: Your Honour, I just wish to correct the record. I
7 reacted too quickly earlier. I wish to withdraw our objection to
8 page 600.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 You have no objection to either of those pages?

11 MS. IODICE: No. No, it was a summary, not a statement.

12 PRESIDING JUDGE SMITH: Yes.

13 MS. TAVAKOLI: Shall I tender my exhibits? Apologies again.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MS. TAVAKOLI: So the first is the diary of this witness. So
16 the German, it's 07 -- in English, 071142 to 071313. And the German
17 is 071139 to 071313. And the pages are the same in both versions,
18 and they are as follows: 071220, 071190, 071162, 071152, 071170,
19 071282, 071228, and 071229.

20 PRESIDING JUDGE SMITH: Madam Court Officer, can we just admit
21 those under one number and then have subparts for each one of the
22 different pages?

23 THE COURT OFFICER: Your Honours, certain pages of the diary
24 have already been admitted yesterday as P01194. I propose that these
25 pages are added to that exhibit number.

1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 Unless there's some objection? None appears. That'll be all
3 right.

4 THE COURT OFFICER: And classification is confidential.

5 PRESIDING JUDGE SMITH: You want to read the exhibit -- oh, do
6 you want to read the subparts then? Is it 1 through ...

7 THE COURT OFFICER: You mean separate pages?

8 PRESIDING JUDGE SMITH: Are you --

9 THE COURT OFFICER: Sorry.

10 PRESIDING JUDGE SMITH: Are you -- are each one of the pages
11 going to have a separate subpart, a decimal, or not?

12 THE COURT OFFICER: No, Your Honour.

13 PRESIDING JUDGE SMITH: Okay.

14 THE COURT OFFICER: They would be just added to the pages
15 already admitted.

16 PRESIDING JUDGE SMITH: All right. Fine. Thank you.

17 MS. TAVAKOLI: I'm just asking my learned friend if it is
18 confidential.

19 MS. IODICE: The pages admitted yesterday should stay
20 confidential. I have no objection to the rest of the pages being
21 classified as public, but that would split the exhibit.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 They all will be in one exhibit, so they should carry the same
24 classification as far as I'm concerned, so it would still be
25 confidential.

1 MS. TAVAKOLI: Thank you.

2 And then -- shall I go on? And then in the KFOR war diary, the
3 English version is SITF00225092 to SITF0025184, and the German is
4 SITF00224836 to 00225261. And the pages are the same in both
5 versions. So the first is page 277; and in the German, the ERN is
6 SITF00225117. Then there's page 291 in both versions; and the German
7 ERN is SITF00225131. And then, finally, page 285 in both versions.
8 The ERN in the German is SITF00225125. Thank you.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 THE COURT OFFICER: Your Honours, certain pages of the same
11 document were admitted yesterday as 1D00131. I propose that these
12 pages are added to the same exhibit.

13 MS. TAVAKOLI: Thank you.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 THE COURT OFFICER: Classification is confidential.

16 MS. IODICE: Similarly, we would not object to these pages being
17 public.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MS. IODICE: I would need to revise that exhibit, Your Honour.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 They will be public classification.

22 MS. TAVAKOLI: Thank you.

23 PRESIDING JUDGE SMITH: For the record, SITF00033529, page 396
24 and page 600 are admitted and will be assigned an exhibit number.

25 THE COURT OFFICER: Your Honour, page 600 with ERN SITF00034128

1 and page 396 with ERN SITF00033194 from the document SITF00033529 to
2 00034531 will be admitted as 2D00021. Classification is
3 confidential.

4 PRESIDING JUDGE SMITH: Thank you.

5 All right, Mr. Roberts. We won't count those five minutes
6 against your time.

7 MR. ROBERTS: Thank you, Your Honour. I think I'll be well
8 short of my estimated time anyway, so I'll save those for another
9 witness.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 You can bring the witness in now, Madam Usher.

12 [The witness takes the stand]

13 PRESIDING JUDGE SMITH: All right. Witness, Mr. Roberts from
14 the Selimi Defence will have questions for you at this time. Please
15 give him your attention.

16 Cross-examination by Mr. Roberts:

17 Q. Good morning, Witness. As the Presiding Judge has stated, my
18 name is Geoff Roberts. I represent Mr. Selimi. I probably have
19 about 20 or 30 minutes of questions. Obviously, if any of my
20 questions are not clear, please don't hesitate to ask me to rephrase
21 them. But please do try to keep your answers direct and concise to
22 my questions. Is that all clear?

23 A. Yes, it is.

24 Q. Thank you. Now, just to go back very briefly, you arrived on 14
25 June into Kosovo. And just to be clear, when KFOR arrived into

1 Kosovo, it was their understanding that they had exclusive authority
2 to conduct police functions when they entered. That's correct, isn't
3 it?

4 A. No, this went beyond police duties and police rights. KFOR,
5 according to the rules, was supposed to separate the parties and
6 ensure the withdrawal of the Yugoslav forces as well as to establish
7 order and security in Kosovo, including the disarming of armed
8 people.

9 Q. Yes. So it went beyond police activities, but it did include
10 them. They were the only police authority within Kosovo from the
11 moment that you entered; that's correct?

12 A. KFOR was the only authority in Kosovo during that time, yes.

13 Q. And you had military police units within the KFOR brigades and
14 battalions that came into Kosovo, didn't you?

15 A. Yes, the Multinational Brigade South that was stationed in
16 Prizren, and that included me, we had German military police forces,
17 yes.

18 Q. Do you know how big a contingent of military police you had at
19 the time when you first entered?

20 A. No, no.

21 Q. But significant numbers?

22 A. Compared to the 5.000 men of the brigade in total, I think the
23 numbers were rather small.

24 Q. Okay. If I can just read you what a member of the German
25 military police at the time said about your responsibilities. So

1 this is Thomas Seefeld who I believe was a sergeant major in the
2 military police. Did you know him at all or did you ever meet
3 Mr. Seefeld? And I apologise for my German pronunciation of that
4 name.

5 A. No. We had several thousand men in our brigade. Of course, I
6 saw a lot of faces, but I don't remember all of them. I just
7 remember a very small part of our soldiers.

8 Q. Understood. It's more the substance of what he says that I'm
9 interested in. So this is, for the reference, ERN 077355-TR-ET
10 Part 1 Revised, page 4. He's asked:

11 "What were, generally speaking, your duties and your area of
12 responsibility in June, July, August 1999 in Kosovo?"

13 He answered:

14 "We were responsible for restoring order and security in the
15 town of Prizren, given that after, I would say, the fall of Kosovo
16 there was no operational police. Kosovo did not have police, so
17 those duties became ours, yes, we performed them. This is to say, we
18 were tasked, later on, with running the prison, with running the
19 police station. Yes, traffic wardens, investigative duties,
20 everything that came up."

21 Now, is that consistent with your understanding of the role of
22 the military police within KFOR when you entered Kosovo and during
23 your time in Kosovo?

24 A. Yes. But there were also other units, such as the air defence
25 unit near the prison, other units that took over police tasks. But

1 the role of the military police is just the way that you described
2 it.

3 Q. Yes, it wasn't just the military police. All units of KFOR had
4 to carry out some form of police-like activities at the time. That's
5 correct, isn't it?

6 A. Maybe not all of them, but several of them took over these
7 tasks, yes, whenever it was necessary. It was only a smaller part of
8 their duties.

9 Q. And is it fair to say that when or if any members of the KLA
10 during that period attempted to carry out any police-like functions -
11 setting up checkpoints or alike - you, as members of the KFOR, would
12 immediately put a stop to that because that was your responsibility?

13 A. As far as possible, we stopped these activities quickly during
14 the first few days.

15 Q. And you were quite vigorous in doing so, if I can use that
16 expression. That comes from your interview. So that's P1191.2,
17 pages 13 to 14. You were quite active and vigorous in trying to stop
18 anyone else from carrying out any public order activities as part of
19 your mandate, as you understood it; is that correct?

