

Monday, 22 September 2025

[Open session]

[The accused entered the courtroom]

--- Upon commencing at 9.00 a.m.

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

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

PRESIDING JUDGE SMITH: Good morning, everyone.

I note that the accused are all present in court today. We will start hearing the evidence of Thaci Defence Witness 1DW-006. Judge Mettraux is appearing via videolink today.

First, as a reminder, in filing F03468, the Panel authorised certain measures under Rule 107 for the present witness, including that 1DW-006's witness statement forms the basis for his wider evidence and that the scope of cross-examination of the witness should be limited to the scope of direct examination as well as issues or questions of credibility; that the witness's testimony be moved into private session if a risk of inadvertent disclosure or sensitive or classified information arises; that the witness may decline to answer questions on the ground of confidentiality.

The Panel will not entertain questions it cannot be shown to be clearly linked to matters authorised by Rule 107 provider and relevant to the case. Where queried on this point, the questioning

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1 party should be ready to state how certain lines of questioning fall  
2 within the scope of Rule 107 authorisation.

3 Madam Court Officer, please bring the witness in.

4 [The witness entered court]

5 PRESIDING JUDGE SMITH: Good morning, Witness.

6 THE WITNESS: Good morning.

7 PRESIDING JUDGE SMITH: The Court Usher will now provide you  
8 with the text of the solemn declaration that you are asked to take  
9 pursuant to our Rules of Procedure 141(2). Take a look at it and  
10 then read it aloud.

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

15 WITNESS: JOHN DUNCAN

16 PRESIDING JUDGE SMITH: Thank you, Witness. You can be seated  
17 now.

18 THE WITNESS: Thank you.

19 PRESIDING JUDGE SMITH: Witness, today we will start your  
20 testimony, which is expected to last approximately two to three days  
21 maximum. As you may know, the Thaci Defence will ask you questions  
22 first and then the remaining Defence teams, and once they are  
23 finished the SPO has the right to ask questions of you. Members of  
24 the Panel might also have some questions for you.

25 The Thaci Defence estimate for your direct examination is 4.5

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1 hours. The remaining Defence teams will take approximately two and a  
2 half hours. The SPO estimates that it will need four hours. As  
3 regards each estimate, we hope that counsel will be judicious in the  
4 use of their time. The Panel may allow redirect examination if  
5 conditions for it are met.

6 Witness, please try to answer the questions clearly, with short  
7 sentences. If you don't understand a question, feel free to ask  
8 counsel to repeat the question or tell them you don't understand and  
9 they will clarify. Also, please try to indicate the basis of your  
10 knowledge of facts and circumstances that you will be asked about.

11 Please also speak into the microphone and wait five seconds  
12 before answering a question, and then speak at a slow pace so the  
13 interpreters can catch up.

14 During the next days while you are giving evidence in this  
15 Court, you are not allowed to discuss with anyone the content of your  
16 testimony outside of the courtroom. If any person asks you questions  
17 outside this Court about your testimony, let us know immediately.

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

21 If you feel the need to take breaks at any point or wish us to  
22 repeat anything, please make an indication and an accommodation will  
23 be made.

24 We begin first with the questions from the Thaci Defence team.  
25 Please give them your attention.

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1 Ms. Tavakoli.

2 MS. TAVAKOLI: Your Honour, before I begin, is the witness aware  
3 that Judge Mettraux is attending via videolink?

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 THE WITNESS: I am aware.

6 PRESIDING JUDGE SMITH: [Microphone not activated]. You can see  
7 him on your screen when he speaks, not now.

8 THE WITNESS: Okay.

9 PRESIDING JUDGE SMITH: When he --

10 THE WITNESS: Thank you.

11 PRESIDING JUDGE SMITH: -- speaks.

12 Examination by Ms. Tavakoli:

13 Q. Good morning, Mr. Duncan.

14 A. Good morning.

15 Q. We've met before. My name is Nina Tavakoli, and I'm co-counsel  
16 for Hashim Thaci. Please, can you tell the Court your full name.

17 A. My name is John Stuart Duncan.

18 Q. And can you please tell the Court your date of birth.

19 A. 17 April 1958.

20 Q. Sorry, I've realised I've got to slow down already. We're  
21 speaking in English --

22 A. I apologise.

23 Q. -- and there is simultaneous translation. What is your  
24 nationality?

25 A. French and British.

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1 Q. What is your occupation?

2 A. I am retired. I was a diplomatic service officer for 38 years,  
3 former British ambassador and territory governor.

4 Q. And, please, can you give the Court a sense of the arc of your  
5 professional experience, the edited highlights if you like, about the  
6 types of positions you held in that 38 years, geographical locations  
7 and so on, so we can get a sense of your expertise.

8 A. Certainly. It's a long list, I'm afraid, so I will try to be  
9 brief.

10 I served overseas in Paris twice, in Khartoum, in Albania, in  
11 Brussels twice, and in the Falkland Islands as governor briefly, and  
12 as governor for the British Virgin Islands in the Caribbean. My  
13 posts across that spectrum were heavily political and military  
14 affairs. So I was in the delegation in NATO in 1993 dealing with the  
15 deployment of European police force in Mostar. I was involved  
16 previously in the deployment of European Community Monitoring Mission  
17 on the Albania-Kosovo border.

18 It's a long list. And I concluded with my political and  
19 military career in being ambassador for arms control and disarmament  
20 at the United Nations, based in Geneva and New York. I can amplify  
21 if you have any further questions, but it's a very long list, I'm  
22 afraid, for 38 years.

23 Q. Thank you. And when you say "political military affairs," what  
24 do you mean by that?

25 A. In the diplomatic service, we tend to have specialisations. So

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1 mine was naturally down that area because I had been in -- in my  
2 undergraduate degree, I had studied strategic affairs, so the theory  
3 of military and strategy. Then when I got into the diplomatic  
4 service, I gradually moved into that area. So it's the area where  
5 we're working with the military, covering the political implications  
6 of military operations, preparations, and, indeed, the wider  
7 strategy.

8 So I was leading -- I was deputy head of department of what was  
9 called Security Policy Department in 1998 on the first strategic  
10 defence review, which is what sort of forces do we need. But also I  
11 moved into a more operational context in my appointment as a  
12 political adviser to NATO's Supreme Allied Commander from 1998 to  
13 2001.

14 Q. Thank you. Now, within that professional experience, you  
15 touched on it, did you have experience working on or in Balkan --  
16 countries of the western Balkans, and if so, where?

17 A. Yes. I was in the Balkans more widely. As I said, I was  
18 involved in the deployment of the police operation in Mostar. But I  
19 was also the first British diplomat to go back to Albania after 46  
20 years of it being closed, and I set up the British mission there in  
21 1992. Also was -- when I was in London as part of the security  
22 policy department responsibilities, I sat in on the meetings, because  
23 that was the height of the Bosnia war. So I had fairly extensive  
24 experience of the Albanian and the wider Balkans problems.

25 Q. And what year was that that you were sitting -- or years that

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1     you were sitting in the security department policy at --

2     A.     That was immediately prior to deployment with NATO, so that was  
3     in 1998.

4     Q.     Thank you. And have you, over the course of your career,  
5     received any awards or recognition for your work; and if so, what?

6     A.     I got -- I was awarded the OBE, the Order of the British Empire,  
7     for my work in Albania. And I was awarded the NATO Kosovo Medal and  
8     the US Army's Outstanding Civilian Service Medal for my work in  
9     Kosovo.

10    Q.     Thank you. And I'd like to now move on to your education. What  
11    institutions were you educated at from degree level and above?

12    A.     So my degree was in international relations but specialising in  
13    strategic affairs, international law and EU law. I was also at the  
14    Sorbonne University in Paris prior to that. I have a *diplôme de*  
15    *civilisation française*. And I was also at the NATO Defence College  
16    in 1992, which is the staff college for NATO.

17    Q.     How long did you study at the NATO Defence College?

18    A.     It's a six-month course.

19    Q.     And why did you attend that?

20    A.     I asked to attend it. I was due to go to a posting in Brussels,  
21    and I asked to be one of the very few civilians that get to go to  
22    that course and go with mostly lieutenant-colonels and colonels who  
23    are going to be -- who are identified for promotion. And therefore,  
24    I asked to attend that, I was accepted, and it was a very good  
25    preparation for my subsequent career.

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1 Q. Why did you think attending that would help you in your career?

2 A. Well, it would give me more practical focus and the opportunity  
3 for six months to work with military officers of senior calibre who  
4 would be going on to future senior jobs and to draw on their  
5 experience and to know them as people rather than simply to study  
6 books, but actually talk to people who had served and who were  
7 serving and were going to serve, so it would give me a background  
8 which was, to my view, quite unique.

9 Q. Given your professional experience that you've just told the  
10 Court about and your study at the NATO Defence College, would you say  
11 that you understand how militaries work and military concepts?

12 A. Yes.

13 Q. Now I'd like to move on, please. What were you doing between  
14 August -- where were you working between August 1998 until December  
15 2001?

16 A. I was the political adviser -- the British political adviser to  
17 NATO's Supreme Allied Commander General Wesley Clark and his deputy  
18 General Sir Rupert Smith. It was a position known as INTAF,  
19 international affairs. The military love their acronyms. And it was  
20 a role, for the Court perhaps to understand, that political advisers,  
21 known as POLADs, again an acronym, were very common in the Second  
22 World War. Only the United States continued with the process of  
23 having diplomats embedded with senior military commanders. The  
24 British discontinued after the Second World War and then reinstituted  
25 the appointments in the Balkans war, in the Bosnia war, and I was the



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1 second person to carry out that function in strategic Allied  
2 headquarters in Mons.

3 Q. And did the United States have a political adviser within this  
4 unit at this time, and if so, who was it?

5 A. It was my immediate superior, Minister Michael Durkee.

6 Q. Thank you. In brief, what did your role entail?

7 A. The role is essentially to advise military commanders on,  
8 obviously, the diplomatic and political considerations which may  
9 apply to a military operation, but to provide them with regular  
10 briefings on what's happening in the regional context, the  
11 international context, and to give them advice on how they should  
12 respond and how that might affect operations.

13 Similarly, our role would be to provide briefings if they were  
14 meeting political leaders, as in the Kosovo conflict they met very  
15 frequently, so I would provide a briefing for the areas I was  
16 responsible for. I would perhaps take notes and -- or generally, I  
17 would take notes, and I would usually do the first draft of the  
18 general's report back up to Secretary-General Solana on the meetings  
19 that he had had.

20 Q. And which areas you were responsible for --

21 A. Given my --

22 Q. -- in the context of Kosovo?

23 A. Sorry. I'll speak slower.

24 Q. No, it's my --

25 A. Given my experience in Albania, I covered the Kosovar aspects.

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1 My colleague, Mike Durkee, who had been there some years before me,  
2 had also a very good knowledge of Serbia matters. So essentially we  
3 split Kosovo and Serbia between us, I doing the Kosovo side, he doing  
4 the Serbia side. We did much wider meetings. So I would go to  
5 the -- sorry, I would go with the generals when they went to Bosnia,  
6 for example, which we did fairly regularly to meet commanders, or,  
7 for instance, Portugal or other NATO allies, I would attend. We  
8 split the world up -- gradually up basically on -- between us so that  
9 we -- drawing on our own expertise.

10 Q. And when you say you dealt with Kosovo issues, what specifically  
11 did you deal with?

12 A. Pretty much across the board. I had built up an understanding  
13 of how Albanian society worked. It was my job when I was in Albania  
14 to understand that. I was interested in it as well. This was a  
15 country which had been closed off for 46 years, so I made it my  
16 business to really try to understand how did this society work.

17 It's the fundamental part of being a diplomat. Our job is to  
18 explain back to our capital what is this society, how does it  
19 function, you know, what are the levers of power, how do you  
20 influence them, how might they be difficult to us. That's  
21 fundamentally what a diplomat does, to explain the complexities of a  
22 society back to your capital. So I drew on that experience.

23 But, obviously, there was another aspect, which was -- I'm sure  
24 the Court is aware of this, but the idea of a greater Albania had  
25 worried the international community for some considerable time, and

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1 when Albania came out of a dictatorship, that focused minds. And so  
2 they wanted to know what was the relationship between Albania Albania  
3 and Kosovo Albania. So, obviously, I had to look at that question  
4 and talk to people and try and understand and advise people back in  
5 my capital: Is this a reality, how might it happen, are there  
6 differences between the Albanian Albanians and Albanian Kosovars, and  
7 how do they think.

8 Q. And how did you conclude that the Kosovan Albanians thought?

9 A. Obviously, the Kosovar Albanians had been subject essentially an  
10 apartheid during the Serbian -- Milosevic's era, where they had been  
11 excluded from government, from the public service, and gradually, as  
12 we saw, this ramped up into, essentially in the end, ethnic  
13 cleansing. But they were quite different to Albanian Albanians. In  
14 fact, to my view, there wasn't a lot of love lost between the two.  
15 This might be because, and I'm speculating, I appreciate, but it's my  
16 opinion, Albania Albania is divided quite roughly into three areas:  
17 The north, where it is as people understand Albania. Obviously, the  
18 public, they talk about, you know, the blood feuds and clans and  
19 things like that, and that is a dominant part of the history and the  
20 culture of northern Albania. Middle Albania is slightly different  
21 with a mix. And southern Albania is heavily influenced by Greece, so  
22 a lot of ethnic Greeks in that part. So it's not a homogeneous  
23 society anyway.

24 The Kosovar side of it, a lot of them had come from northern  
25 Albania. So the concept of honour, the more -- how can I say? I

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1 think the blood feud, the *kanun*, as a basis to society, a way of  
2 thinking. So I -- to give you an example, I'm a Celt, I'm a Scot.  
3 The first thing that we do -- and Bretons, also Celts, do when we  
4 meet someone else is we try to find out who is your family, am I  
5 related. And that's the way they think as well. It's a similar way.  
6 It's not that we're dominated by the fact that we have these  
7 historical family links, but they're part of who we are. And that  
8 was very much what I saw. I saw echoes of that process.

9 When a society becomes under threat, those pressures and links  
10 become more profound. And you could see this in -- parts of the  
11 United Kingdom have had problems where blood is thicker than water.  
12 So if you are all family, okay, I trust this person because he's one  
13 of us, or she's one of us. That way of thinking was quite common,  
14 and I could observe it and I could understand it. If that answers  
15 your question.

16 Q. Yes, it does. So going back to your specialism being Kosovo,  
17 did it cover the Kosovo Liberation Army and the Provisional  
18 Government of Kosovo or not?

19 A. Yes.

20 Q. Now, in order to advise General Wesley Clark and the commanders,  
21 what sources did you draw on to give your advice?

22 A. A wide range of sources. Perhaps if I was, with your  
23 permission, to give an example of a common day during the conflict,  
24 it might explain what that was.

25 Q. Yes, please. That would be helpful.

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1 A. So an ordinary day for me would be focused on the briefing for  
2 General Wesley Clark at 7.30 in the morning. It would take me  
3 45 minutes to drive down there, so I had to do quite a bit before  
4 that.

5 What I would generally do, I would get up. The first thing,  
6 work-wise, I would go onto the internet and I would read all the  
7 information that I could find on the internet about what had happened  
8 in the past 24 hours politically and operationally, obviously, but  
9 mostly politically, that's what I'm looking at.

10 Q. Is this in relation to Kosovo because --

11 A. Yes.

12 Q. -- that's what we're focusing on?

13 A. Yes.

14 Q. Thank you.

15 A. I would then listen to the 24-hour news, and then I would get in  
16 the car and I would drive down and I would listen to the BBC World  
17 Service as I drove down. When I got into the office, I would read  
18 all the diplomatic cables over the evening that had been -- come  
19 overnight. I would read the monitoring services which might pick up  
20 other things that I'd not spotted, and I would read any intelligence  
21 assessments that had been made.

22 We would then go into the meeting. I would brief General Clark.  
23 We would then go together into briefing our operational commanders by  
24 video-conference down in the field. Then throughout the day, I would  
25 be looking at cables as they came in. I would probably be talking to

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1 people that I knew, either Albanians from my time in Albania,  
2 journalists, NGOs, think-tanks, various -- a wide variety of people  
3 to get as much information as I could to put together the picture, as  
4 it is. And I've -- as the Court knows, I'm a dyslexic, so I think in  
5 pictures and I think in patterns, so I would be putting together this  
6 pattern of how -- what was happening, what were the dynamics, what  
7 were the momenta happening during the course of the past 24 hours,  
8 and I would draw on that -- and the other thing I shouldn't forget to  
9 say was that we would also talk -- Mike Durkee and myself, we would  
10 share that information before going to see General Clark. So he  
11 would have the US information and I would have the British source  
12 information and we would put that together so that we would go in and  
13 give him a complete picture of: This is what's happening, this is  
14 the decisive moments that you need to react to, these are the strains  
15 that you need to take into account. And then that process would go  
16 on throughout the day of me expanding those contacts of information  
17 and just keeping a rolling brief of how the whole situation  
18 politically and militarily was operating.

19 Q. Thank you. I don't know if you can answer this, but did you  
20 have insiders in the field giving you information?

21 A. I regret I cannot answer that question.

22 Q. Thank you. Now, did your understanding of Kosovan Albanian  
23 culture inform your understanding of the KLA?

24 A. Yes.

25 Q. In what way?

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1 A. In a wide variety of ways. In general terms, we're talking,  
2 rather than specifics.

3 Q. Yes.

4 A. In general terms, one could observe the family clan links. You  
5 could see the influence of Jashari.

6 Q. What do you mean by that?

7 A. In that the key players, certainly in the early days, and I'm  
8 talking about August 1998, had links with a family or locality. They  
9 certainly had links with Jashari and you could spot it. When you saw  
10 a profile of who were the key players, you could see Jashari's name  
11 popping up all over. So that was obvious, that that was a part of  
12 it.

13 But they were a very heterogenous group of people, and they  
14 came -- and they evolved.

15 Q. What do you mean by saying that they were "very heterogenous"?

16 A. The composition of the major players, particularly as the ethnic  
17 cleansing accelerated, was very multi-faceted. So to give you a  
18 concrete example, you had people who had been JNA regular soldiers,  
19 you had people who had been lawyers, you had people who had been  
20 doctors, you had people who had been journalists, you had other  
21 people whose families had been abused. So their motivations for  
22 taking up arms were quite distinct and different. Does that help?

23 Q. Yes, it does. And were there women fighters in the KLA?

24 A. There were indeed. They were often women who had been sexually  
25 abused, and they -- for an Albanian woman to be sexually abused is a

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1     terrible thing. It's -- you have to remember that it's -- we call it  
2     a Muslim society. It's not that Muslim. The Albanians used to  
3     describe to me that, you know, they were people who were Muslims who  
4     would cross themselves when they went across the church. So it's not  
5     an Islamic society in the way that one sees in the Middle East.

6             But the issue of honour was very, very important and is very,  
7     very important to Albanians, and for a woman to be dishonoured like  
8     that would be a terrible thing. And so, you know, what was the  
9     future going to hold for this woman? And they -- I met several of  
10    them in theatre, and they were quite remarkable people.

11    Q.     And when you're at SHAPE and when you're working with KFOR, how  
12    well did you feel that your international colleagues and the  
13    international community - you'll have to define who they are -  
14    understood this distinctness of the Kosovan Albanian culture?

15    A.     It's always said that every army fights the last war, and this  
16    was certainly something that I could observe, that in many cases  
17    people thought -- and I even heard one foreign minister say to  
18    General Clark, "Well, this is Bosnia, isn't it?" Well, of course,  
19    it's not Bosnia. It's a completely different conflict. The war is  
20    not about, you know, the Bosnians and the Croats fighting each other.  
21    It's an oppression by a state of an ethnicity which isn't a state.  
22    So quite a different situation.

23             The other problem, which we will perhaps come to later, was that  
24    the international community, media, public opinion, commentators, the  
25    military, diplomats, really did not understand the complexities of



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1 Albanian society. They thought of them as a -- to use a colloquial  
2 term, a hotbed of criminals. And to my mind, this was a very  
3 fundamental misunderstanding and would cause serious problem in -- I  
4 mean, it was basically untrue anyway, but it would cause a very  
5 unfortunate dynamic to happen.

6 In my opinion and experience, the Albanians are a very  
7 resourceful and self-sufficient people, and the international  
8 community simply did not understand that sense of entrepreneurship,  
9 resourcefulness. And that resourcefulness, if it is not allowed an  
10 outlet into legitimate business, will find other outlets. And the  
11 fact that Albanians were very effective criminals is not surprising  
12 because they are, by nature, a resourceful and self-sufficient  
13 people.

14 So the answer to the problem is not just to clamp down. It is  
15 to find outlets for them to express that resourcefulness in a more  
16 productive manner. And if one has ever met, subsequently, years  
17 afterwards, Albanian businessmen, they are extremely good businessmen  
18 and women.

19 So this was the problem that I was confronting, was that the  
20 international community, as we have explained who they are, they had  
21 a very poor estimation, in both senses of the word, of the Albanians  
22 and the Kosovars. That was -- that's really not helpful if we're  
23 trying to deal with a people that we are going nominally in to  
24 protect.

25 Q. When you were describing earlier -- just to be clear for the

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1 record, you were talking about Albanians. Did you mean Albanian  
2 Albanians or Kosovan Albanians?

3 A. I meant Albanian -- ethnic Albanians. It is the nature of  
4 ethnic Albanians, whether they be in Kosovo or in Albania proper.

5 Q. So it applies to both communities?

6 A. Yes.

7 Q. And you mentioned earlier - I think you did anyway - this *kanun*.  
8 Did you mention that?

9 A. Yes, I did mention the *kanun*.

10 Q. Can you just briefly explain what that is and the extent to  
11 which that informed your understanding of the KLA, if at all.

12 A. *Kanun* is very old and it's medieval lexicon which is based  
13 around honour. And it is really the same as the biblical eye for an  
14 eye, tooth for a tooth, it's the same idea. And it was very dominant  
15 in northern Albania. As I said earlier, when a society is under  
16 pressure, these old ways of behaving do tend to become stronger.

