

1 Tuesday, 23 September 2025

2 [Open session]

3 [The accused entered the courtroom]

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

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

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

10 PRESIDING JUDGE SMITH: I note for the record that all accused
11 are present in court today.

12 Today, we will continue to hear the evidence of the Thaci
13 Defence Witness 1DW-006.

14 Before we start hearing the evidence of the witness, there are
15 some preliminary matters the Panel would like to address. First, an
16 oral order.

17 The Panel recalls that at yesterday's hearing the Thaci Defence
18 tendered for admission a document which the Panel marked for
19 identification as MFI 1D00388. The SPO objected to its admission
20 since the document is a written statement given by a witness and
21 should therefore be tendered pursuant to Rules 153 to 155. The Panel
22 and Defence in turn replied that the -- I'm sorry, the Thaci Defence
23 in turn replied that the concerned statement is not subject to
24 Rules 153 to 155 as it was not taken in the context of a criminal
25 proceeding, referring to the definition used by the Panel in F03340.

1 This is at pages 104 to 105 of yesterday's live transcript.

2 As previously reiterated by this Panel, Rules 153 and 155 are
3 *lex specialis* in respect of the evidence that comes within the scope
4 of the notion of a written statement given by a witness. See, for
5 example, F01852, paragraph 10. Where the proposed evidence qualifies
6 as a statement, it must therefore be offered pursuant to one of these
7 rules so as to ensure that a party cannot circumvent the particular
8 safeguards provided for the admission of witness evidence.

9 The Panel observes that Rules 153 to 155 do not limit their
10 scope to written statements given by witnesses in the context of a
11 criminal investigation or criminal proceedings. In respect of the
12 Panel's wording in F03340, the Panel notes that the word "proceeding"
13 is not limited to criminal proceedings. In support of this, the
14 Panel directs the parties and participants to filings F01700,
15 paragraph 68; F0152, paragraph 8; and F00334, paragraphs 84 to 87 in
16 Case 07, which are all referenced in footnote 34 of F03340. For the
17 purpose of Rules 153 and 155, it suffices that the concerned
18 statement is testimonial in nature and was given in relation to legal
19 proceedings.

20 In this instance, there is no question that the proposed item
21 constitutes a written statement of a witness. MFI 1D00388 is clearly
22 marked "Witness Statement of Squadron Leader Anthony Quinn" and was
23 given before the High Court of Justice, Queen's Bench Division.
24 Accordingly, the Panel finds that the concerned statement falls
25 within the definition of statements within the meanings of Rules 153

1 to 155.

2 Therefore, the Panel considers that no prejudice arises by MFI
3 1D00388 not being admitted into evidence as the Thaci Defence was
4 given ample possibility to put relevant passages of that statement
5 for comments of the witness and elicit further evidence from him on
6 those points.

7 For these reasons, the Panel rejects the request for admission
8 of MFI 1D00388 and directs CMU to vacate the document's MFI status.

9 This concludes the Panel's oral order.

10 Second, the Panel notes that so far the amount of time used to
11 cross-examine the first three Defence witnesses by the other Defence
12 teams has been well below the times initially estimated. The Panel
13 therefore requests that the parties exercise greater diligence in
14 providing time estimates for future witnesses.

15 In this respect, the Panel reminds the parties that throughout
16 these proceedings it has been flexible with respect to their request
17 for additional time to examine witnesses.

18 We will now continue with the evidence of Thaci Witness 1DW-006.
19 Madam Court Officer, please bring the witness in.

20 [The witness takes the stand]

21 PRESIDING JUDGE SMITH: Good morning, Witness.

22 THE WITNESS: Good morning.

23 PRESIDING JUDGE SMITH: Today we will continue with your
24 testimony. I remind you to please try to answer the questions
25 clearly, with short sentences. If you don't understand a question,

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1 feel free to ask counsel to repeat the question, or tell them that
2 you don't understand and they will clarify. Also, please remember to
3 try to indicate the basis of your knowledge of the facts and
4 circumstances upon which you will be questioned.

5 I remind you that you are still under an obligation to tell the
6 truth as stated by you in your solemn declaration.

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

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

12 We will now continue with the cross-examination by the SPO.

13 Mr. Halling, you have the floor.

14 MR. HALLING: Thank you, Your Honour.

15 WITNESS: JOHN DUNCAN [Resumed]

16 Cross-examination by Mr. Halling: [Continued]

17 Q. Good morning, Witness.

18 A. Good morning.

19 Q. So as the Judge said, I'll be continuing with my questions this
20 morning.

21 PRESIDING JUDGE SMITH: [Microphone not activated]. We have a
22 technical problem. No transcript is up.

23 [Trial Panel and Court Officer confers]

24 PRESIDING JUDGE SMITH: All right. Go ahead. Sorry for the
25 interruption.

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1 Wait.

2 [Trial Panel and Court Officer confers]

3 PRESIDING JUDGE SMITH: You may proceed.

4 MR. HALLING: Thank you, Your Honour.

5 Q. As I was saying, I will continue with my questions for you this
6 morning. We'll see if we can finish by the 11.00 break.

7 Now, just to go back to where we were at the end of yesterday.
8 We were finishing yesterday talking about the extent of the zone
9 commanders' involvement at the 17 June 1999 undertaking negotiations
10 and Ramush Haradinaj in particular.

11 To start today, can you give the names of every zone commander
12 there that day which you can remember.

13 A. Forgive me, the answer is no. Obviously, you deal with this
14 every day. I haven't dealt with this in this level of detail for 26
15 years. You know, I can remember some of the very key people like
16 Remi, Haradinaj, but if you showed me the picture, which we saw on
17 the video, you can see who is there. As to their individual names,
18 26 years on, I'm sorry, I can't remember.

19 Q. When talking about Ramush Haradinaj yesterday, you said he was,
20 as far as you could recall, there the entire time, and you also said
21 that he was part of the more restrictive group invited to the
22 post-meeting banquet. You remember this from yesterday?

23 A. Yes.

24 Q. I'd like to go back now to that Ramush Haradinaj 2001 interview
25 that we were looking at yesterday.

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1 MR. HALLING: So if we could pull up again SPOE00053072 to
2 00053080, and we can just start there for a moment. So we'll start
3 on page SPOE0053080. And thank you, Madam Court Officer, for putting
4 the accompanying Albanian.

5 Q. Just to orient you, this is the subsection of the interview on
6 the transformation of the KLA. Now, Ramush Haradinaj doesn't have
7 any discussion in this subsection about the 19 June negotiations
8 specifically, but he does say something else about the 17th that I
9 wanted to show you.

10 MR. HALLING: If we could now go to SPOE00053082.

11 Q. Now, we talked yesterday about the left side of this page.
12 Let's continue from the bottom and then go to the right. So it says:
13 "You started talking about Jakup [Krasniqi's] reaction."

14 And then on the next page on the right -- sorry, the next column
15 on the right, it says the following:

16 "Jakup Krasniqi reacted to the wording of the demand: not to
17 disarm armed groups, but to talk about the Kosovo Liberation Army. I
18 spoke there too and said that we should talk about transformation,
19 not disarmament. Then everyone spoke, including General Ceku, who
20 was very adamant. He stressed that, given the circumstances, our
21 heritage and other factors, we would transform, lose the liberating
22 role we had in the war, but we would want to continue as a structure
23 to help rebuild and develop Kosovo and, of course, help our people's
24 aspirations for a future defence mechanism in Kosovo. The beginnings
25 of negotiations for the transformation of the KLA took place at this

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1 meeting in Berisha. I got angry during this first meeting because of
2 what I heard, and I left the meeting. I only attended one session
3 and never went back again."

4 Now, Witness, in addition to what Ramush Haradinaj says here
5 about getting angry and not coming back, he was also not in the
6 banquet footage that you were shown yesterday. Is it possible that
7 you are mistaken that Ramush Haradinaj was present for the entire
8 duration of the negotiations?

9 A. You assert that he isn't in the picture of the banquet, as it's
10 called. Could we perhaps have another look at that?

11 MR. HALLING: Certainly. If we can go to 1D287, and the
12 timestamp that was played for you yesterday was 05:48 to 06:29. And
13 because we're just looking at the video, there is no need to have a
14 transcript for this particular section.

15 [Video-clip played]

16 MR. HALLING:

17 Q. He's not in the footage, is he?

18 A. He's not in the footage. That's correct.

19 Q. So I'll ask my previous question again: Is it possible that you
20 are mistaken that Ramush Haradinaj was present for the entire
21 duration of the negotiations?

22 A. It depends what you're defining. I mean, I'm not quite sure
23 what your point is about this, if I may say so. What he says in the
24 book is a pretty accurate description of what happened in the
25 negotiations. Then the banquet happened afterwards. As I said,

1 that's an important part of discussions, but it's not negotiations.
2 Negotiations are when you're looking at the text and discussing a
3 text and the ideas about it. The breaking of bread, as I described
4 it, is a discussion, free-ranging, frank, but not in any structured
5 way. So it's not a negotiation. It's a way to exchange views, to
6 sort things out frankly, but it's not -- as you can see quite
7 clearly, it's not one person leading the discussion. It's a series
8 of people talking about various things and expressing views. It's an
9 important part of the process, but it's not the negotiation.

10 The negotiation took place, as you saw earlier in the picture,
11 in a particular room where we had the text, we exchanged views in a
12 structured manner with interpretation. There's no interpretation,
13 for example, at the banquet as it's called. It was a more
14 free-ranging discussion. But I'm not quite sure what your point is.
15 I hope that gives you a feel for what I experienced.

16 Q. Thank you, Witness.

17 MR. HALLING: Your Honours, we'd ask to admit Ramush Haradinaj's
18 answers on the transformation of the KLA of which the current page is
19 part. The range is SPOE00053080 to 00053085. This should be
20 admitted with its full context. It goes to the reliability of the
21 witness's recollections and the inferences made about the extent of
22 the involvement of the zone commanders in the negotiations.

23 PRESIDING JUDGE SMITH: Any objection?

24 MS. TAVAKOLI: Your Honour, we don't object to the specific part
25 that was put to the witness to be admitted into evidence, but

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1 anything else we would object to. And also we object to the framing
2 by Mr. Halling. What Mr. Halling is framing is purported answers,
3 not his answers. And in Mr. Halling's question I note that he didn't
4 go to the part of the video that this witness says happened on the
5 19th.

6 MR. HALLING: Your Honour, we don't know how else to show that
7 the 19th negotiations aren't discussed in this section other than by
8 tendering the six pages.

9 PRESIDING JUDGE SMITH: SPOE00053080 to 53085 is admitted.

10 THE COURT OFFICER: Your Honours, that will be assigned
11 Exhibit P4493. And public, right?

12 MR. HALLING: Correct.

13 Q. Now, Witness, we just saw part of the video yesterday from the
14 17th. I want to now go to the part of that video about the
15 negotiations themselves.

16 Now, you were shown that whole section of the video, and you
17 were asked who you could identify. You recognised yourself,
18 General Ceku, General John Reith, Ramush Haradinaj, you said Remi you
19 think was there, and other names you could not remember.

20 MR. HALLING: And this is from page 49 of the realtime
21 transcript yesterday.

22 Q. I want to now try and be a little bit more specific about people
23 in the video and what you remember about them. We can start with an
24 easy one.

25 MR. HALLING: Can we go to timestamp 03:07.

1 Q. Now, the people that are just off to the centre of the shot and
2 the person kind of at the back of the table, is that General John
3 Reith?

4 A. Underneath the pillar, if you see the brown part, sitting next
5 to me is General John Reith.

6 Q. Right. And you've already answered my next question. You're
7 sitting just to his right.

8 A. Yes.

9 Q. Correct?

10 A. No, to his left.

11 Q. Oh, I apologise. To the right of the photo, to the left at the
12 orientation of the table.

13 MR. HALLING: If we can now go to the 05:00 mark.

14 Q. I want to focus on the gentleman in the centre. Who is that?

15 A. That's General Ceku.

16 Q. And who is the person seated to his left, to the right in the
17 photograph?

18 A. Mr. Krasniqi.

19 Q. Okay. Now, Agim Ceku and Jakup Krasniqi, were they zonal or
20 regional commanders?

21 A. Could you make this clear what you're actually wanting me to
22 say? The simple answer is yes, they are -- sorry. I beg your
23 pardon, no, of course, they're not. You know this, I know this,
24 everybody knows this, so I'm not quite clear what the purpose of your
25 question is.

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1 PRESIDING JUDGE SMITH: Witness, first of all, just answer the
2 question.

3 THE WITNESS: I beg your pardon, Mr. President.

4 MR. HALLING:

5 Q. Yes. The purpose of my questions is beyond the scope of what
6 we're asking you to do. It's just -- you said no, they're not zone
7 commanders. That's actually all that I needed to know.

8 MR. HALLING: I would now like to go to 04:47 in the video.

9 Q. Now, Witness, there's a gentleman that's about to come into the
10 shot. I'm going to actually play the video for about 10 seconds, and
11 I want to ask you a question at the end of that about the person that
12 you'll see in this next section.

13 MR. HALLING: So if we could play from here to 04:57 on the
14 tape.

15 [Video-clip played]

16 MR. HALLING:

17 Q. That gentleman who is now on the far left of the still, do you
18 know who that is?

19 A. I do not recall who it is.

20 Q. Do you know if that's a zone commander?

21 A. Since I do not recall who it is, I cannot say whether he is or
22 is not.

23 Q. Does the name Bislim Zyrapi mean anything to you?

24 A. After 26 years, as I've explained to you, the individual names
25 of the commanders, I cannot recall.

1 MR. HALLING: If we can now go to a still at minute mark 04:23.

2 Q. This gentleman in the blue-and-black striped shirt, who is that?

3 A. We have wandered into a sensitive area, Mr. President. I know
4 who this gentleman is, and he is a person of particular interest to
5 us -- was. But I'm not sure that I'm prepared to or able to reveal
6 who he was.

7 Q. Witness, would it assist to go into private session for me to
8 ask this question?

9 A. I doubt it.

10 Q. Witness, yesterday you were talking about Xhavit Haliti. That's
11 Xhavit Haliti, isn't it?

12 A. That is not the gentleman that I was told was Xhavit Haliti who
13 was at the meeting in Tirana.

14 Q. The person in the blue-and-black striped shirt, do you know if
15 they're a zone commander?

16 A. Could we go into private session and I can perhaps explain
17 something here?

18 MR. HALLING: It's certainly fine from our side, Your Honour.

19 PRESIDING JUDGE SMITH: Any objection?

20 MS. TAVAKOLI: No, Your Honour.

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

23 [Private session]

24 [Private session text removed]

25

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1 [Private session text removed]

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20 [Open session]

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

22 PRESIDING JUDGE SMITH: Thank you.

23 You may go ahead.

24 MR. HALLING:

25 Q. Now, Witness, without revealing any of the information you just

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1 provided us in private session, is it possible just to say "yes" or
2 "no" as to whether you are aware is this person -- was this person a
3 zone commander?

4 A. Not as far as I recall.

5 MR. HALLING: If we can now go to 04:06 in the video.

6 Q. This gentleman in the centre of the screen, do you know who this
7 is?

8 A. I do not know his name, but I know who he is. I beg your pardon
9 for the translators. I do not know his name, but I know who he is.

10 Q. Who is he?

11 A. He's one of the senior members, as I recall, of the police
12 intelligence function.

13 Q. How did you know that?

14 A. I cannot reveal that.

15 Q. And if I put it to you that this was Kadri Veseli, do you have
16 any reason to dispute that?

17 A. I have no reason to dispute it.

18 Q. So, Witness, there were quite a number of people at this meeting
19 on 17 June that you either knew were not zone commanders or you did
20 not know their precise functions; is that correct?

21 A. It's entirely possible.

22 MR. HALLING: This can be taken off the screen.

23 Q. I would now like to ask one follow-up question about a picture
24 that the Defence showed you yesterday.

25 MR. HALLING: And if we could have 1D385 on the screen.

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Cross-examination by Mr. Halling (Continued)

1 Q. Now, you briefly put on the record which people in this
2 photograph you said were zone commanders and which were not. It was
3 not entirely clear from the transcript yesterday whether the
4 gentleman on the far left was, in your understanding, a zone
5 commander. Could you just answer that question?

6 A. Which left? I beg your pardon. I beg your pardon.

7 Q. Yes, I need to be --

8 A. Are we talking about the left of the picture or as they are
9 standing?

10 Q. Excellent question. I'm referring to the left of the
11 photograph. So if you see the gentleman --

12 A. In the picture --

13 Q. -- in the suit in the photograph, the person to his left in the
14 photo -- from our perspective looking at the photo.

15 A. I'm sorry, I'm still slightly confused. Can I just explain who
16 I think were zone commanders?

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 THE WITNESS: I beg your pardon.

19 PRESIDING JUDGE SMITH: [Microphone not activated] Hold up.

20 THE WITNESS: I beg your pardon.

21 PRESIDING JUDGE SMITH: We're having a technical problem again.

22 [Trial Panel and Court Officer confers]

23 PRESIDING JUDGE SMITH: You may continue. Sorry about the
24 interruption. Maybe ask the question over again.

25 MR. HALLING:

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1 Q. Yes. Now, maybe I can make this simpler. Now, you said
2 yesterday that in the photograph that you thought one of the people
3 was Remi. Can you describe which person in the photo you think is
4 Remi.

5 A. Counting from the right as the picture here, the man in the
6 sweatshirt is, I believe, one of the zone commanders. I seem to
7 recall his face. Remi is the man sitting -- standing immediately to
8 his right. Then the person -- I don't know who that -- I cannot
9 remember who that person was. And then there's another zone
10 commander whose name I don't recall standing next to him, so on the
11 extreme left of the picture.

12 Q. Right. And it was that last gentleman that I was asking about.
13 Witness, are you familiar with the name Nuri Bexheti?

14 A. As I've said to you already, the names of the zone commanders,
15 after 26 years, and they're Albanian names, I can't remember which
16 they were.

17 I mean, I think -- if I may comment on the line of questioning
18 because it confuses me slightly.

19 You're asking me whether I can identify individual people. That
20 was not what I was doing there. I was not there going, oh, we've got
21 all the zone commanders. I said to -- Ceku had told me, "We have to
22 have the zone commanders there." That's what he told me. So I had a
23 natural assumption that he had all his zone commanders. And if he
24 hadn't got any, he'd tell me, "I'm missing one of my zone
25 commanders." But it's not particularly germane to ask me if I

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1 recognise them all.

2 PRESIDING JUDGE SMITH: Witness --

3 THE WITNESS: I'm sorry, I can't understand that.

4 PRESIDING JUDGE SMITH: -- you're going to have to just answer
5 the questions as they're asked.

6 THE WITNESS: Yeah, I'm sorry, but it's -- I am just slightly
7 confused as to how I'm supposed to answer this.

8 PRESIDING JUDGE SMITH: Well, just listen to the question
9 carefully then. There's a reason.

10 THE WITNESS: Thank you.

11 MR. HALLING: Yes.

12 Q. And, Witness, in terms of names and whether any names refresh
13 your recollection, there's a page from a book that I actually would
14 like to show you to see if any of the names refresh your
15 recollection.

16 A. Please do.

17 MR. HALLING: If we could go to P1264, and specifically page
18 SPOE00128903.

19 A. Witness, just for context as to what this is, this is a book of
20 an Albanian journalist named Nuhi Bytyqi who claims to have been at
21 the negotiations on 19 June 1999, and he rattles off at one point in
22 his book the names of the people there. And I'll show you this
23 section and read the names.

24 Q. And so we'll start where it says: "Meetings in Berisha
25 Mountains and the Toast at KLA SHP /General Staff/ in Divjaka."

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1 And this is just to orient you where it says:

2 "On 19 June, we went with Abaz to the Berisha Mountains, at
3 Fshati i Ri, where a part of the Kosovo Provisional Government was
4 operating. Prime Minister Hashim Thaci had arrived by helicopter
5 from Tirana with the spokesman of the US Department of State,
6 James Rubin."