20 A. Well, there was no time for discussions. We just carried out
21 our tasks in a vigorous way.

22 Q. Yes, it's no criticism at all. It's simply to understand your
23 role and that you saw it as your role to stop anyone else carrying
24 out any public order functions. And when I say "your role," I mean
25 the role of KFOR.

1 Sorry, just for the record, just to be clear, that was a
2 question. It may not have been so clearly phrased.

3 But just to say that you did see it as your role, as the role of
4 KFOR, to stop anyone else carrying out any public order functions,
5 didn't you? Is that fair?

6 A. Yes.

7 Q. And you identified, I think, is it Colonel Rolf Bescht earlier
8 in a photograph? He was deputy commander, I think, wasn't he?

9 A. Yes, it was in one of the video-clips. He was the deputy
10 commander of the Multinational Brigade South that was located at
11 Prizren.

12 Q. And he in an article in the *New York Times* - so this is P1188.2,
13 so, for the record, 013435 - is quoted as saying that:

14 "... the allies were taking over the police station," I assume
15 he's referring to KFOR, "'to make it perfectly clear we are the only
16 force, the only authority in town.'"

17 And that's consistent with what you're saying, is it not?

18 A. Yes.

19 Q. And it's what you told any KLA or former KLA commanders, I
20 presume, at the time as well? You wanted that message to be very
21 clear to them.

22 A. The military people who had the responsibility, the brigade
23 commander, for example, on the ground, it was they who told the KLA
24 people about this. General von Korff, the brigade commander, met
25 with KLA people several times and told them very clearly what the

1 procedure was going to be.

2 Q. And so this was why you were so keen on them disarming and so
3 keen on them not taking over public buildings or setting up
4 checkpoints. All of these actions are consistent with your statement
5 that you were the only -- or Mr. Bescht's statement, sorry, that
6 German KFOR was the only authority in town; is that fair?

7 A. In the region of the Multinational Brigade South, the
8 metropolitan area of Prizren, yes. It also goes for the German and
9 also other nationalities within the brigade, such as the Dutch.

10 Q. And presumably, and maybe you don't know this, but presumably
11 all other aspects of KFOR were doing the same thing, weren't they?
12 They had the same mandate as you, to take over responsibility for law
13 and order within Kosovo as soon as they arrived.

14 A. The Brigade South and the other brigades acted according to the
15 mandate.

16 Q. And when you say "Brigade South," sorry, you mean the German
17 part of -- sorry. What do you mean exactly by "Brigade South," just
18 to be clear, how far that covered?

19 A. The Multinational Brigade South was one of several brigades
20 within KFOR. It included the south of Kosovo, it was headquartered
21 in Prizren and was responsible for that region. As far as I know, if
22 I remember it correctly, there were four brigades altogether, but I'm
23 not entirely certain anymore.

24 The Multinational Brigade South was led by the Germans and
25 included a Dutch artillery battalion at the beginning. And then we

1 also got a company of Russian soldiers, and a little bit later
2 further nations joined us.

3 Q. Thank you. And in terms of the rest of Kosovo - and, again, if
4 you can't answer, that's fine - but your understanding was that the
5 KFOR units covering the rest of Kosovo also had the same role and
6 responsibility?

7 A. Yes. The KFOR leadership in Prishtine had, I think, four
8 brigades that all had an identical task.

9 Q. To take over law and order as the exclusive authority in Kosovo?

10 A. Well, initially the task was to escort the rest of the Serbian
11 or Yugoslav forces out of the country and in parallel, of course, to
12 establish order and security or keep it within the whole of Kosovo.

13 Q. Now, as part of your authority, you detained individuals, didn't
14 you? And, again, "you," German KFOR soldiers, detained individuals.

15 A. We apprehended many people, and that is why shortly after the
16 liberation the MUP building started to be used as a prison for those
17 that we arrested for looting, et cetera, and it was run by the air
18 defence unit.

19 Q. But it wasn't run by the military police, the KFOR military
20 police?

21 A. I'm sure that the military police was involved, but they didn't
22 have enough people. That is why other units took over the
23 administration of the prison.

24 Q. And I think it's correct that in your SPO interview you said
25 that the population or the number of people detained after 20 June

1 increased significantly, didn't it, up to around -- well, actually,
2 do you know how many people were detained within that prison?

3 A. I don't have an exact figure, but several dozens, I think, if
4 not more than a hundred.

5 Q. Now, do you know how long KFOR considered they could detain
6 people for at that prison or in other detention facilities operated
7 by KFOR?

8 A. If I remember correctly, it was up to three days.

9 Q. And what was the basis for that understanding? Was that your
10 internal procedures, or what was the basis for you believing you
11 could detain them for three days?

12 A. I think that KFOR had a rule on that.

13 Q. You don't know what specific rule it is?

14 A. No. All I know is that after the first few days or weeks, there
15 were some developments in terms of justice system and police forces
16 to get everything on the right track.

17 Q. Yes, yes, I'll go into that in a bit more detail in a minute.
18 So at the beginning, they were being detained without a specific
19 basis that you're aware of?

20 A. I cannot tell you what the basis was.

21 Q. Who had the right within German KFOR to detain anybody within
22 Kosovo?

23 A. When we saw people looting and arrested them, for example, this
24 happened on the basis of KFOR rules and the KFOR task to stop any
25 crimes from happening, so that's why we arrested them and took them

1 to prison.

2 Q. Yes, but does that mean that anyone within KFOR could arrest or
3 detain under your understanding of what was permitted?

4 A. Let's say at checkpoints or during patrols, if there were any
5 problems, if any crimes were seen or noticed, then the patrolling
6 soldiers arrested the perpetrators and made sure that they were put
7 into prison.

8 Q. Yes. And this is any soldier within German KFOR. It's not
9 limited to members of the military police?

10 A. Within their orders, it was any member of KFOR, not only the
11 Germans.

12 Q. Yes, but any general soldier I mean. It's not limited to
13 specific units who had that authority to arrest?

14 A. No, it wasn't restricted to any particular unit. Any soldier
15 could arrest criminals, perpetrators.

16 Q. And you believed that you could detain them for up to three days
17 based on an order of the commander did you say earlier?

18 A. I think that we were able to keep these people for up to three
19 days.

20 Q. And then what would happen to them?

21 A. Well, the first judges started arriving relatively quickly. I
22 think they came from the EU. And then a kind of justice system was
23 established to treat these cases. But other than that, it depended
24 on what the people had done. Some of them were liberated fairly
25 quickly if they didn't present a danger to the public or to KFOR.

1 Q. We'll get to the dates of the justice system that was created.
2 But in June and July, there was no justice system. That was just
3 KFOR operating at that point; is that fair?

4 A. Yes, that is correct. However, the first judicial bodies or the
5 first judicial representatives arrived relatively quickly in order to
6 help build up an actual justice system.

7 Q. If we can actually just go to your diary just to see the process
8 as you understood it.

9 MR. ROBERTS: So that's -- I'll just get the ERN. So that's
10 071142 to 071313-ET Revised, and that's at page 071266 both in the
11 English and the German. If we can just put this up on the screen. I
12 believe this can be public. So that's at page 071266.

13 I'll just check we have the right page before I start reading.
14 If we just scroll to the -- sorry, no, 266. There we go.

15 Q. So in the second paragraph from the bottom in the English, I'll
16 just read out, it states:

17 "We are on the trail of the 'monument blaster'. The security
18 precautions in the old town are being tightened. There are 65
19 prisoners in the jail, including one woman. None of them are small
20 fry! The brigade commander - advised by the legal adviser - decides
21 on the length of detention."

22 Do you see that in your diary that you'd recorded?

23 A. This helps me remember. Yes, as far as the German contingent is
24 concerned, it included a legal adviser. He was a lieutenant-colonel.
25 This is common because he is advising the commander on all legal

1 affairs, and he did that in these legal affairs as well on that
2 occasion.

3 Q. But, essentially, it's the brigade commander who decides whether
4 they stay in detention or not, according to your diary.