17 So when I was in Albania in 1992, I visited the north, again, as  
18 part of getting the European community monitors up there, and I  
19 talked to the police chief. And I said, you know, "It must be quite  
20 hard up here because, you know, it's quite a lawless part of the  
21 world." And he said, "No, it's actually quite easy. I don't have to  
22 do very much because they sort it out themselves. And you know what  
23 the *kanun* is." So that shows as an example of how something that's  
24 part of one's society, one's way of thinking, under pressure, will  
25 become much stronger.

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1           So the idea of honour was very, very important to the northern  
2   Albanians and to the Kosovars as well.  Theirs is a society under  
3   pressure, considerable pressure.  Does that help with the question?

4   Q.    It does.  Thank you very much.

5   A.    Thank you.

6           MS. TAVAKOLI:  Now I'd like to play a video, please.  Can we  
7   please bring up P02519.

8   Q.    It should come up on your screen, Mr. Duncan.

9           MS. TAVAKOLI:  And if we can just --

10          THE COURT OFFICER:  With transcript or not?

11          MS. TAVAKOLI:  No, I think the just the video is fine.  Just  
12   play until I say stop, please.  Thank you.  With the sound up.

13                           [Video-clip played]

14          "I will date it since there's no date.  21st.  Very well.  Thank  
15   you very much, indeed.

16          "Thank you very much.

17          "Good."

18          MS. TAVAKOLI:  Thank you.  And can you stop the video, and it  
19   can come down.

20   Q.    What is that video of, Mr. Duncan?

21   A.    That is the signing of the UCK undertaking to demilitarise on  
22   the very early morning of 21 June 1999.

23   Q.    And who did you recognise in that video?

24   A.    The defendant, Mr. Thaci, General Jackson, the late  
25   General Jackson, General John Reith, and myself.

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1 Q. Thank you.

2 MS. TAVAKOLI: Actually, maybe we should put it back up so you  
3 can identify yourself. Sorry. I was too keen. If we go --

4 THE WITNESS: You can stop it there.

5 MS. TAVAKOLI: If we can just pause it there.

6 Q. Can you just show us who is there.

7 A. That was General Reith on the left, myself in the white shirt,  
8 General Jackson in the middle, Mr.

9 THE INTERPRETER: Could the speakers please be asked to make  
10 pause between question and answer and to speak more slowly so we can  
11 translate everything that you are you saying. Thank you.

12 THE WITNESS: I do apologise.

13 So on the left is General Reith in the red beret. I am there in  
14 the white shirt and the red tie. Then in -- the next person in  
15 camouflage uniform is General Jackson. And then we have with --  
16 holding the paper, Mr. Hashim Thaci.

17 MS. TAVAKOLI: Is it possible to take a screen capture of this  
18 and then Mr. Duncan can mark it up, please?

19 THE WITNESS: Do you like --

20 MS. TAVAKOLI:

21 Q. Yes. Could you just put the names by the people, please, and  
22 then we'll save that as an exhibit.

23 A. Can I --

24 Q. Yes --

25 A. As a dyslexic, I will get the spellings all wrong.

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1 Q. That's fine.

2 A. Can I just put 1, 2, and 3?

3 Q. Yes, that's fine.

4 A. Okay. So for the record, this is 1, that is General John Reith.  
5 This is 2, that's myself. This is 3, it's General Mike Jackson. And  
6 this person here is 4, that is Mr. Hashim Thaci.

7 Q. Thank you.

8 A. Thank you.

9 MS. TAVAKOLI: Your Honour, can I tender this as an exhibit  
10 separately, please?

11 PRESIDING JUDGE SMITH: The screenshot, any objection?

12 MR. HALLING: None, Your Honour.

13 PRESIDING JUDGE SMITH: The screenshot as marked will be  
14 admitted.

15 Please assign a number.

16 THE COURT OFFICER: Your Honours, that will be assigned  
17 Exhibit 1D382.

18 MS. TAVAKOLI: Thank you. It can be taken down.

19 THE COURT OFFICER: Just a moment to save it, please.

20 MS. TAVAKOLI:

21 Q. Now, please can you tell the Court why you were there.

22 A. Yes. I was there because I wrote the undertaking.

23 Q. Thank you. Now, where and when did the idea for the undertaking  
24 originate?

25 A. The idea for the undertaking came out of my discussions with

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1 General Mike Jackson while he was negotiating the Kumanovo accord  
2 with the Serbs.

3 Q. And can you tell us what Mike Jackson said to you, what those  
4 conversations were?

5 A. Yes. If I might explain why I was talking to him?

6 Q. Yes.

7 A. So as I described, Mike Durkee would cover Serbian issues and I  
8 covered Kosovo issues, but we would also backfill for each other. So  
9 while Mike Durkee was down with General Jackson in Kumanovo during  
10 that military technical annex agreement, I was back in Brussels, and  
11 my role was to follow what was happening in Washington and other  
12 capitals in order that -- because of the time differences, what kept  
13 happening was they would agree something, finish their discussions  
14 for the day, it would go back to capitals, and capitals, as they do,  
15 would start wanting changes. And those changes probably wouldn't  
16 come down to Kumanovo until the following morning, and this was  
17 causing real problems.

18 So my job was to keep track of what was going on in particularly  
19 Washington, with the biggest time difference, and other capitals, and  
20 talk to Mike Jackson in the evening and say, "Right. This is the way  
21 things are going, these are things you can expect to come and hit  
22 your desk first thing in the morning," so that he would be ready to  
23 be deal with those changes and not be surprised by them.

24 Q. Just take a pause there for the translators.

25 A. Okay?

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1 Q. Yeah.

2 A. In these conversations, General Mike Jackson said to me that he  
3 was very concerned that he had no mechanism to deal with the UCK, who  
4 were around about 20.000 guerrilla fighters. He was about to deploy  
5 into Kosovo, and yet there was no mechanism similar to the Military  
6 Technical Agreement which would allow him a framework in which to  
7 deal with and have a relationship with the UCK. And both of us were  
8 aware of the historic parallels of an army being sent in or being in  
9 position ostensibly to protect the population and ending up fighting  
10 them; notably, the Palestine mandate for the United Kingdom in the  
11 1940s. So he asked me is there anything that we can do about this.  
12 And I said to him that I had been in contact with my capital in the  
13 preceding month, so in April and March -- sorry, that would have been  
14 in May. I had been in contact with them, urging that we needed to  
15 have a better understanding of how we were going to deal with the  
16 Kosovo people and the Kosovo army, liberation army, and I had to say  
17 to him that I was not making a lot of progress. I therefore said to  
18 him, "I have a background in international law. I think I can put  
19 together something that would suit your purposes. Would you agree?"  
20 And he said yes.

21 Q. Did you have to get agreement from anybody else other than Mike  
22 Jackson to begin drafting?

23 A. Not to begin drafting. It's the nature of diplomats to try and  
24 anticipate what's going to come. But I did -- once I had a draft, I  
25 had to get agreement in order to proceed.

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1 Q. And when did you have a draft?

2 A. I had a draft ready during those negotiations, so they ended on  
3 the 10th of June, I believe.

4 Q. I think on the 9th, was it?

5 A. On the 9th. On the 9th. So my draft was ready on the 9th.  
6 That's correct. My draft was ready on the 9th. But I had been  
7 discussing it with my capital and the outline of what it would say  
8 and what it would do in the periods during -- while I was speaking to  
9 him in the evening, I would be speaking to them in the morning about  
10 how this might work, what we would base it on. And I spoke to my  
11 capital and Washington.

12 Q. When you say your capital, who in your capital?

13 A. Sorry, I was -- who in my capital?

14 Q. Yeah, or which -- where is your capital?

15 A. Well, my -- I meant the foreign office in London.

16 Q. Thank you. Now -- and then, who did you need to get  
17 authorisation from once you had a draft?

18 A. Well, there are two aspects to your question. One is the legal  
19 mandate in order to engage in a negotiation, and that came from UNSCR  
20 1244, which instructed the commander of KFOR to demilitarise the UCK.  
21 So that was the legal mandate.

22 But there was also the political mandate to carry it out, and  
23 that I got from Washington, from London, and from Secretary-General  
24 Solana. Of course, I did the Secretary-General Solana part via  
25 General Wesley Clark.



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1 Q. So just so I understand, Security Council Resolution 1244, that  
2 authorises you to enter a negotiation?

3 A. It authorises COMKFOR to do so -- or it gives him the legal  
4 basis for doing so.

5 Q. And what about the Rambouillet agreement? Was there a  
6 relationship between that and what you were doing?

7 A. Yes. The problem -- if I can digress into the legal problem --

8 Q. Okay.

9 A. -- that was confronting us. There were various statements and  
10 decisions at international level culminating in UNSCR 1244.  
11 Rambouillet is one. The G8 Statement of Principles is another. And  
12 the first two -- sorry, the Rambouillet talks about, and I can't  
13 remember the exact wording in detail, but it talks about paramilitary  
14 forces not being compatible with this agreement. The exact wording  
15 is --

16 Q. Yeah.

17 A. I can't recall it immediately.

18 Q. Mr. Duncan, did you give a statement to us on 24 August 2025?

19 A. I did.

20 Q. Did you detail this --

21 A. I did.

22 Q. -- in your statement?

23 MS. TAVAKOLI: Your Honour, please may I request, under  
24 Rule 143(1), to bring up the statement so Mr. Duncan can refresh his  
25 memory of the specific --

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1           PRESIDING JUDGE SMITH: Yes.

2           MS. TAVAKOLI: -- legal provisions.

3           PRESIDING JUDGE SMITH: Yes, go ahead.

4           MS. TAVAKOLI: Thank you. So please can we bring up DHT11893 to  
5 DHT11909, and it is paragraphs 14 to 18.

6           Q. Mr. Duncan, if you would like to read those, and you can have  
7 them on your screen, and then you can answer my question.

8           A. Thank you. That helps me a lot. Okay. Yes. This is much  
9 easier, I hope, for the Court to understand.

10           So the Rambouillet Interim Agreement implies that the UCK would  
11 be disbanded because it says:

12           "Paramilitary and irregular forces in Kosovo are incompatible  
13 with the terms of this Agreement."

14           That's fine as a declaration of principle. It doesn't say how  
15 that is to be achieved. Then we get -- further on in the agreement,  
16 it says:

17           "... to establish a durable cessation of hostilities. Other  
18 than those Forces provided for in this Chapter, under no  
19 circumstances shall any ... Forces ... remain within Kosovo without  
20 the prior express consent of the KFOR Commander (COMKFOR). For the  
21 purposes of this Chapter ... 'Forces' includes all [persons] and  
22 organisations with military capability, including regular army, armed  
23 civilian groups, [and] paramilitary groups ..."

24           I hope that's not too fast for the translators.

25           Q. I think they'll tell us if ...

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1 A. Okay. So to --

2 Q. Do you want -- maybe pause just to see. Okay. Go on.

3 A. So, again, it's fine for a statement of overall intent, and it  
4 is fairly clear what is meant. But it doesn't say how is this going  
5 to be achieved. So we go down -- further down if we could. As I  
6 say, paramilitary forces and irregular forces were assumed by  
7 everybody to include the two main known organisations UCK and FARK.

8 Can we go down to the UNSCR?

9 MS. TAVAKOLI: Yes. Next page, please.

10 THE WITNESS: Okay.

11 MR. HALLING: I believe that's paragraph 21.

12 MS. TAVAKOLI: Sorry. Thank you. That's helpful.

13 THE WITNESS: Thank you.

14 So we got to the UNSCR 1244, paragraph 9, which states that it's  
15 decided:

16 "... that the responsibilities of the international security  
17 presence to be deployed and acting in Kosovo will include," so  
18 responsibilities will include, demilitarising the [KLA, Kosovo  
19 Liberation Army] and other ... Kosovo Albanian groups as required in  
20 paragraph 15 below."

21 So that gives the authority to COMKFOR to do that but doesn't  
22 tell them how to do it, and nobody had suggested how this was to be  
23 done, and that was his concern.

24 The other paragraph, 22, is a slightly different point. Perhaps  
25 we will come back to that later.

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1 Q. Yes.

2 A. The problem or the challenge for us was that in a military  
3 operation you have the legal authority to do something, an act of  
4 war, you declare war, you go to war. But in a peacekeeping operation  
5 such as this or in Bosnia, you need something below that. In normal  
6 senses, you have a treaty, you have implementing legislation. In a  
7 military context, you have an authority to go to war. What you need  
8 then is rules of engagement. And I spent a lot of time at SHAPE, as  
9 part of my responsibility, arguing about what the rules of engagement  
10 should say. And the rules of engagement tell the commanders under  
11 what circumstances can you use lethal force and how must you do that.

12 So to give you a concrete example, it will say something like:  
13 If you see enemy forces in the distance, you may open fire. Or it  
14 will probably say: You may not open fire until they fire at you.  
15 And then there is the other one in peacekeeping which comes up all  
16 the time: You see enemy forces attacking civilians, you're not  
17 allowed to do anything until they shoot at you. And that was, as you  
18 all know, one of the major problems in the Bosnian conflict, that the  
19 rules of engagement did not allow the UNPROFOR troops to engage  
20 effectively when they just saw something. They had to have it was in  
21 self-defence.

22 So rules of engagement are given to the commanders and very  
23 often will be cascaded down to ordinary soldiers, so that they will  
24 probably have a little card, most often they will, which will say:  
25 These are the rules of engagement, known as ROE, and you can only do

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1 this in certain circumstances.

2 Now, this part was totally missing from the legal architecture  
3 of how to deal with the KLA.

4 Q. Okay. That's very helpful. And when you were drafting the  
5 undertaking, did you use any models?

6 A. I did.

7 Q. How did you go about that, in brief?

8 A. Yes, I'll try to be brief. The -- as someone who'd grown up in  
9 Africa, and I had worked on -- in areas of Africa in my professional  
10 career, I was well aware of the way that the end of the Rhodesian  
11 conflict, the Lancaster House Agreement in 1979, there was part of  
12 that which dealt with demilitarisation of the guerilla armies, ZIPRA,  
13 ZANLA and the others. And so I asked somebody who had been involved  
14 in the Commonwealth monitoring force how had that worked, had it be  
15 effective, and he said yes, it had been effective. It had brought  
16 the guerillas in in a managed and controlled way, and they had been  
17 able to be reintegrated into society in various ways. It was then  
18 retested in Namibia several years later.

19 With that as my basis concept, I merged that with various parts  
20 of Rambouillet, various parts of the Serbian Military Technical  
21 Agreement, and with those documents I essentially created what became  
22 the undertaking.

23 Q. Thank you. Now, what was the overall aim of the undertaking?

24 A. It's quite -- the overall aim of it was to make a -- to allow a  
25 controlled responsible demilitarisation of the KLA and FARK, and

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1 allow COMKFOR to carry out his responsibilities under UNSCR 1244.

2 That's the overall aim. There are lots of sub-aims to it, but that  
3 was the overall aim.

4 MS. TAVAKOLI: Should we take a break before we get into the  
5 sub-aims?

6 PRESIDING JUDGE SMITH: We'll give you a short ten-minute break  
7 at this time.

8 THE WITNESS: Thank you.

9 PRESIDING JUDGE SMITH: We'll come back then for another hour.

10 THE WITNESS: Thank you.

11 [The witness stands down]

12 PRESIDING JUDGE SMITH: We're adjourned until 10.10.

13 --- Break taken at 9.58 a.m.

14 --- On resuming at 10.10 a.m.

15 PRESIDING JUDGE SMITH: Please bring the witness in.

16 [The witness takes the stand]

17 PRESIDING JUDGE SMITH: All right. Ms. Tavakoli, you may  
18 continue.

19 MS. TAVAKOLI: [Microphone not activated].

20 THE INTERPRETER: Microphone, please.

21 MS. TAVAKOLI:

22 Q. You said before the break that there were a number of sub-aims  
23 or something. Can you take us through those? I think we have to go  
24 a bit more slowly because of the translation.

25 A. Yes, I wonder, with the Court's permission, if Your Honours

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1 would mind pulling up my written evidence again, because it quite  
2 complex. And being a wholistic thinker is very helpful as a  
3 negotiator; it's not very helpful trying to explain complex matters  
4 to people who think a little differently. If that would be  
5 appropriate, I would really find it helpful, and I think the Court  
6 would find it helpful to have that section.

7 PRESIDING JUDGE SMITH: Is there an objection?

8 MR. HALLING: Not on this occasion, no. We understand this to  
9 be paragraph 31 of --

10 MS. TAVAKOLI: Exactly.

11 MR. HALLING: -- the statement.

12 MS. TAVAKOLI: These two longer paragraphs. I think it would be  
13 helpful.

14 PRESIDING JUDGE SMITH: Just remember not to read from it. The  
15 idea is to look at it, refresh your memory, and then testify.

16 THE WITNESS: Okay.

17 PRESIDING JUDGE SMITH: All right?

18 THE WITNESS: Yes, sir.

19 MS. TAVAKOLI: If we could bring up paragraph 31, please.

20 THE WITNESS: Okay.

21 MS. TAVAKOLI: And if you go to the bottom. Is that the end of  
22 that paragraph? Yeah, thank you.

23 Q. Now, what were the other objectives of the undertaking?

24 A. As I say, the overall objective was to provide a mechanism which  
25 would allow us, essentially, have a way of controlling the process of

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1 demilitarisation, to allow that to be done in a controlled  
2 environment, with the agreement of the KLA. That would, in turn,  
3 ensure that they did not become the enemy. That was a primary  
4 concern.

5 So there's a legal concern, a military concern. There was also  
6 a political concern. We wanted to be able to ensure that we did not  
7 leave Kosovo with a situation, which had pertained in other parts of  
8 the Balkans, where the political structures were completely  
9 intrinsically linked into police structures and military structures.  
10 So we wanted to divide the political, military, and police structures  
11 which we understood to exist to keep them separate. And therefore,  
12 we would have a basis for proceeding to a democratic society. We  
13 also --

14 Q. Sorry, when you say --

15 A. Sorry.

16 Q. -- you understood the political, military, and police structures  
17 existed, where did they exist?

18 A. They were disparate.

19 Q. I don't mean geographically. I mean --

20 A. Yes, I mean that in the sense that they -- there were "police  
21 forces" named as police forces. The extent to which they were  
22 effective, the extent to which they were geographically distributed,  
23 we did not know. But we knew of their existence. Obviously, we knew  
24 of the military part because we -- you know, we could see them. We  
25 knew who they were. And we knew of the political side, which was



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1 obviously the people around Hashim Thaci. And also we knew there  
2 were other parts of the political spectrum, the LDK and others.

3 So we wanted to make sure that one part of the political  
4 structure did not have an underpinning of a police and military wing.

5 Q. So --

6 A. That would not be a sustainable situation for the future of  
7 Kosovo.

8 Q. So just to be clear, when you say you didn't want the political  
9 structure to have an underpinning --

10 A. Yes.

11 Q. -- of a police and military structure wing, exactly what do you  
12 mean? What will happen to the political structure in your -- what  
13 was the aim?

14 A. Under the undertaking, they will be separated out.

15 Q. Thank you.

16 A. In terms of the handling the military, they would come under  
17 NATO control. They would be visible. The worst thing that could  
18 happen would be that the KLA fighters would disappear into the  
19 mountains, and then how would we have any visibility or control over  
20 them. This mechanism would provide a means of exerting compliance.  
21 It would have benefits and sanction.

22 So you, military of Kosovo, agree to come in from the mountains,  
23 you agree to go to camps, you agree to give up your weapons, and in  
24 return we will find a role for you in society.

25 That's exactly how the Namibia process worked and it was a model

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1       that I drew on.

2               We also wanted to -- and, obviously, one of the immediate  
3 concerns was to stop any scope for the KLA to continue fighting the  
4 Serbs. Even though the Serbs had agreed to a cease-fire and had  
5 signed up to the Military Technical Agreement, we had no mechanism  
6 for ensuring that, so we needed to engage with the KLA to make sure  
7 that they didn't do that and disrupt the peace process. The  
8 undertaking was a means of doing that.

9               Another part of the undertaking was -- in terms of its  
10 encouragement was that in signing the undertaking, this would be a  
11 continuation of a process of the KLA moving, in international  
12 perceptions, from being a group of criminals, a group of terrorists,  
13 to being freedom fighters, to signing the Rambouillet accords. This  
14 is another step towards democracy, being recognised as a responsible  
15 group of people and a responsible -- with a responsible political  
16 process above it.

17              So it was in -- that was in many ways what we were offering.  
18 We're saying: Sign this. It helps us because we make sure we don't  
19 end up fighting each other. But it also helps you, because if you  
20 sign this, you will be showing the international community that you  
21 are a responsible people and deserving of respect and, ultimately,  
22 independence.

23       Q.     Now, you said earlier, just now, "would come under NATO  
24 control." What do you mean by that? Who would come under NATO or  
25 what would come under NATO control?

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1 A. The former KLA fighters would come under NATO control, as they  
2 did.

3 Q. And why was that important?

4 A. To give us visibility, to have the armed force capable of  
5 exerting sanction if required, and it would be legitimate to exert  
6 sanction because they had signed the undertaking.

7 Q. Which armed force?

8 A. In this case, again, it's quite complex. To deconstruct it, the  
9 KLA was, we knew, the biggest and most effective fighting force.  
10 There were others, notably the FARK. But if the KLA signed the  
11 undertaking, the others would be ostracized on one side, but on the  
12 other side, they would have an inclination to join in because if you  
13 join the undertaking, you get respect. And, again, we're going back  
14 to honour and respect.

15 So there would be a --

16 Q. Sorry, can I just --

17 A. Sorry.

18 Q. Sorry, I need to stop. I'm not sure about the translation.  
19 Your answer, when I said who would come under NATO control, you  
20 said -- it's recorded as saying:

21 "The former KLA parties would come under NATO control ..."

22 Is that correct?

23 A. No. The military.

24 Q. The military would come under NATO control. And before we move  
25 on, can I just ask you did they come under NATO control --

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1 A. Yes.

2 Q. -- and if so, when?

3 A. Immediately the process of demilitarisation process started. So  
4 they started coming into camps. The undertaking identifies the  
5 places where they are supposed to assemble, and they started to  
6 assemble.

7 Q. Thank you. Now, I stopped you. Sorry. You were saying that  
8 the FARK -- there were other fighting forces, the FARK, and so on.