7 If we could now turn the page to SPOE00128904:

8 "At the KLA SHP headquarters in Divjaka, Abaz and I exchanged
9 warm greetings with the main leaders of the Kosovo Provisional
10 Government and the Kosovo Liberation Army. There, in addition to
11 Hashim Thaci, we met with Jakup Krasniqi, member of the government
12 cabinet, General Agim Ceku, who had been the member of the Kosovo
13 Liberation Army General Staff, Fatmir Limaj, Kosovo deputy defence
14 minister, Xhavit Haliti, one of the founders of the KLA and member of
15 the KLA SHP and who was currently heading the Kosovo office in
16 Tirana, Rexhep Selimi, minister of order, Kadri Veseli, head of the
17 Kosovo Intelligence Service, Rame Buja, local government minister,
18 Sylejman Selimi, Kosovo Guard commander, Bislim Zyrapi, Sali Veseli,
19 who were members of the KLA SHP, Pashtrik Operational Zone Commander
20 Tahir Sinani, Drenica Operational Zone Commander Sami Lushtaku,
21 Haxhi Shala, Nuri Bexheti, Ferat Shala, Elmi Recica, Mensur Kosumi,
22 Dilaver Goxhaj, Numan Balic, and other military and government
23 officials."

24 Witness, note that Ramush Haradinaj is not named in this list,
25 but who in this list of names do you know?

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1 A. Again, you put me in a difficult position. The Kosovo side did
2 not introduce at any stage who they were. So these people may or may
3 not have been there. I had no means to know whether they were part
4 of the Kosovo delegation.

5 Q. But many of these individuals you've named already that you're
6 familiar with. Hashim Thaci you know; yes?

7 A. Yes, indeed.

8 Q. Agim Ceku?

9 A. Yes.

10 Q. Jakup Krasniqi?

11 A. Yes.

12 Q. You mentioned knowing the name of Xhavit Haliti?

13 A. As we've discussed, there was a person who was introduced to me
14 as that name at the meeting in Tirana.

15 Q. Now, to the best of your recollection, of all the names of the
16 people in this page that you'd know, were they all at the
17 negotiations on 19 June?

18 A. As I said, I simply can't say who was or was not there in this
19 level of detail because I wasn't focusing on who was there. The key
20 people we were discussing it with are the ones you've just mentioned,
21 and the rest were not introduced to us. They did not do a *tour de*
22 *table* saying: This is so-and-so, so-and-so, and so-and-so, so I have
23 no way of knowing whether any of these -- you know, who these people
24 were, whether or not they were there or not. And it's not something
25 that I would know.

1 Q. I understand. At one point in the 19 June negotiations, and you
2 discussed this yesterday, you pushed everyone out of the room and you
3 had a discussion with, as I understand it, Hashim Thaci, Agim Ceku,
4 General Reith, James Rubin, and yourself. Was that the full list of
5 attendees?

6 A. That's as I recall it.

7 Q. And those were the people you considered to be the key players
8 from the KLA side in the negotiations?

9 A. Those were the people who intervened in the discussions on
10 19 June. Those were the people who -- clearly the people who were
11 the main interlocutors that we were interfacing with.

12 Q. Just to make sure that my question got answered. So these were
13 the people you considered to be the key players?

14 A. I'm trying to answer your question the best I can. The way you
15 phrase it is important. The words of this are important. And I gave
16 you the alternative, and that is my answer.

17 Q. Why don't we go to paragraph 51 of your statement --

18 MR. ELLIS: Your Honours, before this document comes down, I'm
19 being told there's a translation error from the Albanian in that it's
20 actually written Agim Ceku was the chief of the General Staff of the
21 KLA, not somebody who had been the member of the Kosovo Liberation
22 Army General Staff.

23 MR. HALLING: Duly noted.

24 If we could now go to the statement of the witness,
25 paragraph 51. So, again, the ERN for the record is DHT11893 to

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1 DHT11909.

2 Q. And, Witness, you said the words in this respect are important,
3 so I want to go to the exact words --

4 A. By all means.

5 Q. -- of your statement. You said at the beginning here:

6 "At one point I had to halt the main discussions for a private
7 meeting with the key players in which" --

8 A. Yeah.

9 Q. -- "I spelt out the political importance of the Undertaking as
10 a, if not the, key step along the path towards an independent
11 Kosovo."

12 That's what you said, isn't it?

13 A. Mm-hmm. And by "key players," I meant the people who were most
14 active and were our principal interlocutors in the discussions.
15 That's what I meant.

16 Q. And from your evidence yesterday, the zone commanders were not
17 in that discussion.

18 A. I'm sorry, can you be more precise? In the 17 or 19 June?

19 Q. In the 19 June discussion that you are having with that smaller
20 group when you cleared the room, the zone commanders were not part of
21 it.

22 A. They were not.

23 MR. HALLING: Now if we can go back to the video, 1D287, and
24 we'll pause at timestamp 00:39, please.

25 Q. Now, Witness, you said in your evidence yesterday this was

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1 footage from 19 June 1999 and not 17 June, even though the timestamp
2 says 17 June, and Hashim Thaci is actually not visible in the outside
3 part of the footage. But you were explaining that you considered
4 this to be the conversation after that discussion with the main
5 people in the negotiation.

6 A. Mm-hmm.

7 Q. Now, my first question is, if this is 19 June, you're wearing
8 the same clothes as you're wearing on the parts of this video that
9 you've confirmed are on 17 June. Can you explain why the outfit is
10 the same?

11 A. That was the clothes I wore for the negotiation. I was not at
12 home.

13 Q. But they're not your only clothes, because you were wearing a
14 red tie when the undertaking was signed; isn't that right?

15 A. And the reason I did that was because I had reverted to my
16 formal role as a political adviser and not as a member of the
17 military delegation. It was an optical signal.

18 Q. And I appreciate that there are people in this part of the video
19 that are wearing uniforms, but just to focus on someone else in
20 civilian clothes.

21 MR. HALLING: If we can go back to the 04:23 timestamp mark.
22 And to focus again on our gentleman who, on 17 June, is wearing this
23 blue-and-black striped shirt. If we could now go to the 06:25 mark
24 of the video.

25 Q. Witness, you see the same gentleman in the middle of the screen

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1 wearing the same shirt; yes?

2 A. Yes.

3 Q. And that's also on 17 June?

4 A. That is.

5 MR. HALLING: Now if we go to 03:00 even.

6 Q. Witness, we see this same gentleman wearing the same shirt on
7 what you say is the 19th. Everyone is actually wearing the same
8 clothes across all three parts of the footage. Can you explain, was
9 everyone sending optical signals?

10 A. No. Let's be honest about what was going on. We are in a war
11 zone. We don't carry different clothes with us, you know. Amongst
12 the sensory perceptions that I mentioned to you earlier was the smell
13 of battle that most people had on them. You know, we were not
14 travelling in four-star hotels. We were out in a war zone. Of
15 course people are wearing the same clothes for more than one day at a
16 time, as I was, indeed, myself. So I don't see that there's any
17 really issue about people wearing the same clothes over a period of
18 days. And, indeed, there was opportunity to have washed the clothes
19 on the previous day, the 18th, between the two discussions. So I
20 really don't see that this is a major factor as to why they -- you
21 know, why I've said that the -- the pictures are slightly misleading
22 because they've been cut in a particular way, and the date stamp
23 doesn't necessarily apply to what you are seeing.

24 Q. Now, Witness, in your preparation session you were shown a later
25 part of this video.

1 MR. HALLING: If we could go to timestamp 09:07 of this same
2 exhibit. And if we can just play for just a moment. [Microphone not
3 activated].

4 Q. Witness, do you recall seeing this from the preparation session?

5 A. Yes, indeed.

6 Q. And what is this?

7 A. This is Jamie Rubin.

8 Q. And you said in your preparation session that this timestamp in
9 the video, 19 June, is correct?

10 A. It is.

11 Q. Thank you.

12 MR. HALLING: The video can be taken off the screen.

13 Q. Going to the negotiations themselves on 19 June. You said in
14 your testimony yesterday, this is at realtime transcript page 56,
15 that the negotiations went on all day. These were detailed and
16 lengthy discussions; correct?

17 A. The negotiations lasted 13 hours, almost non-stop.

18 Q. I want to focus for a moment on the signature block --

19 A. Yes.

20 Q. -- specifically.

21 A. By all means.

22 Q. And if we could go to your statement at paragraphs 57 and 58 on
23 the evolution of the signature block.

24 Now, Witness, am I correct that at paragraph 57 this is exactly
25 how the signature block looked on 18 June; and then at paragraph 58,

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1 exactly how it looked on 19 June?

2 A. It's exactly as it would have looked.

3 Q. So the commander-in-chief title is not part of the Agim Ceku
4 signature block. It gets put in when Hashim Thaci's name changes?

5 A. That's correct.

6 Q. Now, these draft versions of the signature block that are
7 reproduced in your statement here, did you give these documents to
8 the Thaci Defence?

9 A. I beg your pardon, what do you mean?

10 Q. These draft versions of the signature block of the undertaking,
11 was this something that you showed the Defence in the context of your
12 interview?

13 A. No. This is a -- sorry. This is a -- essentially what I did
14 when I -- when we compiled this was I took the -- I knew what it
15 said. So I said -- I worked backwards. Right. The final version
16 said: Authored by Hashim Thaci, commander-in-chief, accepted by.
17 That's what the undertaking says in its final version, which we all
18 have. So I said to them, "Look, the way this would have worked on
19 18 June was the names are replaced as follows, and the phraseology at
20 the bottom is as follows, so it would have looked like this." So
21 that's how we did it.

22 I don't think there are any documents in any official sources of
23 the drafts as they evolved. And, sadly, the person who worked as our
24 secretary, Captain Tovell [phoen] took his life about ten years ago.
25 So there is no one else who will remember, apart from, perhaps, John

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1 Reith, how this actually evolved in such detail.

2 Q. Thank you.

3 MR. HALLING: Your Honours, this is an unusual part of a witness
4 statement in that it's actually a visual representation of something,
5 and the witness has described that visual representation. We see
6 value in admitting it as a kind of photograph, so we would ask that
7 paragraphs 57 and 58 of the statement be captured by the
8 Court Officer and admitted as an SPO exhibit.

9 PRESIDING JUDGE SMITH: Any objection?

10 MS. TAVAKOLI: We do. If you can just give me a moment.

11 [Specialist Counsel confer]

12 MS. TAVAKOLI: Your Honour, we do object. I understand that the
13 SPO has taken a position previously that you cannot admit witness
14 statements on cross-examination, and that is exactly what they're
15 trying to do here.

16 MR. HALLING: We are only tendering the visual representation of
17 the signature block.

18 MS. TAVAKOLI: It's the same thing. It's coming from -- it's
19 not a visual representation. This is part of his statement. It's
20 two paragraphs drafted in a statement. It is a witness statement.
21 The way Mr. Halling is framing it is disingenuous.

22 JUDGE METTRAUX: So if -- Ms. Tavakoli, if the Prosecution were
23 to type that document and present it to the witness, would it be
24 admissible?

25 MS. TAVAKOLI: The Prosecution can't give evidence, Your Honour.

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1 JUDGE METTRAUX: I haven't said "give evidence." I'm saying if
2 they were to re-type what's on the screen and show it to the witness,
3 would that become admissible?

4 MS. TAVAKOLI: In effect that would be giving evidence because
5 they don't have that information. That information is from
6 Mr. Duncan and from his witness statement.

7 [Trial Panel confers]

8 PRESIDING JUDGE SMITH: Madam Court Officer, please mark this
9 tender as MFI. You can take the screenshot but then mark it MFI.

10 THE COURT OFFICER: Your Honours, that will be MFI'd P4493.

11 MR. HALLING: Thank you. And this can be taken down.

12 Q. Turning now to 20 June 1999, and the last push in the
13 undertaking negotiations. You talked in your examination yesterday
14 about the final discussions with Hashim Thaci and Agim Ceku.
15 Agim Ceku and Jakup Krasniqi were there at the moment of the signing
16 of the undertaking; is that right?

17 A. Agim Ceku was certainly there. Krasniqi possibly. I suspect he
18 was, but I cannot honestly remember if he was there.

19 Q. It was actually the end of the video that was played for you
20 yesterday.

21 MR. HALLING: If we can just confirm that. P2519 is the video,
22 and I believe the video stopped at still 01:09 when it was played for
23 you yesterday. If we could just look at that. So it's timestamp
24 01:09.

25 [Video-clip played]

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1 THE WITNESS: Yeah, he's there.

2 MR. HALLING:

3 Q. Yes. And so --

4 A. [Overlapping speakers] ...

5 Q. -- when you say "he's there," just to confirm for the record,
6 Agim Ceku and Jakup Krasniqi are both present at the signing?

7 A. Yeah. There's a British general whose name I can't remember
8 either is just standing behind them, but I recognise him.

9 Q. And I understood from the evidence that you gave yesterday that
10 the KLA's signature block was settled on 19 June 1999; correct?

11 A. Could you be explicit? What do you mean by "settled"?

12 Q. So what is now the MFI picture of the 19th, that was the final
13 side for the KLA of their part of the signature block. That was the
14 final language?

15 A. That was the final draft, as I can put it like that, that went
16 to NATO.

17 Q. And then on the 20th, it's the NATO side of the signature block
18 that's subject of the last --

19 A. That's --

20 Q. -- discussions?

21 A. -- right, yes.

22 Q. Now, there's one last video I'd like to play for you and then we
23 can take a break.

24 MR. HALLING: If we could put on the screen now 076563B Part 7.

25 And if we can do that in a 50/50 with the transcript, which is

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1 P742.7-ET. And the timestamp on the video to be played will be from
2 the 01:12 to 02:54, and the part of the transcript to be shown is
3 page 1, line 20 to page 2, line 8.

4 Q. Now, Witness, as this is being set up, I'll explain what it is.
5 Hashim Thaci gave an interview to the SPO, and in it he discussed
6 what happened just before signing the demilitarisation agreement.
7 And you can see on the left --

8 MR. HALLING: If we can scroll down to the bottom of the
9 transcript page because it'll start on line 20 and continue.

10 Q. You can hear the words and also see them as the excerpt is
11 played.

12 MR. HALLING: And so when the Court Officer is ready, please
13 proceed.

14 THE COURT OFFICER: Can I just confirm that this can be shown as
15 the video is marked confidential but the transcript public.

16 MR. HALLING: Just to make sure that there is no confusion, we
17 wouldn't broadcast this particular -- what the screen says now, but
18 there's no issue with playing it in public session.

19 [Video-clip played]

20 "Q. I'd like to move on to another document.

21 "A. Before we move on to the next document, I would like to
22 clarify something.

23 "Q. Please do.

24 "A. The document that you presented me with earlier on, it was
25 prepared to have been signed by Agim Ceku. It was discussed earlier

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Cross-examination by Mr. Halling (Continued)

1 on. And he, I believe, will be able to clarify the circumstances
2 around it. Why he left just before it was signed --

3 "Q. Just so we're clear, are you referring to Exhibit 18, the
4 demilitarisation agreement?

5 "A. [In English] Yes. [Interpretation] Right at the last
6 moment, Ceku's name was changed, swapped for my name, and it remained
7 as it was. But the title, commander-in-chief, the name, the person's
8 name was changed, but the title commander-in-chief was not changed.
9 It was a messy affair or it was rather a lot of people and things
10 were rushed.

11 "James Rubin, the adviser to ..."

12 MR. HALLING:

13 Q. It continues, but we can stop there. Witness, I heard you laugh
14 and shake your head at one point while that was being played.
15 Hashim Thaci said Agim Ceku left just before the undertaking was
16 signed. That's not correct, is it?

17 A. No.

18 Q. And he says that his name was swapped for Agim Ceku's name at
19 the last moment, but that actually happened on 19 June.

20 A. It did.

21 Q. And Hashim Thaci said that his name was changed for Agim Ceku
22 but the commander-in-chief title was not changed. That's not what
23 happened, was it?

24 A. It's not.

25 MR. HALLING: Your Honours, we can take the break here.

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1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 THE WITNESS: Thank you.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 [The witness stands down]

5 THE COURT OFFICER: Your Honours, before we go on a break, can I
6 just correct the record. The last number that was assigned to the
7 screen capture, the two paragraphs from the statement, should be
8 P4494.

9 PRESIDING JUDGE SMITH: Thank you. We're adjourned for
10 10 minutes.

11 --- Break taken at 10.04 a.m.

12 --- On resuming at 10.16 a.m.

13 PRESIDING JUDGE SMITH: Please bring the witness in.

14 What's your timeframe, Mr. Halling?

15 MR. HALLING: Still hoping to finish by 11.00. If it goes into
16 the second session, we will finish in the first half of the second
17 session and within estimate.

18 [The witness takes the stand]

19 PRESIDING JUDGE SMITH: All right, Mr. Halling.

20 MR. HALLING: Thank you, Your Honour.

21 Q. Good morning again. Witness, I now have some questions about
22 what I will call military structure. Just as a starting point, there
23 is a degree of internal disagreement within any army. Would you
24 accept that?

25 A. Tension, yes.

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Cross-examination by Mr. Halling (Continued)

1 Q. I now want to go to a couple of discrete passages of your
2 statement.

3 MR. HALLING: If we can go to paragraph 52 of the witness's
4 statement, which is on page DHT11903.

5 Q. And, Witness, you are talking here about the undertaking
6 negotiations, and you assess that, and you can see the sentence on
7 the top:

8 "This was not a hierarchical organisation where the leader's
9 word was unquestionable."

10 That's your phrasing; yes?

11 A. That's right.

12 Q. And then if we go to paragraph 72, you're talking at this point
13 in the statement about Hashim Thaci and Agim Ceku.

14 A. Mm-hmm.

15 Q. And there's a sentence here:

16 "In all my dealings, I did not detect any of what might be
17 described as an 'Albanian strongman' relationship between Mr. Thaci
18 and General Ceku."

19 That's again how you phrased it?

20 A. Yes.

21 Q. You talked yesterday that you didn't notice a huge amount of
22 deference from Agim Ceku to Hashim Thaci, and you also commented on
23 General Jackson's assessment that Thaci was Ceku's boss. You
24 remember that?

25 A. Indeed.

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1 Q. I'd like to now show you an interview that Agim Ceku gave that
2 was published by the Institute for War and Peace Reporting.

3 MR. HALLING: If we can go to SPOE0040358 to 00403544. And, I'm
4 sorry, just to correct -- I got the first page -- it should be
5 SPOE00403538.

6 Q. And, Witness, so this is the beginning of the article in
7 question. You can see the date, just to orient you, is 27 May 1999.

8 MR. HALLING: I now want to go to page SPOE00403542 to see what
9 Agim Ceku says at the end of this interview.

10 Q. And he says the following:

11 "Asked what he thinks will happen in Kosovo once the war is
12 over -- whether it will be an independent, or an autonomous region of
13 Serbia -- he responded: 'I am a soldier and my task is to look after
14 the army, the situation on the battlefield, and to wage war
15 successfully.' He promised to fight until forces loyal to
16 Slobodan Milosevic were expelled from Kosovo and to leave politics
17 'to our government headed by Hashim Thaci.'"

18 Witness, were you aware that Agim Ceku described himself as
19 being part of a government led by Hashim Thaci?

20 A. That's not what he does here.

21 Q. Were you aware that he said:

22 "He promised to fight until forces loyal to Slobodan Milosevic
23 were expelled from Kosovo and to leave politics 'to our government
24 headed by Hashim Thaci'?"

25 A. That's what he says, but he's not saying: I am part of the

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1 government. If I misunderstood your question, forgive me. But that
2 sentence says -- in fact, the two sentences say: I'm a professional
3 soldier, I have a separate role, and I leave politics to our
4 government headed by Hashim Thaci, which is -- reflects what was in
5 my expert -- in my evidence, which you put up on screen just before,
6 where I said that they operated as a team. So I do my bit, you do
7 your bit. So Agim Ceku talked about the military aspects, and
8 Mr. Thaci tried to insert political aspects. That's how the dynamics
9 appeared to work.

10 I hope that answers your question.

11 Q. Almost. You've interpreted the statement, but my question was
12 simpler. You said that's what he says. Were you aware that
13 Agim Ceku had said this in May 1999?

14 A. No.

15 MR. HALLING: I'd like to show you now 1D99, and we can start on
16 page SITF00172766.

17 Q. Now, Witness, this is a statement by Lieutenant-General Ceku,
18 Chief of Staff UCK, in September 1999, memorialising the completion
19 of demilitarisation. Did you see this letter at the time?