5 A. Yes, the legal adviser is an adviser. The decision of the
6 military commander was based on exactly that.

7 Q. Yes, but just as -- who decides whether the person remains being
8 detained is the brigade commander according to your diary. That's
9 correct, isn't it?

10 A. [No interpretation].

11 Q. And he could decide to extend the detention if he felt it was
12 necessary?

13 A. As far as I remember, that is the case.

14 Q. And was the individual at that point -- this is 7 July, I
15 believe. There was no judicial process, was there, in place for any
16 of those individuals to challenge their detention?

17 A. I think at that point in time, there were no civil judges
18 present yet who could have acted on the basis of civil laws.

19 Q. Yes, I was trying to work out what you were doing. When you
20 were detaining people, you didn't have a judicial process to decide
21 whether to carry on detaining them. You had a decision of the
22 brigade commander. That's the way that your military worked; is that
23 fair? And, again, it's not a criticism. I'm just trying to work out
24 how you came to these decisions.

25 A. As far as I remember, this was the case for the entire KFOR

1 because there were no judicial authorities available. Not yet
2 available.

3 Q. Yes. And so throughout KFOR, they were able to detain people up
4 until there had been a decision of the brigade commander, and that
5 brigade commander could continue that detention. And that was
6 normal, was it not?

7 A. At least as far as I remember, that was the case at least during
8 the first weeks.

9 Q. Well, I would suggest it lasted a lot longer than that in terms
10 of actually the ability of UNMIK to establish a justice system and
11 that KFOR continued to detain people throughout June and July without
12 there being any specific process for being able to challenge that
13 detention. Is that consistent with your understanding?

14 A. I do remember that before I returned back home at the beginning
15 of August, there was already a German judge living in our camp, and
16 he was then looking after such affairs. So this must have been in
17 June at the latest, in June, until at least one judge took up his
18 service on behalf of the European Union, I believe.

19 Q. Right. So you're saying that - just so I'm clear and understand
20 your evidence - it was only at the beginning of August that there was
21 a judge there who was assessing the lawfulness, if you like, of the
22 detention of people that KFOR had taken and detained; is that
23 correct?

24 A. Yes, I believe so. Yes. At that point in time, there was a
25 start made with the setup of the Kosovo police, with the judiciary,

1 and at that point in time this judge was already active at the latest
2 at some point in time in July.

3 Q. And so up until that point -- so at some point in July, I would
4 suggest it's the end of July. But the point I'm making is that up
5 until that point, KFOR detained individuals and they didn't have the
6 right to challenge their detention before a judge. You accept that,
7 don't you?

8 A. As far as I know, yes, there were no judges. There were no
9 judges. There were no prosecutors.

10 Q. And your understanding of how procedures happened at the prison
11 and with the military police is that there was no process for fairly
12 challenging the detention of an individual? There was no defence
13 lawyers assigned before there were judges, I presume?

14 A. The example of the old MUP building, there was the company
15 commander of the air defence. He was the head of the prison and he
16 was the investigative judge in one person. And also the men, apart
17 from one woman, as far as I know, those who were detained, he also
18 heard them. That means not everybody was simply detained there for
19 days on end.

20 Q. No, but there were people who were detained there for days on
21 end without the ability to have legal representation and without the
22 ability to be brought before a judge and without the ability to
23 appeal any decision to keep them in detention. That was just the
24 reality of what the situation you were facing at the time, wasn't it?

25 A. It is difficult to say something about that. Because of the

1 situation, it could have been possible, but I cannot assess that in
2 detail.

3 MR. ROBERTS: If we can just go into private session actually
4 just for a specific document now, Your Honour.

5 PRESIDING JUDGE SMITH: Into private session, please,
6 Madam Court Officer.

7 [Private session]

8 [Private session text removed]

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Witness: Johann Fritsch (Resumed) (Private Session)

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Cross-examination by Mr. Roberts

1 [Private session text removed]

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Witness: Johann Fritsch (Resumed) (Private Session)

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Cross-examination by Mr. Roberts

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Witness: Johann Fritsch (Resumed) (Private Session)

Page 15691

Cross-examination by Mr. Baiesu

1 [Private session text removed]

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Witness: Johann Fritsch (Resumed) (Private Session)

Page 15692

Cross-examination by Mr. Baiesu

1 [Private session text removed]

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1 [Private session text removed]

2 [Open session]

3 THE COURT OFFICER: Your Honours, we are now in public session.

4 PRESIDING JUDGE SMITH: Thank you.

5 You can continue, Mr. Baiesu.

6 MR. BAIESU: Thank you. Thank you, Your Honour.

7 Q. You answered -- I will repeat the question, I think, because
8 your answer -- to have it clear on the record. You did not see those
9 instruments being used to mistreat those individuals? Did you see
10 that?

11 A. Yes.

12 Q. Your answer -- have you seen the -- have you been present when
13 these instruments were being used to mistreat the individuals that
14 were at the MUP building?

15 A. No, no one from KFOR was present. KFOR liberated this prison or
16 the prisoners.

17 Q. So when you testified that the KLA used the same instruments
18 after the MUP left, you were making assumptions, weren't you?

19 MS. IODICE: Objection, Your Honour. This is mischaracterising
20 the witness's evidence.

21 PRESIDING JUDGE SMITH: Overruled.

22 You can answer the question.

23 THE WITNESS: [Interpretation] I took photos of these
24 instruments, and this note under the photograph was added by me in my
25 diary. We found these instruments, amongst other things, wooden

Witness: Johann Fritsch (Resumed) (Open Session)

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Questioned by the Trial Panel

1 batons, in a way that they could have been used any time, not stashed
2 away somewhere but somewhere ready to use.

3 MR. BAIESU:

4 Q. As you said, they could have been used any time, and the caption
5 under the photograph says:

6 "The means of torture have not changed."

7 But you have -- my question is you have personally -- you
8 personally have no evidence that these instruments were used by the
9 KLA?

10 A. This note in my dictionary represents the impression I had.
11 Whether these instruments were used by the KLA or already before
12 that, I can of course not prove, and I cannot give more concrete
13 information to that.

14 MR. BAIESU: Those were my questions.

15 Q. Thank you, Witness.

16 PRESIDING JUDGE SMITH: Thank you, Mr. Baiesu.

17 And any redirect by the Prosecution?

18 MS. IODICE: No, Your Honours.

19 PRESIDING JUDGE SMITH: Judge Barthe.

20 JUDGE BARTHE: Yes, thank you, Judge Smith.

21 Questioned by the Trial Panel:

22 JUDGE BARTHE: And good afternoon, Witness. I hope you can hear
23 me well.

24 The Panel has a few more questions for you which we believe are
25 necessary to fully understand your statement, and my first questions

Witness: Johann Fritsch (Resumed) (Open Session)
Questioned by the Trial Panel

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1 are about the security situation in south Kosovo in summer 1999
2 during the time of your deployment.

3 Witness, in your interview with the SPO, the Prosecution, in
4 September 2019, you said following, and this is from Part 4 of the
5 transcript of your SPO interview, page 2, lines 15 to 16, I quote:

6 "What we couldn't prevent was the occasional murder in our
7 sector of, of Serbs, of men, of families. You had that in the first
8 days. You couldn't stop that."

9 And the next quote is from Part 4, page 2, lines 21 to 22:

10 "... there were acts of violence, looting ..."

11 And this is also from Part 4, page 3, lines 1 to 3:

12 "... burning too, especially in the Serbian quarter in Prizren
13 repeatedly, where, where arson occurred, and then, at least in one
14 case, the water was turned off so that the fire brigade, which was
15 rather pathetic anyway, couldn't even extinguish it until we arrived
16 ..."

17 So, Witness, this is my first question: You had to deal with
18 occasional murders, arson, looting, and other acts of violence, is
19 that correct, in the first days after you arrived in Kosovo?

20 A. Yes.

21 JUDGE BARTHE: And what role did the KLA play in this respect,
22 if any? I think you said in your SPO interview and earlier today
23 that they were conducting patrols in the city of Prizren and that
24 they had set up checkpoints; right?