9 A. Yes. So the -- the other fighting forces, such as FARK, would  
10 become -- would have an incentive to sign up to the undertaking as  
11 well, because they would want the benefit of respect and the  
12 possibility of jobs, which is part of the undertaking. It's a -- we  
13 couldn't actually go into what would be offered in terms of training  
14 and what the UCK would become at that stage. It just simply was not  
15 possible for me to get international -- still [indiscernible], I  
16 couldn't get London agreement, I couldn't get Washington agreement,  
17 and I couldn't get inter -- still less international agreement to  
18 decide what to do with them after they demilitarised.

19 But it's integral to the text. If you read it, that's what it  
20 does. It postulates as going to be something. And I knew what it  
21 was. I had explained it to the commanders what it was. And it was  
22 drawn on the French, being French I knew about it, the *Sécurité*  
23 *Civile*, which is essentially a non-armed paramilitary humanitarian  
24 force which comes out when there are forest fires and natural  
25 disasters, things like that. So I knew about this, Bernard Kouchner

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1 knew about it, but most people who don't have such forces had no idea  
2 what this was. And I could not, in the space of a few days, persuade  
3 people that this was a really good idea. It just wasn't going to  
4 work. So I had to just do that as a subtext to it and allow the  
5 momentum to work itself through.

6 Q. Now, what were the key challenges, if any, that you faced in  
7 drafting this undertaking?

8 A. Can we go down a bit in the evidence?

9 Q. I think that's just paragraph 32.

10 MS. TAVAKOLI: Is Mr. Duncan able to look at paragraph 32 and  
11 then testify?

12 PRESIDING JUDGE SMITH: Yes, go ahead.

13 THE WITNESS: Thank you, Your Honour.

14 MS. TAVAKOLI: And then I think it goes on to the next page.

15 THE WITNESS: Yes. Well, I know what the next page says.

16 MS. TAVAKOLI: Okay.

17 THE WITNESS: A key flaw in my argumentation was of course --  
18 and relates to the point we just discussed. Namibia and Rhodesia had  
19 armies. They had formal armies. So some of the guerillas from those  
20 campaigns were integrated into the army and became soldiers. This  
21 is, of course, what the KLA wanted to do or quite -- some of the KLA  
22 wanted to do. But Kosovo was not a state, it did not have an army,  
23 and therefore there was a problem. There was a big challenge: Where  
24 are we going to put these people. Hence, my idea that we would put  
25 them into this thing very similar to the *Sécurité Civile*, which I was

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1     confident people like Bernard Kouchner and others would understand  
2     what this was and would push for it because really there really  
3     wasn't a lot of alternative. You couldn't make them all disband and  
4     just go back to being civilians because they wouldn't do it. This  
5     would not be peace with honour. So this was a major challenge that  
6     we had.

7             There were other challenges such as limited time. You know, I  
8     got this cleared by Washington and London on 10 June. The Serbs were  
9     going to be out of the country in ten days' time. This had to be  
10    done very, very fast indeed. So that was a big challenge.

11            COMKFOR, Mike Jackson, who was authorised to carry this out,  
12    could not possibly carry it out because he was dealing with the  
13    Russian seizure of Prishtine, which I was heavily involved in  
14    handling that, and he was obviously very heavily involved in handling  
15    that. He also had to deploy all his forces, which is a major  
16    military undertaking. So time was a very major challenge for us.

17            The other problem was the Kosovo Liberation Army, UCK, was not a  
18    heterogenous force. As I described, it was -- it had become -- I  
19    think the term we used was "the army of the dispossessed." That's  
20    the word we used at the time. And when I went into theatre, that is  
21    what I saw. I saw people who had a normal life, civilian life, being  
22    doctors, lawyers, you know, all sorts of different things, and they  
23    had taken up arms. So their aspirations were not the same.

24            And when you're negotiating with people, you have to try and you  
25    understand what are their motivations, how did they get to where they

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1 are, what has pushed them to the place they're now in, what do they  
2 want, what are their aspirations, and what are their interests. And  
3 you have to use an understanding of those three things in order to  
4 persuade people to do something. But their aspirations were not the  
5 same, their motivations were not the same, and they came from  
6 different parts of society. And some of them were JNA and wanted to  
7 be the former military.

8 The other big problem was the fact that the leadership of the  
9 KLA as personified by - and I choose my words carefully -  
10 Hashim Thaci might not well be able to deliver the KLA fighters. We  
11 were not at all convinced that that would be the case. Had that been  
12 the case, we would have gone direct to him. We'd have gone to the  
13 KLA political leadership in a classic way and said, "Right. We need  
14 a demilitarisation agreement. Let's start negotiating it."

15 Now, as I said, timing was of the essence, and we had no  
16 confidence that Mr. Thaci would be able to deliver the fighters on  
17 the ground.

18 Q. Can I just pause you there.

19 A. Yes.

20 Q. I just want to go back slightly, sorry. Did you say that the  
21 KLA was not a heterogenous force?

22 A. It was not homogeneous, no.

23 Q. Homogenous.

24 A. It was heterogenous.

25 Q. Okay. It was heterogenous.

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1 A. I beg your pardon.

2 Q. Okay. Let's go back now --

3 A. And one final thing I must say --

4 Q. Yes.

5 A. -- about the political leadership. It was not tenable to do  
6 something that would cause Mr. Thaci to be recognised as the  
7 political leader of the Kosovars. It was not realistic because there  
8 were other political forces, such as the LDK, Mr. Rugova, and others.  
9 They may have chosen him as the leader of their delegation at  
10 Rambouillet, but he did not have what in a democratic society we  
11 would consider to be political legitimacy. He had not been elected.  
12 He had self-declared as a provisional government. But we could not  
13 have a situation where something that NATO was supposed to be  
14 endorsing was effective recognition of him as the prime minister of  
15 Kosovo. That was not realistic, did not reflect reality, and it was  
16 politically untenable.

17 Q. There's a lot in there, Mr. Duncan, that I'd like to go through.  
18 The first thing you said was "the leadership of the KLA as  
19 personified by - and I choose my words carefully - Hashim Thaci might  
20 not well be able to deliver the KLA fighters." What do you mean by  
21 "personified by"?

22 A. It goes back to one of my earlier answers about the role of  
23 diplomats. It's very common in international politics for the  
24 international community - and as we discussed, that's the media, the  
25 politicians, and whatever the international community means - to want



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1 to have somebody with whom they can engage. And the media love this  
2 as well. The media want to say, you know, this is Nelson Mandela,  
3 this is, you know, whoever. There are many examples. That is not  
4 necessarily the reality in many, many cases. There are other levers  
5 of power.

6 And as a diplomat, your job is to understand that complexity and  
7 to report it back to your capital and to use it in negotiating. You  
8 need to know who it is that actually has the levers of power. And a  
9 good example of this is more recent in Iraq. If you remember, we had  
10 Chalabi who was supposed to be the leader of the Iraqi opposition,  
11 and he disappeared as soon as the invasion happened. This sort of  
12 thing is very common. And, indeed, in the Kosovo context, at the  
13 beginning Rugova was seen as the leader of the Kosovars. Could he be  
14 a Malraux, an intellectual who translates into being a  
15 prime minister? That was shown not to be the case. They then moved  
16 to Mr. Thaci. He is a personification of the leadership of the  
17 Kosovars. We had serious doubts as to whether that was in any sense  
18 a reality that we could count on and cause this undertaking to come  
19 into place.

20 Q. Why, in your words, did you have no confidence that Mr. Thaci  
21 would be able to deliver the fighters on the ground?

22 A. According to our information, the real --

23 Q. And can I pause you there. Where is that information from?

24 A. I cannot comment.

25 Q. Please keep going.

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1 A. The real power on the ground or in the structure of the KLA were  
2 the zonal or regional commanders, and this was confirmed to us when  
3 we met General Agim Ceku at the first meeting to discuss the  
4 undertaking. It is what he said to me. He said, "I cannot do this  
5 without the zonal commanders being present. You will have to come to  
6 Kosovo."

7 Q. And what you did understand by what General Ceku said?

8 A. I took him at his word. He was very, very serious on this  
9 point. He said -- he said two things. First of all, he said  
10 Mr. Thaci wasn't available, and that in order to do this he would  
11 need to consult Mr. Thaci. And then he said, "But I cannot do this  
12 until the zonal commanders are involved in the negotiations."

13 Q. Where did you have that conversation with General Ceku?

14 A. In Tirana.

15 Q. When? Do you remember?

16 A. Yes, 14 June.

17 Q. And when you -- he said he would have to consult with Mr. Thaci,  
18 what did you understand that to mean?

19 A. It would be perfectly normal. I understood it as a normal  
20 expression, you know, that the political side of the organisation  
21 would have to -- well, the -- to put it in the reverse order. If he  
22 did this as a military commander without the political side being  
23 involved, it would not -- it would cause -- he would effectively  
24 disempower his political leadership. It would cause a split. So it  
25 was quite normal for him to say, right, I need at some stage the

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1 political side to agree or to be -- certainly be consulted. Whether  
2 it's to be formal approval, that was not clear.

3 Q. And he said that he couldn't do it until the zonal commanders  
4 were involved?

5 A. That's correct.

6 Q. What did you understand by that?

7 A. I think it's fairly clear.

8 Q. Yeah.

9 A. That he wasn't prepared to do a negotiation, us and him, the  
10 senior military commanders. He wanted them to be there. They had to  
11 be there.

12 Q. And what did that lead you to understand about the KLA and how  
13 it worked?

14 A. That the power lay -- that a major part of the power lay at the  
15 regional zonal level. That they had a fair degree of, perhaps,  
16 independence from the senior command. It would be quite complicated.  
17 In military terms, it was unusual. Our forces wouldn't insist on our  
18 regional commanders being present when we had a negotiation. It  
19 would be the senior commander and another senior commander and their  
20 staffs.

21 Q. When you say "our forces" --

22 A. I mean NATO forces or British forces.

23 Q. And --

24 A. So it was an unusual thing for him to say, but I didn't -- I was  
25 not surprised by it.

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1 Q. Did the fact that you did not think that Hashim Thaci could  
2 deliver the fighters on the -- how did that affect how you approached  
3 the negotiations, the fact that you did not understand -- did not  
4 believe that Thaci could deliver the fighters on the ground?

5 A. It explains why we went to General Ceku and the zonal  
6 commanders.

7 Q. When you say "we," who do you mean?

8 A. Well, myself and John Reith and our teams. And the approval of  
9 Secretary-General Solana was to our plan. We said, "This is what we  
10 want to do, this is the best way to do it," and he said, "Right. Go  
11 for it. Go and do it."

12 Q. What did you think Ceku could deliver?

13 A. Well, it goes back to my answer about how NATO would have done  
14 it. NATO would have had its senior commanders. So it would have  
15 been an agreement with, for example, General Clark and whoever the  
16 opposite side was. We wouldn't go down to the regional level. It's  
17 a way -- it's an understanding of a hierarchical structure against a  
18 hierarchical structure, how they deal with each other, and a  
19 hierarchical structure dealing with a non-hierarchical structure.  
20 That's the challenge that we faced because they were not hierarchical  
21 structure. They were organised differently with power in different  
22 places.

23 So we could not just go and talk to Mr. Thaci and, you know, the  
24 rest -- and General Ceku and it would be fine. That wasn't going to  
25 work. We had to have the people who also had power, and they were

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1 notably the zonal commanders. Does that explain it?

2 Q. Yes, it does. I'm just reading something you said earlier. If  
3 you give me a moment.

4 You also said earlier, and this is at 39.3:

5 "... we could not have a situation where something that NATO was  
6 supposed to be endorsing was effective recognition of him as the  
7 prime minister of Kosovo. That was not realistic, did not reflect  
8 reality, and it was politically untenable."

9 A. Yes.

10 Q. Can you explain that, please?

11 A. I'm not clear what you want me to explain.

12 Q. What do you mean when you say -- why couldn't NATO recognise  
13 Hashim Thaci as the prime minister of Kosovo?

14 A. The NATO allies would not agree to that. They were not ready to  
15 recognise Kosovo itself, and they were certainly not ready to  
16 recognise Hashim Thaci as the leader of Kosovo. So that's why it's  
17 an undertaking. We could not have a bilateral agreement between NATO  
18 and the Kosovar provisional government, which existed effectively in  
19 name only, but in political terms was not -- there was no state  
20 Kosovo. There was no government Kosovo. Therefore, NATO could not  
21 have a bilateral agreement with a state that did not exist and a  
22 government that did not exist. Therefore, it had to be an offering  
23 by the Kosovars to us. That is why it is an undertaking and not a  
24 bilateral agreement.

25 Does that help?

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1 Q. It does. So what did NATO think about Hashim's -- so the fact  
2 that he is called the prime minister, what did that mean to NATO?

3 A. They didn't recognise it.

4 Q. Thank you. Now, you said that you met Agim Ceku in Tirana.  
5 That was on 14 June; correct?

6 A. Yes.

7 Q. Now, we saw you in the video next to a General Reith.

8 A. Yes.

9 Q. What was General Reith's role in the negotiations, and when did  
10 you first meet him in this context?

11 A. Yes. To explain. I had approval by London and Washington to  
12 begin a "undertaking negotiation," but it was to produce something  
13 that was an undertaking by them. So a unilateral undertaking. It's  
14 not a bilateral agreement. It's a unilateral undertaking. But I had  
15 to show them, I had to persuade them to sign up to a document that  
16 they'd never seen before, and I had to do it in seven days.

17 I was an unknown quantity to the KLA. They had never seen me.  
18 My job was to be heard, not seen. So when I was asked, in fact, I  
19 was told, "Go and do it," I said this isn't going to work. I can't  
20 go as a diplomat, an unknown diplomat, I arrive at the -- with the  
21 KLA, a group of people who have just been fighting in the depths of  
22 the Kosovo mountains, and persuade them to do this. It's not going  
23 to work. We need a military commander to be the front man who will  
24 engage with them, have their respect. They will know who he is, they  
25 will know what he's done, and they will engage with him. And John

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1     Reith, very kindly, although he was very heavily involved with the  
2     humanitarian crisis, that was his responsibility, the humanitarian  
3     crisis, all the refugees in Albania, he had done negotiation before  
4     in the Balkans and he said, "I'll do this." And so I flew down and  
5     briefed him on what needed to be done, and then I accompanied him  
6     throughout the whole process.

7     Q.    Do you remember what night you briefed him on?

8     A.    13 June.

9     Q.    And then the 14th your meeting Agim Ceku?

10    A.    That's correct.

11    Q.    And then -- by the way, when you first met Ceku, was he  
12    receptive to the idea of the undertaking or not?

13    A.    He was -- on the one hand, he came over as the leader of  
14    victorious army. That's the way he presented himself. You know, "My  
15    men and women have fought the Serbs, you've helped us, but we won the  
16    battle." And he looked at what we showed him, and after a quick read  
17    he said, "I was expecting something like this. I think we can work  
18    with this, but I need the zonal commanders." And some of it, he  
19    already said, "I've already done parts of this. I've told my people  
20    they're not to engage with the Serbs. I've issued, you know,  
21    commands to the zonal commanders not to engage with the Serbs, that  
22    they are to stand back. But let's discuss it further." And we had a  
23    further meeting the following day, and that's when he said, "I need  
24    to have my zonal commanders with me. Otherwise, we can't do this."

25    Q.    And where was that meeting the next day? Do you remember?

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1 A. There was a meeting the following morning. That's where he said  
2 that. So his first briefing was on the 14th in the evening, and then  
3 the following morning we had -- the 15th, where he said, "We've got  
4 to have the zonal commanders here."

5 Q. And was that in the same location or a different location?

6 A. It was the same location.

7 Q. Was Hashim Thaci at that meeting?

8 A. No.

9 Q. So Ceku has said he can't do this without his zone commanders.  
10 Did you offer him a meeting with the zonal commanders present?

11 A. John Reith offered a meeting with the zone commanders present,  
12 much to my surprise.

13 Q. Why were you surprised?

14 A. Because it was to take place in Kosovo in an area still occupied  
15 by the Serbs and I was a civilian.

16 Q. And what did you feel about that?

17 A. I was surprised. As I said to John Reith at the time, "You have  
18 life insurance. I do not. You're proposing to take me into a combat  
19 zone without even life insurance, and, you know, that causes me a  
20 little bit of difficulty." I didn't say no. I just said we have to  
21 do some things before we go.

22 Q. And when did that meeting happen?

23 A. The 17th.

24 Q. What time -- when did you arrive at that place?

25 A. At night, we were taken over the mountains into Kosovo. And we



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1 had to do it at night because the Serbs were still occupying that  
2 part of Kosovo.

3 Q. Can you remember that journey?

4 A. I most certainly do.

5 Q. And can you tell the Court?

6 A. We were taken by helicopter, flying through the mountains and  
7 then through the firebreaks of the wooded areas at 50 feet, and it  
8 happened to be an electrical storm while we did it so that added to  
9 the fun.

10 Q. Now, I want to show you a video, please.

11 A. "Fun" is not the way I would describe it.

12 Q. Yeah.

13 A. I was being ironic.

14 MS. TAVAKOLI: Can I show you a video. It's Exhibit 1D00287.

15 And can we put it forward to 03:02, fast-forward it to there. Can we  
16 play this until 05:48.

17 Q. And then I'm going to ask you some questions about it.

18 [Video-clip played]

19 "... they will confiscate the weapons if they're seen in the  
20 towns with weapons, and then that will then lead to a confrontation.  
21 That's the difficulty. Okay? And that's what I'm trying to  
22 [Overlapping speakers] ...

23 "[Indiscernible] tomorrow evening rather than Saturday morning.  
24 It is purely the fact that we will be under political pressure, and  
25 they will be pressing all the time for more details [Overlapping

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1 speakers] ...

2 "Everything that -- a deadline was fixed. It's Saturday evening  
3 or afternoon [indiscernible].

4 "Can -- if we can't meet tomorrow evening, I would like if you  
5 can do -- meet on Saturday morning.

6 "Okay.

7 "10 -- 10.00 or something [Overlapping speakers] ... and we will  
8 come for you here?

9 "Yes.

10 "Okay.

11 "Maybe in Prishtine if you agree with [indiscernible] ...

12 "I want to try and keep us out of the media's eyes for the  
13 moment [indiscernible] ... undertaking and it is seen as you coming  
14 forward and saying to the international community, 'We are doing  
15 this, we' -- you know. So it's better that we keep a low profile at  
16 the moment.

17 "What I -- the final thing I would say to you is that if you  
18 feel that we can discuss earlier than 10.00 on Saturday, I can come  
19 whenever you'd like me to. [Overlapping speakers] ..."

20 MS. TAVAKOLI: Stop, please. Can we stop. Thank you.

21 Q. What is that video of, Mr. Duncan?

22 A. That's a video of the discussions on 17 June 1999 in Kosovo.

23 Q. And did you recognise anybody in the video?

24 A. Well, there's me, there's General Ceku, there's John Reith. The  
25 zonal commanders, Ramush Haradinaj. I think Remi is there, the --

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1     whose name I can't remember, there's a guy who's from their police  
2     structure, all the zonal commander are there.

3     Q.    Do you know how the zonal commanders got to that meeting?

4     A.    No.

5     Q.    And do you recall how they were dressed?

6     A.    Well, you can see there they're all in combat gear. I think  
7     with memory, one of the thing that strikes you is the smell. They  
8     smelt of combat and that smell of fire and smoke and cordite and --  
9     it was quite an impressive moment.

10    Q.    And can you give us the headlines from that meeting?

11    A.    Yeah. It was probably not unexpected. They took a lot of what  
12    we said on board, a lot of detail that they provided. They agreed  
13    the assembly points with us. From the military perspective, it was  
14    very constructive. The political wing, I think it's, sorry,  
15    Mr. Haliti or one of the defendants here, they were very difficult.  
16    They kept trying to put in language which would give implicit  
17    recognition to the provisional government, and we had to keep batting  
18    that back, so -- I mean, with some success at that meeting so that  
19    the text was left pretty much as I had drafted it but with a lot of  
20    administrative detail put in.

21           So it was a constructive meeting. But their attitude was,  
22    overall, you know, they were very reluctant to do it because they  
23    felt, you know: We won the war, and we want to disarm with honour.  
24    If we've got to disarm, we want to disarm with honour, so we want  
25    this to be done properly.

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1           There was a strong feeling that -- you know, that this was  
2           something that was going to be difficult for them, and that honour  
3           as, you know, of victorious soldiers fighting to protect their people  
4           had to be respected. It was a very strong sentiment that came out of  
5           it.

6           Q.    You mentioned Ramush Haradinaj being in the room. Was there  
7           anything -- how was he dressed?

8           A.    Ramush is quite a character. He was almost Rambo-esque. He had  
9           a grenade down one pocket. He had a combat knife strapped to his  
10          arm. Yeah, he was quite a sight. He was quite vocal.

11          Q.    Overall, what did you understand, if anything, about the KLA and  
12          how it was organised and its hierarchy from that meeting?

13          A.    It completely reinforced what General Ceku had told us. You  
14          know, that these were serious players, and they had to be included in  
15          anything that was going to be negotiated. And they were quite -- I  
16          mean, the language difficulty you saw, we had to have translation.  
17          Very few of them spoke English. Haradinaj spoke some English, but  
18          most did not. And that, nonetheless, it was very clear that, you  
19          know, these were the people that we needed to be speaking to.

20          Q.    And when did -- were there discussions about what became  
21          paragraph 25 of the undertaking at that meeting or not?

22          A.    The political side did try to put in something like that. It  
23          was essentially the statement that the KLA political leadership had  
24          made before.

25          Q.    And who was the political side at that meeting?

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1 A. I'm trying to remember if it was -- I think it was the  
2 defendant.

3 Q. Which defendant?

4 A. Names, I'm a dyslexic.

5 Q. The defendants here are called Thaci, Kadri Veseli,  
6 Rexhep Selimi, and Jakup Krasniqi.

7 A. Ah, that's a good point. I think it was -- I'd have to refresh  
8 my memory. I'm sorry. Names are awful.

9 Q. Okay. Doesn't matter. If you can't remember, that's fine.  
10 Now, on the --

11 A. It was the person who gave all the statements in the -- you  
12 know, the political statements that were made by the KLA were usually  
13 given by Krasniqi. There we go. It was Krasniqi.

14 Q. Thank you.

15 A. I think.

16 Q. Now, can I keep pressing play for this next bit in the video,  
17 and then I'll ask you a question about this. Watch this and tell me  
18 what this is afterwards.