20 A. No, I don't believe I did. No, I don't believe I did. What was
21 the timing of it?

22 Q. You can see he's talking about the demilitarisation, you can
23 see:

24 "As of midnight on 20 September 1999 we will cease wearing the
25 uniforms with insignia of the UCK ..."

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1 MR. HALLING: And if you go to the previous page, that may
2 assist.

3 THE WITNESS: Oh, yes [Overlapping speakers] ...

4 MR. HALLING:

5 Q. You can see this is a cable of --

6 A. Yeah, that's what I need --

7 Q. -- 21 September 1999.

8 A. -- the time, date, group. No, I don't recall. 21 September. I
9 don't recall this particular statement. It's not very surprising.

10 JUDGE METTRAUX: Mr. Halling, the date on the next page is
11 actually under the signature, I believe.

12 MR. HALLING: Yes, I think it's -- yes, if we can go to the next
13 page on the bottom.

14 Q. And there you see it's handwritten 20 September 1999.

15 MR. HALLING: But on the next page, if we go forward one and we
16 scroll to the bottom, there is no equivalent date but it's all from
17 the same set of papers.

18 THE WITNESS: Yeah.

19 MR. HALLING:

20 Q. And it's statement of Hashim Thaci on the same occasion,
21 commander-in-chief UCK.

22 A. Mm-hmm. Yes.

23 Q. So Agim Ceku and Hashim Thaci's statements here, they identify
24 their respective roles in the same terms used in the undertaking.

25 A. Exactly.

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Cross-examination by Mr. Halling (Continued)

1 MR. HALLING: Okay. Now I want to go to the signature block
2 again of the undertaking, P1444, and on this occasion, to put the
3 Albanian translation of the signature block also on the screen. So
4 it's page 078204, 078204-AT, if we can put that on the left side of
5 the screen, and put that same page in the English on the other side
6 of the screen.

7 Q. Now, Witness, we've discussed this page at great length already.
8 I just wanted to orient you to the way that the Albanian is
9 translated, this "*komandanti i pergjithshem*." Do you see that on the
10 Albanian?

11 A. Yes.

12 MR. HALLING: I now want to show P3916, page SPOE00228173.

13 Q. And, Witness, just to again orient you, this is from a set of
14 materials that were found at Jakup Krasniqi's residence. And if you
15 can see in this organigramme, you see a "General Commander" on the
16 right side, and that is above, you see, the "General Staff," and you
17 also see seven OZs on the left side. Do you see those in the
18 organigramme?

19 A. Yes.

20 Q. And in the Albanian side, you see that "General Commander" is
21 interpreted as "*Komandanti i Pergjithshem*," the same as before.

22 A. Mm-hmm.

23 Q. Have you ever seen a KLA organigramme like this before?

24 A. No.

25 MR. HALLING: Okay. Now if we could go to P880.

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Cross-examination by Mr. Halling (Continued)

1 THE WITNESS: Could I just make a comment, if I may,
2 Mr. President? There's one thing that you skipped over in the
3 signature block. Just above the signature block, it says quite
4 clearly the English language version of the undertaking takes
5 precedence. So there's no particular argument about saying that in
6 Albanian it's slightly different or it means something else, because
7 this was negotiated with translation and both sides had the text.
8 But it's very clear in the undertaking that it's principally
9 negotiated in English and that the English language version takes
10 precedence, and that's, you know, black and white.

11 So I'd just comment as a help to you.

12 Q. Thank you for clarifying.

13 MR. HALLING: The exhibit once again is P880. And in this one,
14 the first page of the exhibit is in Albanian, and the second page --
15 sorry, the first page is in English, and the second page is in
16 Albanian.

17 Q. Now, Witness, you can see this one, it's dated 10 August 1999.
18 It's request for carrying guns. And you see it -- there's a list of
19 names.

20 MR. HALLING: And then if you scroll to the bottom of each page
21 to again see the signature block.

22 Q. Here you actually see a KLA stamp, and it says "The
23 General Commander of UCK Hashim Thaci" on this page on the right, and
24 this term again, "*Komandanti i Pergjithshem*," on the left. Do you
25 see that?

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Cross-examination by Mr. Halling (Continued)

1 A. Yeah. Could you just remind me of the date? Apologies.

2 Q. It's 10 August 1999.

3 A. [Overlapping speakers] ...

4 Q. My question is did you know that this title was used in other
5 documents by Hashim Thaci?

6 A. No, and it shouldn't have been. I remember this issue. This
7 was, as it says, in August. This is when, despite the undertaking,
8 there was a request for certain senior members to continue to carry
9 sidearms, and General Jackson or his staff should have spotted that
10 this should not have come from Hashim Thaci. It should have come
11 from General Ceku. And it's very clear in the undertaking that
12 that's the way the relationship is supposed to work.

13 So, you know, this is an interesting document, but it's -- it's
14 an attempt to continue Hashim Thaci having a role in the KLA
15 demilitarisation, which is specifically excluded. So it should have
16 been picked up at the time, and I really don't know whether it was.
17 I do remember the issue coming up and why we agreed to do it.

18 Q. And to be clear, you'd not seen this request --

19 A. I had --

20 Q. -- previously?

21 A. -- not seen this request as it stands. I was told of the
22 request by KFOR, and we consulted as to whether we should do it or
23 not.

24 MR. HALLING: Yes. Your Honour, all the documents that we have
25 just shown go to the reliability of the inferences the witness makes

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1 between Hashim Thaci and Agim Ceku. They are not all admitted. The
2 IWPR interview, which is SPOE00403538 to 00403544, we would tender at
3 this time as well as the Albanian translation of the signature block,
4 which is 078204 to 078204-AT. For the latter document, we would ask
5 it be given a number linking it to P1444.

6 THE WITNESS: Mr. Halling, may I make a very brief comment?

7 MR. HALLING: I believe there needs to be a procedural
8 discussion.

9 THE WITNESS: Sorry.

10 MS. TAVAKOLI: No objection.

11 PRESIDING JUDGE SMITH: That will be admitted, which is
12 SPOE00403538 to 00403544 and the block at 078204. Is there any more
13 to that?

14 MR. HALLING: There is not, Your Honour.

15 PRESIDING JUDGE SMITH: Okay. Admitted.

16 THE COURT OFFICER: Your Honours, for SPOE00403538 to 00403544,
17 it will be assigned Exhibit P4495. And I note it's currently
18 classified confidential.

19 MR. HALLING: That one can be public. They both can be public,
20 in fact.

21 THE COURT OFFICER: And for the 078204 to 078204-AT, it will be
22 assigned P01444_AT.

23 PRESIDING JUDGE SMITH: Both are reclassified as public.

24 You may proceed.

25 MR. HALLING: And, sorry, just to clarify with the

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Cross-examination by Mr. Halling (Continued)

1 Court Officer, it says on the transcript "it will be assigned
2 P1444_ET." It's the Albanian translation of the signature block that
3 we tendered.

4 THE COURT OFFICER: Indeed. It should be _AT.

5 MR. HALLING: Thank you, Madam Court Officer.

6 Q. Witness, that was actually all the questions that I had about
7 this. You said you wanted to make a brief comment. I wanted to give
8 you the opportunity before moving on --

9 A. Thank you.

10 Q. -- if there's anything else you would like to say.

11 A. Thank you. When you showed my evidence, my written evidence,
12 you quickly skipped over a part, which is where it comes. I said he
13 did not have the profile of a Balkan strongman.

14 Now, since 1992, I had met a good number of Balkan strongmen,
15 and I had met them in Albania, I had met them in Bosnia, and I was
16 very familiar with the profile of that sort of person, and that's
17 what I'm saying there. That he did not have that profile. I was
18 very familiar with those type of people. I'd dealt with them, spoken
19 to them, and negotiated with them. And he didn't fit the profile.
20 So that's what I'm saying there.

21 So I hope it amplifies a little bit more to your purposes.

22 Q. Understood. I now want to talk about the undertaking
23 implementation.

24 A. Mm-hmm.

25 Q. And you were talking in your evidence yesterday that there was

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Cross-examination by Mr. Halling (Continued)

1 violence that was happening because of revenge and that there was
2 individualised random violence. Do you remember this evidence from
3 yesterday?

4 A. Yes, indeed.

5 Q. Just as a starting point, is it your evidence that all of the
6 violence was isolated and random at this time in Kosovo?

7 A. We had no evidence that it was organised. I think that answers
8 your question.

9 Q. Witness, until UNMIK could take responsibility for policing,
10 this fell to KFOR; correct?

11 A. That's correct.

12 Q. And the undertaking itself envisaged how KFOR could raise
13 breaches of the undertaking with the KLA?

14 A. That's correct.

15 Q. And the way the undertaking was designed was that the senior KLA
16 leaders had to be informed about such breaches in order to address
17 them?

18 A. Through the JIC or various mechanisms, yes.

19 Q. Yes. And actually we'll talk about the JIC in a moment.

20 MR. HALLING: But just to go to the undertaking itself just to
21 see the individual parts, if we could go to P1444, page 078201. And
22 this is paragraph 16 of the undertaking.

23 Q. Now, I believe you said this yesterday, but COMKFOR was the
24 authority for dealing with breaches of the undertaking; yes?

25 A. That's correct.

Witness: John Duncan (Resumed) (Open Session)

Page 27203

Cross-examination by Mr. Halling (Continued)

1 Q. And this was General Mike Jackson?

2 A. That's correct.

3 Q. And you see that's reflected here.

4 A. Mm-hmm.

5 Q. "The authority for dealing with breaches of this Undertaking
6 rests with COMKFOR."

7 Now the -- you were talking in your evidence yesterday that
8 General Jackson didn't know what was happening in the mountains. You
9 were referring to his familiarity with the undertaking negotiations
10 only; correct?

11 A. Yes. He was not aware in detail of what we were doing and how
12 we were doing it. If I may be permitted to put in the context. When
13 I arrived at his headquarters on the 12th, therefore just before
14 arriving -- sorry, on the 13th, we were in the midst of the problem
15 of Russian troops securing Prishtine, he had seen -- or I had sent
16 him the draft of the undertaking, but immediate -- you know, the
17 whole thing is tied up in him trying to deploy, him having to deal
18 with the discussion between himself and General Jackson about how to
19 deal with the Russian problem, and me coming along, saying, "Have you
20 read my undertaking." So let's imagine the pressure that he's under.

21 We then had to tell him where we'd got to after the initial two
22 meetings, which we did, and tell him -- request that he speak to
23 Sergio de Mello, which he did, and then we arrived with the draft
24 text and, you know, he was there to sign it.

25 But all this time, he is intensely involved in a very complex,

1 very challenging environment, so you would expect that, you know, he
2 wasn't paying attention to what John Duncan and John Reith were doing
3 up in the mountains. And, in fact, I realise later that he had not
4 really understood that because he was focused, quite naturally, on
5 other things. And it was not until several years later that, when I
6 was speaking to him about it over his proverbial glass of whiskey, as
7 he used to do, that he said, "I didn't realise you were doing all
8 that stuff. I mean, you told me and asked me to do various things
9 and I did them. But I did not have visibility of how that whole
10 thing was working and I was not focusing on it," and that was quite
11 understandable. So that's what I meant.

12 Q. Thank you. Now let's look at the composition of this joint
13 implementation committee.

14 MR. HALLING: If we can go to paragraph 21 of the undertaking,
15 which is 078202, and if we scroll down.

16 Q. So you see at paragraph 20, just to start:

17 "The JIC will be chaired by COMKFOR, and will comprise the
18 senior commanders of KFOR and the UCK, and a representative from the
19 interim civil administration [in] Kosovo."

20 And part of the responsibility of the JIC, where you see at
21 paragraph 21 --

22 A. Mm-hmm.

23 Q. -- "it may be called without prior notice and representation by
24 the UCK is expected at a level appropriate with the rank of the KFOR
25 chairman. Its functions will include:"

Witness: John Duncan (Resumed) (Open Session)
Cross-examination by Mr. Halling (Continued)

Page 27205

1 At b.:

2 "The investigation of actual or threatened breaches of this
3 Undertaking."

4 This is how the Joint Implementation Commission was designed in
5 the undertaking.

6 A. That's correct.

7 Q. Do you accept that General Jackson, because of his role, was
8 well placed to identify and raise undertaking breaches with the KLA?

9 A. His staff were. I mean, he's the overall commander, but, you
10 know, he had -- as we saw yesterday, he had specialised criminal
11 investigation teams, and they were providing regular reports and
12 regular investigations. So he had the means to understand or be
13 brought to his attention what was happening if there were breaches.

14 We also had people -- I can't remember when they were deployed,
15 but we had people -- I can't think of the exact word. It's not
16 seconded, but they were situated in the assembly points to liaise
17 with the KLA. So we had a variety of means of finding out when there
18 were undertaking breaches.

19 Q. Now, you yourself were not responsible for ensuring the
20 effective implementation of the undertaking?

21 A. No, I was not.

22 Q. And you were also not involved with investigating or recording
23 any allegations of crimes?

24 A. No, but I saw the regular reports that came up, of which I think
25 you have copies, which show so many incidents and what was happening

1 and what the understanding was. So I would see very similar things
2 to what he would see as part of my regular gathering of information.

3 Q. But would you accept that such matters were for General Jackson
4 to take forward and that you weren't looking over his shoulder --

5 A. Very much --

6 Q. -- as he conducted his work?

7 A. -- the case, yes. I had other concerns. I went back to my day
8 job.

9 Q. Yes. Now, General Jackson gave evidence that he would raise
10 concerns with Hashim Thaci and Agim Ceku about detention sites. Do
11 you have any reason to dispute that?

12 A. If that's what he said.

13 Q. Why don't we maybe go to a document.

14 MR. HALLING: If we can go to P2523, and this would be page
15 SPOE00000057.

16 THE INTERPRETER: The interpreters kindly ask the speakers to
17 pause between questions and answers.

18 MR. HALLING: Yes, I'm duly guided by the interpreters.

19 Q. So, Witness, you can see here on the top "Lieutenant General Sir
20 Mike Jackson." It's got a date of 19 July 1999. And I want to
21 direct you to this entry here where it says: "Incident at Ponosevac -
22 Sunday 18 July 1999."

23 A. Mm-hmm.

24 Q. "At 1925 hours on Sunday 18 July 1999, what appears to have been
25 a UCK detention centre, was entered by KFOR troops. The 'centre' was

Witness: John Duncan (Resumed) (Open Session)
Cross-examination by Mr. Halling (Continued)

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1 in a building in Ponosevac," and then it gives a grid reference.

2 "The patrol found," a redaction, "who had been badly beaten and was
3 being detained against his will. He was transported to the civilian
4 hospital at Dakovica for treatment."

5 And then it says:

6 "The KFOR patrol arrested 7 x uniformed individuals, one of whom
7 was carrying a UCK ... card."

8 And, Witness, you also see at the top that this letter is
9 written to Brigadier General A. Ceku. Are you aware of this incident
10 at Ponosevac mentioned by General Jackson?

11 A. After so long, not this specific incident specifically. But
12 this is what the undertaking was designed to do. It was to provide a
13 mechanism whereby we could hold them to account for misbehaviour.
14 And no one is suggesting that there wasn't misbehaviour, but who was
15 ordering it is the question.

16 In this instance, you know, there's no suggestion that
17 General Ceku had ordered it. There's no implication there. He's
18 being asked to account for his men.

19 Q. Now, Witness, you said at the beginning of the answer you
20 weren't familiar with this specific incident specifically, so you
21 don't anything about the aftermath of the discussion or what
22 happened?

23 A. I beg your pardon. What [Overlapping speakers] ...

24 Q. What happened --

25 A. After this letter was issued?

Witness: John Duncan (Resumed) (Open Session)

Page 27208

Cross-examination by Mr. Halling (Continued)

1 Q. Yes.

2 A. No, it would have been General Jackson's responsibility to carry
3 that out.

4 Q. Understood. There are a couple other documents in this regard I
5 wanted to show you just to see if you're familiar with the
6 discussions.

7 A. Mm-hmm.

8 MR. HALLING: If we could now go to P755, and we'll start on
9 page SITF00172746.

10 Q. And again, just to orient you, this a cable --

11 A. 29 July, yeah.

12 Q. -- 29 July 1999, correct. And then if we go to SITF00172748, we
13 can see there's a discussion with Hashim Thaci going on. At part d),
14 "Paramilitary Forces:

15 "COMKFOR said that he was worried about PU elements in black
16 uniforms. He asked who they were. They had no authority to make
17 arrests. It was kidnapping. He was losing confidence and might have
18 to react. Thaci's answer was evasive."

19 Are you familiar with this exchange between General Jackson and
20 Hashim Thaci on 29 July 1999?

21 A. This specific one, no. Our concerns about the PU, very much so.

22 Q. Understood.

23 MR. HALLING: Now, Your Honours, we've actually grouped all of
24 the documents with private session concerns to the end of our
25 cross-examination, and we've hit that point here. So for Rule 107

Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Halling (Continued)

1 provider reasons, we would ask to go into private session.

2 PRESIDING JUDGE SMITH: Into private session, please,

3 Madam Court Officer

4 [Private session]

5 [Private session text removed]

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Witness: John Duncan (Resumed) (Private Session)

Page 27210

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27212

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27214

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27215

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27216

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27217

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27218

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27219

Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

Page 27220

Cross-examination by Mr. Halling (Continued)

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13 [Open session]

14 THE COURT OFFICER: Thank you, Your Honours. We are now in
15 public session.

16 PRESIDING JUDGE SMITH: Go ahead.

17 MR. TULLY: I didn't have my earphone in so I wasn't following.
18 Thank you.

19 Just in light of the last item that was shown to the witness,
20 this wasn't something that came up during direct examination and I
21 didn't object. It's counsel's right to explore it with the witness.
22 However, as we indicated in our filing F03342, if matters that might
23 be incriminating to Mr. Selimi arise during the cross-examination of
24 the Prosecution which were not elicited during direct, we would
25 apply -- based on the accused's right to examine and have examined

Witness: John Duncan (Resumed) (Open Session)
Procedural Matters

Page 27221

1 against him -- witnesses against him, we may apply for re-cross. I
2 need to consult with Mr. Selimi, and I just want to --

3 PRESIDING JUDGE SMITH: Thank you for the notice.

4 MR. TULLY: -- file now. Thank you.

5 MR. HALLING: Yes, we made it quite clear how it was linked to
6 the direct examination. It's perfectly within counsel's right to
7 re-cross.

8 The only qualification I wanted to give now is we've finished
9 with our questions for the witness. There was an MFI document on
10 that representation of the undertaking. If that document is denied
11 admission, what I'm going to do is just to read that into the record
12 and ask for the witness's comment. So if it is denied admission, we
13 may seek leave to ask a very brief further question just to get that
14 on the record.

15 PRESIDING JUDGE SMITH: We'll take that up right after the
16 break.

17 So we will be back at 11.35.

18 [The witness stands down]

19 PRESIDING JUDGE SMITH: We're adjourned until 11.35.

20 --- Recess taken at 11.08 a.m.

21 --- On resuming at 11.38 a.m.

22 PRESIDING JUDGE SMITH: The current MFI previously referred to
23 will not be admitted. It was a part of a statement. Part of a
24 statement is still a statement, so we will not be admitting it. And
25 I think you said you had an alternative you wanted to explore.

Witness: John Duncan (Resumed) (Open Session)
Procedural Matters

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1 MR. HALLING: Yes. So we would require an extra few minutes of
2 questioning with the witness.

3 PRESIDING JUDGE SMITH: No problem.

4 Please bring the witness in.

5 MR. HALLING: And if, while the witness is coming in, page
6 DHT11903 of the witness's statement can be put on the screen.

7 [The witness takes the stand]

8 PRESIDING JUDGE SMITH: We're moving closer, Witness, to having
9 you finished, so I'm sure that's good news.

10 THE WITNESS: Mr. President, Your Honour, with all the respect
11 of this Court and yourselves, Your Honours, I would like to ask a
12 procedural question because I'm not aware of all the procedures that
13 work. In diplomatic speak, it would be a point of order. So I
14 wonder if I might respectfully ask you such a question?

15 PRESIDING JUDGE SMITH: I can't promise you we'll give you an
16 answer, but go ahead and ask the question.

17 THE WITNESS: Thank you very much.

18 Before we closed, I was asked a question by the SPO
19 representative, and, I will be candid, I was so surprised by his line
20 of argumentation that I was immediately at loss for words. He took
21 that as no reply. That was a mistake. I was intending to reply, and
22 I would like to reply, if the Court would like to hear what my reply
23 would have been. But I'm not sure how procedurally we do that.