25 A. Yes. And there was a stronger presence in Serbian districts in

Witness: Johann Fritsch (Resumed) (Open Session)
Questioned by the Trial Panel

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1 order to prevent revenge, acts of revenge.

2 JUDGE BARTHE: Bear with me just a second. I'm waiting for the
3 transcript.

4 You just said "a stronger presence" -- or "there was a stronger
5 presence in the Serbian districts in order to prevent revenge, acts
6 of revenge." Are you referring to or were you referring to the KLA
7 who showed a stronger presence in the Serbian districts to prevent
8 act of revenge? Is that what you were saying?

9 A. No, with "presence" I meant the KFOR forces.

10 JUDGE BARTHE: Understood. And, Witness, did you personally see
11 checkpoints by the KLA?

12 A. In the period 13th, 14th June, the time of entry, I saw the
13 first KLA checkpoints at the Morina border crossing to Albania where
14 KLA - and that was immediately after the withdrawal of the Serbian
15 forces - basically took over the border crossing. This is something
16 we prevented quickly. And in the next days, what we prohibited as
17 well were illegal checkpoints by KLA forces. And there were
18 partially also people in civil clothes --

19 JUDGE BARTHE: So you just said these checkpoints were illegal
20 from --

21 A. -- seen there.

22 JUDGE BARTHE: -- KFOR's point of view; is that right?

23 A. They were illegal checkpoints. The KLA was not authorised to
24 exercise power in any form.

25 JUDGE BARTHE: How did you recognise or how did you know that

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1 these were, in fact, KLA checkpoints? Did you -- or did the soldiers
2 wear KLA uniforms? Did they tell you that they were KLA, or did you
3 check their IDs? How did you know that?

4 A. What was very widespread on the KLA members was the KLA logo.
5 And very often, not that often, but what was visible was a sign, I
6 think it was a red armband, showing a kind of a military police, and
7 it was at least clearly visible that they were KLA members.

8 JUDGE BARTHE: Did the persons you believed to be KLA explain to
9 you why they had set up these checkpoints, for example, at the border
10 crossing to Albania? Did you speak to these people?

11 A. This was quite a hectic period. And if talks were necessary in
12 this hectic period, they took place. And the military leaders did
13 talk to the KLA leaders in order to be able to guarantee an orderly
14 process.

15 Why KLA erected checkpoints and why they took over the border
16 crossing did not matter to us.

17 JUDGE BARTHE: Thank you. Now, I would like to talk about the
18 events at the former MUP building on 18 June 1999, and I would like
19 to start with the question: Can you tell us how many KLA soldiers
20 were there when you arrived? Approximately, of course.

21 A. More than a handful. I think around 20 at first in the
22 prison -- at -- in the prison. And during the action, more and more
23 people arrived, also members of the KLA. This was in the middle of
24 the city. A lot of members of the press, international press was
25 present there. And also more and more forces from KFOR, military

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1 personnel and medical personnel and so forth.

2 JUDGE BARTHE: In your SPO interview - I'm referring to Part 3,
3 page 7, lines 5 to 11, for the record - you said that when your first
4 troops were present at the scene, there were some KLA people walking
5 around in uniform and that some of them were trying to make it
6 difficult to do any recording. Do you remember saying this during
7 your SPO interview, especially the last part about people trying to
8 make it difficult to do a recording?

9 A. Yes. This problem could be solved relatively quickly.

10 JUDGE BARTHE: And could you tell us what these uniformed people
11 did to prevent the recording or to make a recording difficult?

12 A. Well, the usual matters known by the media: Put your hands in
13 front of the camera or simply saying "no" in any language. But this
14 problem I believe was relatively quickly solved by our intervening.
15 It was not a huge problem.

16 JUDGE BARTHE: Thank you. Can you describe the uniform of these
17 people, the people who tried to make a recording difficult? For
18 example, what colour was -- the uniform was?

19 A. I cannot say anything about this making the recordings
20 difficult. I cannot say anything about the uniforms. There was the
21 usual picture of black uniforms, a mix of uniforms up to military
22 civil uniforms.

23 JUDGE BARTHE: And did the people you met at the MUP building
24 tell you that they were from the KLA? And if so, did they mention a
25 specific unit?

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1 A. The uniforms and the insignia made basically clear that they
2 were KLA members. And there was at least one KLA member in complete
3 uniform, and because of his gestures, because of his behaviour, it
4 was clear that he was a chief, that he was a commander.

5 JUDGE BARTHE: Did you talk to that person, to that man?

6 A. No, I did not talk to that man.

7 JUDGE BARTHE: Nobody told you, explicitly told you that they or
8 he or she was a KLA member; right?

9 A. As far as I know, he had a complete uniform. Which nationality,
10 I do not recall. But there are pictures, press, media pictures. And
11 on his hat I believe was the KLA symbol. And the way he behaved made
12 clear he was a leader.

13 JUDGE BARTHE: I understand that. But nobody told you, that was
14 my question, explicitly told you that he or she belonged to the KLA;
15 right?

16 A. No.

17 JUDGE BARTHE: And did anybody tell you that the men in and
18 outside the MUP building were not from the KLA? Did anybody tell you
19 this?

20 A. No. And they were recognisably members of this formation.

21 JUDGE BARTHE: So you did not have a doubt that the individuals
22 who had occupied the MUP building were, indeed, KLA soldiers, did
23 you?

24 A. Absolutely no doubt.

25 JUDGE BARTHE: And, Witness, did you see or hear about people

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1 who were kidnapped and detained by people from Albania or other
2 countries who had bought or otherwise obtained KLA uniforms in order
3 to pretend to be from the KLA?

4 A. No.

5 JUDGE BARTHE: Did you hear about people who were arrested and
6 detained by people who pretended to be from the KLA and who wore KLA
7 uniforms in order to pretend to be from the KLA?

8 A. No, absolutely not.

9 JUDGE BARTHE: And do you know whether the KLA handed over to
10 you, that is to KFOR, any persons or provided KFOR with the names of
11 persons suspected of having committed crimes, be they suspects from
12 the KLA's own ranks or others who were not members of the KLA? Did
13 that happen as far as you know?

14 A. I do not remember such processes.

15 JUDGE BARTHE: Thank you. Witness, I would like to move on to
16 the people who were liberated from the former MUP building on 18 June
17 1999, and could I ask you to describe their physical and mental
18 state. Were they visibly injured; and if so, what injuries did they
19 have?

20 A. As you can see on my photos, several men had large bruises,
21 partially on their belly, partially on their back, and on other parts
22 of their bodies. And they showed us these bruises, and I documented
23 them. And that was shortly after the liberation. And our medical
24 personnel treated them in front of the building while other forces
25 cleared the building.

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1 JUDGE BARTHE: Did you see stab wounds as well?

2 A. No.

3 JUDGE BARTHE: And were these people, the people who were
4 liberated by you and your comrades, were they stressed and/or
5 exhausted? Can you remember that?

6 A. Well, they were, in German, *mitgenommen*. They were happy to be
7 released, but they were suffering mentally and physically.

8 JUDGE BARTHE: And did these individuals ask for anything; for
9 example, water or food?

10 A. Whether they asked for that, I do not know, but we immediately
11 provided them with water, and the medical personnel checked them
12 accordingly.

13 JUDGE BARTHE: Did they ask to contact their relatives?

14 A. I do not recall that.

15 JUDGE BARTHE: And you said in your SPO interview, and also
16 today, that you heard from the KLA people that the prisoners in the
17 MUP building were allegedly collaborators; is that correct?

18 A. Yes.

19 JUDGE BARTHE: Now I would like to ask you to help us identify
20 the exact time of the events at or in the former MUP station.

21 First of all, the raid was on 18 June 1999; is that right?

22 A. That's right.

23 JUDGE BARTHE: And the Serbs had left the area a few days
24 before; correct?

25 A. Yes, in the days before that day.

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1 JUDGE BARTHE: Do you have any information about when exactly
2 the KLA took over the MUP building, whether it was on 12 June,
3 13 June, or 14th or 15th, or later?