19 A. Thank you.

20 [Video-clip played]

21 MS. TAVAKOLI: Stop. Thank you.

22 Q. Now, the date stamp on that section of the video and the section  
23 of the video we played before of the meeting were the 17th of the 6th  
24 1999. Were they correct or not?

25 A. I believe so.

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1 Q. What was that piece of the video showing?

2 A. That was a -- a very important part of any negotiations in the  
3 Balkans is the moment of breaking bread afterwards. So the KLA side  
4 offered us dinner in a tent in the woods - literally in the woods -  
5 where we all sat down, and after we'd finished the formal  
6 negotiations we broke bread. And it was a moment when we actually  
7 realised that we were -- we were in business. And we were able to  
8 reassure them about our credentials, that, you know, NATO wasn't  
9 going to -- this wasn't about NATO getting rid of them. It was about  
10 NATO being a good ally, helping them to disarm with honour, and  
11 hopefully find something in the future.

12 I may well at that stage -- and it's so long ago, I can't  
13 remember. I may well have talked to them about the *Sécurité Civile*  
14 model as a possible model, and we could speak frankly and say, you  
15 know, "Your idea of having a national guard is never going to run.  
16 You can't have that." It's the informal part of the negotiation, a  
17 very important part of a negotiation in the Balkan context.

18 Q. And was it the same people at the dinner that were at the  
19 meeting?

20 A. Pretty much, yes.

21 Q. Thank you. Now, on 18 June, what happened then? Do you  
22 remember?

23 A. Yes, I'm just trying to put it into the right order. If I am  
24 correct, we had to do certain things. We had to talk to the UN. We  
25 had to keep them briefed as to what we were doing. And we also had a

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1 problem. So let's deal with the UN first.

2 So we briefed General Jackson, who, in turn, briefed Sergio de  
3 Mello, and we explained to them where we were, what we were doing,  
4 how far we'd got, prospects for success. They wanted much more, and  
5 we had to say to them this is not tenable. They wanted at one stage  
6 to have a weapons-free zone in Kosovo, and we said, you know, this is  
7 an Albanian Balkan society, you can forget it. That's never going to  
8 happen. This is your only realistic way of doing this. And that's  
9 the last we heard of it. But, you know, they were told where we'd  
10 got to and what we were doing.

11 Then we had a problem with a separate discussion going on on the  
12 US side and that we managed to diffuse. That was involving  
13 Mr. Rubin, Jamie Rubin, but to what extent I really don't know. And  
14 we persuaded him to come up to us and join us the following day.

15 Q. Do you know anything about that problem? Can you expand any  
16 more than what you've said or not?

17 A. It's classic of American diplomacy to be going off and doing  
18 something separate. I'm sorry to take that with humour, but it is  
19 something that, as a professional diplomat, throughout my career I've  
20 often found the American administration, the famous interagency --  
21 you know, not -- getting to an interagency agreement, but suddenly  
22 finding that one agency is going off and doing something else is very  
23 common. So it didn't surprise me that this had happened, that there  
24 was a parallel negotiation going -- or attempt at negotiation going  
25 on. But they were far -- clearly much further back than we were,

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1 because we were already -- we had a text, we were working at it, we  
2 had agreement in principle and with some detail with the KLA, and,  
3 therefore, we asked them to come and join us.

4 PRESIDING JUDGE SMITH: Ms. Tavakoli, it's time for the break.

5 MS. TAVAKOLI: Yes. Yes, thank you.

6 PRESIDING JUDGE SMITH: We have a regularly scheduled half-hour  
7 break at this time, so we'll see you back here at 11.30.

8 THE WITNESS: Thank you very much, Your Honour.

9 [The witness stands down]

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

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

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

13 PRESIDING JUDGE SMITH: Please bring the witness in.

14 [The witness takes the stand]

15 PRESIDING JUDGE SMITH: All right. Ms. Tavakoli, you may  
16 continue.

17 MS. TAVAKOLI: [Microphone not activated].

18 Q. Mr. Duncan, now moving to 19 June. Was there a meeting on that  
19 day?

20 A. Yes. We didn't finish my answer to the 18th June.

21 Q. Okay. Please finish what you wanted to say.

22 A. Yes, there were two other issues which are important for the  
23 Court to appreciate, I think. Firstly, we asked the UK Foreign  
24 Minister, Mr. Robin Cooke to contact Mr. Thaci and urge him to  
25 support the agreement which was being negotiated in Kosovo.



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1           The second thing was a major problem that we had with, you  
2           mentioned, paragraph 25. Paragraph 25, as I said, was originally put  
3           forward by the KLA side in a way which would have given implicit  
4           recognition to the provisional government. Obviously, that was, as  
5           we said to them, unacceptable and we could not agree it. Therefore,  
6           General Reith and myself redrafted it.

7           If you want to put up an example of paragraph 25, I can tell you  
8           which is our wording and which is their wording. That's up to you.

9           Anyway, we put it to the Secretary-General and to General Wesley  
10          Clark, and they wanted it removed. And we had to say to them,  
11          "Right, the option is a bilateral agreement and you can get it  
12          removed, or a unilateral undertaking and you have this. And it is a  
13          reasonable step for something that is supposed, presentationally and  
14          publicly, to be a unilateral declaration by the Kosovo Liberation  
15          Army for them to have this phraseology as amended." And after a lot  
16          of argument, they eventually agreed that that was a reasonable  
17          position to adopt, and they agreed to support us in taking it forward  
18          in that way.

19          That was what happened on the 18th.

20          Q.    Thank you very much. Now moving to the 19th.

21          A.    Yes.

22          Q.    Was there a meeting on that day?

23          A.    There was. The Serbs had moved out of that zone. Therefore, it  
24          was possible to fly in during the day. We had, by then, been joined  
25          by the US team who had been conducting their own discussions with

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1 Mr. Thaci, which Mr. Rubin talked about in his evidence, and so we  
2 went as a joint team, accompanied by Jamie Rubin, Shaun Byrnes, and  
3 Larry Rossin, and we flew in during that -- that morning.

4 Q. How long was the meeting?

5 A. It went on all day.

6 Q. All day. What was the status of the draft undertaking at the  
7 time Mr. Thaci arrived? Like, how far advanced were you?

8 A. Well, we'd got past the practical details, which were sort of  
9 the logistics, where they would assemble, et cetera, and most of that  
10 day was taken up with efforts by Mr. Thaci and Mr. Krasniqi to insert  
11 political language which would lead -- you know, implicitly give them  
12 recognition and have NATO give them recognition. So we spent a lot  
13 of time - a lot of time - discussing that.

14 Q. And what was your and NATO's view about what they wanted?

15 A. Unacceptable.

16 Q. And why was it unacceptable?

17 A. It would have given them recognition. It would have also  
18 distorted the nature of the undertaking, what was the undertaking  
19 intended to do, and confused it.

20 Q. Now, was there anything memorable that happened at that meeting?

21 A. Depends what one means by "memorable." For me, yes. I  
22 interrupted the discussions and revealed my hand and what I was  
23 doing. As I explained, my job was to guide General Reith. I was the  
24 author of the declaration. I was a diplomat. I knew what the  
25 diplomatic community would agree to. And so, you know, he did the

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1     talking, but we talked a lot about it first. When we had a problem  
2     like 25, we discussed it together and came up with the right clauses.

3             At one point during the discussions, the situation was getting  
4     out of control. Mr. Thaci and his political advisers were pushing so  
5     hard for the inclusion of language which would have been unacceptable  
6     that I stood up and asked all the zonal commanders to leave the room  
7     and asked for a separate meeting with Mr. Thaci, Mr. Ceku -- General  
8     Ceku, Jamie Rubin, General Reith, and myself. And to my amazement,  
9     everyone got up and walked out of the room. The reason, I discovered  
10    later, was they perceived me as a political commissar. Jamie Rubin  
11    talked about communist think. And I was, as you see, dressed very  
12    like a political commissar, and therefore -- they are not people in a  
13    communist society that you ignore. If they tell you to do something,  
14    you do it. And that's what they perceived me as, and, therefore,  
15    they all got up and went out of the room.

16            It caused a lot of trouble that I did that, and I had to -- in  
17    the same video I think you have seen of me talking to Mr. Haradinaj,  
18    trying to placate him over why I had done that, and the reason I did  
19    it was so that I didn't have a situation where a whole lot of people  
20    were arguing and coming up with proposals. I needed to have a core  
21    team who I could talk frankly with and let them cascade that to their  
22    independent political and military side and not have that argument  
23    out in public.

24            And I talk very, very frankly. And in that intervention, I said  
25    to them, "You started out as terrorists in most public perception.

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1 You have moved up that path," and I drew it out in a diagram. And I  
2 said, "You've moved up that path. You've signed Rambouillet. You  
3 have shed blood. You are now perceived possibly as freedom fighters.  
4 But you are not a government, you are not a state, and that's where  
5 you want to go. If you want to go up to that point, you have to sign  
6 this undertaking as it stands and stop putting stuff into it."

7 And Mr. Thaci said nothing. General Ceku took my diagram, and I  
8 later saw him showing it to the zonal commanders and doing what I  
9 wanted him to do, which was to persuade them to agree and remove  
10 their objections.

11 Q. And what did you understand from the fact that Ceku took the  
12 diagram outside to the zonal commanders?

13 A. That they had to agree.

14 Q. Now, can I just show you another bit of the same video, please,  
15 which is 1D00287. And I just want to play the beginning up to date  
16 stamp -- so 00:21 -- just play it from the beginning, and we stop it  
17 at 00:42.

18 [Video-clip played]

19 MS. TAVAKOLI: If you could just pause it there, please.

20 Q. What is this showing, Mr. Duncan? And, firstly, is the date  
21 stamp on that video correct?

22 A. No.

23 Q. What date should it be?

24 A. That should be the 19th.

25 Q. How do you know that?

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1 A. Because it's taken in daylight.

2 Q. And what is that showing?

3 A. That is showing what I just mentioned. After I had interrupted  
4 the negotiations, I went out, and I could see that Ramush Haradinaj  
5 was extremely irritated by what I had done, and so I personally went  
6 and spoke to him. And that's me explaining to him, you can see by my  
7 hand gestures, why -- I had explained the same things I had explained  
8 to General Ceku, and why they had to -- they should agree this  
9 because it was in their interests. So as I said, I understood their  
10 aspirations and their motivations, and this was in their interests,  
11 and it was important that they should agree it as it stood. And you  
12 can see he was not very happy.

13 Q. And what is he wearing there? What does he have on him?

14 A. "Him"?

15 Q. Ramush Haradinaj.

16 A. Yeah, he's got -- he's taken his knife off his arm and stuck it  
17 into his flak jacket. I don't see any grenades today.

18 MS. TAVAKOLI: And can I note for the record that we've stopped  
19 the video at 00:39, and that is the part that Mr. Duncan is talking  
20 about.

21 Q. What was the ultimate outcome of that meeting on the 19th?

22 A. The text was pretty much agreed. It was almost -- it was pretty  
23 much in its final version. And we then sent it to NATO for it to be  
24 put before the North Atlantic Council for their agreement. Even  
25 though it's a unilateral undertaking, it's not "a bilateral"

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1 discussion, we had to get -- we couldn't really have a situation  
2 where it was offered by the KLA and then some NATO ally said, "Oh,  
3 this is unacceptable. We can't accept it." So we had to get their  
4 agreement.

5 Q. And do you remember when you sent it?

6 A. It would have been that evening.

7 Q. And did you get agreement?

8 A. We did eventually. There was a lot of problem over the  
9 signature block and that was essentially one of the last stumbling  
10 blocks. It was from -- I wasn't there. I --

11 Q. Sorry, can I pause you there.

12 A. Sorry.

13 Q. Which part of signature block?

14 A. The signature block saying, "Accepted by COMKFOR  
15 General Jackson."

16 Q. So the KFOR part of the signature block?

17 A. Yes.

18 Q. Carry on, please.

19 A. And eventually that -- the compromise that was agreed with the  
20 North Atlantic Council was that it should be "received by,"  
21 therefore, language that does not imply any sort of recognition, and  
22 that's how it was changed. And that how it was put to the KLA side  
23 on the 20th, and there was further discussion just before the  
24 signature to explain why it had been changed.

25 Q. Can you recall at all what different governments thought about

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1       that side of the KFOR side of the signature block or not?

2       A.     In detail, no, I was not present. But I was getting reports  
3       from London that there was quite a lot of opposition, and that the  
4       Americans used quite a lot of pressure to make sure that all the  
5       allies agreed. I mean, naturally one would assume that other nations  
6       such as Greece would not be particularly -- they would be  
7       particularly concerned about what we were going to do in a country  
8       which was bordering them, so -- but there were others who were still  
9       in the mindset of: These are terrorists and we shouldn't be  
10      negotiating with terrorists and we shouldn't accept this at all.  
11      There were others who were concerned about, you know, what was the  
12      future going to be. This was a peculiar operation where we had --  
13      you know, we had a -- successfully concluded military campaign and  
14      yet we had no idea what the outcome was going to be. You know, was  
15      it going to be a state, was it going to be a UN-mandated territory,  
16      or was it -- it was still in some state of confusion.

17      Q.     What date was the undertaking signed?

18      A.     It was signed at ten minutes past midnight on the 21st.

19            MS. TAVAKOLI: Thank you. Can I bring up, please,  
20      Exhibit P01444, and can I go to the final page of that document.  
21      Maybe if we go to the first page first and then to the final page.  
22      Thank you. And then can we go to the last page, please. Pan down.  
23      A bit further. I want to see the signature block. Thank you.

24      Q.     Now, what is that a picture of, Mr. Duncan?

25      A.     That's the final page of the undertaking.

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1 Q. Now, I want to focus on the KLA side --

2 A. Mm-hmm.

3 Q. -- of the signature block. Was there a signature block on the  
4 first draft?

5 A. No.

6 Q. What date was the first draft? Do you remember?

7 A. It would have been 10 -- the first draft that I completed and  
8 got agreement to was on 10 June.

9 Q. Why was there no signature block on the first draft?

10 A. Because I was concerned that if we put things in like signature  
11 blocks, we would get into a circular argument which would take us  
12 away from what the primary purpose of this document was. So when we  
13 gave the first version to General Ceku, it had no signature block on  
14 it. I wanted them to focus on what this document was saying, not who  
15 it was signed by.

16 Q. When did a signature block first appear?

17 A. I think 17th or 18th June.

18 Q. And what was in that signature block?

19 A. That was for signature by General Ceku on behalf of the UCK.

20 Q. And why did it have Ceku's name?

21 A. For practical reasons. He was the person we were negotiating  
22 with. And we'd had no -- on the 17th, 18th, Mr. Thaci had not been  
23 directly involved in the negotiations, and, therefore, you know, it  
24 didn't -- we'd been told he was not available. Therefore, we put it  
25 in the name of General Ceku.



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1 Q. Now, we see here that the signature block has the name of  
2 Hashim Thaci and there's a title. I want to go first -- I want to  
3 ask you questions first about his name and then secondly about the  
4 title.

5 So how did Hashim Thaci's name come to be in this document?

6 A. As I recall, this came -- the change was done in the discussions  
7 of the 19th.

8 Q. And who proposed that change? Do you know?

9 A. I don't recall. And it was a very long day. You know, it was  
10 quite tense. I didn't allow anyone to have any lunch, so it was --  
11 there was a lot happening on that day, and I really don't remember  
12 who put that in, who changed.

13 Q. Do you know why it changed?

14 A. No. I mean, it came from the KLA side. They said, "We want  
15 Hashim Thaci to sign it."

16 Q. Did the international community, particularly the United States,  
17 perhaps the Brits, have a view on who should sign on the KLA side?

18 A. No, it didn't really work like that. We did the work, put it  
19 back to them. It was not a basis of, you know: They sent  
20 instructions, this is what you're going to do. You know, the whole  
21 process was almost in reverse. After all, if you remember, I drafted  
22 this thing. It didn't come to me from London, saying: You should go  
23 out and negotiate and this is what it should say. I wrote it and put  
24 it back to London and said, "Right, this is what I think we should  
25 do," and they said, "Yes, go for it." So there wasn't an instruction

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1 saying we want -- not -- certainly not at that level of detail.

2 Q. Did you mind that now it was being signed by Thaci?

3 A. No.

4 Q. Why not?

5 A. What was important to me was that we had the full engagement of  
6 the Kosovar side, in particular the military. If they asked for  
7 Hashim Thaci to sign it, that was okay, because it didn't work like  
8 that. The whole process here is about getting them engaged, as,  
9 again -- I state it again, understanding their motivations and what  
10 they wanted. You know, the long term desires. Once they were  
11 properly engaged in it, if they signed up to it, the nature of the  
12 people that they were - Albanians with a sense of honour - and the  
13 fact they had all been engaged in it, you know, all the zonal  
14 commanders had been engaged right from the beginning of our  
15 discussions, they would feel honour bound to agree to it, but also  
16 they would get something out of it.

17 You know, they understood that this was -- this is disarmament  
18 with honour. They were being recognised. They were going to get  
19 engagement with international organisations, notably NATO. They were  
20 being recognised for their effort, and there was a prospect of  
21 something that might lead to their independence in the fullness of  
22 time.

23 So understanding those motivations which are embedded in this  
24 meant that I didn't really mind who signed it. It was not important  
25 because the process itself would be a momentum which would lead us to

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1 where we wanted to go.

2 Q. You used the word "they" a lot in your last answer. Who is  
3 "they," just for the record?

4 A. We are talking essentially about the military wing.

5 Q. Thank you. Now, let's move to the title. Do you know who came  
6 up with the title "Commander-in-chief UCK"?

7 A. No.

8 Q. Do you know why it was used?

9 A. Since I don't know who came up with it, I can't give you a  
10 complete answer. I can tell you what I thought at the time, and to  
11 my mind this was a very typical, slightly overinflated, almost  
12 grandiose, title that guerrilla armies and leaders often use. From  
13 my own personal experience, I remember in the African revolutionary  
14 movements that happened in the country that I grew up in, the  
15 guerillas were given names such as "General," you know, and they had  
16 a couple hundred people under their command. Even in France in --  
17 where I live for a lot of the year, the resistance leaders would say,  
18 "Well, this is the battalion from so-and-so." It's not a battalion,  
19 it's 300 people.

20 So the tendency to overinflate the title is something that did  
21 not surprise me in the slightest. I didn't take it particularly  
22 seriously. I did wonder whether, you know, it was something that  
23 came from the American model, that the president has the title of  
24 commander-in-chief, but it was clearly not that in reality. It was,  
25 to my mind, a grandiose title being given to somebody which had no

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1 reality.

2 MS. TAVAKOLI: Can I refresh Mr. Duncan's memory, please, at  
3 paragraph 60 of his statement.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MS. TAVAKOLI: It talks about this issue. I can go through it,  
6 but --

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 MS. TAVAKOLI: No.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MS. TAVAKOLI: I'll elicit it orally then. That's fine.

11 Q. Now, could Mr. Thaci have signed as prime minister?

12 A. No.

13 Q. Why not?

14 A. That would be implicit recognition of the provisional  
15 government.

16 Q. Do you think that his signing as commander-in-chief is any way  
17 related to that point?

18 A. I think it made NATO a little bit more comfortable with having  
19 his name at the bottom. If the KLA insisted his name had to be at  
20 the bottom, putting a military title made it a little bit more  
21 acceptable to the NATO allies. I think probably like me, they didn't  
22 put too much importance on the exact wording. But it had a slightly  
23 military sense to it, so it kept it in: This is a  
24 military-to-military agreement.

25 Q. Did you think that in reality Hashim Thaci was the

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1 commander-in-chief of the KLA?

2 A. No.

3 Q. Why not?

4 A. I saw no evidence of it.

5 Q. What evidence would you expect to see if he was? Firstly, what  
6 is a commander-in-chief?

7 A. Right. Well, I think there's a -- in the court cases around the  
8 Balkans, there have been a definite -- a definition has been given  
9 which is not one which is very familiar to those of us who have  
10 served with the military. The issue of being a commander-in-chief is  
11 related to command and control. So command is the authority to issue  
12 an instruction or a directive. Control is the ability to carry out  
13 that command and to ensure that it is carried out effectively.

14 So it's a political authority. It doesn't give you absolute  
15 power. So, for example, the problem that General Jackson had  
16 encountered when the Russians invaded was exactly that problem. He  
17 received a command, but General Wesley Clark did not have control.  
18 And that is -- it's sort of conceptual problem that sort of bothers  
19 military think-tanks all the time.

20 So a commander-in-chief is not necessarily someone who can  
21 ensure that any instruction they give will be carried out. That is  
22 usually a separate function in NATO concept of how things are done.

23 Q. Now, why did you say a moment ago that Hashim Thaci was not the  
24 commander-in-chief of the KLA?

25 A. Because the actual -- the way they behaved to him when we were

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1 in the negotiations. They treated him as the political -- as you'd  
2 -- as I expected, the political wing with a certain influence and  
3 authority, but not someone to whom they gave military respect. It  
4 was very noticeable. You know, they respected General Ceku because  
5 he was a professional military officer. His family had suffered at  
6 the hands of the Serb, grievously, and they saw him as a  
7 professional.

8 When Hashim Thaci arrived, there was a certain tension as you  
9 would often find, as I often found, between a politician arriving  
10 with a group of military officers. There's a distinct tension that  
11 -- you can feel it. They treat them slightly differently. So they  
12 saw him as an important politician to their cause but not their  
13 military commander, and that was my impression of how they behaved to  
14 him.

15 Q. Is there an example or how did you see -- is it possible to put  
16 into words how you got that view?

17 A. Feeling.

18 Q. Feeling.

19 A. It's very intuitive. But I -- it was very striking the way --  
20 the way we were dressed. I mean, I talked a bit earlier about being  
21 seen as a political commissar. It was very deliberate. That's why I  
22 dressed in the way that I did and -- so that I blended into the  
23 military ethos. Mr. Thaci arrived in a Western suit, looking very  
24 smooth. And there was an immediate sort of clash of -- visual clash  
25 between the two groups of people.

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1 Q. And did he appear to have authority over the zone commanders or  
2 not?

3 A. At no stage did I see him sort of give directives or -- he  
4 focused -- or orders or anything like that. No. It was very clear  
5 that we had two people we were talking to. One was the military --  
6 the senior military officer, and the other was the politician.  
7 That's the impression that I had.