24 [Trial Panel confers]

25 PRESIDING JUDGE SMITH: The only reason I -- Judge Mettraux was

Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Halling (Continued)

1 consulting me.

2 THE WITNESS: I beg your pardon.

3 PRESIDING JUDGE SMITH: This was in private session, so before
4 you go further we should be in private session.

5 THE WITNESS: That is correct, yes.

6 PRESIDING JUDGE SMITH: And Mr. Halling has a few more
7 questions, and I'll allow him to get to this, what you brought up, as
8 part of his response.

9 THE WITNESS: Thank you.

10 PRESIDING JUDGE SMITH: Or not response -- yeah.

11 THE WITNESS: Thank you for your indulgence, Mr. President.

12 [Private session]

13 [Private session text removed]

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Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Halling (Continued)

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Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Halling (Continued)

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13 [Open session]

14 PRESIDING JUDGE SMITH: Thank you.

15 Go ahead.

16 MR. HALLING:

17 Q. Now, Witness, we can see on the screen we have paragraphs 57 and
18 58 of your statement again.

19 A. Yes.

20 Q. And just to have it crystal clear on the record, where it says:

21 "Offered by General Agim Ceku on behalf of the UCK"

22 "Accepted by [Lieutenant General] Mike Jackson Commander KFOR"

23 That is how the undertaking's signature block looked on 18 June
24 1999; correct?

25 A. That is how it would have looked, yes.

Witness: John Duncan (Resumed) (Open Session)

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Cross-examination by Mr. Halling (Continued)

1 Q. Yes. And then:

2 "Offered by Hashim Thaci Commander in Chief UCK"

3 "Accepted by [Lieutenant General] Mike Jackson Commander KFOR"

4 That is how the signature block would have looked on 19 June
5 1999; correct?

6 A. The end of -- sorry, the end of 19 June.

7 Q. Thank you.

8 MR. HALLING: Your Honours, that satisfies the SPO. We have no
9 further questions for the witness.

10 PRESIDING JUDGE SMITH: Thank you.

11 MR. TULLY: Your Honour, as anticipated, I applied to re-cross
12 the witness simply on the final document shown by Mr. Halling in his
13 cross-examination, and my questions will be no more than five
14 minutes.

15 PRESIDING JUDGE SMITH: Does the Thaci Defence have any
16 objection to Mr. Tully going ahead at this point?

17 MS. TAVAKOLI: No objection, Your Honour.

18 PRESIDING JUDGE SMITH: Go ahead, Mr. Tully.

19 MR. TULLY: Thank you, Your Honour. And for the record, and for
20 anything in the future, our understanding is that the order of play
21 would be us before the redirecting party, if that's correct. I'll
22 leave that with the Panel.

23 Cross-examination by Mr. Tully:

24 Q. But to my questions. Witness --

25 MR. HALLING: Just to clarify for counsel. Although the last

Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Tully

1 document was not requiring private session, everything related to it
2 would.

3 MR. TULLY: Just to be sure, maybe let's go to private session
4 then, please.

5 PRESIDING JUDGE SMITH: All right. I agree with that.

6 Go into private session, please, Madam Court Officer.

7 MR. TULLY:

8 Q. And as by way of introduction, sir, my name is Eric Tully. I am
9 counsel --

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. TULLY: Sorry.

12 [Private session]

13 [Private session text removed]

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Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: John Duncan (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: John Duncan (Resumed) (Private Session)

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Re-examination by Ms. Tavakoli

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Witness: John Duncan (Resumed) (Private Session)

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Re-examination by Ms. Tavakoli

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Witness: John Duncan (Resumed) (Private Session)

Page 27232

Re-examination by Ms. Tavakoli

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23 [Open session]

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

25 PRESIDING JUDGE SMITH: Thank you.

Witness: John Duncan (Resumed) (Open Session)

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Re-examination by Ms. Tavakoli

1 MS. TAVAKOLI: Thank you.

2 Q. You were asked yesterday by the Prosecutor about the appointment
3 of General Agim Ceku as the commander of the KLA. Do you recall
4 that?

5 A. I do.

6 Q. Now, I would like to -- you said at the time, I think, that you
7 couldn't recall who had appointed him. That's correct, isn't?

8 A. That is correct.

9 Q. Now, I'd like to show you an interview that General Ceku gave in
10 2000 to *Zeri*.

11 MS. TAVAKOLI: If we could please pull that up. It's 1D00243.
12 It's at page 5 of that document, please. And if we can go to the
13 second paragraph.

14 Q. And you see the last sentence -- actually, let's read the
15 question:

16 "Zeri: Was the procedure for your election as Chief of the
17 General Staff of the KLA done in Kosovo or earlier?"

18 And he explains a bit. And then the last sentence says:

19 "Then, we stayed at the General Staff for a few days and my work
20 was discussed for a long time and the decision to appoint me Chief of
21 the General Staff of the KLA was made by the entire General Staff,
22 not by one person."

23 Does that refresh your recollection, or do you have any reason
24 to doubt what Agim Ceku has said?

25 A. It's a very long time ago. I don't recall -- I certainly don't

Witness: John Duncan (Resumed) (Open Session)

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Re-examination by Ms. Tavakoli

1 recall seeing this or a translation of it. The reference to the
2 General Staff is intriguing, but we may come back to that. It
3 reflects my impression of what I saw when I was at the -- up in
4 Kosovo with the zonal commanders on the 17th and 19th, that they
5 treated him with considerable respect. So the fact that he was
6 essentially appointed by a group of people rather than appointed on
7 top by someone else is reflected here, and that doesn't surprise me
8 at all.

9 It's the -- the relationship and the dynamics between them very
10 much reflect that statement.

11 Q. Thank you.

12 [Specialist Counsel confer]

13 MS. TAVAKOLI:

14 Q. Now, you were asked questions this morning about the movements
15 of Ramush Haradinaj.

16 A. Yes.

17 Q. And I just want to clarify your evidence on that. Yesterday,
18 you said that Ramush was present at the meeting on the 17th; correct?

19 A. That's correct.

20 Q. Then you were shown a video - and that is, for the record, 1D287
21 - which had a shot of you discussing things with Ramush Haradinaj,
22 and you said that that must have happened on the 19th because it was
23 daylight, and that was the first daylight day that you had
24 negotiations; is that correct?

25 A. That's correct.

Witness: John Duncan (Resumed) (Open Session)

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Re-examination by Ms. Tavakoli

1 Q. So if it's right that Mr. Haradinaj is saying that he only
2 stayed for one day, Mr. Haradinaj is wrong, isn't he?

3 A. I wasn't sure that that's what was said.

4 Q. What did you think he said?

5 A. From what I saw, he was at the meeting but then left, and that
6 would indicate why he wasn't in the dinner afterwards. So it's,
7 strictly speaking, he was there for the meeting and then left, didn't
8 join us for the dinner, which, as I tried to explain to the
9 Prosecution, were two different things.

10 So it was correct in what he said. It's also correct in the
11 video. There isn't a contradiction there between the two, so I don't
12 see that there's any real issue there that --

13 Q. And just to be --

14 A. But maybe you can explain it to me.

15 Q. The meeting you're talking about, that you think he's talking
16 about, is the meeting on the 17th.

17 A. Yes, and he was there for the entire meeting as far as I recall.

18 Q. On the 17th?

19 A. On the 17th. But not the dinner.

20 Q. Not the dinner. And was he also there on the 19th?

21 A. Yes, he was.

22 Q. Thank you. Now I want to move back to this tricky topic of the
23 zone commanders.

24 MS. TAVAKOLI: If we could please bring up the video again,
25 1D287. And if you could go forward to -- oh, yeah. All right.

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1 Let's go forward first to 01:30. Right.

2 [Video-clip played]

3 MS. TAVAKOLI: Maybe just pause it there. Thanks.

4 Q. Now, you were asked by the Prosecutor today to -- you were shown
5 the video and you were asked to name all of those that you thought
6 were zone commanders; correct?

7 A. That's correct.

8 Q. Now, I want to -- and I just want to try again. The man in
9 civilian clothes -- sorry.

10 [Specialist Counsel confer]

11 MS. TAVAKOLI: Can we go to the man that's second on the right.
12 I know the shot is poor.

13 Q. Do you know who that man is?

14 A. After 26 years, it's very difficult to see from that photograph
15 who he is.

16 Q. Did you know if he was a zone commander?

17 A. As I said, they were not formally presented to us. So I had a
18 briefing on all of them with photographs, but unless NATO is prepared
19 to release that document, which was later -- well, it was later
20 compiled into a document, but it was very highly classified. And
21 unless NATO is prepared to reveal that, you know, I can't match this,
22 26 years later, faces to the names which are in Albanian.

23 I do, however, recognise the one sitting next to Ceku who was --
24 if I recall, he was quite striking, and he was described as a very
25 independent-minded commander who would be very difficult to deal

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1 with.

2 So, yes, I had a briefing on it, but it's 26 years later.

3 They're all Albanian names and they weren't presented to us. I did
4 have photograph -- little photograph briefings on them, but it's not
5 possible to tell you 26 years later that, you know, this was
6 definitely a zone commander. I can't do that for you. I'm sorry.

7 Q. I understand. But just for the record, I need to just ask my
8 questions --

9 A. Sure, please.

10 Q. -- and if you can just say "yes" or "no," and then I will ask
11 you --

12 A. I apologise.

13 Q. -- a general question at the end.

14 A. Please.

15 Q. Does the name, 26 years later, Ahmet Isufi mean anything to you?

16 A. It rings a bell but no more than that.

17 Q. Going back to the man on the far left that you identified, does
18 the name Rrahman Rama --

19 A. I believe it's him.

20 Q. Thank you. And did you know if he was a zone commander?

21 A. I was told he was.

22 Q. Then can we move -- the same picture, sorry. The man on the
23 other side of Ceku, do you know who he is?

24 A. It's very difficult to tell --

25 Q. No.

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1 A. -- who he might be. The photograph is really not that clear.

2 Q. Okay. Have you -- and you don't know if he's a zone commander?

3 A. No.

4 Q. Have you heard -- does the name Tahir Sinani mean anything to
5 you?

6 A. Again, it's too long ago.

7 MS. TAVAKOLI: Now can we move, please, to 01:44.

8 Q. Do you know who this man is?

9 A. I don't recall his name.

10 Q. Do you know if he was a zone commander?

11 A. I believe so.

12 Q. Does the name Shukri Buja mean anything to you?

13 A. Yes, that would have been Shukri Buja then.

14 Q. And do you understand him to have been a zone commander?

15 A. That was my understanding.

16 MS. TAVAKOLI: Now, please, can we go to 03:42. Sorry, I just
17 need some assistance from my team. Let's move forward. Move
18 forward, sorry, and then come back. Can we go to 04:45. Sorry, I
19 think this is the wrong reference.

20 I'm really sorry about this, Mr. Witness and Mr. President. I'm
21 just liaising with my team about who these people are.

22 THE WITNESS: Could I just offer some commentary?

23 MS. TAVAKOLI:

24 Q. Maybe not. Can we just get through my questions --

25 A. [Overlapping speakers] ... as you want.

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1 Q. -- that would be helpful --

2 A. [Overlapping speakers] ...

3 Q. -- and then we can go back. Hopefully my last question will
4 enable you to say what you want to say.

5 A. Thank you.

6 MS. TAVAKOLI: Can we try and go back now again to 01:44,
7 please -- oh, is that the one? No. 03:42.

8 Q. The man -- do you know who the man on the far left is, please?

9 A. No, I don't know who that is.

10 Q. Do you know if he was a zone commander?

11 A. I don't know.

12 Q. Does the name Sadik Halitjaha mean anything to you?

13 A. That rings a bell.

14 Q. Do you know if he was a deputy zone commander?

15 A. I honestly don't know.

16 Q. Then can you please look at the man with his hand on his face?

17 A. That's Remi.

18 Q. That's Remi. And do you know if he was a zone commander?

19 A. He was.

20 Q. And then who's the man next to --

21 A. I don't recognise the others.

22 Q. No, the one on the other side.

23 A. Oh. With the shaven head?

24 Q. Yes.

25 A. That's Ramush.

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1 Q. Thank you.

2 MS. TAVAKOLI: Can we please now go to 04:45 -- no? Okay.

3 Thank you.

4 Q. Now, Mr. Witness, the Court -- Mr. Duncan, even, the Court is
5 aware that these events are 26 years ago. Is it correct -- you just
6 told us that before you attended this, you got a briefing from NATO
7 with everyone's pictures -- you didn't?

8 A. No, that's not what happened.

9 Q. Did Ceku -- what did you just say at the beginning of this? You
10 said --

11 A. I was given a briefing. But perhaps I can explain -- that's
12 what I wanted to comment on.

13 Q. Okay. Yes. Please do.

14 A. Okay. So the individuals of the zone commanders were known to
15 NATO, and NATO was compiling, you know, who they were. When we went
16 into the Berisha mountains for this 17 June meeting, I was given a
17 series of cards written, so index cards, which had the zonal
18 commanders' names on them and details of their -- who they were, what
19 profession they held in civilian life, had they been in JNA, were
20 they -- you know, there were facts about them as personalities, and
21 that's what I was drawing on to identify the dynamics that would
22 happen in that meeting. But it didn't have photographs. They were
23 not introduced to us by General Ceku. He just said, "We've got the
24 zone commanders with us." So I wasn't able to say this one is that,
25 that one -- as you and the Prosecution have been asking me. It

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1 wasn't something I was able to do.

2 He, General Ceku, said to me, "I've got my zone commanders
3 here," and some of them were quite vocal. So those that were vocal,
4 I can recall quite easily. I can put the name to the face because I
5 remember them being vocal. Those who just sat there and didn't say
6 anything, I've no idea which ones they were. So that explains why
7 it's difficult for me to actually say this is so-and-so, this is
8 so-and-so, because I didn't have their photographs in the briefing
9 that I was given and were not introduced to them by name.

10 Q. That's very clear, Mr. Duncan. So you have no doubt in your
11 mind that NATO briefed you properly and informed you that all the
12 zone commanders were there; correct?

13 A. They didn't brief me.

14 Q. They gave you these cards. You had no reason to doubt the
15 information in the cards?

16 A. None at all.

17 Q. And you had no reason to doubt what Ceku had said, that he was
18 bringing his zone commanders, and that was who was in the cards?

19 A. That's what -- yes, I've no reason to doubt that.

20 Q. And is it the case that 26 years later, and because you have --
21 in part -- it's difficult for anyone, but dyslexia and names makes it
22 even more difficult?

23 A. That's very true.

24 Q. Thank you. Now, this morning --

25 MS. TAVAKOLI: Please, can we take this video down.

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1 Q. This morning you were asked questions about Mr. Thaci's use of
2 the title commander-in-chief in correspondence about the use of
3 sidearms by senior members of the KLA. Do you recall that question?

4 A. I recall that question.

5 Q. Now, yesterday, at pages 44 to 45 of the realtime transcript,
6 you said that NATO couldn't recognise Hashim Thaci as the
7 prime minister of Kosovo, that they wouldn't agree to that.

8 "They were not ready to recognise Kosovo itself, and they were
9 certainly not ready to recognise Hashim Thaci as the leader of
10 Kosovo."

11 Do you remember that?

12 A. Yes.

13 Q. And yesterday in your evidence, you were referred to paragraph
14 60 of your statement where essentially you said that Mr. Thaci
15 couldn't sign as prime minister because NATO and the international
16 community did not recognise the PGoK in that position.

17 A. Mm-hmm.

18 Q. So somebody came up with the title that gave Mr. Thaci the
19 appearance of legitimacy and authority, and that was
20 commander-in-chief. Do you remember saying that?

21 A. Yes.

22 Q. Now, please, can I show you a memo.

23 MS. TAVAKOLI: That is 1D00361. And if we show you the front
24 page first so you can just see. It's a UN document. And then if we
25 go to the second page, please. It's from Bernard Kouchner, the SRSG.

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1 And if we go down, please, on 5 October 1999.

2 Q. And the heading is "Procedures for Handling Written
3 Communications from So-Called 'Government of Kosovo' Entities." And
4 it says:

5 "UNMIK offices at all levels receive written communications from
6 the so-called 'Government of Kosovo' or the 'Interim Government of
7 Kosovo' entities. It has been the policy of the Mission to return
8 such letters to the sender without response since the Mission does
9 not want to be put in a position of recognising these entities. This
10 policy does not restrict [day-to-day] contacts which UNMIK staff
11 members have with the representatives of these so-called 'Government'
12 entities.

13 "Therefore, I would be grateful if this policy would be followed
14 throughout the Mission - at all levels and by all officers and
15 Pillars. It might be useful to quietly inform your local
16 interlocutors of our strict enforcement of this policy so that they
17 might desist from sending such communications."

18 So here UNMIK is saying they will not accept communications
19 signed by anyone who purports to be part of or in a formal position
20 in the so-called government of Kosovo.

21 A. Yes.

22 Q. Is that correct?

23 A. That's correct.

24 Q. Now, did NATO have a policy - formal or informal - of not
25 accepting correspondence from people in the provisional government,

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1 in that capacity, and specifically Hashim Thaci as prime minister?

2 A. Not that I'm aware of. This would have been something that
3 should have been handled at operational level, General Jackson's
4 staff. I'm not aware that NATO had such a policy. It certainly
5 should have had such a policy. This is the right policy.

6 Unfortunately, we see a letter coming in from Mr. Thaci which should
7 not have been received.

8 Q. And why should NATO have had such a policy?

9 A. In order not to breach the allied position of not recognising
10 the provisional government.

11 Q. And is the letter you were shown earlier signed by
12 Mr. Hashim Thaci a breach of that allied position, in effect?

13 A. Yes. And moreover, it's a breach of the undertaking because the
14 undertaking does not give Mr. Thaci a role, and he should not have
15 been involved in requesting sidearms. It should have been
16 General Ceku. It's very clear that that letter should not have been
17 received and accepted. I do not know what happened to it. I was
18 aware of the incident. It was reported to me that they wanted
19 sidearms and we -- we agreed the recommendation that they should be
20 given them. How they requested it was never shown to me.

21 Q. Thank you. Now can we please move -- sorry, I have one further
22 question. Him using the title commander-in-chief in that
23 correspondence, did that mean anything to you?

24 A. No.

25 Q. No.

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1 A. It was completely *ultra vires* as you would call it. He should
2 never have signed it, and we should never have received it.

3 Q. And was he at that stage the commander-in-chief?

4 A. The KLA was demilitarising. They were bound by the undertaking,
5 not by anything that they dreamt up and calling themselves
6 commanders-in-chief, et cetera.

7 Q. So was this title something dreamt up?

8 A. It was redundant.

9 Q. Thank you. Now, I want to go back to the issue of violence.
10 Actually, no. Yesterday, you were asked questions about the origins
11 of the clause in the undertaking about the protection of civilians.
12 Do you recall that?

13 A. Yes.

14 Q. And you said that:

15 "There was also the problem, which was going to become apparent
16 and became apparent as we've seen earlier today, was that there would
17 be a very uncertain situation, and the forces of the civil power, in
18 this case UNMIK, would not be strong enough to prevent any such
19 revenge attacks or things that we've talked about. And, therefore,
20 you know, it was common sense to make sure that we got an undertaking
21 from the KLA that they were not going to be part of this, that they
22 were going to ... refrain from what happened afterwards."

23 Do you remember saying that?

24 A. Yes.

25 Q. Now, please, can I play you a video of a press conference by

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1 Pentagon spokesperson Ken Bacon on 5 June 1999.

2 MS. TAVAKOLI: And the reference is 1D76, please.

3 THE INTERPRETER: The interpreters kindly ask the speakers to
4 pause between questions and answers. Thank you.

5 MS. TAVAKOLI: Sorry.

6 [Video-clip played]

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

14 "It sounds like you're encouraging the Serbs who now live in
15 Kosovo then to leave?

16 "I'm not encouraging them at all. I'm just stating what we
17 anticipate the facts will be."

18 MS. TAVAKOLI: Thank you.

19 Q. So the Pentagon was anticipating that these would be the facts.
20 When you said yesterday that the clause was included to ensure that
21 the KLA would refrain from what happened afterwards, were you talking
22 about what Ken Bacon was talking about in the video?