4 A. No, I don't.

5 JUDGE BARTHE: Thank you. Witness, we've talked about the
6 events at and in the former MUP building. Do you know of other
7 detention sites the KLA had allegedly used apart from the former MUP
8 station?

9 A. No, I don't recall anything of that sort. I assisted in the
10 liberation of one single man on factory premises outside of the city,
11 but this was not a real prison. This was just one person. And when
12 it comes to any other locations where more than one person was held,
13 I don't recall anything. I can't tell you anything.

14 JUDGE BARTHE: In Part 5 of your SPO interview, this is on pages
15 1 to 5, you mentioned an incident where a heavy battle tank was used
16 to open I think it was the entrance gate of a factory. Was that the
17 incident you were just referring to where a man was liberated?

18 A. Yes, sir.

19 JUDGE BARTHE: There was a factory site, according to Part 5 of
20 your SPO interview, in Krushe e Madhe; is that right?

21 A. My diary contains the name of the location. We received a piece
22 of information on this and went to that spot. And since the factory
23 gate was closed, we used the tank to open it.

24 JUDGE BARTHE: And as far as you remember, that was before or
25 after the events at the MUP building on 18 June 1999?

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1 A. It was after.

2 JUDGE BARTHE: And how did you know that the factory site was
3 used by the KLA? How did you know that?

4 A. We used to get tips from the population leading to certain sites
5 like graves or crime scenes.

6 JUDGE BARTHE: And did you meet persons who wore KLA uniforms at
7 that site?

8 A. I am not entirely certain anymore. I don't know whether the
9 people who were holding the prisoner were wearing uniforms or not. I
10 don't recall.

11 JUDGE BARTHE: So I'm asking because I would like to know
12 whether it was clear to you that you had to deal with a KLA detention
13 site or whether it was just an incident where the KLA was not
14 involved at all.

15 A. I remember the tip that we got. We heard that somebody was
16 being held on these premises, and we went there at great speed,
17 liberated the man, and afterwards I went on to my next assignment
18 immediately. So I am afraid I cannot say much more about the hostage
19 takers, for example.

20 JUDGE BARTHE: Thank you. And also in Part 5 of your SPO
21 interview on pages 7 to 10, you mentioned another incident where a
22 small Serbian village called Dojnice in the mountains around Prizren
23 was destroyed, where you found five or six bodies of presumably
24 elderly people who were killed and who had not fled. But you said in
25 your interview that there were no indications that the KLA was

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1 present in that area; is that right?

2 First of all, can you remember saying that to the SPO in your
3 interview?

4 A. Yes. Could I say a few more words about Dojnice --

5 JUDGE BARTHE: Yes, please. Go ahead.

6 A. -- Your Honour? We received a tip according to which something
7 had happened in the southern area of our region, the Dragash tip. We
8 were told that there was a location there where a crime had been
9 committed.

10 Then we went into this very remote mountainous area, and we
11 found a village there. We asked the people in the village about what
12 we had heard, and that was the first time in all those weeks when we
13 did not receive the support of the Albanian population. They refused
14 to help us. They just kept schtum. And we went on further up the
15 mountain and found Dojnice, this village, and what you've just told
16 us.

17 We reported this, of course, and other forces took over from us
18 and we went back. We did not find any perpetrators in the upper
19 village. All we found was the crime scene. And in addition, we
20 found the local church that had been destroyed, a Serbian Orthodox
21 church.

22 JUDGE BARTHE: [Microphone not activated].

23 THE INTERPRETER: Microphone, please.

24 JUDGE BARTHE: I'm very sorry. I think it was my first mistake
25 in that regard.

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1 I just wanted to ask you, Witness, if there's anything, anything
2 else you would like to add in this regard.

3 A. No, sir.

4 JUDGE BARTHE: Thank you. Those were my questions.

5 PRESIDING JUDGE SMITH: All right.

6 Judge Mettraux.

7 JUDGE METTRAUX: Thank you, Judge Smith.

8 And good afternoon, Witness. I have a few follow-up questions
9 for you.

10 You spoke of and were asked about a vacuum that was left after
11 the departure of the Yugoslav troops from Kosovo. Do you recall
12 discussing this?

13 A. I do recall.

14 JUDGE METTRAUX: Do you know why it was thought to be
15 undesirable for the KLA to fill that void or vacuum? In other words,
16 do you know why the international community and KFOR did not wish to
17 have the KLA fill that void?

18 A. On the basis of the KFOR rules, these forces had to be disarmed
19 as well. That was the reason. And also in order to reintroduce
20 order and security and prevent any atrocities towards the remaining
21 Serbs and others. So on the part of KFOR, any Kosovan authorities
22 were undesirable.

23 JUDGE METTRAUX: I don't wish to put words in your mouth, but
24 does that mean that there was concern, as you understood, that acts
25 of revenge could come not just from members of the civilian

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1 population but also from KLA members? Would that be fair?

2 A. The intention was to prevent any kinds of revenge independent of
3 where they came from.

4 JUDGE METTRAUX: Thank you. Now, is it correct that after KFOR
5 had entered Kosovo, so sometime between the 11th and 14th June 1999,
6 the KLA continued to operate for a few more months; is that right?

7 A. I don't think so. The KLA was disarmed relatively quickly on
8 the basis of the rules that had been established with the exception
9 of very few cases. And within the first few weeks, KFOR was able to
10 consolidate its position, and then other organisations came into the
11 region as well as representatives of the justice and police systems
12 in order to establish a new order.

13 JUDGE METTRAUX: Then let me ask you this -- the question in
14 that way perhaps: Do you recall or can you recall when the process
15 of demilitarisation of the KLA ended approximately?

16 A. I think they were disarmed by the end of June.

17 JUDGE METTRAUX: And when you say that, are you speaking of
18 Kosovo in general or the area in which you were operating, yourself
19 and your colleagues?

20 A. The rules about disarming the KLA were the same for the whole
21 KFOR, the entire KFOR force. I believe that by the end of June at
22 the latest, the KLA had been disarmed, at least to a great degree.
23 And from then on, more and more uniforms disappeared from the
24 streets.

25 JUDGE METTRAUX: Thank you. I want to follow up on something

1 you were asked by counsel for the Defence and by Judge Barthe as
2 well.

3 To your knowledge, did Kosovo Albanian civilians ever set up
4 detention facilities?

5 A. As far as I know, no.

6 JUDGE METTRAUX: And is it the case that those detention
7 facilities that you have testified about, in particular at the MUP
8 building, were being manned, in your understanding, by the KLA; is
9 that right?

10 A. When we liberated the prison, we found people who were
11 definitely members of the KLA.

12 JUDGE METTRAUX: And was it your understanding that the people
13 you had freed had been up until that point under KLA custody?

14 A. Yes, that's what I assume.

15 JUDGE METTRAUX: Now, you were asked by Mr. Roberts for the
16 Selimi Defence a number of questions about the authority of KFOR to
17 detain and arrest suspected criminals. Do you remember these
18 questions, sir?

19 A. Yes, I do, Your Honour.

20 JUDGE METTRAUX: I have in front of me here a document dated
21 4 July 1999 from UNMIK, Interim Administration Mission in Kosovo.
22 It's called a "Statement on the Right of KFOR to Apprehend and
23 Detain." It suggests that the power of KFOR to apprehend and detain
24 was based on Security Council Resolution 1244 and on that particular
25 statement.

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1 Do you have any memory of that particular document which is
2 signed by the Special Representative of the Secretary-General of the
3 UN, Mr. Sergio de Mello? Do you recall that document?

4 A. Yes, I do. It describes the tasks of KFOR.

5 JUDGE METTRAUX: And it's -- this particular statement requires
6 of KFOR to comply with internationally recognised human rights
7 standards. And it requires that the names of detained persons shall
8 be immediately reported to one of the prosecutors newly appointed by
9 UNMIK and then onwards to investigative judges or a person with
10 judicial authority, as was feasible in the circumstances.