8 Q. Now, these changes to the KLA side of the signature block, was  
9 General Sir Mike Jackson present for those or not?

10 A. No.

11 Q. Now, you've talked a lot about how you understand the KLA  
12 hierarchy to be. How did the KLA present itself to the outside  
13 world?

14 A. They were doing their best to show us that they were a serious  
15 military counterpart. So when we arrived on the 17th in the pitch  
16 darkness, there was an honour guard, all dressed up in nice, new  
17 uniforms, with Kalashnikovs across their chest, berets, and, you  
18 know, it was, you know, the proper military formal greeting of  
19 another military delegation. So they were keen to show that they  
20 were professional people. They were not just a group of guerillas in  
21 the bush. Now, that was very much the way they wanted to be seen.

22 Q. And was that correct?

23 A. It's very easy to dress six people up in new uniforms and put  
24 berets on, so I can't really say that it necessarily was.

25 MS. TAVAKOLI: Can we bring up a photograph, please. That's

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1 DHT05354.

2 Q. Mr. Duncan, what is this photo?

3 A. This is the honour guard on the day of the 19th, during the  
4 daylight.

5 Q. And did they have that on other days?

6 A. They had it on the 17th.

7 MS. TAVAKOLI: Your Honour, please can I seek to tender that  
8 into evidence.

9 PRESIDING JUDGE SMITH: Any objection?

10 MR. HALLING: No objection.

11 PRESIDING JUDGE SMITH: DHT05354 is admitted. Please assign a  
12 number.

13 THE COURT OFFICER: Your Honours, that will be assigned  
14 Exhibit 1D383, and I note it's marked confidential.

15 MS. TAVAKOLI: It can be public, I think.

16 PRESIDING JUDGE SMITH: Reclassify it as public.

17 MS. TAVAKOLI: And then can I please bring up DHT05355.

18 Q. What is this photo, Mr. Duncan?

19 A. This is Mr. Thaci as he was dressed on the 19th.

20 MS. TAVAKOLI: Thank you. Please can I tender that into  
21 evidence.

22 MR. HALLING: No objection again, Your Honour.

23 PRESIDING JUDGE SMITH: DHT05355 is admitted.

24 MS. TAVAKOLI: And please can I --

25 PRESIDING JUDGE SMITH: Assign it a number.



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1 THE COURT OFFICER: Your Honours, that will be assigned  
2 Exhibit 1D384, and I note it's also classified confidential.

3 PRESIDING JUDGE SMITH: Reclassify it as public.

4 MS. TAVAKOLI: And then please could I bring up DHT05356.

5 Q. What is this, Mr. Duncan?

6 A. This is some of the zonal commanders, probably on the 19th as  
7 well, and you can see they are dressed with -- not quite as bad as  
8 Ramush, but they've got guns and suchlike. They have come from the  
9 fighting.

10 Q. Thank you.

11 MS. TAVAKOLI: Please, can I tender that.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. HALLING: Just on this one, can it be clarified whether all  
14 of the people in the photo are zone commanders?

15 THE WITNESS: The ones -- first person on the left and -- not  
16 the person, obviously, in the suit jacket and tie, but the other two  
17 are zonal commanders as I recall. I think one is Remi.

18 MR. HALLING: No objection to the admission.

19 PRESIDING JUDGE SMITH: DHT05356 is admitted.

20 THE COURT OFFICER: Your Honours, that will be assigned  
21 Exhibit 1D385, and it's also classified confidential.

22 PRESIDING JUDGE SMITH: Reclassify it as public.

23 MS. TAVAKOLI:

24 Q. You said earlier that "they were keen to show that they were  
25 professional people. They were not just a group of guerillas in the

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1 bush."

2 A. Mm-hmm, yes.

3 Q. How professional were they?

4 A. In what sense do you mean "how professional were they"? Sorry.

5 Q. You said that it was easy -- with the honour guard picture, you  
6 said it's easy to put on, I don't know what you said, a Kalashnikov  
7 or whatever. Does that picture represent the reality of what the KLA  
8 was?

9 A. Not necessarily. I've many experiences of visiting countries  
10 where you get an honour guard and they're all dressed up but, you  
11 know, the army is pretty shambolic, sitting behind that, without  
12 naming and embarrassing the countries which I elicited. But, no,  
13 it's not evidence of a good organisational structure. And they were  
14 in my experience and in the information I had received from various  
15 sources in the field as you would expect a guerrilla army to be -  
16 pretty chaotic, disorganised, getting better gradually. But they  
17 were not -- they were a guerrilla army. They were not a regular army  
18 by any stretch of the imagination; hence, the grandiose titles and  
19 things like that.

20 Q. Did any other -- apart from the KLA itself, was there anyone  
21 else suggesting that they were an organised army?

22 A. The Serbs were, for one.

23 Q. Can you tell us about that?

24 A. Sorry?

25 Q. Yes, why were the -- what were the Serbs doing?

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1 A. Well, Serb propaganda, as I understood it, and I was on the  
2 receiving end, was that these were -- you know, it started off as  
3 terrorists, and then they moved into this as a real threat. You  
4 know, this is a regular army, and well disciplined, and, therefore,  
5 you know, it's got a hierarchy that operates very much like a proper  
6 army, perhaps in part, you know, to justify their lack of success  
7 against the KLA. I mean, the KLA had some major setbacks during the  
8 conflict, but, you know, kept springing back and -- as it became the  
9 army of the dispossessed, with more recruits coming in and more JNA  
10 people, and Agim Ceku, General Ceku and his reforms to, you know,  
11 bring in a degree of professionalism.

12 Q. What were your impressions of Hashim Thaci in the negotiations?

13 A. To spare his blushes, I found him a bit of an enigma. I had  
14 done the briefing for General Clark's meetings with him earlier in  
15 the year, and I found he didn't seem to be engaged in the way that I  
16 would expect a professional politician to be engaged. And at the  
17 discussions, he seemed to be focused overly on matters such as the  
18 Clinton call, and he didn't seem to appreciate that the undertaking  
19 would prevent him having the sort of bodies that the KLA was growing,  
20 so the police force, the intelligence police force, and, you know,  
21 the fact that they had a military wing. And as you've seen elsewhere  
22 in the Balkans, that's what politicians rely on. It's their power  
23 base. They can use that. And he didn't seem to appreciate that this  
24 was all going to disappear if they signed up, because we were going  
25 to make sure that they were kept very separate. That anyone who had

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1 police experience would go into the police and be kept under control,  
2 that the KLA would be going into demobilisation and demilitarisation,  
3 and that he would be separated out from it. And it didn't seem to  
4 sort of trouble him that this would be the result of what this  
5 undertaking would do.

6 So I found him a little bit out of his depth, and I was bemused  
7 by that.

8 Q. You said he was overly focused on the matters such as the  
9 Clinton call.

10 A. Yes.

11 Q. What did you deduce from that, if anything? Why was he  
12 interested in the Clinton call?

13 A. Well, as I say, I was rather surprised by it, and it was really  
14 how Jamie helped us -- Jamie Rubin helped us secure the final  
15 agreement. They went off after I broke the negotiations up. When we  
16 reconvened, they then decided that we'd have separate discussions, so  
17 one-on-one, Jamie Rubin with Mr. Thaci, General Reith with  
18 General Ceku, and sort of just hammer out some of the details.

19 And I thought that -- you know, I was bemused by that, that  
20 focus, which was largely -- as Jamie told me later, was on the call  
21 with Clinton. And I think I realised much, much later that it might  
22 have been a way for an Albanian politician or Kosovar politician to  
23 say, you know, "I can speak to the president of the United States."  
24 And, of course, the Kosovars saw the US -- so they didn't see this  
25 really as NATO. It was the US, General Clark, it's the Americans. A

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1 very understandable reaction. So it would be something that would be  
2 very helpful to him in his future political career.

3 Q. Why would it be helpful to him?

4 A. To be able to say that. You know, "I spoke to  
5 President Clinton, and he said, you know, you're doing a great job,  
6 and keep going," and whatever he wanted to say about his call with  
7 President Clinton. It would have political importance to him.

8 Q. So the support of the Americans was important to Hashim Thaci,  
9 was it?

10 A. Clearly so. And he had obviously had a lot of discussions with  
11 Jamie and with Madeleine Albright as well. So he -- you know, he,  
12 obviously, saw the Americans as the key players in all of this. And  
13 he was not entirely wrong. I mean, Madeleine Albright and Jamie  
14 Rubin and General Clark were absolutely key players in the way that  
15 that whole campaign and conflict evolved.

16 Q. Thank you. Can you describe the relationship that you observed  
17 between Hashim Thaci and General Ceku?

18 A. I think it very much was team players, and that's the way they  
19 presented themselves to us in the way they behaved. It was, you  
20 know: I'm handling the military side, you're handling the political  
21 side, and, you know, we're both doing our own bit. So it was a team  
22 effort in the way I observed it.

23 Was -- so the sort of subset question to that is: Is there sort  
24 of deference? I didn't really notice a huge amount of deference. It  
25 seemed to be: We have our own responsibilities. That's how I recall

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1 it, and it's very impressionistic.

2 Q. I would like to read you sort of what General Sir Mike Jackson  
3 had said?

4 MS. TAVAKOLI: The reference for the Court is Exhibit P02517,  
5 paragraph 16 and 31.

6 Q. Now, General Sir Mike Jackson has said this:

7 "Thaci signed the undertaking on 21 June instead of Ceku because  
8 he was the boss. He was the 'Commander in Chief.'"

9 "Because Thaci was the leader of the KLA, if the Undertaking had  
10 been signed by, shall we say, Ceku, that would only have given Thaci  
11 wriggle-room later."

12 "Thaci exercised authority over Ceku. It was acknowledged. I  
13 do not see it as being disputed -- a disputed issue that Thaci was  
14 senior to Ceku. There was never any doubt in our minds at KFOR who  
15 the ultimate boss of the KLA was, and that was Thaci. Thaci signed  
16 the Undertaking on 21 June ... because he was the boss, and this  
17 remained clear throughout my time in Kosovo. If Thaci had given --  
18 gave an instruction to Ceku, Ceku would have carried it out. I have  
19 no reason to think otherwise. Ceku had been an officer in the VJ and  
20 then in the Croatian Army. I never knew Ceku to disobey an  
21 instruction from Thaci ... I do not recall specific examples of  
22 Thaci's ability to make things happen, but that is not to say that he  
23 clearly was not the boss."

24 A. Mm-hmm.

25 Q. Do you agree --

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1 A. Yes.

2 Q. -- with General Sir Mike Jackson?

3 MR. HALLING: Objection. Compound as phrased. There is a lot  
4 of propositions in that quote.

5 PRESIDING JUDGE SMITH: We'll take the question.

6 Go ahead. Answer it if you can, in general.

7 THE WITNESS: In general? Thank you, Mr. President.

8 General Jackson and I became eventually very good friends. It's  
9 a very personal relationship between a political adviser and their  
10 military commander. I was not his political adviser, but I worked  
11 very closely with him as you see from how I got into doing the  
12 undertaking.

13 However, I think that in this case my answer must be no. I  
14 think that -- first of all, as I said earlier, General Jackson's role  
15 was to deploy all those forces, the NATO forces. It was very  
16 difficult. He also had to deal with the Russian seizure of  
17 Prishtine. Remember the comments about, "I won't create World War  
18 3"? I was there when he said that. So he was under a huge amount of  
19 pressure. I did not trouble him with what we were doing. We just  
20 told him, "We are doing this." The only time we troubled him was  
21 when he had to talk to the UN, which is part of the mandate of the  
22 UNSCR.

23 So the result was General Jackson did not know what happened up  
24 on the mountains. He was not there. And he did not know until  
25 several years later, over one of his famous whiskey sessions, when he

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1 and I were sitting down together, I told him what we did. And he  
2 said, "Quite honestly, I did not know that's what you were doing."  
3 So he did not know how the undertaking was created.

4 What he says about what happened afterwards isn't that  
5 surprising because that's very much a Western military officer's  
6 perceptions, that if the politicians ask you to do something, you do  
7 it. Notice, as a comment, he himself says he doesn't recall any  
8 specific evidence for that view or specific examples. He may be  
9 right that, I mean, if Ceku had been given an instruction he would  
10 have carried it out. But he's talking about a period later on, after  
11 the undertaking has been signed, after the conflict has finished.  
12 Everyone is settled in a post-conflict period.

13 So I wouldn't agree with his statement. I think it comes from  
14 not being there when this was done and his general perception of how  
15 professional military officers - and he certainly had a lot of  
16 respect for General Ceku - should behave and his feeling that that's  
17 what he would have expected General Ceku to do. It's not my  
18 understanding.

19 MS. TAVAKOLI: I'd like to show you another document, please.

20 I think we have to go into private session for this document.  
21 It is SPOE00214873 to SPOE00214999.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 [Private session]

24 [Private session text removed]

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14 [Open session]

15 THE COURT OFFICER: Your Honours, we are back in public session.

16 MS. TAVAKOLI:

17 Q. Mr. Duncan, I'm going to repeat that question. Do you know if  
18 the KLA did, in fact, demilitarise?

19 A. They did.

20 Q. Who was in charge on the KLA side of demilitarisation?

21 A. General Ceku.

22 Q. To whom did he report?

23 A. General Mike Jackson.

24 Q. Who had overall responsibility for the process of the  
25 demilitarisation of the KLA?

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1 A. The same, General Mike Jackson.

2 Q. And what was the legal basis for that responsibility?

3 A. UNSCR 1244.

4 Q. Thank you.

5 THE INTERPRETER: Interpreter's note: The speakers are kindly  
6 requested to pause between question and answer. Thank you.

7 THE WITNESS: Apologies.

8 MS. TAVAKOLI: Sorry.

9 Q. Mr. Duncan, I'd now like to move to a different subject matter  
10 which is post-war Kosovo.

11 After the undertaking was signed, did you visit Kosovo again in  
12 1999; and if so, when and with whom?

13 A. Yes -- sorry. Yes, I went on several visits, notably in August,  
14 with General Wesley Clark.

15 PRESIDING JUDGE SMITH: What year?

16 THE WITNESS: 1999, sorry.

17 MS. TAVAKOLI:

18 Q. Did you go before August or not?

19 A. I think they were all in August, the visits with General Mike --  
20 with General Wesley Clark.

21 MS. TAVAKOLI: Your Honour, may I be permitted to refresh the  
22 witness's recollection of paragraph 74 of his statement?

23 PRESIDING JUDGE SMITH: Yes.

24 MS. TAVAKOLI:

25 Q. Please, could you look at paragraph 74, Mr. Duncan. Actually,

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1 73 -- yeah, 74.

2 A. Ah. Yeah, okay. One of them was in July.

3 Q. Thank you.

4 A. Sorry. My apologies.

5 Q. That's all right. Can you describe the governance situation in  
6 June 1999? And by that I mean the political, legal, and security  
7 situation overall?

8 A. In June or July?

9 Q. June.

10 A. As the Serbs left, the Serb forces left, there was also a very  
11 large exodus of the public service in its entirety, so the prisons,  
12 the lawyers, the judges, the policemen, and this was a result of the  
13 system of apartheid that had been applied by the Serbs in preceding  
14 years where they had essentially either got rid of -- sorry,  
15 dismissed Albanian nationals or ethnic Albanians from any of these  
16 positions and prevented them coming in, not recruiting them.

17 So the majority of the public service was then Serb and most of  
18 them left, so it was a total vacuum.

19 Q. Thank you.

20 MS. TAVAKOLI: I'd now like to show you another document. Can I  
21 check with the SPO whether this document should be in private  
22 session? That is ERN SPOE00000959 to 0001070.

23 [Specialist Prosecutors confer]

24 MR. HALLING: For this one, public session is all right.

25 MS. TAVAKOLI: Thank you. If we could please bring that up.

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1 And can we just have a look at the first page, please.

2 Q. Now, this, Mr. Duncan, is a witness statement of an Anthony  
3 Quinn who was from the special investigative branch of the Royal  
4 Military Police, and it was a statement made in the High Court in  
5 London.

6 MS. TAVAKOLI: If we can just go to the top, I'd just like to  
7 see the date. Yeah.

8 Q. On 5 March 2016. Do you know an Anthony Quinn?

9 A. I do not.

10 MS. TAVAKOLI: Now, if we could go to the last sentence of  
11 paragraph 1 to orient you.

12 Q. Between June and September 1999, he was deployed to Kosovo where  
13 he was second-in-command of the special investigative branch of the  
14 Royal Military Police.

15 MS. TAVAKOLI: And then please can we go to the next page, to  
16 paragraph 6, the last sentence.

17 Q. "We entered Pristina on 20 June 1999."

18 Mr. Duncan, did you know that at that time the Royal Military  
19 Police had deployed to Prishtine?

20 A. On 20 June, I was otherwise occupied. But I was not aware that  
21 we had deployed this type of military unit, but I am not surprised  
22 either.

23 Q. Did you become aware later?

24 A. Of their deployment at that time? No. But part of my work  
25 after the end of the conflict -- actually, quite considerably later,



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1 in the later months towards the winter, I was aware of the forces  
2 that we were using to deal with criminality.

3 Q. Thank you.

4 MS. TAVAKOLI: Can we please go to paragraph 13 of this  
5 statement.

6 Q. And I'll read it for the record, but if you can follow it:

7 "The situation when we arrived in Kosovo in June 1999 was  
8 extremely challenging. There was no local governance, no water, no  
9 sewerage, no power and no currency. There was a total breakdown of  
10 normal order. Our team of little over 100 RMP were the only police  
11 [force] within MNB Centre. There were masses of Kosovar Albanian  
12 refugees coming back into Kosovo over its borders and a few enclaves  
13 of Serbs. The approach on the ground by KFOR troops in MNB Centre  
14 was very much a 'soft hats' approach to the local population ..."

15 I'm going to skip through.

16 "Language [is] a big problem as when you went to any kind of job  
17 you always needed two sets of interpreters, one Serb and one  
18 Albanian, as the people from each community refused to communicate  
19 with an interpreter from the other community."

20 MS. TAVAKOLI: And then could I just go down to paragraph 14,  
21 please.

22 Q. Can you read that?

23 "Upon entering Kosovo one of KFOR's main roles was to return the  
24 country to some sort of civilised normality. This was not an easy  
25 task. The Serbian population, who had controlled everything, had

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1 largely left, leaving behind a country on the verge of anarchy.  
2 There was an enormous vacuum in terms of civilian infrastructure.  
3 Importantly, there were no police, which I understand was because the  
4 police in Kosovo were all or almost all Serbian and they had been  
5 obliged to withdraw as part of the Military Technical Agreement."

6 My questions are, first, is Anthony Quinn's description of the  
7 vacuum consistent with yours?

8 A. Very much so.

9 Q. What about his description of the situation - no governance, no  
10 water, et cetera?

11 A. That is exactly what I saw.

12 Q. What about his sentence, "There was a total breakdown of normal  
13 order"?

14 A. That's correct.

15 Q. And what about him saying that "the Serbian population, who had  
16 controlled everything, had largely left"?

17 A. That is true.

18 Q. And "leaving behind a country on the verge of anarchy"?

19 A. Very much so.

20 MS. TAVAKOLI: In due course, Your Honour, I'm going to seek to  
21 tender this statement. However, I want to address other parts of it  
22 later on.

23 That can be taken down for now, please. Thank you,  
24 Madam Court Officer.

25 Q. You visited, as we've seen, Peje on 6 July.

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1 A. Yes.

2 Q. Can you describe to the Court what you saw on that first visit,  
3 please.

4 A. Yes. It was terrible, shocking. As we came in, we could see  
5 devastation to the Albanian farms, farmhouses, animals. We could see  
6 Serb houses burning. There were at least six that I observed as we  
7 came in, and one of them was a hundred yards from where the  
8 helicopter landed.

9 As we drove around the town, you could see wanton destruction of  
10 Albanian businesses, homes, and this is very different from the sort  
11 of destruction you would see from bombing. So, I mean, I was  
12 familiar with bombing, destruction. I'd seen plenty of it. This was  
13 wanton destruction.

14 I didn't put this in my evidence, but as James Blunt, who was  
15 also there, put it in his song "No Bravery," he talks about "He has  
16 been here," and what he means is that phrase of evil stalking the  
17 land, and that's what I saw. It was pure evil stalking the land.  
18 You could almost touch it. It was quite, quite horrible.

19 Q. And did you get a sense of who was committing the violence and  
20 why?

21 A. The original violence was quite clearly during the conflict. I  
22 mean, these were quite obviously several weeks old. And the houses  
23 burning were, obviously, quite clearly Serb houses or previously Serb  
24 houses which were burning.

25 Q. And did you get a sense of who was burning them, who was

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1 committing that violence?

2 A. Difficult to say. I certainly didn't see sort of armed troops  
3 wandering around doing it. This was just people.

4 Q. When you say "just people"?

5 A. Ordinary people. Not armed troops.

6 Q. Why was it happening?

7 A. Revenge. Yeah. I mean, revenge. When you know what happened,  
8 and, of course, I was getting as much as everybody in terms of  
9 reports from NGOs and suchlike, and then you see it, you know, you  
10 can imagine why people -- you know, it goes way beyond honour. This  
11 is the sort of stuff that happens at the ends of wars.

12 Q. And revenge for what?

13 A. For the atrocities that they had been -- had to endure.

14 Q. We need -- who is "they"?

15 A. Sorry, I beg your pardon. The atrocities carried out by the  
16 Serbs against the Kosovar Albanians.

17 Q. So who was committing the violence, the Serbs or the Albanians  
18 that you saw?

19 A. When I was there, the violence before had been carried out by  
20 the Serbs, and the violence that I saw going on was being carried out  
21 by the Kosovar Albanians.

22 Q. In revenge is what --

23 A. In revenge.

24 Q. -- you're saying? You said it was just people. Did it appear  
25 to be organised or not?

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1 A. No.

2 Q. Did you see members of the KLA committing crimes?

3 A. I did not.

4 MS. TAVAKOLI: Can I refer Mr. Duncan to paragraph 78 of his  
5 statement, please?

6 PRESIDING JUDGE SMITH: Yes, go ahead.

7 MS. TAVAKOLI:

8 Q. Can you read that sentence, 78, please.

9 A. "It did not appear to me that this violence was organised or  
10 directed from above as opposed to individual acts of revenge or  
11 criminal behaviour."