23 A. Yes. And I've reflected overnight on how that piece of that
24 paragraph came in. And as far as I can recall, my very first draft
25 of the undertaking had language in it about retaliatory attacks, but

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1 then it was part of the discussion with Washington and London that I
2 had expanded that to what then became the draft of that paragraph
3 with the references to civilians and imprisonment and suchlike.

4 So yes is the simple answer to your question.

5 Q. Thank you. Now I'd like to move back to the question I opened
6 my questions with about violence in MNB East.

7 MS. TAVAKOLI: And we need to go into private session because of
8 the Rule 107 provider.

9 PRESIDING JUDGE SMITH: Into private session, please.

10 [Private session]

11 [Private session text removed]

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1 [Private session text removed]

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21 [Open session]

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

23 MS. TAVAKOLI: Please, can I bring up Exhibit P02516.

24 Q. Now, if you see at the top, Mr. Duncan, this is General Sir Mike

25 Jackson's evidence given in the case of Kontic at the High Court in

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1 London on 24 May 2016.

2 MR. HALLING: Your Honours, we didn't show this in cross. Can
3 we inquire how this is within the scope of the cross-examination?

4 MS. TAVAKOLI: This is related. The Prosecutor put, at length,
5 examples of individual acts of violence committed against Serbs
6 allegedly by the KLA and about acts of violence against civilians.
7 He also talked about General Jackson's views in a memo and in reports
8 of a meeting with Mr. Thaci about the nature -- he asked questions
9 about the nature of the violence that was occurring in the summer
10 1999. This statement goes to the nature of that violence.

11 PRESIDING JUDGE SMITH: Go ahead.

12 The objection is overruled.

13 MS. TAVAKOLI: Please, can I go to two short paragraphs. First
14 to page 121589.

15 THE COURT OFFICER: Can I have the page again?

16 MS. TAVAKOLI: It's page 16 first, please. Yes. And if we
17 could just stop there.

18 Q. He answers:

19 "Yes. I had no evidence myself that ..."

20 And if we skip through a few words:

21 "... that the KLA institutionally, by policy if you wish, were
22 committing terrorist acts against whomever. I am not saying that
23 individuals did not do this, but I have no evidence that this was KLA
24 policy."

25 MS. TAVAKOLI: And now, please, can we go on the same document

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1 to page 121594, which is page 21 in this document. And if we go down
2 a bit, please.

3 Q. And you see at line 17, General Sir Mike Jackson says:

4 "I say, I have no evidence that institutionally the KLA ...
5 adopted a policy of ethnic cleansing of the remaining Serbs."

6 Do you agree with General Sir Mike Jackson's assessment?

7 A. On this occasion, I do agree with him.

8 Q. And, finally, to your knowledge, did General Sir Mike Jackson
9 ever report to NATO command that Hashim Thaci was in any way
10 orchestrating or condoning violence against civilians?

11 A. Not to my knowledge.

12 Q. Thank you.

13 MS. TAVAKOLI: Those are my questions.

14 PRESIDING JUDGE SMITH: Thank you.

15 Judge Barthe.

16 JUDGE BARTHE: Already my turn.

17 Questioned by the Trial Panel:

18 JUDGE BARTHE: Good afternoon --

19 A. Good afternoon, Your Honour.

20 JUDGE BARTHE: -- Mr. Duncan. Mr. Duncan, the Panel has a few
21 more questions for you to shed some more light on some of the issues
22 that you have already addressed in your testimony so far. And my
23 first question is about your professional background as a former
24 British diplomat.

25 You said in your statement to the Defence on 24 August 2025 at

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1 paragraph 4 that you served in Paris and in Khartoum, followed by
2 postings in London, before being posted to Tirana where you served as
3 the *charge d'affaires* from 1992 to 1993. Do you recall saying this
4 to the Defence?

5 A. Yes, indeed.

6 JUDGE BARTHE: So how many months were you deployed in Albania
7 during that time?

8 A. I think it was about eight months altogether. I was deployed in
9 June and I left in the early spring, something like that.

10 JUDGE BARTHE: Just for the record, in June 1992 and early
11 spring 1993; is that right?

12 A. That's correct, yes.

13 JUDGE BARTHE: Thank you. You also said - and it can be found
14 at paragraph 73 of your statement to the Defence - that you made
15 several, I think there were four, visits to Kosovo after the signing
16 of the undertaking; is that right?

17 A. Certainly several, yes, Your Honour.

18 JUDGE BARTHE: How long approximately were you in Kosovo during
19 these visits, all in all?

20 A. As I explained in the cross, in the redirect, Your Honour, most
21 of these visits were flying-in-and-out visits, so, you know, SACEUR's
22 personal airplane, and we would fly in and spend the morning and
23 afternoon and fly back in the evening. So they're very much
24 snapshots.

25 I then went back -- I would have to refer to my notes to give

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1 you the exact dates, but I went back on my own for two or three days.
2 I also flew in with General Rupert Smith when he went. So there were
3 quite a few visits during the course of the following six months.
4 The total is difficult to estimate because they were -- you know,
5 they would fly in and fly out, so not even a full 24 hours.

6 JUDGE BARTHE: So a couple of days; is that fair?

7 A. Yes, maybe all in all. In the following six months, something
8 like three to four days total time.

9 JUDGE BARTHE: Thank you. Have you been to Kosovo any other
10 times before or after the war, apart from the visits you just
11 mentioned; and if so, when was that, and for how long were you there?

12 A. In the following year, so that would be 2000, I went because of
13 a problem that we were having fighting the last war, that the
14 [indiscernible] of troops needed to really understand that this was
15 not Bosnia. So all the MNBs were changing, and I went down for a
16 couple of days and gave them a briefing for that. So there was a
17 couple of days.

18 I went mostly to Kosovo three or four times a year afterwards,
19 something like that. Before, I had not been. I'd just flown over
20 the Kosovo border with the ECMM.

21 JUDGE BARTHE: Thank you. I would like to move on to paragraph
22 13 of your statement, the statement that you gave to the Defence in
23 August, that also covers some aspects, some topics you addressed here
24 and discussed with us in court or with the Defence and the
25 Prosecution.

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1 It reads or it describes that:

2 "During [the] late-night discussions in Kumanovo,
3 General Jackson expressed very serious concerns about the lack of a
4 detailed plan for the demilitarisation of the UCK/KLA, estimated by
5 that stage to be well over 20.000 -- 25.000 armed fighters."

6 My first question: Do you recall discussing this with the
7 Defence and --

8 A. Yes, Your Honour, I do.

9 JUDGE BARTHE: Thank you. Am I right that you were referring to
10 the discussions that led to the Kumanovo or Military Technical
11 Agreement between the international security force KFOR and the
12 Federal Republic of Yugoslavia and the Republic of Serbia that was
13 concluded on 9 June 1999; is that right?

14 A. That's correct.

15 JUDGE BARTHE: And, Mr. Duncan, yesterday - and this is a
16 reference to page 22, line 12 of our realtime transcript, yesterday's
17 realtime transcript - you said that at the time of the undertaking,
18 the signing of the undertaking or the negotiation that led to the
19 signing of the undertaking, the KLA had around -- you said,
20 roundabout 20.000 fighters.

21 I would like to ask you, if you can answer the question, how
22 many fighters did the KLA have at the time, around 20.000 or well
23 over 25.000?

24 A. Your Honour, it was very difficult to tell. There were various
25 figures flying around, and the NATO figure was between those two.

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1 That was roughly 20 to 30.000. I mean, this is a guerrilla army, and
2 it's very difficult to say who's part of the structure, who's an
3 individual doing things. It wasn't possible at that time, but we --
4 there was a figure given, and I'm trying to -- this came out of the
5 undertaking. It's only after the undertaking that we were able to
6 get a figure from the KLA as to how many people they had, because
7 these are the people who are going to be part of the demilitarisation
8 programme and because it had -- because it had advantages. There
9 were obviously jobs on offer as a result.

10 There was a phenomena of people saying, "Oh, I'm a member of the
11 KLA as well, so I need to be counted amongst them." So the actual
12 figure, I don't think we've ever really known what it was. It was
13 somewhere in the region of 20 to 30.000 people. The best figure that
14 is -- the closest authoritative figure is the one that they gave us
15 when we did the undertaking and demilitarisation agreement and they
16 had to say how many people they had.

17 JUDGE BARTHE: Thank you. I understand. And that helps.

18 A. Thank you.

19 JUDGE BARTHE: In paragraph 15 of your statement to the Defence,
20 you refer to Chapter 7 Article I(2)(a) of the March 1999 Rambouillet
21 Interim Agreement provided to establish a durable cessation of
22 hostilities.

23 A. Yes.

24 JUDGE BARTHE: Do you remember that?

25 A. I do.

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1 JUDGE BARTHE: I would like to know from you, Mr. Duncan, was
2 this goal achieved; and if so, when do you think was the case, the
3 durable cessation of hostilities in Kosovo?

4 A. Hostilities as in the legal sense of it, Your Honour, I would
5 say was achieved with the final evacuation of the Serb troops and
6 paramilitaries on 21 June. The situation after 21 June was not
7 hostilities, it was civil disturbance. And that's one of the
8 problems that KFOR had, was that they were not many -- most of them
9 were not trained for civil disturbance. They were trained for
10 hostilities. And that was a major mind shift for most of these units
11 coming in.

12 So I think that's the area that we can say that the legal
13 definition of the end of hostilities occurred on 21 June with
14 complete certainty.

15 JUDGE BARTHE: Thank you. In paragraph 17, two paragraphs
16 further down, in your statement you -- or it is said that you told
17 the Defence during your interview in August that the self-declared
18 Provisional Government of Kosovo was not recognised by any country
19 and international body, and in practice had no power to instruct
20 "armed civilian groups or paramilitaries" to demobilise or enforce
21 such an instruction.

22 Mr. Duncan, can you explain why you think so? In other words,
23 what is the factual basis for your assumption?

24 A. I'm sorry, Your Honour, does this come from UNSCR 1244 you're
25 referring to?

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1 JUDGE BARTHE: I was referring to paragraph 17 of the transcript
2 or of the summary of your statement, the statement that you signed
3 and gave to the Defence, that you gave to the Defence in August. You
4 said, and I think you repeated it several times here in the
5 courtroom, that the provisional government had no power to instruct
6 anyone.

7 A. Yes, I see what you mean.

8 JUDGE BARTHE: So I'm asking for the factual basis. That's my
9 point.

10 A. Yes. The factual basis was that -- I'm trying to answer your
11 question as accurately as I can. It had self-declared as an
12 organisation. It had declared numerous bodies, including, as we have
13 seen, defence ministries and the like, but it was not a state. It
14 had no architecture backing up behind these named bodies.

15 So how was this -- and it was a dichotomy, as I said, that's why
16 I asked about the UNSCR. The UNSCR talks about the Serbs and gives
17 instructions, et cetera, to a state, with all the architecture of the
18 state, the public service, police forces, justice, I mean, all that
19 sits around the architecture of a state. A self-declared government
20 by a group of individuals is not a state. Neither legally, as in no
21 one recognises it, nor in practice. So that was how I came to the
22 argument that I put in that evidence, that this was a major problem.

23 And the practical problem was that there was nobody to carry out
24 these instructions. I mean, Mr. Thaci could give an instruction to
25 do things, but what he was doing was urging people. He had no

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1 democratic legitimacy. The state that he claimed to represent did
2 not exist. It had been emptied of its public service. It was not
3 recognised by anybody. It had a geographical limit, and that's about
4 all it had.

5 So that was the basis, the factual basis for my declaration in
6 that statement.

7 JUDGE BARTHE: Thank you, Mr. Duncan. Maybe to make my point
8 clearer. Ultimately what happened is that the KLA demobilised within
9 three months; isn't that right?

10 A. They did, pretty much, yes.

11 JUDGE BARTHE: And we heard recently in this courtroom that this
12 was a kind of, I'm using my words but I'm not sure whether this word
13 was also used, a world record of an armed force that demobilised, as
14 I said, in world record time.

15 So I wonder or the Panel wonders how did that go?

16 A. How did it happen or how did -- I'm sorry, I'm not
17 understanding.

18 JUDGE BARTHE: Without --

19 A. [Overlapping speakers] ...

20 JUDGE BARTHE: -- any instructions leading, so how can it --

21 A. How is it possible?

22 JUDGE BARTHE: How can it happen that an armed force demobilise
23 within three months, in record time. I'm quoting a different person
24 now.

25 A. Yes.

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1 JUDGE BARTHE: Do you have an explanation?

2 A. I was aware of the comment. I don't think it's true, but
3 nonetheless, I was aware of the comment.

4 How is it possible? It was possible, as I have tried to explain
5 in my evidence, because the way that the undertaking worked. The
6 undertaking split off the military command structure, which did
7 exist. I mean, it was not a hierarchy but there was a structure to
8 it, because we had the zonal commanders and we had Agim Ceku. And it
9 split that off from the self-declared political wing. So it was not
10 the political wing who made this happen. It was because we split the
11 military wing off that we were able to harness their aspirations.

12 And what did they want? Various things because they were a
13 heterogenous group of people. And that's when I say that I was
14 looking at -- in detail at the aspirations of the zonal commanders
15 and trying to find ways of meeting that, and I think we succeeded,
16 that we were able to get their buy-in to make this happen.

17 Now, there were very difficult steps because parts of that were,
18 as I mentioned, the problem that -- this is based on a Namibian and
19 Rhodesian settlement, where there was a regular army that these
20 people could go to. So that's what happened to ZANLA and ZIPRA and
21 the Patriotic Front. They went into the regular army. Some went
22 into the police, et cetera.

23 We didn't have a regular army, so we had a major problem with
24 that construct.

25 But, nonetheless, that said, the organised part, the only part

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1 realistically that sat behind the self-declared government was the
2 military wing, and we split that off. We addressed their
3 aspirations, what did they want to do, and they understood that it
4 was in their interest to do it, by and large. And by successfully
5 doing that, we got them to do what we wanted, which was to
6 demobilise, and we did it in three months.

7 JUDGE BARTHE: Thank you. I think I can follow.

8 I have another question for you. You said yesterday - this is
9 on page 83 of our realtime transcript - that General Ceku was in
10 charge of the demilitarisation on the KLA side, the demilitarisation
11 process, and reported to General Jackson. Do you remember that you
12 said that --

13 A. Yes.

14 JUDGE BARTHE: -- yesterday?

15 A. Yes, Your Honour.

16 JUDGE BARTHE: Do you know whether General Ceku also reported to
17 anyone from the KLA or the Provisional Government of Kosovo; and if
18 so, to whom did he report?

19 A. I do not know what he did, but he was not supposed to be
20 reporting in any way whatsoever to the political wing. That is clear
21 from the undertaking and the terms of the undertaking, and we've seen
22 a fairly egregious example of the political wing trying to reassert
23 control. That is not unexpected. As I also said in my evidence, it
24 was one of the things that surprised me about Mr. Thaci's approach to
25 the 19 June discussions in that he did not appear to understand or

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1 appreciate fully what would happen if they signed the undertaking.
2 The military wing would be pulled out of any control that he might
3 have, and he would not be able to use the military wing for political
4 purposes. That was the intent of the undertaking.

5 JUDGE BARTHE: But as you just said, you don't know whether
6 General Ceku reported to anyone.

7 A. Only he could tell you that, Your Honour.

8 JUDGE BARTHE: I fully understand. Thank you.

9 I'd like to move on to paragraph 21 of your statement, the
10 statement that you gave to the Defence. There it is said that on
11 10 June 1999, the day after the Kumanovo Agreement was signed, the
12 United Nations Security Council adopted United Nations Security
13 Council Resolution 1244. And I would like to go back to the
14 Kumanovo Agreement that was signed, as I said, on 9 June and ask you
15 whether you know who negotiated and signed this agreement on behalf
16 of NATO on the one hand and on behalf of the Federal Republic of
17 Yugoslavia and the Republic of Serbia on the other hand?

18 A. I know who signed it on the NATO side, it was General Jackson.
19 I do not recall the name of the Serbian military officer who signed
20 it.

21 JUDGE BARTHE: But you can recall that it was a military officer
22 on the --

23 A. Yes.

24 JUDGE BARTHE: -- Serbian side who signed it.

25 A. Mm-hmm.

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1 JUDGE BARTHE: Would that surprise you if it was

2 General Nebojsa Pavkovic?

3 A. No. I do not recall. I mean, it's in the public domain, and
4 it's an agreement whose signature I haven't -- the signature block of
5 that agreement, I have to say, I haven't looked at for a very long
6 time.

7 JUDGE BARTHE: Yes.

8 A. Other parts I have looked at but not the signature block.

9 JUDGE BARTHE: Thank you. You're right. It is, indeed, in the
10 public domain, but it's important -- or my question was whether you
11 know that it was signed by a military --

12 A. Yes, indeed.

13 JUDGE BARTHE: -- officer.

14 A. Yes, indeed, Your Honour.

15 JUDGE BARTHE: Not by --

16 A. Yes, indeed.

17 JUDGE BARTHE: -- a politician.

18 A. Exactly.

19 JUDGE BARTHE: Thank you. Also in paragraph 21 of your
20 statement, you refer to paragraph 9 of United Nations Security
21 Council Resolution 1244 that stated that "it decides that the
22 responsibilities of the international security presence to be
23 deployed and acting in Kosovo will include demilitarising the Kosovo
24 Liberation Army and other armed Kosovo Albanian groups as required
25 in," another paragraph, "paragraph 15" of that resolution.

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1 I would like to ask you, Mr. Duncan, what other groups were
2 meant here, if you can say.

3 A. Certainly the FARK, Your Honour, which was the other main group.
4 It is possible that it was intended also to cover any more smaller
5 irregular forces, and it would make sense for it to do so.

6 JUDGE BARTHE: Exactly where I was heading. Were there any
7 other smaller armed forces, Albanian forces operating in Kosovo at
8 the time? That is, in 1999, in summer or early summer 1999. If you
9 know.

10 A. My understanding was that there were what you might call
11 individual village defence groups which were not structured or part
12 of any organisational structure.

13 JUDGE BARTHE: Thank you. And in paragraph 22 of your statement
14 to the Defence, one can find a reference to the aforementioned
15 paragraph 15 of United Nations Security Council Resolution 1244 that
16 demanded "that the KLA and other armed Kosovo Albanian groups end
17 immediately all offensive actions and comply with the requirements
18 for demilitarisation as laid down by the head of the international
19 security presence, in consultation with the special representative of
20 the Secretary-General."

21 A similar question as I've just asked you. Were there other
22 armed Kosovo Albanian groups that carried out offensive military
23 actions at the time in early summer 1999 apart from the KLA?

24 A. Yeah, I think the answer, Your Honour, is the same. There were
25 two principal ones. There were the KLA, the FARK, and also small

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1 irregular groups, largely local-based, but these were very difficult
2 to have any visibility of, but we were aware of their existence. And
3 it's perfectly natural. You would expect that sort of thing to
4 occur.

5 JUDGE BARTHE: Do you actually know whether FARK carried out
6 military actions in Kosovo in summer 1999?

7 A. At this length of time, Your Honour, and I cannot point to any
8 particular actions that they carried out, it would require me to go
9 back and look at the reports from that time.

10 JUDGE BARTHE: No, it's okay. I fully understand.

11 Maybe one last question before we break for lunch. At paragraph
12 26, or according to paragraph 26 of your statement to the Defence you
13 said in your interview in August that you had been in, and I quote
14 from this paragraph, "in a regular dialogue with [your] colleagues in
15 London over several months over the need for closer engagement with
16 the Kosovar leadership about post conflict scenarios."

17 Do you remember that?

18 A. That is correct, yes.

19 JUDGE BARTHE: I would like to know, Mr. Duncan, who did you
20 think was the Kosovar leadership at the time when you decided -- or
21 when you had this dialogue with your colleagues in London?

22 A. From recollection -- and it is a great pity, Your Honour, that
23 NATO have not been willing to release, and, indeed, the British
24 government, to release my reports from that period and of the actual
25 undertaking negotiations, because a lot of these questions would be

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1 easily answered if you had access to my cables. But so far they have
2 not been either willing or able to do so. So I'll do the best from
3 memory.