11 Do you recall such an arrangement being put in place in the
12 early days of July 1999?

13 A. As I mentioned before, the first judges were already there at
14 the beginning of July, and they were sent by UNMIK. Yes.

15 JUDGE METTRAUX: Thank you, sir. I'm grateful for your
16 responses.

17 PRESIDING JUDGE SMITH: Judge Gaynor, anything?

18 JUDGE GAYNOR: Yes, I do. Thank you very much, Judge Smith.

19 Witness, in 1999 you had served for nearly 30 years as a
20 professional military officer; is that right?

21 A. 29 years, Your Honour.

22 JUDGE GAYNOR: And am I right in assuming that during that
23 period, you had received some instruction in international
24 humanitarian law?

25 A. Yes.

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1 JUDGE GAYNOR: And so you were aware of the obligation of a
2 party to an armed conflict to investigate and, where appropriate, to
3 prosecute serious violations of international humanitarian law?

4 A. Yes, I did.

5 JUDGE GAYNOR: Now, while you were serving as a member of KFOR,
6 did you consider that both the Serbian side and the KLA side were
7 obliged to investigate serious violations which had been committed by
8 members of their own armed forces?

9 A. Yes, at least theoretically.

10 JUDGE GAYNOR: Yes. And you've told us that KFOR's mandate
11 included the duty to guarantee law and order in Kosovo. Did you
12 consider that KFOR's mandate in any way suppressed the obligation of
13 the KLA to investigate serious violations committed by its forces?

14 A. No, I didn't.

15 JUDGE GAYNOR: And from what you observed as a member of KFOR,
16 did you form a view as to whether the KLA was taking steps or trying
17 to take steps in good faith to investigate crimes committed by its
18 own forces?

19 A. I don't know anything about this.

20 JUDGE GAYNOR: Did you at any time have discussions with members
21 of the KLA about -- in which they expressed a desire or a wish to
22 investigate crimes committed by their own armed forces?

23 A. Well, as far as I was concerned, I've never had any
24 conversations about these kinds of things.

25 JUDGE GAYNOR: Did you see anything that might indicate an

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1 enthusiasm or a willingness on the part of the KLA to investigate
2 crimes by their own forces?

3 A. No, I didn't.

4 JUDGE GAYNOR: Thank you. I have no further questions.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 I'm sorry. I thought I hit it.

7 Any follow-up questions by the Prosecution based on the Judges'
8 questions?

9 MS. IODICE: No, Your Honour.

10 PRESIDING JUDGE SMITH: Are there going to be questions -- we're
11 getting close to the time for the break. Are there going to be
12 questions from the Defence side?

13 Ms. Tavakoli.

14 MR. ROBERTS: I think --

15 PRESIDING JUDGE SMITH: Oh.

16 MR. ROBERTS: [Microphone not activated].

17 PRESIDING JUDGE SMITH: Either one of you.

18 MS. TAVAKOLI: Perhaps.

19 PRESIDING JUDGE SMITH: Okay.

20 MS. O'REILLY: Yes, possibly one.

21 PRESIDING JUDGE SMITH: All right.

22 We'll break for lunch now. We'll have a lunch, hour and a half.
23 You'll be back at 2.30, and we will take up the rest of your
24 testimony at that time.

25 You may leave the room.

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Further Cross-examination by Ms. Tavakoli

1 THE WITNESS: [Interpretation] Thank you.

2 [The witness stands down]

3 PRESIDING JUDGE SMITH: So we're adjourned until 2.30.

4 --- Luncheon recess taken at 12.59 p.m.

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

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 [The witness takes the stand]

8 PRESIDING JUDGE SMITH: All right. Witness, we're ready to
9 proceed.

10 Ms. Tavakoli will have some questions for you.

11 MS. TAVAKOLI: Thank you.

12 Further Cross-examination by Ms. Tavakoli:

13 Q. I've just got a couple of questions. I think Judge Barthe asked
14 you a question about who you understood the detainees to be in the
15 MUP building, and you said that you'd heard that they were
16 collaborators. Do you remember that?

17 A. Yes.

18 Q. And I just want to know whether you'd also heard, when you were
19 in the field, Commander Drini, a KLA commander, saying that the
20 prisoners were criminals?

21 A. No.

22 MS. TAVAKOLI: And the reference for that, if the Court wants
23 one, is P1188.2. Thank you.

24 Q. The next question. You were asked questions by Judge Gaynor.
25 Judge Gaynor asked you about the obligation of a party to an armed

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1 conflict to investigate and, where appropriate, to prosecute serious
2 violations of international law. Do you remember that question?

3 A. Yes.

4 Q. And you agreed with him that both the Serbian side and the KLA
5 were obliged to investigate serious violations which had been
6 committed by members of their own armed forces, and your answer was:

7 "Yes, at least theoretically."

8 A. Yes.

9 Q. Can you expand a little bit about what you mean, "at least
10 theoretically"?

11 A. What I meant was that armies, armed formations, have the
12 obligation to inspect in such cases. But I was conscious of the fact
13 that, at the time at least, that was a task who was not started yet.

14 Q. Thank you. And can I ask you, did you know that in the
15 particular legal circumstances of post-war Kosovo, that UNMIK
16 considered that the ICTY and UNMIK police were the only competent
17 authorities to investigate war crimes pursuant to UN Security Council
18 Resolution 1244?

19 A. I know that after the entry of KFOR forces, these organisations
20 had the task to do exactly that.

21 Q. Thank you very much.

22 MS. TAVAKOLI: And if the Court wants an exhibit, it's 1D84.

23 No further questions.

24 PRESIDING JUDGE SMITH: Thank you.

25 Ms. O'Reilly.

1 Further Cross-examination by Ms. O'Reilly:

2 Q. Good afternoon again, Witness. This morning before lunch you
3 were asked by Judge Barthe at page 65 of the transcript about the
4 burning of houses, specifically Serbian houses. Do you remember
5 that?

6 A. Yes.

7 Q. I'd like to just take you to a page of your diary.

8 MS. O'REILLY: So the first page of that document is 071142, and
9 I'd like to go to the page ending in 1172, which will be the same for
10 the German and the English. I'm just waiting for the English to come
11 up still. Apologies. Thank you.

12 Q. And so in the middle part there in the English it's talking
13 about numbers of attacks on Serbs increasing, and it says:

14 "Departing Serbs announce that they will set fire to their
15 houses."

16 Witness, could you explain to us why Serbs were setting fire to
17 their own houses?

18 A. At that point in time, and the same applies today, I could only
19 explain that as follows: Nobody after having fled did not want to
20 leave his houses to anybody else.

21 Q. So what you're saying is they were burning their houses in order
22 to prevent Albanians from moving into those houses; is that right?

23 A. About the will to do that, we were partially informed about.

24 Yes.

25 Q. Thank you, Witness. That was the only question I had.

1 PRESIDING JUDGE SMITH: Thank you, Ms. O'Reilly.

2 Mr. Roberts.

3 MR. ROBERTS: Thank you, Your Honour.

4 Further Cross-examination by Mr. Roberts:

5 Q. Good afternoon again, Witness. I just have a only about five
6 minutes of questions.

7 Firstly, if I could just follow up on a question from counsel
8 for Mr. Thaci in response to a question by Judge Gaynor about the
9 suppression of the obligation of the KLA to investigate serious
10 violations committed by its forces.

11 Do you remember that question?

12 A. Yes.

13 Q. Now, you said that they hadn't started yet, I believe the
14 response, that they theoretically had the obligation but they hadn't
15 started yet. Do you accept that that was, at least in large part,
16 because of the actions that KFOR had taken in disarming them and
17 disbanding them and in essentially being the only public order
18 authority in Kosovo at the time?

19 A. I do not know anything about the efforts of the KLA to check
20 such things. And because of the situation during the first days
21 after entry, that was not something to be expected either. Whether
22 this was then actually done, I cannot tell you.

23 Q. Okay. But do you accept that it's likely that your actions had
24 a significant impact on their capacity to carry out any such
25 investigations?