12 Q. I want to talk about the criminal behaviour.

13 A. Mm-hmm.

14 Q. Who were the criminals? My point really here is you're  
15 separating. You seem to be saying revenge or criminal behaviour.  
16 Are they separate things?

17 A. Yes. Revenge is by the ordinary people, ordinary persons. In  
18 the situation of anarchy, those who are criminals will seek to take  
19 advantage of it and, you know, will loot houses for criminal intent.  
20 They are taking advantage of the anarchy to steal whatever they can.  
21 So that's what I'm differentiating between: those who are  
22 opportunistic criminals who take advantage, and those who are trying  
23 to, you know, take revenge for what they've suffered. I think they  
24 are two different human motivations.

25 Q. And what was the nationality of the criminals?

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1 A. If we're distinguishing between what I saw had happened and what  
2 was happening, it would depend. So the criminal behaviour could  
3 equally have been carried out -- the past criminal behaviour by the  
4 Serbs, but I'll come back to that. What was going on, people setting  
5 fire to houses, that's revenge. Were they looting the houses? I  
6 couldn't really see whether they were looting the houses. And that's  
7 criminal behaviour.

8 The past violence was noticeably not criminal. It was wanton.  
9 So the violence carried out by the Serbs on the Albanian Kosovars was  
10 absolutely wanton. So this was burning haystacks, killing animals,  
11 and, you know, burning businesses. So there was a bus station which  
12 had new Volvo buses in it and they had all been torched. They didn't  
13 take them away. They just torched them all. So that's previous  
14 criminal behaviour.

15 So I think one needs to distinguish between what I saw going on  
16 and what had happened in the past.

17 Q. And on that visit, did you know anything -- did you get to learn  
18 anything about the local KLA command structure in Peje?

19 A. Yeah, I think it was in Peje that we had the problem. There  
20 would seem to be a leadership struggle going on, so the local unit  
21 was having a lot of trouble engaging with the KLA because they -- as  
22 they put it, their commander keeps changing. So there was a local,  
23 in that instance, power struggle going on with the KLA, which they  
24 reported to us.

25 MS. TAVAKOLI: Now, can we please bring up an article in English

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1 and Albanian. In English, it's 018319. And the Albanian is the  
2 original, it's the same number, please. Just the top one is fine.  
3 Thank you.

4 Q. So this, Mr. Duncan, is from -- is a statement by General Clark  
5 made on 14 August in which he addresses the violence in Kosovo, and  
6 it's quoted in Shekulli. And it says:

7 "Clark: There are no facts for KLA attacks.

8 "Pristina - Supreme Commander of NATO Wesley Clark said during a  
9 visit in Pristina that there are no facts that the Kosovo Liberation  
10 Army is behind the attacks that have been committed against the Serbs  
11 after signing of peace with them in June. Clark said that the  
12 leaders of the KLA have supported their calls for the Serbs to remain  
13 in the region."

14 Then it quotes him:

15 "'I will not point my finger at the KLA. Their leader has been  
16 very cooperative with us at senior levels' ..."

17 "Some international officials have said that the KLA is the  
18 initiator -- some [internationals] have said that the KLA is the  
19 initiator of attacks against [the] Serbs, that they have expelled  
20 170,000 Serbs from Kosovo. However Clark explained that in the  
21 majority of cases the violence should be seen as spontaneous and  
22 particularly in the south of Kosovo, the violence is connected to  
23 organised crime."

24 Another quote:

25 "'From the /.../ of the KLA we have received repeated statements

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1 for their support of a multiethnic society and the purposes of the  
2 international community, thus I can't point my finger towards whoever  
3 has done this' ..."

4 Can you recall, Mr. Duncan, if General Wes Clark made this  
5 statement on one of the trips that you accompanied him on?

6 A. Yes, I briefed him to do so.

7 Q. And is General Clark's view here consistent with yours?

8 A. Yes.

9 MS. TAVAKOLI: Your Honour, I seek to tender this into evidence.

10 MR. HALLING: No objection, Your Honour.

11 PRESIDING JUDGE SMITH: 018319, with no objection, is hereby  
12 admitted.

13 THE COURT OFFICER: Your Honours, that will be assigned  
14 Exhibit 1D387. And I note it's classified confidential at the  
15 moment.

16 MS. TAVAKOLI: I think it could be public.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MS. TAVAKOLI: And then please can I bring up -- I think, again,  
19 we have to go into private session because of the Rule 107 provider.  
20 And that is -- it's SPOE00214873 to SPOE00214999.

21 PRESIDING JUDGE SMITH: Into private session, please.

22 [Private session]

23 [Private session text removed]

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1 [Private session text removed]

14 [Open session]

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

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 --- Luncheon recess taken at 12.58 p.m.

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

19 PRESIDING JUDGE SMITH: Please bring in the witness.

20 MR. TULLY: Your Honour, if I may update the Court on time  
21 estimates.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. TULLY: If I can update the Court on our time estimate.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. TULLY: We currently have 30. We will be less -- and we

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Examination by Ms. Tavakoli

1 will have less, if any, questions.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MS. TAVAKOLI: Less than an hour.

4 PRESIDING JUDGE SMITH: Okay. Mr. Dixon, any change?

5 MR. DIXON: Yes, I think I'll be less than the hour --

6 PRESIDING JUDGE SMITH: Okay.

7 MR. DIXON: -- initially set.

8 PRESIDING JUDGE SMITH: Mr. Ellis.

9 MR. ELLIS: I'm intending something like 15, 20 minutes.

10 PRESIDING JUDGE SMITH: Thank you all.

11 What about the Prosecution's cross-examination state?

12 MR. HALLING: We'll keep it at the same total. We'll definitely  
13 finish tomorrow, and whether it's first or second session is the only  
14 question.

15 PRESIDING JUDGE SMITH: Thank you.

16 [The witness takes the stand]

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 You may continue direct examination.

19 MS. TAVAKOLI: Thank you, Your Honour.

20 Q. Mr. Duncan, I want to go back to something before the end of the  
21 war. It's my fault.

22 MS. TAVAKOLI: Could we please put [REDACTED] Pursuant to In-  
Court Redaction Order F3493RED. back up on the  
23 screen, [REDACTED] Pursuant to In-Court Redaction Order F3493RED.,  
1D00386, at page 3.

24 MR. HALLING: And just because of the restrictions, that would  
25 need to be in private session.

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Examination by Ms. Tavakoli

1 MS. TAVAKOLI: Sorry, yes. My mistake.

2 PRESIDING JUDGE SMITH: So we need to go into private session,  
3 please, Madam Court Officer.

4 [Private session]

5 [Private session text removed]

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Witness: John Duncan (Private Session)

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Examination by Ms. Tavakoli

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Witness: John Duncan (Private Session)

Page 27111

Examination by Ms. Tavakoli

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Witness: John Duncan (Private Session)

Page 27112

Examination by Ms. Tavakoli

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19 [Open session]

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

21 MS. TAVAKOLI: Thank you.

22 Please, can I go back to the Kontic statement of Anthony Quinn,  
23 so that is SPOE00000959 to 00001070, and the page I want ends in 962.  
24 Thank you. It's paragraph 15 of the statement.

25 Q. Can I please ask you to read the last two sentences:



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Examination by Ms. Tavakoli

1           "The murder rate was extremely high: within the first four weeks  
2 we had over 100 murders. The majority of the victims were from the  
3 Serbian community who had not left the country as returning Albanians  
4 sought revenge."

5       A.    Mm-hmm.

6       Q.    Is Officer Quinn's recollection consistent with yours,  
7 Mr. Duncan?

8       A.    I believe so.

9       Q.    Thank you.

10       MS. TAVAKOLI: Can we go down now, please, to paragraph 18.

11       Q.    I'll read that:

12           "The array of crimes committed by the local population which we  
13 were investigating seemed to have a variety of causes. There were  
14 revenge crimes committed by Albanians against Serbs for the perceived  
15 wrongs committed by them prior to and during the war but there were  
16 also a large number of cases where opportunistic individuals or  
17 groups were fulfilling personal vendettas or grudges or simply  
18 pursuing a criminal enterprise in what was then a relatively lawless  
19 society."

20       Are Officer Quinn's recollections there consistent with yours?

21       A.    Yes. And it's not at all surprising. We had the same in France  
22 at the end of the Second World War. But, of course, in France, at  
23 the end of the Second World War, we had an administration, we had  
24 police forces able to respond. In Albania, there was a vacuum --

25       Q.    In Kosovo.

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Examination by Ms. Tavakoli

1 A. In Kosovo. In Kosovo, I beg your pardon, there was a vacuum.  
2 So that's not surprising that the situation was considerably worse  
3 than we had experienced 60 or so years previously.

4 Q. And in that paragraph, there's reference to a criminal  
5 enterprise. Were you aware, Mr. Duncan, of whether there were  
6 criminal gangs coming over the border from Albania in the summer of  
7 1999 or not?

8 A. I certainly had reports of that from various sources.

9 MS. TAVAKOLI: Can we go up to paragraph 17, please, to the last  
10 sentence of that.

11 Q. And if we read what Mr. Quinn says here:

12 "There was no prospect at that time of being able to imminently  
13 prosecute the offenders (as there was no prosecution service in  
14 place) ... we hoped that our PACE compliant interviews, which we  
15 conducted using interpreters and exhibiting all the evidence, would  
16 eventually be used for trials by the prosecuting authorities which  
17 were to be established by UNMIK."

18 And if you hold that.

19 MS. TAVAKOLI: Can we go now down to 24, please.

20 Q. "Even though there was no local prosecution authority which was  
21 in operation to take the investigations forward to a criminal trial,  
22 we still prepared the case file with as much detail as possible in  
23 the hope that it would be dealt with by the UNMIK or ICTY prosecuting  
24 teams."

25 Do you see that?

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Examination by Ms. Tavakoli

1 A. Yes.

2 Q. Were you aware that there was no prosecuting authorities in  
3 place at that time?

4 A. Very much so.

5 Q. And are Mr. Quinn's comments on that consistent with your  
6 understanding?

7 A. Absolutely. It is an area that has always been difficult to get  
8 the international community to release personnel to come forward in  
9 the specialised area of police and prisons, and, obviously,  
10 prosecution and defence lawyers. So this was particularly acute in  
11 Kosovo at this time, and I was very well aware of it.

12 Q. Thank you.

13 MS. TAVAKOLI: I'd like to tender into evidence the statement of  
14 Mr. Anthony Quinn, please.

15 MR. HALLING: And we object, Your Honour. We have been  
16 indulgent with not objecting to the leading aspects of using this  
17 statement in this way, but this is clearly a statement of a witness  
18 within the meaning of the Panel's definition. It is not tendered  
19 pursuant to Rules 153 to 155, and it cannot be admitted this way.

20 MS. TAVAKOLI: If I may reply. We are seeking to tender it  
21 under Rule 138. It's relevant, it's about post-war Kosovo, and it's  
22 consistent with the witness's evidence. It's authentic. It's a  
23 witness statement from an English proceedings in the High Court in  
24 London. It contains the witness's signature, a date, and an  
25 attestation that the facts stated in this witness statement are true.

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Examination by Ms. Tavakoli

1 It has probative value and its probative value is not outweighed by  
2 its prejudicial effect. It does not fall under Rules 153 to 155  
3 because it is not a witness statement taken in the context of a  
4 criminal investigation or proceeding.

5 The Kontic trial was a civil proceeding, and as such, as  
6 Your Honours have ruled before, a witness statement for the purposes  
7 of 153 to 155 is a record "in whatever form of what a witness said in  
8 respect of facts and circumstances relevant to the case that was  
9 taken in the context of a criminal investigation or proceedings," and  
10 your decision there, Your Honours, is F03340. This is a civil trial  
11 and, therefore, we submit that it seeks to fall to be tendered under  
12 Rule 138.

13 [Trial Panel confers]

14 PRESIDING JUDGE SMITH: Please mark that MFI and give it a  
15 number.

16 THE COURT OFFICER: Your Honours, that will be MFI 1D388.

17 PRESIDING JUDGE SMITH: Go ahead.

18 MS. TAVAKOLI: Thank you.

19 Now, please, could I bring up -- we need to go into private  
20 session now because of the Rule 107 provider.

21 PRESIDING JUDGE SMITH: Into private session, please,  
22 Madam Court Officer.

23 [Private session]

24 [Private session text removed]

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Witness: John Duncan (Private Session)

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Examination by Ms. Tavakoli

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Witness: John Duncan (Private Session)

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Examination by Ms. Tavakoli

1 [Private session text removed]

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3 [Open session]

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

5 MS. TAVAKOLI:

6 Q. In the visit with Wes Clark on 13 August, do you recall if you  
7 had separate discussions with Hashim Thaci at all?

8 A. Yes, we did.

9 Q. And can you tell the Court what you discussed?

10 A. We discussed the ongoing security situation. We asked various  
11 things such as the potential for collaboration amongst the political  
12 parties. We had discussions about, again, the national guard  
13 question. It was a fairly short discussion as I recall.

14 Q. And did you brief General Clark before that meeting?

15 A. I did.

16 Q. Can you recall your briefing?

17 A. Basically, what we -- what I've just described, and I briefed  
18 him to raise these matters. I think in my evidence I may have put  
19 some more detail.

20 Q. You did.

21 MS. TAVAKOLI: If I could please seek to refresh the witness's  
22 memory with paragraph 83 --

23 THE WITNESS: I apologise.

24 MS. TAVAKOLI: -- of his statement.

25 PRESIDING JUDGE SMITH: Yes, go ahead.

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Examination by Ms. Tavakoli

1 MS. TAVAKOLI:

2 Q. That will come up, Mr. Duncan, if you would like to read it.

3 A. Thank you. Ah. Yes. I raised with General Clark the problem  
4 that we had identified, in that the process of demilitarisation was  
5 proving contentious and that Mr. Thaci appeared to be losing support  
6 from amongst some of the zonal commanders who wished to associate  
7 with other parties. Of particular concern were the links to previous  
8 financing of the UCK. And, therefore, this could be a problem for  
9 the process of demilitarisation.

10 I advised General Clark to avoid a public confrontation with  
11 Mr. Thaci because I felt that this would risk undermining his  
12 position. And although he's not a very easy person to work with --

13 Q. Who?

14 A. Mr. Thaci. We needed his continued arguments to -- public  
15 arguments that the undertaking should be conformed with, complied  
16 with.

17 Q. And was General Ceku at that meeting?

18 A. No, they were separate meetings.

19 Q. What was your meeting with General Ceku?

20 A. Again, very much the same sort of themes and asking him for his  
21 assessment of how the demilitarisation was going with the zonal  
22 commanders in particular - were they complying, you know, how was the  
23 atmosphere in the KLA about demilitarisation.

24 Q. And which member of the KLA was responsible --

25 A. I beg your pardon?

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Examination by Ms. Tavakoli

1 Q. Which member of the KLA was responsible for delivering on the  
2 demilitarisation?

3 A. General Ceku.

4 Q. Thank you.

5 MS. TAVAKOLI: We can take the document down.

6 Q. Now, Mr. Duncan, you've given graphic evidence to the Court of  
7 the crimes that were being committed by Albanians against Serbs in  
8 the summer of 1999. Could Hashim Thaci have stopped that violence?

9 A. Independently, no.

10 Q. Why do you say that?

11 A. Because it was not, as far as we could judge, orchestrated  
12 violence. What we wanted him to do was to appeal to his fellow  
13 Kosovars that they should not do this, that they should refrain.  
14 But, of course, we're dealing, as I described, with revenge attacks,  
15 we're dealing with criminal opportunists. So like any politician, he  
16 could appeal for calm, but he could not enforce it. And since it was  
17 not organised by the KLA as far as we could judge and determine from  
18 our reports on the ground and our access to usual sources, this was  
19 the best we could ask of him.

20 Q. And did he appeal for calm?

21 A. He did indeed.

22 Q. Thank you.

23 MS. TAVAKOLI: No further questions.

24 PRESIDING JUDGE SMITH: Mr. Dixon.

25 MR. DIXON: Thank you, Your Honours.



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Cross-examination by Mr. Dixon

1 Cross-examination by Mr. Dixon:

2 Q. Good afternoon, Mr. Duncan.

3 A. Good afternoon.

4 Q. My name is Rodney Dixon. I act on behalf of Mr. Kadri Veseli,  
5 and I have a few further questions for you this afternoon. You said  
6 this morning at page 13 of the live transcript -- we don't have to go  
7 back there. But you were describing your day, when you start very  
8 early in the morning, and you said that one of the key things that  
9 you did was look at all of the available material and information for  
10 the briefing for General Clark. And you said that you looked at  
11 everything that you could find on the internet in the last 24 hours,  
12 you said that you also looked at diplomatic cables that were coming  
13 through, that you read the monitoring services to see everything that  
14 could be picked up, and that you read intelligence assessments as  
15 well.

16 So would it be right to say then that, in your view, you had a  
17 very comprehensive understanding of what had happened on a day-by-day  
18 basis as a result of reviewing all of that material?

19 A. I wouldn't say it was comprehensive because of the problems of  
20 getting reporting out of a war zone and the fact that there were very  
21 few journalists actually in theatre. So it was a picture. It was  
22 not necessarily comprehensive.

23 Q. Yes, you indicated here that you had persons in the field. You  
24 were getting information from them as well?

25 A. Could you be more precise?

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Cross-examination by Mr. Dixon

1 Q. You said that you had operational commanders that you were  
2 getting briefings to and getting information from. Would you get  
3 information directly from the field as well?

4 A. I can't comment on that.

5 Q. And I understand that because of the Rule 107 procedures that  
6 are in place, you're not able to go into details. I'm not going to  
7 press you. But could I just ask for a generic answer that you did  
8 get information from the field about what was happening on a  
9 day-to-day basis? This is in the conflict zone.

10 A. I feel I cannot really answer that question for you.

11 Q. Well, can we just leave it at this, then, that you said you read  
12 any intelligence assessments that were being made. That's correct,  
13 isn't it?

14 A. That is correct, yes.

15 Q. And that was happening on a daily basis?

16 A. Yes.

17 Q. Can I just confirm in terms of the time period that we're  
18 looking at then for all of that information coming through, that this  
19 would have been from August 1998 through the whole of 1999?

20 A. That's correct. That's when I was in post.

21 Q. So these reviews that you were doing each day and the materials  
22 that you were getting, that was happening throughout that period in  
23 1998 and 1999?

24 A. Yes.

25 Q. When you gave evidence earlier that the KLA, from your

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Cross-examination by Mr. Dixon

1 understanding, lacked an organised top-down structure, would that  
2 view have been formed based on information that we've talked about  
3 now that you were getting plus your own experiences? Would it be a  
4 composition of all of that information and material?

5 A. Yes, but it was not a decisive moment where I came to the view  
6 that they didn't have such structure. It was from August 1998, the  
7 situation was constantly evolving. So we had the massacres, Recak  
8 and others. Then, of course, as we got into it, closer to the  
9 conflict, the organisation known as the KLA became much larger than  
10 it had been in previous years.

11 So it's -- if you're asking me sort of at one split moment did I  
12 come to that conclusion? No. I was constantly looking at what I  
13 could see in terms of information coming to me. And as I went  
14 through the material, I did not see any example or instance where  
15 they had sort of organisation which was being claimed by, *inter alia*,  
16 the Serbs and, indeed, themselves.

17 Q. Yes, so it was an evolving situation. But when you looked back  
18 on it at the end of the time going back, it covered the entire period  
19 1998 to 1999?

20 A. I wouldn't dissent to that. That sounds accurate.

21 Q. Thank you. In your witness statement, I'm not going to ask you  
22 to turn it up. I can just read you the relevant parts because it  
23 flows on exactly from what we've been discussing. Paragraph 62, you  
24 say this:

25 "Both in the run up to the Undertaking negotiations in June 1999

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Cross-examination by Mr. Dixon

1 and afterwards I never saw any indication that the UCK/KLA was a  
2 highly disciplined top-down organisation. The UCK/KLA might have  
3 tried to persuade the wider public that it could be compared to a  
4 regular national armed force, for example in public statements, but I  
5 saw this more of a political gesture rather than reflecting reality."

6 Do you stand by that?

7 A. I do.

8 Q. And you said a little earlier in your statement that:

9 "It [was] very common for liberation movements to give  
10 themselves titles or ranks and to call their units by names ([for  
11 example], Battalions or Brigades) that often bear little relation to  
12 their equivalents in regular armed forces."

13 Do you stand by that as well?

14 A. Yes, and it's an accurate description of how guerrilla armies  
15 from the last 80 years have operated.

16 Q. And this was particularly so with the KLA as well?

17 A. Yes.

18 Q. And you said earlier on, and it's also in your statement, about  
19 grandiose titles, titles that had little practical reality?

20 A. Yes.

21 Q. Is it correct, then, that what you've described here in relation  
22 to these titles and these structures applied equally to the  
23 General Staff of the KLA, if you'd heard of that? That the practical  
24 reality was that the General Staff was not an organised collective  
25 controlling and commanding the KLA collectively throughout Kosovo.

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Cross-examination by Mr. Dixon

1 Would that be a correct assessment?

2 A. Perhaps I can offer a comment?

3 Q. Yes, please.

4 A. During my time, I heard reference to the General Staff but  
5 mostly in political statements. I noted from the indictment that it  
6 was created in the mid-1990s when the KLA was a completely different  
7 organisation. It was much smaller. And if they wish to give  
8 themselves grandiose titles such as General Staff, you know, that's  
9 what such organisations tend to do. But by the time I was involved  
10 in it, I saw no evidence that there was such a thing as a  
11 General Staff which had a meaningful military application.

12 Q. Yes, thank you. And you had no meetings with this General Staff  
13 as a collective --

14 A. No.

15 Q. -- during your time there, did you?

16 A. No.

17 Q. You've testified that you did have meetings. We've heard about  
18 these meetings on the 17th and 19th of July -- sorry, June, 17th and  
19 19th of June, but that was with the zone commanders to address them.  
20 That was the focus of the meeting. That's right, isn't it?

21 A. It was with General Ceku and the zonal commanders on the 17th.  
22 And on the 19th, we were joined by Mr. Thaci and some of his  
23 political colleagues.