4 In that discussion, it was part of a discussion that was going
5 on in NATO in the North Atlantic Council around what was the
6 objective, because we're coming to the end of a war, what is it are
7 we going to do? Are we going to have a UN protectorate? Are we
8 going to, you know, just stabilise the situation, and, as the UNSCR
9 actually says, and then allow the Serbs to return. No one could
10 agree what the position was.

11 And my correspondence with senior colleagues in London, I was
12 saying you need to focus on this. You must get the political side to
13 focus on what it is they want to do, even if it's an outline, because
14 the military are in a real difficulty because they can't plan for
15 post cease-fire until they know what you want to do. They can create
16 a condition of peace but that's not very easy to do, and it will
17 easily deteriorate. So it makes the need for an undertaking even
18 more important.

19 And it was not -- and part of that, I urged that they speak to
20 the Kosovo leadership as understood by Rame Buja. So they needed to
21 talk to Rugova, the LDK, to Mr. Thaci, to those who had been
22 represented as a cross-section of the leaders of Kosovar Albanian
23 society.

24 So that's what I had been urging for at least two months, for
25 London to do that, and to press the allies to come to some kind of

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1 agreement as to what was the outcome we were fighting for. That's
2 what I was doing.

3 JUDGE BARTHE: Thank you, Mr. Duncan. I think your lunch break
4 is well deserved.

5 A. Thank you, Your Honour.

6 PRESIDING JUDGE SMITH: We will break now for lunch. We will be
7 back at 2.30. Remember not to speak with anyone about your testimony
8 outside the courtroom.

9 THE WITNESS: Thank you.

10 PRESIDING JUDGE SMITH: Madam Court Officer, you can escort the
11 witness out of the room.

12 [The witness stands down]

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

14 --- Luncheon recess taken at 1.01 p.m.

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

16 PRESIDING JUDGE SMITH: Please bring the witness in.

17 MS. TAVAKOLI: Your Honour, before the witness is --

18 PRESIDING JUDGE SMITH: Oh, wait. Hold on.

19 Yes.

20 MS. TAVAKOLI: Before the witness comes in, I don't know whether
21 it would assist this witness if various paragraphs of his statement
22 are referred to that it's brought up on the screen so he can read it
23 at the same time. It's a matter for Your Honours, but given what you
24 know about him.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

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1 [The witness takes the stand]

2 PRESIDING JUDGE SMITH: We'll continue with questions from
3 Judge Barthe.

4 THE WITNESS: Thank you.

5 JUDGE BARTHE: Thank you.

6 Welcome back, Mr. Duncan. I hope you had a pleasant lunch
7 break.

8 A. Thank you. I did have a -- just a quick reality check,
9 Your Honour, that I wasn't -- I just want to be double sure that
10 you're asking me about my physical presence in Kosovo post the
11 hostilities. That was the period you were interested in?

12 JUDGE BARTHE: Yes, go ahead.

13 A. Okay. That -- I just wasn't sure that we were talking about
14 hostilities and post hostilities. Post hostilities, I'd been in
15 touch with my POLAD colleagues, like Wendy Gilmour and others, but
16 that represents how often I was there physically. So thank you for
17 that clarification.

18 JUDGE BARTHE: Thank you very much. My next question, or
19 questions, actually, are about paragraph 32 of your statement where
20 you identified a number of key challenges, among others, the fact
21 that NATO forces would begin deployment on 12 June 1999, whereas the
22 Serb -- or all Serb forces were due to have left Kosovo by 21 June
23 1999. Do you remember this?

24 A. Yes, indeed.

25 JUDGE BARTHE: I would like to ask you, Mr. Duncan, did the Serb

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1 forces comply, more or less, with the 21 June deadline?

2 A. As far as I was aware, yes. I am trying to think if there were
3 any problems up on the northern border. There were occasional sort
4 of miscalculations, if I recall, where people got too close to the
5 border and that sort of thing happens. But in any significant way,
6 yes, they complied.

7 JUDGE BARTHE: Just for the record, you were referring to the
8 border to Kosovo?

9 A. Yes.

10 JUDGE BARTHE: Thank you. So more or less, all Serb forces had
11 left Kosovo by the 21st --

12 A. They had all left by the 21st.

13 JUDGE BARTHE: -- of June 1999?

14 A. Yes.

15 JUDGE BARTHE: Do you know where the Serb forces went? Did they
16 go back to their home barracks somewhere in Serbia or did they stay
17 close to the border to Kosovo?

18 A. I have no recollection of exactly where they went to. But they
19 were compliant and that was what mattered.

20 JUDGE BARTHE: Thank you. Mr. Duncan, according to paragraph 41
21 of your statement to the Defence, you told the Defence that any
22 suggestion that the KLA/UCK was a disciplined, hierarchical
23 organisation under firm political control was dispelled by
24 General Ceku at your first, as you called it, substantive meeting on
25 15 June 1999, where Mr. Ceku informed you that Mr. Thaci was

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1 currently unavailable, and said that the UCK/KLA political
2 authorities would need to be consulted, and also that he could not
3 negotiate any document without his zonal and regional commanders
4 being present.

5 Do you remember saying this to the --

6 A. Yes.

7 JUDGE BARTHE: -- Defence?

8 A. Yes.

9 JUDGE BARTHE: Apart from Mr. Thaci, was there anybody else
10 General Ceku wanted to consult from the political side of the KLA?
11 Did he mention anyone in particular?

12 A. Your Honour, he didn't mention anyone else.

13 JUDGE BARTHE: Thank you. I would like to move on to paragraph
14 50 of your statement in which you talked about or discussed,
15 according to the document the Defence prepared about your interview,
16 the second round of discussions at the KLA headquarters in Kosovo on
17 19 June 1999, and you gave evidence about this meeting here in the
18 courtroom as well.

19 And you said, according to this document in front of me, that
20 you were joined by Mr. Thaci for the first time and Jamie Rubin, the
21 US Assistant Secretary of State, during these discussions; is that
22 right?

23 A. That's correct, Your Honour.

24 JUDGE BARTHE: Could you please explain why that happened? In
25 other words, what was the purpose of Mr. Thaci's participation in

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1 that meeting?

2 A. It's -- yes. The Kosovar side invited him, if you like. It was
3 not -- we didn't say we want Mr. Thaci there. We had organised to
4 meet again. In fact, you heard it in the video, General Reith
5 talking about the urgency of meeting. And so when that meeting was
6 agreed and we had got Mr. Rubin and his American colleagues with us,
7 we went up and there was Mr. Thaci. We did not have any role in
8 inviting him or saying he should be invited.

9 Now, I mean, it makes sense as you indicated in your -- implied
10 in your previous question that if he was to be consulted, given the
11 time pressures, it was a good thing that he was there. So we had no
12 problem with him being there because the political side had to be
13 consulted. It was even easier if they're actually in the room. They
14 then decided to play all the political cards that they wished to
15 play, but there was -- you know, that was why I stopped the meeting,
16 because they were overplaying that, and that was their entire focus
17 was to put political declarations into the undertaking.

18 So that's how it came about. So the genesis and progress of the
19 discussion and Mr. Thaci's role in it.

20 JUDGE BARTHE: Thank you. Mr. Duncan, that brings me to my next
21 question, the comment you just made in relation to the point where
22 you stopped the meeting, as it is said here in paragraph 51 of your
23 statement to the Defence, for a private meeting with the key players
24 of the KLA in which you spelled out the political importance of the
25 undertaking as a, if not the, key step along the path, you said,

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1 towards an independent Kosovo.

2 My question is who did you have -- just for the sake of
3 clarification, who did you have this meeting with? Who were the key
4 players that you talked to in this private meeting?

5 A. Thank you, Your Honour. On our side, it was General Reith,
6 myself, Jamie Rubin, the three of us. And on the Kosovar side, it
7 was General Ceku, Mr. Thaci, and I believe Mr. Krasniqi.

8 JUDGE BARTHE: Mr. Jakup Krasniqi?

9 A. Yes.

10 JUDGE BARTHE: Thank you. I believe you already said this
11 earlier today in response to a question by the Prosecution, that none
12 of the zonal, as you called them, or regional commanders were present
13 during this private meeting; is that right?

14 A. Yes, Your Honour. That is correct. My intent was to create a
15 situation where we could talk to three people who had been the most
16 active in the discussion, and they could talk to their subordinates
17 on the political and military wings independently. Because to have
18 this discussion that I had with them in a plenary, if you like, could
19 lead to misinterpretation by them. It would give them an opportunity
20 to keep opening up the debate, which is what they kept doing.

21 And in order to not undermine them, I didn't want to undermine
22 their authority, so in order to do that I asked everyone else to
23 leave. And then we could have a very frank exchange of views, as
24 it's often known, in which I was very forceful in saying that, you
25 know, this could not continue, and the reasons why it could not

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1 continue. And I left it to them to go and talk to their colleagues
2 and subordinates and explain the position.

3 JUDGE BARTHE: Thank you. And, Mr. Duncan, as you said
4 yesterday, it worked. Everyone left the room apart from the people
5 you just mentioned.

6 A. That is correct, Your Honour.

7 JUDGE BARTHE: You also said yesterday, I believe, in response
8 to a question again by the Prosecution, on page 128 of our realtime
9 transcript, that you were not familiar with any internal regulatory
10 document of the KLA; is that correct?

11 A. That's correct, Your Honour.

12 JUDGE BARTHE: Let me, Mr. Duncan, nevertheless ask you: Are
13 you aware of any provision or rule that required the consultation
14 and/or the approval of the regional or operational zone leaders of
15 the KLA before an agreement could be made?

16 A. I'm sorry, Your Honour, are we talking about the role of the
17 regional commanders?

18 JUDGE BARTHE: Yes, yes. The regional or local commanders as
19 you've called them.

20 A. If I've understood your question correctly, I was not aware of
21 any official document that would require their presence. I was
22 working on the basis of our discussions with General Ceku who said
23 their presence was essential, and I took him at his word.

24 JUDGE BARTHE: I understand. And not only the presence of the
25 regional or zonal commanders, but also, or more importantly, a

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1 requirement that they have to be consulted or had to be consulted or
2 their approval had to be sought by --

3 A. I think if -- again, if I've --

4 JUDGE BARTHE: -- others.

5 A. -- understood you correctly, Your Honour, we're talking here
6 about the difference between consultation and participation. So what
7 General Ceku told me, in sum, was that the zonal commanders had to
8 participate in the discussion. Secondly, that the -- there had to be
9 consultation with the political wing. They're two different things.
10 One is the participation was essential of regional commanders or
11 zonal commanders, and the political authorities had to be consulted.

12 And that made perfect sense to me. I could understand where he
13 was coming from.

14 I hope that answers your question, Your Honour.

15 JUDGE BARTHE: Yes, and maybe I was not clear enough. My
16 question was more whether there was a requirement, a legal
17 requirement so to speak, a formal requirement to consult the
18 commanders or to get their approval.

19 A. Not that I was aware of.

20 JUDGE BARTHE: Thank you. Mr. Duncan, I'm afraid I still have
21 one or two more questions about the --

22 A. Of course.

23 JUDGE BARTHE: -- notorious signature block --

24 A. Yes.

25 JUDGE BARTHE: -- of the undertaking. But before I do that, I

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1 have one other question in relation to what you said on page 55 of
2 our realtime transcript, yesterday's transcript, where you said that
3 you had asked UK Foreign Minister Robin Cook on 18 June 1999 to
4 contact Mr. Thaci to urge Mr. Thaci to support the agreement which
5 was -- or had been negotiated in Kosovo. Do you remember saying this
6 yesterday?

7 A. Yes, Your Honour, but I didn't say "I." I said "we."

8 JUDGE BARTHE: That's right. "You," I mean plural.

9 A. Yes.

10 JUDGE BARTHE: So this is clear. My question is why was it
11 important -- I assume that it was important to you because you - not
12 you personally - contacted UK Foreign Minister Robin Cook to contact
13 Mr. Thaci. So why was it important that Mr. Thaci supported the
14 agreement for you?

15 A. It's not quite accurate, the first part. And then I'll answer
16 the second part.

17 What I did was I spoke to Prime Minister Tony Blair's office and
18 they asked Mr. Cook to phone Mr. Thaci. This was after we had
19 discovered that there was a separate US track going on with
20 discussions between Jamie Rubin and Larry Rossin, I think, in
21 Ljubljana, which he referred to in his evidence. And, obviously,
22 there was a competing track, and we needed to make sure that that
23 competing track did not interfere with where we were, and that if
24 they were engaging with Mr. Thaci, we needed to add our voice to
25 whatever they were doing with him and urge that, you know, they stop

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1 their second track and they come back into the main track with us and
2 negotiate.

3 And that may be the thing that prompted him to come over and
4 join in, and which was constructive, but that is the reasoning that
5 caused us to do it and who we did it with.

6 JUDGE BARTHE: Thank you. Now to the signature block. At
7 paragraph 60, and you also said this several times here in this
8 courtroom, it's recorded that Mr. Thaci could not sign as
9 prime minister, in his capacity as prime minister, because NATO and
10 the international community did not recognise the PGoK, the
11 Provisional Government of Kosovo, and this position.

12 What I would like to know from you now is did Mr. Thaci actually
13 want to sign the agreement in his capacity as prime minister of the
14 Provisional Government of Kosovo?

15 A. You're asking a very detailed question on a 13-hour negotiation
16 non-stop, so the second longest in my entire career, so I'll try to
17 remember what exactly happened. I recall that -- if I remember this
18 correctly - and I am open to correction from other evidence that you
19 may find - it was put to us that Mr. Thaci should sign instead of
20 General Ceku. And our response was: If this is what you want, we
21 are prepared to accept that, but we will not accept him in his role
22 as prime minister of the provisional government because it will
23 sabotage the entire operation. We will not get anywhere.

24 And then we came to this compromise wording which we have
25 discussed over the past two days.

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1 JUDGE BARTHE: Thank you. Maybe that helps. The reason why I'm
2 asking is because yesterday on page 99 of our transcript, lines 15 to
3 17, you said:

4 "... when it was proposed, we made it clear that it could not be
5 [signed] in his capacity as prime minister ..."

6 So this is why I'm asking who came up with this proposal,
7 whether it was Mr. Thaci or a different person, or whether you don't
8 know who it was.

9 A. For the language of commander-in-chief or the fact that he was
10 to be a signatory?

11 JUDGE BARTHE: That he was added or that he was the one who
12 should have signed the agreement.

13 A. [Overlapping speakers] ... this is something that came out of
14 the Kosovar side. And it was a foot -- and I think it may help to
15 understand the context. Again, it goes back to your earlier question
16 of why did I stop the negotiations.

17 Mr. Thaci and Mr. Krasniqi, throughout those 13 hours, spent
18 their time trying to amend the declaration, the undertaking, and they
19 kept doing so in a way which was perfectly obvious that what they
20 were trying to do was to influence the document so that it gave
21 implicit recognition. Now, of course, that was a complete no-no. We
22 were not going to agree to that.

23 So each time we went through this discussion, we would have to
24 say, "No, you know, we cannot accept this language," and explain why.
25 And this went on interminably until I stopped the negotiations. So

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1 with that in the run-up to a proposal from them that he should sign
2 it, you can see the logic of what they were trying to do and what we
3 were trying to do, which was to say, "No, we cannot have him as --
4 and you must stop doing these political amendments because they are
5 not going to run and we are not going to accept them," which is very
6 difficult to do because this is still supposed to be a unilateral
7 undertaking from them, and yet we're telling them they can't put what
8 they want in it.

9 So it was an extremely intense and difficult discussion for that
10 period.

11 JUDGE BARTHE: Thank you, Mr. Duncan. And one last time, am I
12 right in assuming that you still don't recall who came you up with
13 the suggestion of adding the Commander-in-Chief UCK addition?

14 A. You are correct. I do not remember exactly who it was, but I
15 tried to explain the genesis of that moment when whoever it was
16 proposed him and the genesis of the moment of whoever it was came up
17 with that terminology. So that is, I hope, the best I can do in
18 this -- after 26 years of explaining how -- not of explaining, but 26
19 years later explain how we got to that position.

20 JUDGE BARTHE: So correct me if I'm wrong, but this proposal
21 came from someone from the KLA side?

22 A. From the Kosovar side, yes.

23 JUDGE BARTHE: From the Kosovar side. Thank you.

24 One or two brief questions about paragraph 69 of your statement
25 where you said -- and you said similar things in court yesterday and

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1 I believe also today, when you said Mr. Thaci was something of an
2 enigma to you. In paragraph 69 -- or according to paragraph 69 of
3 your statement to the Defence, you told the Defence that you found
4 many of Mr. Thaci's political decisions, or rather lack of them,
5 difficult to understand.

6 I would like to ask you, could you please give us one or two
7 brief examples of Mr. Thaci's political decisions that you found
8 difficult to understand?

9 A. I think it was the lack of them, Your Honour, more than the
10 decisions. I think it's the lack of decisions. If I recall
11 correctly, I briefed General Wesley Clark several times for his
12 meetings with Mr. Thaci. I'm pretty sure I'm right that they met in
13 the margins of Rambouillet. I could be wrong there because we were
14 not allowed to go to Rambouillet, but I'm pretty sure we had a
15 meeting -- he had a meeting. I didn't attend it, but I recall
16 briefing him. Then Mr. Thaci came down to SHAPE and we briefed him
17 there.

18 Subsequently, I briefed General Wesley Clark post the conflict
19 in his meetings which are recorded in the documents we've seen in
20 private session. And throughout that time, I was constantly briefing
21 him that Mr. Thaci and the KLA needed to, in some form or other,
22 reconvene the group of people who had been considered representatives
23 of the Kosovar leadership, so the LDK, Rugova, et cetera, that he
24 needed to work with them.

25 And although they had given places for the LDK, et cetera, in

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1 the supposed self-proclaimed Kosovo government, this didn't seem to
2 turn into a reality. So we kept saying the same thing again and
3 again. And yet politically, it's self-evident that that's what he
4 had to do. And to be telling someone of his stature, as it were, in
5 political terms, we shouldn't have to keep doing that. And if he
6 couldn't do it, he had to explain why he couldn't do it, and he never
7 did explain why he couldn't do it.

8 So this I found very enigmatic, and one has to realise that I
9 had spent my time working with senior politicians. I was a private
10 secretary to one of our ministers for two years. So I was extremely
11 used to dealing with senior-level politicians and the way they think
12 and the way they reason, and, therefore, I found him a bit of an
13 enigma.

14 JUDGE BARTHE: Thank you. Some more questions about the three
15 or four or several visits that you made to Kosovo that you mentioned
16 at the beginning and I mentioned at the beginning of the questioning.

17 In July 1999, it is said here in paragraph 74 of your statement,
18 you visited or accompanied the Supreme Allied Commander Europe to Pec
19 and to Kosovska Mitrovica exactly on 6 July 1999, according to your
20 statement to the Defence. I would like to know how long were you in
21 Pec? Was that a day trip?

22 A. Yes, Your Honour. It was part of a day trip. So the first part
23 of the day trip -- I can't remember the exact order, I'd have to look
24 at the report again, but it was a day trip that went partly to
25 Mitrovice and partly to Pec.

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1 JUDGE BARTHE: Thank you. And you said, and this can be found
2 in paragraph 75 of your statement, that you observed damage -- the
3 damage and the wanton destruction of buildings in and around Pec that
4 was appalling. And in the country side, there were large numbers of
5 farm buildings and haystacks that had been systematically destroyed
6 or burnt out. And in the town itself, it is said here:

7 "... (Albanian) private homes and apartment blocks lay in ruins
8 ..."

9 Do you remember saying this to the Defence?

10 A. Yes, Your Honour.

11 JUDGE BARTHE: A simple question from me: How did you know that
12 these homes were, in fact, Albanian homes? I'm just asking just to
13 find out what the basis of your --

14 A. The basis was --

15 JUDGE BARTHE: [Overlapping speakers] ...

16 A. -- the type of damage that had been done and how long ago it had
17 occurred. So I could see Serb homes being burnt. They were on fire
18 while I was there. The other properties that had been burnt
19 systematically were from an earlier period, and, of course, I had
20 seen the reports about what happened in Pec.

21 JUDGE BARTHE: You've just -- thank you, Mr. Duncan. You've
22 just answered my second question, how do you know or how did you know
23 that Serb homes were burned, as you said. And as I said, you already
24 answered that question. Thank you.