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Further Cross-examination by Mr. Roberts

1 A. This is something I cannot assess.

2 Q. Understood.

3 MR. ROBERTS: Second, if I could just move to some questions
4 from Judge Mettraux. And apologies for addressing a question to the
5 Bench, but it would assist me. There was a document that was
6 referred to by Judge Mettraux. Is it possible to have the ERN of the
7 document so I could bring it up by the Court Officer?

8 JUDGE METTRAUX: I don't think there's an ERN, Mr. Roberts, but
9 you could probably find it online as I did. It's a publicly
10 available document.

11 MR. ROBERTS: So am I correct in understanding it hasn't been
12 disclosed to the Defence by the Prosecution in this case?

13 JUDGE METTRAUX: I haven't checked, Mr. Roberts.

14 MR. ROBERTS: So that my understanding to that extent is
15 correct, that it wasn't found within the case file at least. That's
16 all I was seeking to verify. And I think that's clear from your
17 answer. Apologies for addressing a question to the Bench, but I just
18 wish to be clear as to the status of that document.

19 Q. But this was a document that Judge Mettraux referred to. I'll
20 just read out exactly what he said:

21 "I have in front of me ... a document dated 4 July 1999 from the
22 UNMIK, Interim Administration Mission in Kosovo. It's called a
23 'Statement on the Right of KFOR to Apprehend and Detain.' It
24 suggests that the power of KFOR to apprehend and detain was based on
25 Security Council Resolution 1244 and on that particular statement."

1 And he asked you if you remember that document, which you
2 confirmed you did, and also then about whether this statement
3 requires KFOR to comply with international human rights.

4 So my question as a follow-up from that is were you still aware
5 after that date as to concerns about the specific legal basis for
6 detaining people by KFOR?

7 A. No. But during this period of time, we witnessed that from day
8 to day more and more the international police took over such tasks.

9 Q. Right. Just actually on that issue. Did you ever see someone
10 who was detained brought before a judge in your time in Kosovo?

11 A. Arrested, yes. And then the transfer to a court, I cannot
12 recall that. And during the first days, there were no courts.

13 Q. Yes.

14 MR. ROBERTS: If we could just bring up one document which is
15 DRS00632. And this is a report from the Parliamentary Assembly of
16 the Council of Europe, titled, "South-East Europe and Kosovo:
17 Evaluation of the humanitarian situation in the Federal Republic of
18 Yugoslavia, particularly in Kosovo and Montenegro." This is dated
19 18 September 1999, for the record. So this is two and a half months
20 after the statement from Mr. Sergio Vieira de Mello.

21 If we can just go to paragraph 13, which is at the bottom of the
22 third page, DRS00636. And I'll just read it. Just right at the
23 bottom of that page, if we could scroll. A bit further. I think
24 it's the next page, please.

25 I'll read it for the record. There seems to be a slight issue

1 with what's being displayed. Okay. I'll read the ERN again. So the
2 ERN of the specific page is DRS00636. So I think that's the bottom
3 of the next page. Yeah.

4 Q. So paragraph 18 there, again, addressing Security Council
5 Resolution 1244, so that's specifically referring to it:

6 "Under UN Security Council Resolution No. 1244 of 10 June 1999,
7 KFOR has the mandate and responsibility to ensure both public order
8 and safety until the UN Mission in Kosovo (UNMIK) can take full
9 responsibility for maintaining civil law and order in Kosovo.
10 However KFOR is neither trained nor equipped for policing. It has no
11 means and no legal basis to detain suspects or hold inquiries.
12 Furthermore there is no legitimate authority to judge persons accused
13 of having committed crimes."

14 So this was two and a half months after the statement that was
15 referred to by Judge Mettraux, and there still appear to be severe
16 concerns about the legality of detaining people. You're not aware of
17 that at all?

18 A. Afterwards, after I had returned back home, I read about such
19 matters. But during my deployment there, and especially during on
20 the weeks and days after entering, that was not a topic for us. We
21 were busy establishing law, order, and security, and I think that
22 because of this UN resolution there was also the right to arrest and
23 detain people. But this is only something I can say now, and I am
24 not legally trained.

25 Q. Yes. And to be fair, maybe that sums up the position at the

1 time you were in, you felt the obligation to secure and establish law
2 and order and security allowed you to detain those people, did it
3 not, in if not the heat of battle, but in the intensity of the
4 situation you were in at the time? Is that a fair assessment?

5 A. I assume that KFOR had the right to do so and also at the time I
6 assumed that KFOR had the right to do so.

7 MR. ROBERTS: Thank you, Your Honour.

8 Q. Thank you, Witness.

9 MR. ROBERTS: No further questions.

10 PRESIDING JUDGE SMITH: Thank you.

11 Mr. Baiesu.

12 MR. BAIESU: We do not have any questions, Your Honour.

13 PRESIDING JUDGE SMITH: Witness, your testimony is now complete.
14 Thank you for being with us and for your testimony.

15 I also want to extend our thanks to the German interpreters who
16 were with us the past two days. You've done an excellent job, just
17 like our usual translators, so thank you again.

18 You may leave the courtroom now with our thanks, and we wish you
19 well.

20 THE WITNESS: [Interpretation] Thank you, Your Honours.

21 [The witness withdrew]

22 PRESIDING JUDGE SMITH: We will step aside for about ten minutes
23 to allow the SPO to get set up for the next witness. So we will just
24 call it -- we will reassemble at 3.00 then.

25 --- Break taken at 2.49 p.m.

1 --- On resuming at 3.00 p.m.

2 PRESIDING JUDGE SMITH: Please, into private session,
3 Madam Court Officer.

4 [Private session]

5 [Private session text removed]

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8 [Open session]

9 THE COURT OFFICER: Your Honours, we are now back in public
10 session.

11 PRESIDING JUDGE SMITH: Before we start hearing the evidence of
12 Prosecution Witness W04710, I have one oral order to issue.

13 Today, the SPO filed F02327, a request for video-conference
14 testimony for two witnesses who are notified as reserve witnesses in
15 the current block of hearings. The SPO requested an expedited
16 briefing schedule for this filing.

17 The Panel informs the parties, participants, and Registry that
18 responses to F02327 and Registry submissions on the feasibility of
19 the requested videolink should be provided orally in court tomorrow
20 morning before we start hearing the witness. No reply will be
21 entertained.

22 This concludes the oral order.

23 Now we can proceed.

24 Madam Court Officer, please bring the witness in.

25 [Microphone not activated].

1 MR. ELLIS: Thank you, Your Honour.

2 PRESIDING JUDGE SMITH: Go ahead.

3 MR. ELLIS: Simply to say I think we can respond earlier than
4 that. I've discussed with my colleagues by e-mail, and we do not
5 oppose the videolink.

6 PRESIDING JUDGE SMITH: If anybody else wants to volunteer that
7 at this point, that's fine. Otherwise, we'll wait till tomorrow.

8 MR. MISETIC: We also don't oppose.

9 MR. TULLY: We also don't oppose, Your Honour.

10 MR. EMMERSON: The same on this team.

11 PRESIDING JUDGE SMITH: Okay. [Microphone not activated].

12 That shortens things up. So the videolink on those two
13 witnesses will be allowed - that will be an oral order - based upon
14 the agreement of the parties.

15 [The witness entered court]

16 THE WITNESS: [Interpretation] Good afternoon.

17 PRESIDING JUDGE SMITH: Good afternoon, Witness. The Court
18 Usher will now provide you with the text of the solemn declaration
19 which you are asked to take pursuant to Rule 141(2) of our rules.

20 Please proceed to read that aloud. And then when you're
21 finished, I'll ask you if you consent to what you've stated.

22 THE WITNESS: [Interpretation] Shall I start?

23 PRESIDING JUDGE SMITH: Go ahead. Yes.

24 THE WITNESS: [Interpretation] Solemn declaration, subject to
25 Rule 141: Conscious of the significance of my testimony and my legal

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1 responsibility, I solemnly declare that I will tell the truth, the
2 whole truth, and nothing but the truth, and that I shall not withhold
3 anything which has come to my knowledge.