24 Q. Yes. And you focused on the discussions that you had with a  
25 number of the zonal commanders, quite intense discussions. Would

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Cross-examination by Mr. Dixon

1      that be the correct way to characterise those?

2      A.     Yes.

3      Q.     And that was about demilitarising in their zones and the steps  
4      that would have to be taken in their particular zones?

5      A.     It applied to everybody. But as I said earlier, the major point  
6      where they became forceful was after I halted the discussions, and  
7      they were obviously very upset at being excluded from the  
8      discussions.

9           During the discussions themselves, they all had questions and  
10     things that they wished to clarify, but it was not combative. They  
11     were working with us to come to an agreement.

12     Q.     Yes, I wasn't suggesting that there was combat. In terms to  
13     find an agreement so that they would be able to go back to their  
14     zones respectively and implement that on the ground; is that right?

15     A.     I wouldn't dissent with that description.

16     Q.     So you expected them as the zone commanders to go back to their  
17     different areas, their villages, and ensure that this was cascaded  
18     down and actually did happen?

19     A.     As full participants of the discussion with General Ceku, I  
20     expected that they were going to take it collectively as their  
21     responsibility to make this happen -- collectively and individually.

22     Q.     Yes. And did you, when you were discussing this with any of the  
23     zone commanders, get a sense that they were in touch with their  
24     zones, that they were there representing the various villages and  
25     people in their organisations in their respective areas?

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Cross-examination by Mr. Ellis

1 A. They were the people who had come, they were the people that  
2 General Ceku had told us had to be there. I couldn't comment further  
3 than that.

4 Q. But you would have expected them to go back to their areas --

5 A. Yes.

6 Q. -- to deal with this?

7 A. Yes.

8 Q. Thank you, Mr. Duncan. Those are our questions.

9 MR. DIXON: Thank you, Your Honours.

10 PRESIDING JUDGE SMITH: Mr. Tully.

11 MR. TULLY: Thank you, Your Honour. We have no questions.

12 PRESIDING JUDGE SMITH: Mr. Ellis.

13 MR. ELLIS: Thank you, Your Honour. I think I will be the 20  
14 minutes indicated.

15 PRESIDING JUDGE SMITH: Go ahead.

16 Cross-examination by Mr. Ellis:

17 Q. Good afternoon. We haven't met. I'm Aidan Ellis and I  
18 represent Mr. Krasniqi.

19 A. Yes.

20 Q. We've been speaking a little, both with Ms. Tavakoli earlier  
21 today and with Mr. Dixon, about your sources of information. I think  
22 you've confirmed that in addition to the cables, the reports from the  
23 monitoring services, and any intelligence assessments, you were also  
24 working closely with Mr. Durkee who was covering the Serbian side  
25 particularly; is that --

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Cross-examination by Mr. Ellis

1 A. That is correct. Sorry. That is correct.

2 Q. Thank you. And you were also previously involved in the  
3 deployment of the European Community Monitoring Mission on the  
4 border; is that right?

5 A. That's correct.

6 Q. Thank you.

7 MR. ELLIS: Could I have on screen, please, SPOE00304401, on the  
8 second page, please.

9 Q. This is the unredacted part of a report from the European  
10 Community Monitoring Mission dated 27 November 1998. And I think you  
11 just confirmed that you had started enrolling in August 1998, so this  
12 would be within the period. Have you had a chance to read the  
13 paragraphs there?

14 A. If you would give me a second.

15 Q. Sure.

16 A. Yes, I've read it.

17 Q. Thank you. So this appears to be a report in relation to a  
18 report submitted by the chief of police of Djakovica, and that would  
19 have been part of the Serbian apparatus, wouldn't he?

20 A. It looks like that, yes.

21 Q. And you will see that when US KDOM located the victim and  
22 assessed physical injuries and the placement of an RPG launcher  
23 because it was incompatible with the initial report that the UCK had  
24 initiated the attack. Do you see that in the [Overlapping speakers]

25 ...



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Cross-examination by Mr. Ellis

1 A. I do.

2 Q. [Overlapping speakers] ... report?

3 MR. ELLIS: Can I then take you, please, to another document,  
4 which is SPOE00133489. And this one, to orientate you, is a KDOM  
5 report, a weekly report for the period November 23rd to November 29.  
6 And if we could go to the second page, please, the fourth paragraph.

7 Q. Now, maybe this is the same incident, maybe it isn't, but the  
8 report there is that once KDOM visited the scene, they found evidence  
9 that appeared to contradict the part of the report given by the  
10 police and a further investigation was called for. Do you see that  
11 --

12 A. [Overlapping speakers] ...

13 Q. -- in the report?

14 And if we could look over the page, please, on page -- the page  
15 ending 91, you see a paragraph there beginning "On 27 November ..."  
16 It's the second paragraph down. If I could invite you to read that.

17 A. Yes.

18 Q. So here again was a report received from VJ forces, but KDOM  
19 were not able to confirm whether this was a KLA arms deposit or a  
20 stage-managed operation by the VJ. Are you able to recall whether  
21 you saw these cables or these sorts of cables during the time when  
22 you were in post?

23 A. I certainly saw these types of cables. And I neglected to  
24 mention it in my earlier evidence that, yes, of course, this is one  
25 of the sources of information that we had. And, yes, it's not --

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Cross-examination by Mr. Ellis

1 this one is not particularly surprising if one remembers that the  
2 collapse of Albania in 1997, I think 1997, when all the arms dumps  
3 were raided and -- so there was a lot of weaponry, military weaponry  
4 floating about in the area. So it is -- you can see why it is  
5 difficult for them to say whether it is actually a KLA arms dump or  
6 something else.

7 Q. And you've also confirmed, I think earlier today, around page 72  
8 in the transcript, that you were aware of Serbian propaganda --

9 A. Yes.

10 Q. -- at the time. And is it consistent with reports that you saw  
11 at the time that there were occasions when Serbian propaganda sought  
12 to stage manage operations to portray the KLA in a bad light?

13 A. Yes.

14 MR. ELLIS: Could we then go back a page in the document,  
15 please, to the sixth paragraph on that page.

16 Q. I'll just invite you to read the section beginning "Villagers in  
17 Volujak and Svrhe," with an apology with how I've pronounced them.

18 A. Yeah.

19 Q. Now, you spoke, I think, at the start of your evidence about  
20 your awareness of Albanian society at the time and the importance of  
21 the *kanun*. Do you recall that?

22 A. Yes.

23 Q. And is it right that a part of that reliance on the *kanun* is  
24 that people tended to look to sort things out themselves in reliance  
25 on what you've described as an eye-for-an-eye-type approach?

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1 A. That's the basis of *kanun*. It's not a -- you know, we're not  
2 talking about *kanun* in the Middle Ages, but it's part of the way  
3 society thinks. So, yes, there would be echoes and justification for  
4 people to try and right a wrong by taking action which would be  
5 equivalent. This is roughly how the *kanun* works.

6 Q. Yes. And that approach continued throughout the conflict,  
7 didn't it?

8 A. Yeah. Very much so, yes.

9 Q. And did you read the reports during your time involved in the  
10 area, that people had been killed because of family disputes or local  
11 rivalries?

12 A. I cannot think of any instances in particular, but it wouldn't  
13 have surprised me to see things like that.

14 Can I just come back to you on that? There was an incident in  
15 post-conflict -- again, I have to be careful how I answer this  
16 question. There was an incident where a senior member of the KLA was  
17 involved in a family feud between his family and people around it and  
18 someone else who was not in the KLA. And when this was -- this first  
19 occurred, it was thought that this might be an infringement of the  
20 undertaking. And what actually happened was it was an incident of  
21 the type you are talking about, where there was a family feud going  
22 on between these two families, and one of the families took action  
23 against the other family, and it just happened that one of those  
24 family members was a KLA person.

25 Q. And I imagine on those occasions, unless one investigates

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1     thoroughly, it can be quite hard to tell which side of the line it  
2     falls; correct?

3     A.     Exactly.

4           MR. ELLIS: Your Honours, these two documents I was intending to  
5     tender either through the bar table or through this witness. Perhaps  
6     I can invite Mr. Halling to indicate whether the Prosecution objects,  
7     and then if there is an objection, I can deal with it through the bar  
8     table in the light of the rulings last week.

9           MR. HALLING: We have no objection to admitting them now.  
10    Because of the nature of the documents, we just ask they be  
11    classified as confidential.

12          PRESIDING JUDGE SMITH: I'm not sure, Mr. Ellis, how much of  
13    each of these you're admitting. Page 2 on the first one?

14          MR. ELLIS: The first one was SPOE00304401.

15          PRESIDING JUDGE SMITH: Yes.

16          MR. ELLIS: The only thing that's unredacted on the first page  
17    is the date and the title. I suppose it might --

18          PRESIDING JUDGE SMITH: I'm just asking which pages you want to  
19    tender.

20          MR. ELLIS: I would tender both because the date's relevant for  
21    context.

22          PRESIDING JUDGE SMITH: Page 1 and 2?

23          MR. ELLIS: Yes.

24          PRESIDING JUDGE SMITH: All right. 0304401 at page 1 and 2 is  
25    admitted and remains confidential.

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1 THE COURT OFFICER: Your Honours, that will be assigned  
2 Exhibit 4D107.

3 MR. ELLIS: And the second document was SPOE00133489.

4 PRESIDING JUDGE SMITH: Yes.

5 MR. ELLIS: It's a four-page document. I only used two, but I  
6 think it all may be useful for context.

7 PRESIDING JUDGE SMITH: Any problem with all four pages?

8 MR. HALLING: No, Your Honour.

9 PRESIDING JUDGE SMITH: All four pages of SPOE00133489 is  
10 admitted and will remain confidential.

11 THE COURT OFFICER: Your Honours, that will be assigned  
12 Exhibit 4D108.

13 MR. ELLIS: Your Honour, there was one other document that I  
14 wish to show the witness briefly, but I see I've omitted in error to  
15 put it on the PQ. May I seek permission to show it to the witness?

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. ELLIS: It's an article from the *Telegraph*.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. HALLING: We would need the ERN to know if we have any  
20 position on it.

21 MR. ELLIS: It's DJK02054.

22 MR. HALLING: No objection to this being shown to the witness.

23 PRESIDING JUDGE SMITH: Go ahead, then.

24 MR. ELLIS: Thank you, Your Honour. If I could have that on  
25 screen, please. And apologies that it wasn't on the PQ. If we could

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1 scroll down a little. That's fine. Thank you.

2 Q. Witness, this is an article from the *Telegraph*, I think, at the  
3 time. I'm not sure whether this is something you'll be able to  
4 comment on or not. But you'll see that it begins that:

5 "British and American special forces teams [were] working  
6 undercover in Kosovo with the rebel Kosovo Liberation Army ..."

7 Are you able to confirm the accuracy of that?

8 A. I am not able to comment.

9 Q. Thank you. And were you aware of reports such as this being  
10 published at the time?

11 A. I would have almost certainly have seen this at the time.

12 MR. ELLIS: Your Honour, I would seek to tender it on the basis  
13 that the witness has seen similar reports at the time.

14 PRESIDING JUDGE SMITH: Mr. Halling.

15 MR. HALLING: It's a little thin but no objection.

16 PRESIDING JUDGE SMITH: DJK02054 is admitted. It should remain  
17 confidential? It is public?

18 MR. ELLIS: It's a public report.

19 PRESIDING JUDGE SMITH: Oh. Oh, I'm sorry.

20 MR. HALLING: We agree on this one. It can be public.

21 PRESIDING JUDGE SMITH: It will remain public, then.

22 THE COURT OFFICER: Your Honours, that will be assigned  
23 Exhibit 4D109, and I note it's a three-page article.

24 MR. ELLIS: Yes.

25 PRESIDING JUDGE SMITH: I couldn't hear you.

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1 THE COURT OFFICER: It's a three-page article and Your Honours  
2 just mentioned the first --

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 MR. ELLIS: Yes.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. ELLIS: And those were my questions. Thank you,  
7 Your Honour.

8 PRESIDING JUDGE SMITH: Yeah, we'll break now before you do your  
9 cross-examination.

10 We have a ten-minute break, is all, here.

11 [The witness stands down]

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

13 --- Break taken at 3.26 p.m.

14 --- On resuming at 3.40 p.m.

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

16 [The witness takes the stand]

17 PRESIDING JUDGE SMITH: It's a long day, huh?

18 THE WITNESS: It is.

19 PRESIDING JUDGE SMITH: Mr. Halling with the SPO will have  
20 cross-examination questions for you. Please give him your attention.

21 THE WITNESS: Thank you.

22 MR. HALLING: Thank you, Your Honour.

23 Cross-examination by Mr. Halling:

24 Q. Good afternoon, Mr. Duncan. My name is Matt Halling. I'm a  
25 Prosecutor with the Specialist Prosecutor's Office. I'll be asking

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1     you questions until 4.30 today, and then I'll finish tomorrow.

2     A.     Fine.

3     Q.     So I wanted to start, you were talking about your knowledge of  
4     KLA and PGoK issues, the sources you consulted, the difficulties of  
5     getting reporting in a war zone. I wanted to start, are you familiar  
6     with the People's Movement of Kosovo, or the LPK?

7     A.     Yes.

8     Q.     Are you familiar with the LPK's relationship with the KLA?

9     A.     Yes.

10    Q.     What did you understand that relationship to be?

11    A.     We're looking back a long time, and it's a very detailed  
12    question. As I recall, it was -- how can I put this? It was the  
13    political wing of the KLA. It was part -- if you wanted -- my  
14    understanding was it was part of the same group, if you want.

15    Q.     Are you familiar with the contents of official KLA communiqués?

16    A.     I would see them, not necessarily always, but I would see a lot  
17    of them. They would be reported to me by, as we've seen, ECMM, KDOM.  
18    I would see them in the press, monitoring briefings, things like  
19    that. So I would get them sent to me in various forms.

20    Q.     And what kind of topics were KLA communiqués about?

21    A.     Gosh, a wide range of topics from the political to what they  
22    were doing. But largely, as I read them, part of a -- I mean, I was  
23    a director of communications in one of my previous jobs. Part of a  
24    narrative that they were trying to create of this is a  
25    well-established organisation and with, you know, it's the future of



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1 Kosovo. That's the narrative that they were trying to create.

2 Q. Maybe we can look at an example.

3 MR. HALLING: Could the Court Officer please put on the screen  
4 P273-ET.

5 Q. Now, Witness, the evidence in this case is that KLA communiqués  
6 were sequentially numbered. You see this is Communiqué 28 and it's  
7 dated 16 January 1999. And it begins:

8 "On 26 December 1996 and 7 January 1997, in operational zone no.  
9 1, our armed units carried out two assassinations against  
10 collaborators of the Serbian occupier in Kosovo."

11 And then a couple paragraphs down it says:

12 "The decision to execute them was taken by the KLA Central Staff  
13 after they had been warned earlier to quit their collaboration with  
14 the occupier, and in line with the KLA Central Staff decision  
15 published in Communiqué no. 27."

16 Have you ever seen a communiqué on something like this before?

17 A. This is well before my time. As you know, I started in August  
18 1998. This is January 1997. So it is a different entity to what I  
19 was dealing with. The war had moved on considerably. So I don't  
20 recall ever seeing anything of this nature referring to execution of  
21 collaborators and nation's traitors. And you can see the point of it  
22 at the bottom of the last two paragraphs in terms of the narrative.

23 MR. HALLING: If we could now have on the screen P1752-ET.

24 Q. Now, Witness, you can see at the top of the screen it's  
25 Communiqué No. 80 of the General Staff of the KLA, and it's dated 23

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1 June. Now, it doesn't have a year, but you see at the beginning  
2 under part 2, it says:

3 "A first meeting between COMKFOR and KLA was held on June the  
4 22nd, 1999, in Pristina."

5 So do you see that?

6 A. I do.

7 Q. Now in part 1 of this communiqué, it says the following:

8 "Drenica Operative Zone Intelligence Service has undisputable  
9 information that, up to 1995, Sami, Vehbi and Gani Lutani  
10 collaborated with Yugoslav Secret Services and later with Yugoslav  
11 Army [Services] in Kosovo."

12 And then it says in the next paragraph:

13 "During their armed activity against Kosovar population, they  
14 also raped Kosovar women and girls, where in one case they forced one  
15 of them to commit suicide by jumping off a third floor. For all  
16 these crimes, they were wanted by KLA and on June the 19th, 1999 they  
17 were found and surrounded by the military police force. They called  
18 on them to surrender but they opened fire and as a result of the  
19 gunfight, Vehbi and Gani Lutani were killed, whereas Sami is still a  
20 wanted person. Two of our policemen were wounded."

21 Now, Witness, the KLA is saying this incident happened on  
22 19 June when you were negotiating the undertaking. Are you familiar  
23 with this having happened?

24 A. I am not.

25 MR. HALLING: And just for the others in the courtroom in

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1 relation to this communiqué, we would note P431, page 12; P2868,  
2 pages 2 to 3; P2869, page 5; and pages 2793 and 2794 of the  
3 transcript.

4 The document can be taken off the screen.

5 MR. DIXON: Your Honours, just before that is done, it's not an  
6 objection but just to note that this, as I understand it, is the  
7 English translation of a communiqué and that wasn't on the screen.  
8 So if there's anything to be made of what the witness saw or didn't  
9 see at the time, whether he saw it in the original or some  
10 translation of it, I think that's important to point out. That that  
11 was not what was published as I understand it. That was a  
12 translation of what was published.

13 MR. HALLING: Irrespective of that, my question was about  
14 whether he was familiar with the incident.

15 PRESIDING JUDGE SMITH: That's correct.

16 MR. DIXON: I understand that. That's why I wasn't framing it  
17 as an objection, but just saying if there was any reference made to  
18 whether he saw it or could understand what happened as a result of  
19 that, it wouldn't be fair to put that because this was a translation.  
20 He wouldn't have necessarily read it in the Albanian.

21 PRESIDING JUDGE SMITH: I don't know that he reads the Albanian.

22 MR. DIXON: I don't know that either. That's why I was pointing  
23 this out.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. HALLING: And why don't we just resolve that right now.

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1 Q. Do you speak and understand Albanian, sir?

2 A. Not at that level.

3 Q. Getting back to my questions. Are you familiar with the  
4 contents of any KLA regulations?

5 A. And specifically what regulations are you referring to, may I  
6 ask?

7 Q. We'll start with any regulatory document issued by the KLA.

8 A. At the time, no.

9 Q. Are you familiar with the contents of any KLA orders or KLA  
10 reports?

11 A. KLA reports as reported to the press, yes. Internal documents,  
12 no.

13 Q. Have you ever seen any documents concerning KLA appointments  
14 before?

15 A. That depends what you're referring to. If it's a general  
16 question like that, it's -- I'm sorry, but it's a little bit too  
17 vague. So I can give you an example of things that I saw, and that  
18 was the appointment of Agim Ceku as the commander of the KLA. So  
19 that sort of thing, yes, I saw it. But most of what I saw was not  
20 what we would call raw intelligence, because there's no time for  
21 someone like me in my position to read raw intelligence. What I need  
22 to be able to do is to have intelligence assessments, so that's what  
23 I would generally see, in which there would be, and sometimes they  
24 would be based on, information that people had picked up on internal  
25 documents, as you refer to them, but I would not necessarily see that

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1 document or that regulation. What I would see would be the  
2 assessment by the agencies of something that had happened such as a  
3 regulation or an appointment.

4 I hope that helps.

5 Q. It does. You gave one example in your answer of the appointment  
6 of Agim Ceku. Are there any other examples of appointments that you  
7 saw or that you can remember?

8 A. Nothing significant, no.

9 Q. And from your familiarity with the decision appointing  
10 Agim Ceku, do you remember who issued that decision?

11 A. No, I don't recall.

12 Q. Maybe we can try and refresh your recollection.

13 MR. HALLING: Can we please put P113-ET on the screen, page  
14 008559.

15 Q. And you can see on the bottom of the screen where it says:

16 "In Degree 84/99 dated 28 April 1999, issued by the government  
17 of Kosovo in Prishtina, it is stated:

18 "In reliance on the proposal of the Ministry of Defence of  
19 Kosovo, in reliance on Article 6 Paragraph F of the Law Relating to  
20 the Business of the Provisional Government, the Government of Kosovo,  
21 in its meeting on 27 April 1999, appoints Mr. Agim Ceku to be Chief  
22 of the General Staff of the Kosovo Liberation Army.

23 "This decision comes into force immediately.

24 "Hashim Thaci, Prime Minister."

25 Is this the appointment of Agim Ceku that you saw?

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1 A. I don't think so, no. And it's impressive, but it's propaganda,  
2 I'm afraid. But you would expect this.

3 Q. Are you disputing that Hashim Thaci issued the decision?

4 A. No, I'm not contesting what it says there. I'm looking at what  
5 the language is being used. So we talk about a Ministry of Defence  
6 of Kosovo. What was the Ministry of Defence of Kosovo?

7 Q. Right. You actually answered my question already --

8 A. Yeah, so --

9 Q. -- with what you said.

10 A. Yeah, okay.

11 MR. HALLING: We can take the document off the screen.

12 Q. Are you familiar with a person in the KLA named Azem Sylja?

13 A. It rings a bell. Perhaps you'll refresh my memory.

14 Q. I'll try another name first. Sokol Bashota?

15 A. There are a lot of names, and I have to -- once again, and I'm  
16 sorry, but in dyslexia, names is one of the things that you can't get  
17 and I'm very bad at it. I used to have someone behind me whispering  
18 names when I was an ambassador so that I knew who the heck it was  
19 that I was supposed to be meeting. So the names would be meaningless  
20 to me, I'm sorry to say.

21 Q. If I told you that Azem Sylja was the former general commander of  
22 the KLA and Sokol Bashota was the former deputy commander, do you  
23 have any reason to dispute that?

24 A. Yes, now that you've put them into context, those names are  
25 familiar.

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1 Q. Are you familiar with the names of the KLA operational zones?

2 A. I beg your pardon, the zones themselves or the zone commanders?

3 Q. We'll start with the zones themselves.

4 A. I don't recall what they were called exactly, no.

5 Q. You mentioned a couple of them in paragraph 83 of your  
6 statement. I don't know if we need to put it on the screen --

7 A. No.

8 Q. -- but the sentence was:

9 "Remi and Ramush, zonal commanders of Prishtine and the eastern  
10 zone remained loyal but were hardliners."