25 So I could move on to or I can move on to paragraph 79 of your

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1 statement. And according to that paragraph, you were shown a
2 statement by General Clark in which General Clark addressed the
3 question of violence in Kosovo, quoted in *Shekulli* dated 14 August
4 1999. And if I'm not wrong, this is exhibit -- or this exhibit was
5 admitted as Exhibit 1D387, just for the record, our record.

6 And in this document, General Clark is quoted in the following
7 way, namely:

8 "I," this is a reference to General Clark, "will not point my
9 finger at the KLA. Their leader has been very cooperative with us at
10 senior levels."

11 Mr. Duncan, do you know or do you have any idea to whom
12 General Clark is referring here as the leader of the KLA?

13 A. No. A bit of context. It's a statement to the press, which
14 General Clark did often, but he was -- how can I put this? He would
15 always turn to me afterwards and say, "How did that go? Was that all
16 right?" So he was obviously nervous when he spoke to the press,
17 although he did it a lot.

18 And in a press statement when you're nervous, it's easy to be
19 imprecise. So, quite frankly, he was being imprecise. I do not know
20 who he was referring to.

21 JUDGE BARTHE: Thank you. In the same document,
22 General Clark -- or according to the same document, General Clark
23 explained that in the majority of cases the violence should be seen
24 as spontaneous and particularly in the south of Kosovo, the violence
25 is connected to organised crimes. This is what General Clark

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1 allegedly said to the press.

2 Do you remember saying him -- that he said that?

3 A. Your Honour, I do remember that. Yes, Your Honour.

4 JUDGE BARTHE: Thank you. And, Mr. Duncan, you said to the
5 Defence, according to paragraph 80 of your statement, that you agree
6 with General Clark's assessment. In other words, do you also believe
7 that the violence, particularly in the south of Kosovo, is connected
8 to organised crimes; and, if I may ask you, why you believe -- if
9 that's the case, why do you believe so?

10 A. Yes, Your Honour, I do consider that was an accurate statement
11 as far as we were aware, and this was based on the information that
12 we were receiving from KFOR commanders and other sources.

13 JUDGE BARTHE: And I think we should move into private session
14 for -- or in the interests of a Rule 107 provider, please.

15 [Private session]

16 [Private session text removed]

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22 [Open session]

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

24 JUDGE BARTHE: Thank you.

25 Mr. Duncan, I have now some last questions about your

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1 preparation session with the Defence, the Thaci Defence, on the 12th
2 and 17th September 2025, so last week basically. And during your
3 preparation session, and also yesterday I think here in court, you
4 were shown a witness statement by a person named Anthony Quinn from
5 the Royal Military Police made in the High Court in London in 2016.

6 I can see you nodding, so --

7 A. Yes.

8 JUDGE BARTHE: -- you remember this?

9 A. Yes, Your Honour.

10 JUDGE BARTHE: Thank you.

11 According to paragraph 14 of the note that was prepared by the
12 Defence, by the Thaci Defence about your preparation session, it is
13 said that you were shown at least two paragraphs, more than two
14 paragraphs, but especially two paragraphs, namely, paragraphs 17 and
15 24 of this statement made by Mr. Quinn, and you confirmed that there
16 was no prosecution service in place in Kosovo in summer 1999, I
17 assume?

18 A. That's correct, Your Honour.

19 JUDGE BARTHE: And that there were also reports from KFOR that
20 indicated that organised criminal groups from Albania were trying to
21 move into Kosovo during the vacuum in the summer 1999 and were a real
22 problem. This is basically what you just said five minutes ago.

23 Can you remember when, according to these reports that you read,
24 this started? In other words, when did the criminal groups, the
25 armed or organised criminal groups from Albania arrive in Kosovo?

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1 Was that immediately after the Serb forces had left or later on, if
2 you know?

3 A. From memory, they did it by -- as the returning refugees came
4 back, criminal elements -- or elements of organised crime came back
5 with them. So in that period of the withdrawal of the Serb forces,
6 in came the refugees but accompanying them were people from organised
7 crime. That was my understanding.

8 JUDGE BARTHE: Thank you. And could I ask you to be a little
9 bit more specific in relation to what kind of organised crimes
10 occurred or were committed in these days?

11 A. These would be -- I mean, to describe Albanian organised crime.
12 It was a very active group of people. I think at that time, they ran
13 something like 40 per cent of the prostitution rings in Western
14 Europe. I mean, they were very active. So anything from drugs to
15 weapons. Probably not in this instance prostitution rings, but
16 pretty much across the organised crime spectrum of activity.

17 JUDGE BARTHE: Human trafficking as well?

18 A. Indeed, human trafficking, definitely.

19 JUDGE BARTHE: And were these crimes -- maybe it's obvious, but
20 I ask the question anyway. Were these crimes directed against a
21 specific group; for example, just the Serbs or the just the Roma
22 population or the Albanian population in Kosovo --

23 A. These are --

24 JUDGE BARTHE: -- or was it just directed against anyone?

25 A. These are unscrupulous, opportunistic people. So anyone that

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1 they can get their hands on or subvert or steal from, they will do
2 it.

3 JUDGE BARTHE: So thank you very much, Mr. Duncan, for your
4 patience. These were --

5 A. My pleasure.

6 JUDGE BARTHE: -- my questions.

7 PRESIDING JUDGE SMITH: Judge Mettraux.

8 JUDGE METTRAUX: Thank you, Judge Smith.

9 And good afternoon, Mr. Duncan.

10 A. Good afternoon.

11 JUDGE METTRAUX: The bad news for you, Mr. Duncan, is I have
12 some more questions. The good news is most of my questions have been
13 asked already. So there's only about two areas I would like to visit
14 somewhat further with you.

15 And I will start with asking the Registry to bring up Exhibit
16 P113, please, and specifically page 008559. Thank you.

17 And, Mr. Duncan, I'll ask you to look at the bottom of the page.

18 If we could scroll down - thank you - the document.

19 Do you recall being shown this item already by the SPO?

20 A. Yes, I believe I saw this earlier today.

21 JUDGE METTRAUX: And it purports to be a decree No. 84/99, dated
22 28 April. It's signed by Prime Minister Hashim Thaci on behalf of
23 the PGoK, and it appoints Mr. Agim Ceku to be chief of the
24 General Staff of the Kosovo Liberation Army. Do you see that?

25 A. Where is this bit about Agim Ceku? Yes. Yes, of course, at the

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1 bottom.

2 JUDGE METTRAUX: And I think you described it yesterday, it's
3 page 130 of the realtime transcript, as -- in your view, of course,
4 and in your perception, as something of a bit of propaganda; is that
5 right?

6 A. I'm not necessarily -- Your Honour, I'm not sure that propaganda
7 is the way I would describe it. It is a continuation of a narrative
8 by Mr. Thaci and his colleagues in the political wing to -- for
9 public consumption, that they are in charge and that the KLA is a
10 well-organised and -- a well-organised organisation with very
11 definite structures and, you know, it's an effective professional
12 organisation.

13 So it's part of a communications strategy. I think propaganda
14 has a slightly derogatory term, so I wouldn't necessarily use that.

15 JUDGE METTRAUX: Thank you. And would you accept, and if you
16 need me to refresh your memory, that this function or position that
17 Mr. Ceku is appointed to here, chief of the General Staff of the KLA,
18 is the same position as he signed his name under in the
19 demilitarisation certification that was shown to you this morning; is
20 that right?

21 A. Your Honour, with respect, I think that's possibly a non
22 sequitur. In here we have Mr. Thaci announcing that Mr. Ceku has
23 been given this position. When we engage with Mr. Ceku, he did not
24 describe himself as this. So there's obviously a dislink between
25 what Mr. Ceku thought he'd been appointed to and what Mr. Thaci says

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1 he's been appointed to. And I think that again points me back to the
2 narrative communication aspect of this particular document.

3 And I recall that I was shown another document in which
4 General Ceku said, earlier today, that he had been chosen to go to
5 the job of commanding the military wing. And as I say, he didn't use
6 the title that Mr. Thaci uses here.

7 JUDGE METTRAUX: Well, to make it easier for ourselves, could
8 the Registry bring Exhibit 1D99, please.

9 Do you recall being shown this document earlier today,
10 Mr. Duncan?

11 A. Yes, this is the outgoing cable of 21 September.

12 JUDGE METTRAUX: And if we can scroll it down a little bit so
13 that you have a second to acquaint yourself with it.

14 This is, in effect, you would agree, recorded documents that see
15 the transition of the KLA from the demilitarisation process into the
16 KPC. Do you agree?

17 A. I'm not sure without seeing the documents, Your Honour. I'm not
18 sure what "Statements by UCK leadership" refers to.

19 JUDGE METTRAUX: Can we turn the page, please?

20 A. Okay, yes. I'm with you now.

21 JUDGE METTRAUX: The title here is "Statement by
22 Lieutenant-General Ceku, Chief of Staff UCK." Do you see that?

23 A. Yes.

24 JUDGE METTRAUX: And if we scroll down the page, please, you
25 have two signatures here.

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1 A. Mm-hmm.

2 JUDGE METTRAUX: On the left you have one saying
3 Lieutenant-General Agim Ceku, Chief of Staff UCK. Do you see that?

4 A. I do. And, of course, I note that by -- in a document dated
5 September he is calling himself the chief of staff, when I --

6 JUDGE METTRAUX: So I'll stop you there.

7 A. Sorry. Please go on.

8 JUDGE METTRAUX: Can you simply confirm at this stage that this
9 is the same function and title that you saw a moment ago Mr. Ceku
10 being appointed to? Do you agree with that?

11 MS. TAVAKOLI: Your Honour.

12 JUDGE METTRAUX: Would you agree with that?

13 A. I see that my Defence counsel is wanting the floor, Your Honour.

14 MS. TAVAKOLI: Your Honour, is it possible for you to ask
15 non-leading questions in your truth-seeking function?

16 JUDGE METTRAUX: Can you answer the question, please?

17 A. Could you put the question to me again, please, Your Honour?

18 JUDGE METTRAUX: Yes. Is this the same function that Mr. Ceku
19 is signing his name under, the same function as he was appointed to
20 on 20 April 1999 by a decree signed by Mr. Thaci?

21 A. What I can say, Your Honour, is it's the same title.

22 JUDGE METTRAUX: Thank you.

23 Can we please see Exhibit P392, please. And I'll ask the
24 Registry to please put the Albanian version as well on the screen.

25 So, Mr. Duncan, it's a two-page document. I'll give you a

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1 second to go through the first page, and I'll draw your attention to
2 certain parts, and then we'll go into the second page. I'll give you
3 a moment --

4 A. [Overlapping speakers] ... May.

5 JUDGE METTRAUX: -- just to scan through it.

6 A. Please move down.

7 JUDGE METTRAUX: [Microphone not activated].

8 I'll go to the second page in a second, Mr. Duncan. And I want
9 to stay on that first page first.

10 A. Yes.

11 JUDGE METTRAUX: Can we go back up, please.

12 Do you remember this afternoon, I think it was, being asked
13 about reporting by Mr. Ceku and who he reported to? Do you recall
14 discussing that?

15 A. I do.

16 JUDGE METTRAUX: So here, simply for the record, you will see
17 the subject matter of this document is a combat report. It's dated
18 24 May 1999. It purports to come from the Kosovo Liberation Army
19 General Staff. And it's being addressed to the defence minister
20 Mr. Azem Sylja. Do you see that?

21 A. I do, Your Honour.

22 JUDGE METTRAUX: And if we can turn the page, please. And I'll
23 give you again a moment to acquaint yourself, Mr. Duncan. If you
24 need more time, please say so.

25 A. I've seen it. Thank you.

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1 JUDGE METTRAUX: My first question is, and I think I know the
2 answer to it, but are you acquainted with this particular item?

3 A. I have never seen documents like this before.

4 JUDGE METTRAUX: And would you agree, and phrase it in your own
5 way if you wish, that it purports to report, as the title suggests, a
6 variety of military and operational matters pertaining to combat;
7 correct?

8 A. It does indeed, Your Honour.

9 JUDGE METTRAUX: And it is signed, if we can scroll down, you
10 will see, also in the Albanian, by Agim Ceku. Do you agree?

11 A. I can see that, and it is -- it is what it says, Your Honour.

12 JUDGE METTRAUX: And would you agree that it -- again, Mr. Ceku,
13 who is signing this document, uses the same title, chief of the
14 General Staff, as we saw in the certification document and in the
15 decree of April 1999? Would you agree with that?

16 A. I would, indeed.

17 JUDGE METTRAUX: And, again, this document comes from a period
18 of time before the undertaking was signed on 21 June 1999; correct?

19 A. It does.

20 JUDGE METTRAUX: But do I understand your evidence of earlier
21 today correctly that this would have been the sort of activity that
22 after 21 June 1999 would have been regarded as being contrary to the
23 undertaking?

24 A. That is also correct, Your Honour.

25 JUDGE METTRAUX: And would you agree that while your

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1 understanding of the decree was that this was a bit -- and, again,
2 I'm not meaning to put words in your mouth, but was to create an
3 impression of a structure. As far as Mr. Ceku was concerned, he
4 considered that this was the role under which he was operating at the
5 time? Would you agree with that?

6 A. If I may, Your Honour, to me it poses a question, and the
7 question is: Why did we never hear about the General Staff apart
8 from in declarations of, your words, a propaganda nature, and yet --
9 and when we have the undertaking proposal and the first iteration of
10 the signature block, General Ceku does not use this title?

11 I am well aware that there was such a body as the General Staff
12 - read it in the indictment - created in 1994, I believe. The
13 question, to my mind, is: What was the function of this body during
14 the period of the conflict, and why did he never mention it to us nor
15 did we see any evidence as I can recall of this body, the
16 General Staff?

17 JUDGE METTRAUX: And that was my next question for you,
18 Mr. Duncan. Did you ever become -- or did you ever get access to the
19 records of the General Staff, be it regulations, decisions, orders,
20 or any such documents?

21 A. We -- not to my knowledge were we aware of that. What we did
22 see was the role of the regional or zonal commanders and the role of
23 General Ceku and the military structure, which he described as being
24 -- he was the commander, so using a different title to this. So what
25 this is purporting to do is not -- and how it comes to be is not

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1 entirely clear and was not entirely clear at that time.

2 JUDGE METTRAUX: And, again, no criticism of you. Do you know
3 when Mr. Ceku became a member of the KLA General Staff?

4 A. I should know, but I can't remember the exact date. I mean, it
5 is -- again, it's a well-known piece of information, but I cannot
6 remember it at this very moment in time when it was.

7 JUDGE METTRAUX: And do you know who had been holding his
8 position or equivalent position within the General Staff before him?

9 A. It was one of the Selimis, was it not? I believe so. As I say,
10 names are not very good for me. But it was one of the people who
11 became a zonal commander and was present at the meetings.

12 JUDGE METTRAUX: Now I want to go to my second series of
13 questions, sir, and I will just contextualise it for your benefit.
14 You were asked a number of questions in the context of
15 demilitarisation undertaking or agreement and the KLA's chain of
16 command.

17 And I understand your evidence -- and, again, if there's any
18 misunderstanding or any further clarification you would like to give,
19 please do so. I understood you to be suggesting that reliance for
20 the purpose of implementation of the terms of the undertaking was
21 placed on what you considered to be, to use your terms, the military
22 wing of the KLA.

23 Did I understand that correctly?

24 A. Sorry, your microphone stopped at the end of your question.

25 JUDGE METTRAUX: I apologise. Did I understand it correctly

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1 that the assumption that was built into the undertaking was that the
2 chain of command of the so-called military wing of the KLA would be,
3 in effect, implementing the terms of the undertaking?

4 A. Yes, Your Honour, because, according to the information that we
5 had, and I think I've tried to explain this, perhaps not very well,
6 in the past, was that power lay with the zonal commanders and
7 General Ceku. Had our information been different, we would not have
8 approached it in the same way. Had this body which calls itself the
9 General Staff been a powerful body which had control and was able to
10 interface with us, that's where we would have gone. But we did not
11 because, as I say, we did not see any of this.

12 All that we saw of the existence of a General Staff was that it
13 had been created in the past, that there were statements made
14 publicly. But the information that I had, and the reason I went to
15 Tirana and not Ljubljana, was because we were told that the people to
16 engage with were the -- General Ceku, and he told us, "The people I
17 need with me are the zonal commanders."

18 So that's where power lay. Whatever the network of
19 architecture, efficient or non-efficient, might exist, power lay with
20 those people and that's why we engaged with them.

21 I hope that answers your question and is not too far off track.

22 JUDGE METTRAUX: Well, we'll see if we can use a document to get
23 a bit further into this, and I'll ask that we go into private session
24 for a second for Rule 107 provider reasons.

25 [Private session]

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7 [Open session]

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

9 JUDGE METTRAUX: Thank you.

10 And thank you, Mr. Duncan, for your patience.

11 A. No, no problem.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 JUDGE GAYNOR: Thank you, Judge Smith.

14 First of all, I'd like to ask you about the distinction you've
15 drawn, Mr. Duncan, between the military wing -- go ahead.

16 MS. TAVAKOLI: I'm sorry, Judge Gaynor. Is it possible to have
17 a ten-minute comfort break? We usually have one at this time. Or
18 just --

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 MS. TAVAKOLI: We go ahead.

21 JUDGE GAYNOR: Was there any documentary basis for the
22 distinction you drew between the military wing and the political wing
23 of the KLA?

24 A. I'm sorry. I don't quite follow your question.

25 JUDGE GAYNOR: In your evidence, you've referred repeatedly to

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1 the military wing of the KLA and the political wing of the KLA.
2 Those terms don't appear anywhere, for example, in the
3 demilitarisation undertaking. What was it that made you believe that
4 there was a clear division between the military wing and the
5 political wing?

6 A. I'm sorry if I -- if you got the impression that I implied there
7 was a clear division. What I was suggesting was that there was --
8 that they had separate roles. Were they connected? Yes, of course,
9 they were connected. But I didn't say they were completely separate
10 bodies.

11 How can I express this clearly enough? It was difficult to
12 distinguish between those who had been active in operations on the
13 ground and then chose to be in a political function. So how do you
14 distinguish and say they are clearly drawn lines? They aren't
15 clearly drawn lines, but they are carrying out different functions,
16 and that is the best way I can express it, is that there is a
17 political wing and a military wing.

18 It's very common in guerrilla organisations to have that sort of
19 distinction, that people who cut their teeth or earn their spurs are
20 people who have been right in the beginning involved in operations
21 and then move on to a more political role. So it's not as clear a
22 distinction as your question implied to me --

23 JUDGE GAYNOR: Very well.

24 A. -- just now.

25 JUDGE GAYNOR: And when you met around 19 June 1999 what you

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1 described as the key players, on the KLA side you met Ceku,
2 Hashim Thaci, and Jakup Krasniqi. So there, for example, can you
3 tell me who was in the political wing and who was in the military
4 wing out of Ceku, Krasniqi, and Thaci?

5 A. Ceku was -- Your Honour, Ceku was doing -- was the head of the
6 military wing to all intents and purposes, whereas Mr. Thaci and
7 Mr. Krasniqi were carrying out a political function.

8 JUDGE GAYNOR: And to go back to your earlier answer, did you
9 see that as a clear division or could you accept that there's overlap
10 in their functions?

11 A. I think it's an important question of context. In everything
12 that I saw during that undertaking negotiation, Mr. Krasniqi and
13 Mr. Thaci never went into military matters. On no occasion did I
14 ever see that. What I did see them do is talk about political
15 issues. Equally, Mr. Ceku only talked about military matters and did
16 not talk about political matters. So there is a practical
17 distinction between what they were doing and what roles they carried
18 out.

19 JUDGE GAYNOR: Now, you said that on 19 June 1999 Thaci and
20 James Rubin arrived by helicopter.

21 A. I beg your pardon, Your Honour. I did not say they -- I beg
22 your pardon. Were you talking about the 19th or the 17th?

23 JUDGE GAYNOR: Please correct me if I've got it wrong. I
24 thought you said it was 19 June 1999 you said they arrived by
25 helicopter.

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1 A. Thank you for the clarification. I was rather struck by the
2 document that we saw earlier today which said Mr. Thaci arrived by
3 helicopter. I do not recall Mr. Thaci arriving by helicopter, but
4 maybe my memory is playing tricks, but I certainly don't remember
5 that.