4 PRESIDING JUDGE SMITH: Do you consent to follow that solemn
5 declaration?

6 THE WITNESS: [Interpretation] Certainly, yes.

7 WITNESS: W04710

8 [The witness answered through interpreter]

9 PRESIDING JUDGE SMITH: You can be seated now.

10 Witness, today we will start your testimony, which is expected
11 to last approximately one day.

12 As you may know, the Prosecution will ask you questions first,
13 then the Defence has the right to ask you questions, and members of
14 the Panel might also have questions for you.

15 The Prosecution estimate for your examination is one hour. The
16 Defence estimates that it will need 4.5 hours. And as regards each
17 estimate, we hope that counsel will be judicious in their use of the
18 time. The Panel may allow redirect examination if conditions for it
19 are met.

20 Witness, please try to answer the questions clearly with short
21 sentences. If you don't understand a question, feel free to ask
22 counsel to repeat the question or tell them you don't understand and
23 they will attempt to clarify.

24 Also, please try to indicate the basis of your knowledge of the
25 facts and circumstances that you will be asked about. In the event

1 you are asked by the SPO to attest to some corrections made regarding
2 your statements, you are reminded to confirm on the record that the
3 written statement, as corrected by the list of corrections,
4 accurately reflects your declaration.

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

8 While you are giving evidence in this court, you are not allowed
9 to discuss with anyone the content of your testimony outside of the
10 courtroom. If any person asks you questions outside of the courtroom
11 about your testimony, please let us know.

12 The Panel understands that the SPO has hard copies of your prior
13 witness statements for you to reference during your testimony in case
14 of need. If you cannot recall something and therefore wish to
15 consult these documents to refresh your memory, please notify the
16 Panel before doing so. I repeat, this should only be done in the
17 event that you need to make that reference because you cannot recall.
18 You should not read directly from these documents.

19 Please stop talking if I ask you to do so and also stop talking
20 if you see me raise my hand because that means that I may have an
21 additional instruction to give you.

22 If you feel the need to take a break, please let us know and an
23 accommodation will be made.

24 We will begin first with the Prosecution's questions that are
25 seated to your left.

Examination by Ms. Insinga

1 Madam Prosecutor, do we need to be in private session?

2 MS. INSINGA: Your Honour, we can begin in public session and
3 then we'll move to private session.

4 PRESIDING JUDGE SMITH: All right. Thank you. Go ahead.

5 MS. INSINGA: Thank you, Your Honour.

6 Examination by Ms. Insinga:

7 Q. Good afternoon, Witness.

8 A. Good afternoon.

9 Q. We have met before but I will introduce myself again. I am
10 Alexandra Insinga with the SPO.

11 I am going to note, as I explained to you during your
12 preparation session last week, rather than ask you about all of the
13 relevant issues you may have information about, it may be possible to
14 admit some of your prior statements into evidence. And in order to
15 do so, there are a number of procedural steps to follow which I will
16 do so after establishing your identity.

17 MS. INSINGA: And, Your Honour, for my initial questions and to
18 protect the witness's identity, at this time I would ask that we go
19 into private session.

20 PRESIDING JUDGE SMITH: Private session, please,
21 Madam Court Officer.

22 [Private session]

23 [Private session text removed]

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Witness: W04710 (Private Session)

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Examination by Ms. Insinga

1 [Private session text removed]

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11 [Open session]

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

13 PRESIDING JUDGE SMITH: Go ahead.

14 MS. INSINGA: Thank you, Your Honour.

15 Q. Witness, we are now in public session, but none of my questions
16 at this time should identify you.

17 Witness, were you previously interviewed by the SPO?

18 A. Yes, I was. In Prishtine.

19 MS. INSINGA: I would ask that the Court Officer please pull up
20 091696-TR-AT Part 1 RED2, page 1. And this is not for public
21 broadcast.

22 Q. Witness, without stating your name or any other identifying
23 information, does the page shown to you on your screen -- is that
24 your SPO interview?

25 A. Yes.

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Examination by Ms. Insinga

1 Q. And have you recently had the opportunity to refamiliarise
2 yourself with the contents of this interview?

3 A. I don't think it is necessary, but if you want to, we can.

4 Q. I apologise. Let me rephrase the question, Witness. Did you
5 recently have the opportunity to read this statement again?

6 A. Fine. Shall we do it? You want me to read it out loud or ...?

7 Q. No, Witness.

8 PRESIDING JUDGE SMITH: Witness, listen carefully to the
9 question. She's asking you about a different matter.

10 MS. INSINGA: Thank you, Your Honour.

11 Q. Witness, last week did you have the opportunity to read this
12 interview that's displayed on the screen in front of you?

13 A. Yes, yes.

14 Q. And last week during your preparation session, you also
15 indicated some changes and clarifications to this interview; correct?

16 A. That's correct.

17 Q. And those changes were reflected in a note that was read back to
18 you last week; correct?

19 A. Correct. That's correct.

20 Q. And do you confirm that what was read back to you last week in
21 that note reflected your changes fully and accurately?

22 A. Entire -- fully and accurately.

23 Q. And subject to the changes that were in the note that was read
24 to you last week, do these statements - that note combined with the
25 statement displayed on the screen in front of you - accurately

Witness: W04710 (Open Session)

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Examination by Ms. Insinga

1 reflect what you said and what you would say if asked again in court
2 today about the same information?

3 A. Everything I have stated in my statement is accurate.

4 MS. INSINGA: Your Honours, at this time, having fulfilled the
5 Rule 154 criteria, and in accordance with decision F02245, the SPO
6 hereby tenders all three parts of 091696-TR along with its -- with
7 both translations as well as Preparation Note 1, which is ERN 121098
8 to 121099, and this also includes the associated exhibit identified
9 at footnote 140 of decision F02245.

10 PRESIDING JUDGE SMITH: Any objection?

11 MR. MISETIC: No objection.

12 PRESIDING JUDGE SMITH: Mr. Ellis?

13 MR. ELLIS: None.

14 PRESIDING JUDGE SMITH: 091696-TR-AT Part 1 RED2, plus all
15 translations, is admitted.

16 THE COURT OFFICER: Your Honours, the statement with ERN 091696,
17 English and Albanian, will be admitted as P01195.1. That's for
18 Part 1. We also have two parts more.

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 THE COURT OFFICER: The second part with the same ERN, both
21 English and Albanian, will be admitted under P number P01195.2.

22 And Part 3, both English and Albanian, will be admitted as
23 P01195.3.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 The note number 1 at 121098 to 121099 is admitted.

1 THE COURT OFFICER: Preparation note will be admitted as P01196.

2 PRESIDING JUDGE SMITH: Thank you.

3 You may proceed.

4 MS. INSINGA: Thank you, Your Honour.

5 At this time, the SPO has a short summary that can be read in
6 public session for this witness and it's been provided to the Defence
7 counsels.

8 PRESIDING JUDGE SMITH: You may go ahead and read it.

9 MS. INSINGA: Thank you, Your Honour.

10 W04710 is a family relative of a charged murder and enforced
11 disappearance victim from Drenoc. The witness will describe the
12 alleged victim's activities prior to disappearing from Drenoc, the
13 last time the witness saw him, and the extensive efforts the family
14 made to find out what happened to him.

15 Your Honour, at this time for the remainder of my questions I
16 would ask that we move back into private session to protect the
17 identity of the witness.

18 PRESIDING JUDGE SMITH: To protect the identity of the witness,
19 we will move into private session.

20 Madam Court Officer.

21 [Private session]

22 [Private session text removed]

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Witness: W04710 (Private Session)

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Examination by Ms. Insinga

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Misetić

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Misetić

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Misetić

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Misetić

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Witness: W04710 (Private Session)

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Cross-examination by Mr. Miletic

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Cross-examination by Mr. Miletic

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17 [Open session]

18 THE COURT OFFICER: Your Honours, we are now in public session.

19 PRESIDING JUDGE SMITH: We are adjourned.

20 --- Whereupon the hearing adjourned at 4.30 p.m.

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