11 Did you understand the Prishtine and the eastern zone to be the  
12 names that the KLA gave to two of its zones?

13 A. I think that's taken from a briefing to General Clark, and the  
14 terminology I was using was the terminology used by NATO.

15 Q. So do you know the terminology that the KLA used when describing  
16 its own zones?

17 A. No, I don't recall what it was.

18 Q. Now, you mentioned that Ramush was the zonal commander of the  
19 eastern zone. I take it was the eastern zone in the eastern part of  
20 the country?

21 A. I think there may have been an error there in either the -- when  
22 I wrote the brief or in my later recollection.

23 Q. Okay. So if I put it to you that Ramush Haradinaj was the head  
24 of what was called the Dukagjini zone and that that's in the western  
25 part of --

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1 A. Yeah.

2 Q. -- Kosovo --

3 A. Yeah.

4 Q. -- do you have any reason to dispute that?

5 A. You are correct. Yes.

6 Q. I now want to talk about the undertaking, starting, I guess, in  
7 big-picture terms. A key challenge when drafting the undertaking was  
8 concerns of a renewed Serbian offensive. That's right, isn't it?

9 A. No. We had a Military Technical Agreement with the Serbs. The  
10 undertaking is focused on the part that's missing in the jigsaw,  
11 which was our ability to deal with the Kosovo Liberation Army. We  
12 had no mechanism in which to engage with them, and the risk was they  
13 would become insurgents against us.

14 MR. HALLING: If we can now go to paragraph 32 of the witness's  
15 statement, which is across DHT11893 to DHT11909.

16 Q. Now, Witness, you asked to have your recollection refreshed with  
17 this page of the statement earlier today.

18 A. Mm-hmm.

19 Q. You actually weren't shown that these key challenges continued  
20 on to the next page.

21 A. Mm-hmm.

22 MR. HALLING: If we could flip the page.

23 Q. You can see one at vii:

24 "Kosovars" -- this was a key challenge that:

25 "Kosovars more widely were concerned over long term risk of a



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1 renewed Serb offensive and the international community's willingness  
2 to protect them."

3 That was a key challenge, wasn't it?

4 A. No, that -- yeah, it was a key challenge but you have to  
5 understand how -- what that means. They were concerned that NATO  
6 would not protect them. They were equally concerned that UNSCR 1244  
7 talks about return, and they read it to mean return of the Serbs. So  
8 that's a legitimate concern on their behalf, that the international  
9 community, which had mixed views on the Kosovar Albanians, very mixed  
10 views, and they had a UNSCR which talks about return, they were  
11 concerned that NATO might pull out and they would be subject to a  
12 renewed Serb offensive. As a result of that concern, they might be  
13 resistant to doing an agreement to demilitarise.

14 I hope that explains what that sentence is trying to say.

15 Q. I think so. And from the KLA side in the undertaking, the  
16 undertaking was also supposed to deter KLA reprisals for any UNSC  
17 1244 violations.

18 A. Mm-hmm.

19 Q. That's right? I heard you but --

20 A. Yes. Sorry.

21 Q. -- it needs to be on the record.

22 A. I beg your pardon. I beg your pardon.

23 Q. Yes. And so just one more time clearly on the record, I'll ask  
24 the question again: The undertaking was also supposed to deter KLA  
25 reprisals for any UNSC 1244 violations?

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1 A. Can I just ask you what violations you have in -- because that's  
2 a very vague term, "any violations." What violations in particular  
3 are you concerned about and do you feel the undertaking was related  
4 to?

5 Q. Why don't we just go to the undertaking itself.

6 A. By all means.

7 MR. HALLING: So P1444, paragraph 11.

8 Q. And you see there in the middle of the screen:

9 "The UCK agrees not to conduct any reprisals, counterattacks, or  
10 any unilateral actions in response to violations of the UNSCR 1244  
11 and other extant agreements relating to Kosovo. This in no way  
12 denies the right of self-defence."

13 This was something that you've included in the undertaking; yes?

14 A. Yes, that's right. And what it means, we're talking about  
15 actions in response to violations in UNSCR 1244. What we're talking  
16 about is Serb violations. That's what we're talking about. So the  
17 first part of the sentence is about not to conduct reprisals,  
18 counterattacks. That's their action. The second part of the  
19 sentence is "any unilateral actions in response to violations," so  
20 that's a reaction to Serb violations of the UNSCR 1244.

21 Is that clearer, I think?

22 Q. I follow.

23 A. Yeah.

24 Q. Thank you. And you were talking about -- in your evidence  
25 earlier today about General Jackson's concerns. You were in

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1 agreement with General Jackson that the lack of a demilitarisation  
2 plan as KFOR deployed was a serious problem?

3 A. Very serious problem.

4 Q. And you were talking about the speed of everything. The push  
5 was to get the undertaking finalised by 21 June 1999; correct?

6 A. Yes, that's correct.

7 Q. So the final discussions with the KLA in these negotiations were  
8 particularly sensitive due to time pressure; right?

9 A. Very much so.

10 PRESIDING JUDGE SMITH: Witness, please --

11 THE WITNESS: I beg your pardon.

12 PRESIDING JUDGE SMITH: -- have a slight pause before you  
13 answer.

14 THE WITNESS: I do apologise.

15 MR. HALLING:

16 Q. Witness, when you were negotiating the undertaking, you  
17 negotiated only with the KLA.

18 A. Yes.

19 Q. And you said in your statement, and again in court today, that  
20 this was a military-to-military agreement but with a lot of political  
21 connotations as well.

22 A. That's correct.

23 Q. And your concern was that the functions of the KLA's military  
24 arm and political wing were commingled at this time; correct?

25 A. It's not a term I would use. It was part of -- I had the word

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1 in my mind just a second ago. They were not commingled. It was an  
2 architecture. So not a hierarchical architecture, but an  
3 architecture in which there was a political wing, and in the same  
4 architecture was a military wing, and you've referred me earlier to a  
5 police and intelligence wing, so there are at least three elements to  
6 that architecture of what the KLA was.

7 And it's not a pyramid. It's like a network, if you want.  
8 That's the way that I viewed it.

9 Q. I didn't ask how it was hierarchically structured. They needed  
10 to be divided, these political and military functions?

11 A. I beg your pardon. Yes, you're quite right. We needed to break  
12 the links, however they were, between those three elements.

13 Q. Witness, you discussed how Hashim Thaci represented the KLA in  
14 these undertaking negotiations. What mattered to you at the time was  
15 that the person signing the undertaking had the apparent authority to  
16 sign it; is that right?

17 A. I believe I explained it in slightly more detail than that, that  
18 the undertaking itself creates a series of drivers which motivates  
19 people to do things, and those people are zone commanders, in  
20 particular Agim Ceku. And that once we had that driver in place,  
21 which meant they bought into it, they negotiated it with us, they  
22 were honour bound, and I use the term advisedly, to abide by it.  
23 After that, you need to formalise it.

24 And if they chose to have Hashim Thaci as the signature, that  
25 was okay with us, but the real reality of the undertaking is it

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1 creates that momentum. So it's slightly more complex than you were  
2 implying, if I may.

3 Q. I follow, I think, but just to make sure I do.

4 MR. HALLING: If we can go to paragraph 59 of your statement.

5 Q. And so it says on the bottom:

6 "What was important was that the person signing had the apparent  
7 authority, either delegated (for example in diplomatic ..."

8 And then it continues on the next page:

9 "... (for example in diplomatic terms this would be  
10 plenipotentiary powers) or by nature of their position to sign a  
11 binding agreement."

12 This is what was important.

13 A. The key word is "apparent." The appearance of authority for the  
14 formal document which was going to be handed over. What the  
15 undertaking did is what I've just explained.

16 Q. And you were satisfied that Hashim Thaci had sufficient stature  
17 to sign this document on behalf of the whole KLA.

18 A. It was their request. It was their undertaking. I was not  
19 going to contest that if they wished Hashim Thaci to be the  
20 personification of the KLA and sign, that was okay.

21 Q. Now, before going into the undertaking negotiations more  
22 specifically, I did want to focus on just one part of your drafting  
23 process. So you talked earlier about the Lancaster House Agreement  
24 and Rambouillet and the MTA all being models for the drafting of the  
25 undertaking.

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1 A. That's correct.

2 Q. Were there any provisions on the protection of civilians that  
3 you borrowed from any of the model documents when drafting?

4 A. I really can't recall. It was done very fast. And I would have  
5 to look at the documents again to say: That came from here, that  
6 came from there. You know, it's a very complex drafting process, and  
7 it was done at immense speed. I mean, I have subsequently done  
8 negotiations of major conventions, such as cluster munitions and arms  
9 trade treaty, which take months. We did this in a week. So, you  
10 know, you'd have to bear with me and I'd have to go back and look at  
11 the documents.

12 Q. I understand that. There's one particular provision in the  
13 undertaking I was interested in.

14 MR. HALLING: And maybe we can go to that. So P1444, page  
15 078200, and this would be paragraph 10(d) of the undertaking. And  
16 we'll just wait a moment for it to appear on the screen.

17 Q. It says at the beginning of 10:

18 "The UCK undertakes and agrees in particular:"

19 And then if we can go to the next page:

20 "Not to attack, detain or intimidate any civilians in Kosovo,  
21 nor shall they attack, confiscate or violate the property of  
22 civilians in Kosovo."

23 What was the origin of that?

24 A. It's very difficult to say after so long. I can't recall  
25 similar language in the Lancaster House. It may well be there.

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1 There was a similar situation of a guerrilla army coming in from, in  
2 their case, the bush rather than the mountains, and there was the  
3 risk of attack to civilians. Whether it was -- there was also --  
4 sorry. There was also the problem, which was going to be apparent  
5 and became apparent as we've seen earlier today, was that there would  
6 be a very uncertain situation, and the forces of the civil power, in  
7 this case UNMIK, would not be strong enough to prevent any such  
8 revenge attacks or things that we've talked about. And, therefore,  
9 you know, it was common sense to make sure that we got an undertaking  
10 from the KLA that they were not going to be part of this, that they  
11 were going to, you know, refrain from what happened afterwards.

12 And as I've said before, I, as a French national, am very well  
13 aware of what happened post liberation. So I would be aware of the  
14 risk that such revenge attacks would happen. So I can't give you a  
15 simple answer as to where that came from without further research.

16 Q. Yes. And to at least spare that further research, if I put it  
17 to you that this language of attacking and intimidating civilians  
18 doesn't appear in the Lancaster House Agreement, the Rambouillet  
19 accords, or the MTA, do you have any reason to dispute that?

20 A. If you've done the research, I'll take your word for it.

21 Q. Now, Witness, I would like to go now to the meetings that you  
22 have -- we'll start with the meetings on the 14th and 15th of June,  
23 1999. And I understand you met with Agim Ceku both days?

24 A. Yes.

25 Q. In those meetings, was there anyone else from the KLA side with

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1 Agim Ceku? Do you remember?

2 A. There was a man called Haliti.

3 Q. Do you remember Haliti's first name?

4 A. Xhavit.

5 Q. Xhavit Haliti. And who from the international side was there  
6 besides yourself?

7 A. It varied. On the first day, I believe -- from the  
8 international community, there was a representative of US KDOM on the  
9 first day. And on the second day, there was also a representative of  
10 US KDOM and a US representative as well.

11 Q. And in addition to the evidence you already provided earlier  
12 today on your discussions with Agim Ceku, at one point on 15 June  
13 Agim Ceku asked that the undertaking should be in the KLA's name; is  
14 that right?

15 A. I believe that's correct because I think the original draft said  
16 "armed forces," and the title was changed and that wording was  
17 changed. I mean, I could refer to my notes at the time, but you're  
18 asking me here and that's roughly my recollection.

19 Q. We'll get back to that in a little bit, maybe tomorrow. On  
20 17 June, as I understand from your evidence earlier today, this was  
21 the meeting with the zone commanders?

22 A. That's correct.

23 Q. But you also talked about there being a political wing presence  
24 at this same meeting.

25 A. Yes.



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1 Q. And you said Hashim Thaci wasn't there.

2 A. He was not.

3 Q. Do you know where he was? You were told he was not available.

4 A. On the 17th -- on the 18th, he was definitely in Ljubljana, and  
5 I think he was there on the 17th as well.

6 MR. HALLING: If we could pull up on the screen 1D339-ET.

7 Q. Now, Witness, this is going to be a media report that comes on  
8 the screen. It goes to a video that's in Albanian, so I'll spare you  
9 that and we'll just show the English transcript.

10 A. Thank you.

11 Q. You can see --

12 A. 17th, yes.

13 Q. Yes.

14 "Hashim Thaci and Pandeli Majko in Macedonia."

15 And then you see:

16 "17.06.1999.

17 "Albanian Radio and Television."

18 And it begins:

19 "Moderator: After his meetings with the highest Macedonian  
20 officials, Prime Minister Pandeli Majko travelled to Tetova where  
21 hundreds of Albanians gathered to welcome him. First at the premises  
22 of Tetova municipality, the chief of the Albanian Government, Pandeli  
23 Majko met with the President of the Kosovo Provisional Government,  
24 Hashim Thaci, with whom he had a long tête-à-tête meeting."

25 Did you know that on 17 June 1999 Hashim Thaci was meeting with

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1 high-level officials in Macedonia and the Albanian prime minister?

2 A. Hang on. This is taking place in Albania -- in Macedonia, isn't  
3 it? The 17th. So this is -- he met them at Tetovo -- yes, I --  
4 well, I knew he was definitely there on the 18th, but as I said, I  
5 had a -- I couldn't be sure whether it was on the 17th as well.

6 Q. But did you know that he wasn't with you on the 17th because he  
7 was meeting a prime minister?

8 A. No.

9 Q. I'd now like to show you a notebook that we have that's in  
10 evidence.

11 MR. HALLING: If P3910 can be put on the screen, and  
12 specifically page SPOE00229442.

13 Q. Now, just for context, this is something that we found in  
14 Jakup Krasniqi's residence, and there's a page of notes on it that I  
15 wanted to show you. And it's here.

16 MR. HALLING: And actually I don't think we need the original  
17 Albanian because the witness will only look at the English, and then  
18 we can make the English bigger.

19 Q. Witness, I'd just like to give you a moment to familiarise  
20 yourself with the contents of the page.

21 MR. HALLING: And we may need to scroll down to capture -- yes,  
22 there. Thank you.

23 MR. ELLIS: Your Honour, whilst that's being read, we would like  
24 to see the original Albanian in this case to be able to check what's  
25 written, please.

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1 MR. HALLING: It's P3910. I don't see the value in the witness  
2 having it. We don't have strong feelings.

3 PRESIDING JUDGE SMITH: Pull it up.

4 MR. HALLING:

5 Q. Witness, that made the font smaller, but please just focus on  
6 the right side of the screen. When you're familiar, my question is  
7 going to be: Are these topics raised during the 17 June 1999  
8 meeting?

9 A. Some of them.

10 Q. We'll focus on a few.

11 "I still recommend the document to be titled ..."

12 Do you see that?

13 A. Yes.

14 Q. "... 'The undertaking of the KLA demilitarisation'.

15 "This shows ... you are doing this with your own choice."

16 Witness, was it stressed to the KLA on 17 June that it would be  
17 good if it was clear that the undertaking came from them?

18 A. It was made very clear to them that this had to be a unilateral  
19 undertaking.

20 Q. What is here under point 4:

21 "Within 90 days, all KLA forces will finish the demilitarisation  
22 of the KLA."

23 Was this 90-day deadline discussed in the 17 June 1999 meeting?

24 A. Yes, it was their request.

25 Q. Under point 5, aren't these the same points, the political

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1 points you said the KLA demanded at this meeting and which become  
2 paragraph 25 of the undertaking?

3 A. This is, indeed, a reiteration of what Krasniqi had said  
4 publicly in a statement, which I did see, which is calling for --  
5 that became -- that's the basis of what became paragraph 25.

6 Q. And for point 2, where it says:

7 "We will change word ... Kosovo at KLA- ... this will be  
8 throughout the text."

9 If I put it to you that it said "Kosovo Albanian forces" in an  
10 earlier draft, does that refresh your recollection?

11 A. I think that's right, yes. Yes, indeed. Now you say it, I  
12 think that was the original title, Kosovo Albanian forces.

13 Q. And the KLA insisted that it be changed to KLA.

14 A. They requested it. They requested it. They didn't insist, and  
15 we were quite happy to do that.

16 Q. Okay. You spoke about Ramush Haradinaj being there on 17 June  
17 1999. Yes?

18 A. Yes, indeed.

19 Q. And you -- did he stay throughout the entirety of the -- the  
20 entire duration of the negotiations?

21 A. Well, the negotiations in Kosovo only took place on the 17th in  
22 the evening and on the 19th through the whole day. He was -- as far  
23 as I can recall, he was there the entire time.

24 Q. We have an interview of Ramush Haradinaj in a book that I would  
25 like to show you.

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1 A. Famous book, yes.

2 MR. HALLING: So if we can go to SPOE00053072 to 00053085-ET,  
3 and it'll be on page SPOE00053082, and it's columns but it's on the  
4 left side of the page.

5 THE WITNESS: I know its irregular, but you didn't ask me what  
6 wasn't in there, and there's one glaring example of what wasn't in  
7 there.

8 MR. HALLING:

9 Q. Go ahead.

10 A. The General Staff and the command structure of the KLA. That  
11 was never discussed, did not come up.

12 Q. But all of the other topics that we listed --

13 A. The ones --

14 Q. -- they are all topics you recall from the discussions on  
15 17 June?

16 A. The ones that you have asked me about, yes.

17 Q. Now to focus --

18 A. Sorry.

19 Q. -- on the left side of the page here. The interviewer asks  
20 Ramush Haradinaj:

21 "Let us now talk about the procedure for reaching an agreement  
22 on the transformation of the KLA."

23 Answer:

24 "The first meetings on the transformation of the KLA were also  
25 held in Berisha. I recall a meeting in which John Riff," it says, "a

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1 senior NATO commander who had come from Albania under extraordinary  
2 pressure, demanded that we accept an agreement to demilitarise ...  
3 within the first thirty days. This meant handing over our weapons  
4 and our uniforms within 30 days, and returning home."

5 He was then asked another question, and then in the next answer  
6 he adds:

7 "The first challenge was that the discussions focused on the  
8 disarmament of armed groups. Jakup Krasniqi reacted very well. He  
9 demanded that there be no talk about the transformation agreement" --  
10 sorry.

11 "He demanded that there be no talk about the disarmament of  
12 Albanian armed groups, but rather about the Kosovo Liberation Army,  
13 because it was about an army. Of course, [the] reaction of  
14 Jakup Krasniqi was supported by all of us."

15 So this meeting with John Riff, the transformation agreement,  
16 where -- is this consistent with your recollection of the 17 June?

17 A. It's a perception from the Albanian side, Kosovar Albanian side  
18 of what we were discussing on 17 June. The 30 days, I don't recall  
19 that we actually had in the first draft "30 days." It strikes me as  
20 an unrealistic date to do. To disarm an army of 20.000 people in 30  
21 days seems ambitious, but I could be wrong there.

22 The question of Albanian armed groups was my sloppy drafting at  
23 the beginning. When I drafted it, I put in a title which was about  
24 Albanian armed groups, and they said, "We want to be -- a proper  
25 title of the Kosovo Liberation Army." And since we were talking to

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1 the KLA, we agreed and said, "We'll be precise in our language here.  
2 We're not talking about unnamed Albanian armed groups, we're talking  
3 about you. You call yourselves the Kosovo Liberation Army. It's  
4 your undertaking. We're happy for you to put it in here." He is  
5 saying it's because it's about an army with all he implies in all  
6 that. That is not the way we saw it. It's his perception.

7 Q. And then just below that in the question:

8 "Who was at that meeting?"

9 Ramush Haradinaj responds:

10 "All zone commanders and the Political Directorate of the KLA  
11 General Staff attended the meeting, though Hashim Thaci was absent.  
12 He was not at this meeting. As far as I know, he was in Skopje that  
13 day meeting with James Rubin, in an attempt to advance these talks."

14 And you had said in your evidence earlier today that  
15 Hashim Thaci was not there on the 17th and there were political  
16 representatives.

17 A. That's correct.

18 Q. Correct?

19 A. That's correct.

20 Q. Now, this reaction of Jakup Krasniqi about the Albanian armed  
21 groups where you were just commenting on the drafting, do you  
22 remember Jakup Krasniqi making this intervention?

23 A. Yes.

24 Q. Now, you were shown a video of these developments, and I think  
25 we won't be able to show parts of the video until tomorrow because

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1 we're almost out of time, but just to start the topic, you were shown  
2 footage of the banquet that followed the negotiations.

3 A. Yes.

4 Q. You remember this from your evidence earlier today. And you  
5 were talking about how this was a very important part of negotiations  
6 in the Balkans, and it was pretty much the same people. Were the  
7 people you considered to be the most important all at that banquet?

8 A. I think it was a more restrictive group of people than were  
9 actually in the room, because there are -- as you see from the video,  
10 there are a lot of people in the room. It was a more restrictive  
11 group. I think Ramush -- yes, Ramush was there. I think Remi was  
12 there. There were around about roughly 12 people around the table,  
13 maybe a bit more, maybe 14, but there were considerably more people  
14 in the negotiations. How they were chosen, I couldn't tell you.

15 Q. Okay.

16 MR. HALLING: Now, Your Honours, I note the time. We could stop  
17 for the day here.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Do not speak to anyone outside the courtroom about your  
20 testimony. We'll see you tomorrow morning at 9.00. Thank you for  
21 being with us today.

22 THE WITNESS: Thank you.

23 [The witness stands down]

24 PRESIDING JUDGE SMITH: All right, Mr. Ellis.

25 MR. ELLIS: Your Honour, I just wanted to ask for tomorrow that



1 where documents are originally in Albanian or where there is an  
2 Albanian translation, it would assist if that could be displayed on  
3 the screen as well for the benefit of Mr. Krasniqi who does not speak  
4 or read English.

5 PRESIDING JUDGE SMITH: Thank you. That can be done.

6 MR. HALLING: We can, Your Honour.

7 PRESIDING JUDGE SMITH: Yeah.

8 So we'll see you tomorrow morning. We're adjourned until  
9 9.00 a.m.

10 --- Whereupon the hearing adjourned at 4.29 p.m.