6 JUDGE GAYNOR: What date did Thaci and Rubin show up?

7 A. Mr. Rubin arrived by helicopter with us. Mr. Thaci was already
8 in position, as I recall it.

9 JUDGE GAYNOR: Very well. Now, on 19 June 1999, that's the same
10 day that Ceku's name was replaced by Thaci's name on the signature
11 block of the draft demilitarisation agreement, and you've told us
12 that this was proposed by the KLA side but you don't recall who
13 exactly it was; is that right?

14 A. That's correct, Your Honour.

15 JUDGE GAYNOR: Now, the text of the demilitarisation agreement
16 itself refers several times to the "UCK Chief of General Staff." It
17 refers at least four times to that expression, but not once does it
18 refer to "Commander-in-Chief UCK" except for the signature block,
19 obviously.

20 Now, given that that is the case, did anyone in NATO object to
21 this sudden replacement of the signatory for the KLA of Hashim Thaci
22 as Commander-in-Chief UCK?

23 A. Do you -- I beg your pardon. Do they object to him being placed
24 as the person who signs?

25 JUDGE GAYNOR: Yes. Did they object to the replacement of Ceku

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1 with Thaci?

2 A. Not on the 19th because they didn't know. On 20th, it is quite
3 possible that they did, Your Honour, but I would not know because I
4 did not see the record of the discussions at the North Atlantic
5 Council. I received telephone readouts of what was happening.

6 JUDGE GAYNOR: But certainly these drafts which you were sending
7 back and forth, they were informed that that was the change in the
8 signature block for the KLA side, were they not?

9 A. They -- Your Honour, they could see it. The first time that the
10 North Atlantic Council saw the document in detail was on 20 June.

11 JUDGE GAYNOR: Very well. So did any of the zone commanders or
12 any of the other KLA personnel present at the negotiations object to
13 the replacement of Ceku's name with Thaci's name?

14 A. Not that I recall, Your Honour.

15 JUDGE GAYNOR: So am I right in understanding that everyone
16 there was very keen to reach an undertaking which would, in fact, be
17 observed by the KLA?

18 A. I'm not sure I understand the sense of your question. Everyone
19 present, Your Honour?

20 JUDGE GAYNOR: We'll go at it a different direction. Would you
21 agree that asking a liberation army to demilitarise is one of the
22 most sensitive aspects of any peace process?

23 A. Absolutely, Your Honour.

24 JUDGE GAYNOR: And no responsible commander is going to
25 demilitarise if they believe that their forces are going to come

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1 under attack shortly afterwards?

2 A. That -- that's correct, yes.

3 JUDGE GAYNOR: So am I right in understanding that it was good
4 practice for the KLA leadership to fully consult with the zone
5 commanders who were in charge of the troops on the ground, to get
6 their full consent to the demilitarisation agreement?

7 A. That would be an assumption that would require that this was, as
8 we have tried to describe it, not an organisation which was
9 hierarchical where people do what they're told, but an organisation
10 which was -- had more complex power structures than is often
11 attributed to them.

12 JUDGE GAYNOR: Going back to the replacement of Thaci as the
13 signatory. Does it make sense that those present understood that
14 Hashim Thaci was more likely to be able to ensure KLA compliance with
15 the agreement than Agim Ceku?

16 A. Our understanding was, and it goes back to our discussion with
17 your colleague, that power lay in two places. That power on the
18 military side -- if you want to call it military wing, fine. On the
19 military side, those engaged in carrying out the fight on the ground,
20 that power lay -- a split between Agim Ceku and the zone commanders.
21 That was our understanding. That's what I was advised. And I've
22 told you why I was advised that and by whom. So I trusted that
23 judgment. Mr. Thaci was their request that he be put in as the
24 signatory.

25 JUDGE GAYNOR: So the zone commanders wanted Thaci to sign the

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1 agreement on behalf of the KLA?

2 A. It didn't come out of the zone commanders. It came out of the
3 interlocutors who, as I described -- we described them as key people,
4 but they were the people who were most vocal in the discussions
5 during that day. They were General Ceku, Mr. Thaci, and
6 Mr. Krasniqi.

7 JUDGE GAYNOR: But to your knowledge, the zone commanders were
8 supportive of Thaci being the signatory?

9 A. They did not object.

10 JUDGE GAYNOR: Now, I want to move towards your general evidence
11 that there was very little command and control within the KLA. And
12 if I've misrepresented your position, please do correct me, of
13 course.

14 It seems that the text of the demilitarisation assumes that the
15 KLA did, in fact, have command and control. For example, paragraph
16 9, and this is P01444.

17 Perhaps Madam Court Officer could bring it up in English and
18 Albanian.

19 But I'll read out the relevant section. It says:

20 "The UCK Chief of General Staff undertakes to issue clear and
21 precise instructions to all units and personnel under his command, to
22 ensure contact with the FRY forces is avoided and to comply fully
23 with the arrangements for bringing this Undertaking into effect."

24 Now, am I right in understanding that that provision assumes
25 that there is command and control within the KLA itself?

1 A. It's a similar question, Your Honour, to what you've just asked
2 me but a slightly different aspect of it. The person called the
3 chief of the General Staff is General Ceku in -- as -- anyway, we can
4 come back to that. It's General Ceku is the person who has command
5 and control. And as we've discussed, I understand that there is a
6 legal definition in the international court system for command and
7 control.

8 It's not necessarily how NATO understands it. So in the way
9 NATO understands it it's more often that you have command, you issue
10 commands, but the person who carries it out has to have command and
11 control.

12 So this is a perfect example of what went -- of this, what I'm
13 talking about, is what happened when the Russians went to Prishtine.
14 This is an easy way to explain it. So general -- and I was there
15 throughout the whole day when this happened. I was listening to all
16 the conversations when it happened between the two of them.

17 General Clark had command, and he issued a command to
18 General Jackson. General Jackson had command and control.
19 General Wesley Clark did not have control because there was the
20 possibility of the red card, as it was called, and the nationals
21 could say, "No, this is out of your control."

22 So that's how it happened that they had this impasse between
23 someone who had the command authority but not the complete control
24 authority. So there are things that, in a military context as we
25 understood it, the person who had command and control in this

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1 organisation was Agim Ceku. Mr. Thaci had command but not
2 necessarily control. He could issue instructions.

3 JUDGE GAYNOR: Well --

4 A. But could he carry -- ensure that they were carried out? That
5 was not our understanding. But this was always our understanding at
6 the time, and it's the way that we thought about it.

7 JUDGE GAYNOR: Well, if it was your position that Agim Ceku had
8 command and control but Thaci didn't --

9 A. Mm-hmm.

10 JUDGE GAYNOR: -- why then didn't you insist that Agim Ceku
11 remain on the signature block?

12 A. For reasons of getting them to agree. Because I was confident
13 that we had done a negotiation with all those who were where the
14 power lay, as I was describing to your colleague. Where did the
15 power lay? All those people who had the power, both command and
16 control in theoretical terms, if you want to describe it like that,
17 but they had the power to make sure this happened, and they were
18 honour bound, as Albanians think, very much it's their way of
19 thinking, to carry it out.

20 Not only that, but they had a particular interest in doing this
21 because of their aspiration to be the future army of Kosovo. So by
22 agreeing to this, they had absolutely, down the cascade, an interest
23 in abiding by this. The end result of that understanding was that if
24 they wished to have Mr. Thaci sign it, that wasn't a problem unless
25 you put his name as the prime minister, because the reason this would

1 work, and the reason it did work, was because General Ceku and his
2 zonal commanders, as we say, bought into this process. They had
3 every reason to agree with it and they wanted it to happen.

4 JUDGE GAYNOR: So --

5 A. I hope this is a not too complicated way of explaining it, but
6 that's the way we saw it, the way I saw it since I drafted the thing.

7 JUDGE GAYNOR: So apart from the prohibition on detaining
8 civilians in Kosovo, which I think we know from other evidence was
9 not observed, this was largely a successful demilitarisation
10 agreement. Is that your position?

11 A. I think the evidence shows that it was largely successful, and
12 it met both our objectives. It kept them with the prospect of having
13 an army of which they would be part, and it made sure that they
14 remained under control from our perspective, they did not end up as
15 insurgents fighting against us. So from both perspectives it met our
16 objectives.

17 JUDGE GAYNOR: So then can I just ask one final question. Given
18 that this concerned the demilitarisation of a force which you
19 believed to be between 25.000 and 30.000 soldiers, and it was signed
20 by Hashim Thaci as commander-in-chief UCK, does it not follow that
21 Hashim Thaci did, in fact, exercise effective command and control
22 over the UCK for the purpose of this agreement?

23 A. No, because it was comprehensive. It was not top-down. It was
24 a comprehensive buy-in agreement. That's what I've just tried to
25 explain. I'm sorry if I haven't explained it well enough. It was

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1 because all the actors in the process had an interest. It was not
2 because he had command and control. It's because they had an
3 interest to make it happen, all of them. And so that's not a command
4 and control issue. It's a diplomatic issue about how do you get
5 people to agree. If you get everybody to buy into it, it doesn't
6 matter if the top man tells them because everybody agrees to do it.
7 So the issue of command and control doesn't really -- it's not the
8 answer to how this worked.

9 JUDGE GAYNOR: Thank you for your answers.

10 A. Thank you.

11 JUDGE GAYNOR: No further questions.

12 PRESIDING JUDGE SMITH: We're going to take a break now.

13 We'll take a ten-minute break now.

14 THE WITNESS: Thank you.

15 [The witness stands down]

16 PRESIDING JUDGE SMITH: I just want to quickly go around. I
17 don't know whether we can finish today or not.

18 Does the Prosecution have questions, follow-up questions?

19 MR. HALLING: Nothing further.

20 MS. TAVAKOLI: Yes, we have a couple.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 MS. TAVAKOLI: 15 minutes.

23 MR. DIXON: Yes, Your Honours, we have a few as well, five to
24 seven minutes.

25 MR. TULLY: Nothing from us, Your Honour. Thank you.

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1 MR. ELLIS: Five, possibly seven.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 I want you to be aware of the fact that the witness is looking
4 tired, and I don't blame him, so try to keep it to a minimum. I'm
5 not cutting anybody off, but I appreciate your estimates. So let's
6 take a short break and then finish this up. We'll call you back to
7 the courtroom when we're ready.

8 --- Break taken at 3.56 p.m.

9 --- On resuming at 4.04 p.m.

10 PRESIDING JUDGE SMITH: Please bring the witness in.

11 [The witness takes the stand]

12 PRESIDING JUDGE SMITH: Mr. Duncan, you've been worked pretty
13 hard today. We're going to try to get you out of here today so it's
14 finished, so bear with us. We've got about a half hour left to go.

15 THE WITNESS: Thank you, Your Honour.

16 PRESIDING JUDGE SMITH: Can you take it?

17 THE WITNESS: I feel we're almost in a situation with diplomats
18 and lawyers talking past each other, and I'm sorry if my frustration
19 with that process shows at times. But it's --

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 THE WITNESS: We'll try for another --

22 PRESIDING JUDGE SMITH: [Microphone not activated] ... with us
23 for another half hour.

24 THE WITNESS: -- half hour and resolve our differences.

25 PRESIDING JUDGE SMITH: All right. Ms. Tavakoli will have a few

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Further Re-examination by Ms. Tavakoli

1 questions. These questions are to follow up on the Judges'
2 questions.

3 THE WITNESS: Yes.

4 PRESIDING JUDGE SMITH: That's all. They're not going over
5 everything again, just following up.

6 Further Re-examination by Ms. Tavakoli:

7 Q. Good afternoon, Mr. Duncan.

8 A. Good afternoon again.

9 Q. You were asked a question by Judge Barthe about whether or not
10 ...

11 A. I'm listening.

12 Q. I'm just waiting for the transcript. FARK -- you knew whether
13 -- or you could recall whether or not FARK carried out any military
14 actions in Kosovo in the summer of 1999. Do you remember that?

15 A. I remember the question.

16 Q. And you said you couldn't recall given the passage of time and
17 you would have to go back and look at your reports. Do you remember
18 that?

19 A. I remember that.

20 MS. TAVAKOLI: Now, please, could I bring up on the screen
21 1D236. If you could take a look at this please, Mr. Duncan.

22 A. [Overlapping speakers] ... yes, it's a --

23 MS. TAVAKOLI: Oh, sorry, we need to go into private session.

24 PRESIDING JUDGE SMITH: Into private session, please.

25 [Private session]

Witness: John Duncan (Resumed) (Private Session)

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Further Re-examination by Ms. Tavakoli

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Witness: John Duncan (Resumed) (Private Session)
Further Re-examination by Ms. Tavakoli

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6 [Open session]

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

8 MS. TAVAKOLI:

9 Q. Now I want to turn to some questions you were asked by
10 Judge Mettraux. Firstly, you were asked about a decree, something
11 purporting to be a decree, No. 84/99, dated 28 April, signed by
12 Prime Minister Hashim Thaci.

13 MS. TAVAKOLI: Please, could we bring that up on the screen.
14 It's P00113. Page number 3, please.

15 Q. And Judge Mettraux --

16 MS. TAVAKOLI: If you can just please go down,
17 Madam Court Officer. Thank you.

18 Q. -- told you that it's signed by Prime Minister Hashim Thaci,
19 told you that it appoints Agim Ceku to be chief of the General Staff
20 of the Kosovo Liberation Army. Can you see that?

21 A. Yes.

22 Q. Thank you.

23 MS. TAVAKOLI: That can come down.

24 Q. And then shortly thereafter, Judge Mettraux invited you to
25 confirm that Agim Ceku signed the demilitarisation agreement --

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Further Re-examination by Ms. Tavakoli

1 demilitarisation certification in the same position, specifically
2 chief of the General Staff of the KLA. Do you recall that question?

3 A. I recall that question.

4 MS. TAVAKOLI: Please, can we now pull up 1D99 at page 2.

5 Q. Now, this is the demilitarisation certification; correct?

6 A. Yes.

7 MS. TAVAKOLI: Can we please go down to the signature.

8 THE WITNESS: Mm-hmm.

9 MS. TAVAKOLI:

10 Q. Now, you can see here that Agim Ceku -- well, what has Agim Ceku
11 signed his name as here, please?

12 A. As chief of staff, not chief of General Staff.

13 Q. Is the position chief of staff the same or different to chief of
14 the General Staff of the KLA in your world, NATO terminology?

15 A. In military terminology they are quite different.

16 Q. Please, can you explain the difference?

17 A. A chief of staff is an administrative officer. So in NATO
18 headquarters, you have the Strategic Allied Commander, his deputy,
19 the Deputy Strategic Allied Commander, and you have the Chief of
20 Staff. They are three separate four-star officers. The chief of
21 staff is the one who runs the headquarters, so it's an administrative
22 role. Chief of General Staff is a military role concerned with
23 strategic military matters. It's not a matter of administration.
24 It's a matter of how you carry out. It's a command position, if you
25 want.

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Further Cross-examination by Mr. Dixon

1 JUDGE METTRAUX: Ms. Tavakoli, are you suggesting that this is a
2 different position? Because if that is the case, a chief of staff
3 operates -- as I understand the evidence of Mr. Duncan, he's correct,
4 in my understanding, there is a commander to whom there is a chief of
5 staff. Is that your position?

6 MS. TAVAKOLI: If I may consult.

7 [Specialist Counsel confer]

8 MS. TAVAKOLI: Your Honour, when we submit our final brief and
9 our final argument, we will confirm our case. I have no further
10 questions at this time for this witness.

11 PRESIDING JUDGE SMITH: Mr. Dixon.

12 MR. DIXON: Thank you, Your Honours.

13 Further Cross-examination by Mr. Dixon:

14 Q. Mr. Duncan, I have only a few more questions as well arising
15 from the Judges' questions.

16 The first is in relation to a question that was put by
17 Judge Barthe right at the beginning of his questions. You were asked
18 about the factual basis for the position that the provisional
19 government had no power to instruct anyone in the process going
20 forward from the undertaking. Do you recall that?

21 A. Yes.

22 Q. And you said:

23 "Yes. The factual basis was that ..."

24 And this is on page 93:

25 "... I'm trying to answer your question as accurately as I can.

1 It had self-declared as an organisation. It had declared numerous
2 bodies, including, as we have seen, defence ministries and the like,
3 but it was not a state. It had no architecture backing up behind
4 these named bodies."

5 Do you remember saying that earlier on?

6 A. Yes.

7 Q. Now, it's right, isn't it, that when you talk here about
8 numerous bodies being self-declared, there was the defence ministry
9 or minister of defence that you've referred to, there were a number
10 of others as well, and I want to understand the factual basis that
11 you're putting forward.

12 There was also a minister of Kosovo intelligence service?

13 A. I believe so.

14 Q. And there was also a minister of public order?

15 A. Yes.

16 Q. And a minister of justice?

17 A. Yes.

18 Q. There were a number of these self-proclaimed bodies?

19 A. That is my understanding.

20 Q. And in respect of, in particular, the minister of Kosovo
21 intelligence service, it's correct, looking at your factual basis,
22 that that minister, that body had no practical ability to take any
23 steps following on from the undertaking in relation to
24 demilitarisation and related matters?

25 A. That is my understanding. In order to explain my understanding,

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Further Cross-examination by Mr. Dixon

1 and perhaps to give a clearer answer to the questions from the

2 Panel --

3 Q. Yes.

4 A. -- I wonder if we might go into private session, Mr. President.

5 MR. DIXON: I'm happy to do that.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MR. DIXON: Yes, I've asked the factual basis, and I've got the
8 answer. The witness wants to provide a further explanation which I'm
9 happy to hear. I don't think he should be cut off.

10 PRESIDING JUDGE SMITH: Into private session, please.

11 MR. DIXON: We do still have time, I think, to finish
12 everything, Your Honours.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 MR. DIXON: Well, the witness is going to answer my question
15 with a further comment.

16 THE WITNESS: Yes, to remain, with respect, within your -- yes,
17 I have it -- within your -- I beg your pardon.

18 [Private session]

19 [Private session text removed]

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Witness: John Duncan (Resumed) (Private Session)

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Further Cross-examination by Mr. Dixon

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Further Cross-examination by Mr. Dixon

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7 [Open session]

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

9 PRESIDING JUDGE SMITH: Thank you.

10 Go ahead.

11 MR. DIXON:

12 Q. So, Mr. Duncan, just to confirm then, where I started out on
13 this, when I mentioned the minister of Kosovo intelligence service,
14 it's correct, as you said in answer to Judge Barthe's question, that
15 -- where you said it had no architecture backing up these main
16 bodies, that would have applied equally to the Kosovo intelligence
17 service?

18 A. There was a Kosovo -- part of the KLA which was concerned with
19 gathering intelligence and "police functions," but it was -- it was
20 active but of limited geographical spread as we understood it. But
21 it was active.

22 Q. And when you say it was of a "limited geographical spread," do
23 you mean that it was operating in parts, pockets, of Kosovo but not
24 everywhere?

25 A. I don't think we had that degree of precision of it, of what it

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Further Cross-examination by Mr. Dixon

1 was doing.

2 Q. And from your understanding at the time, it's right, isn't it,
3 that it didn't have any centralised command structure operating in
4 those limited geographical areas; is that right?

5 A. We had limited -- I mean, this is the nature of such
6 organisations, that they are not very visible. It is why it caused
7 us concern. So we had limited knowledge of how widespread it was,
8 but we believed it to be relatively limited.

9 Q. Yes, thank you. And just so I can confirm the time period,
10 that's in 1998 going into 1999?

11 A. Yes.

12 Q. And --

13 A. To my recollection.

14 Q. And the minister or ministry of the Kosovo intelligence service
15 that I mentioned earlier, this would have been now when we're
16 talking about the period of the provisional government --

17 THE INTERPRETER: Could the speakers kindly slow down and pause
18 between answer and question for the purposes of interpretation.
19 Thank you very much.

20 MR. DIXON: Yes, I'm sorry.

21 Q. As far as you know, we've brought it up to now the time of the
22 undertaking in June 1999, that ministry didn't exist in any real
23 term. There was no architecture behind it at that time; is that
24 right?

25 A. No, I --

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Further Cross-examination by Mr. Dixon

1 MR. HALLING: Objection --

2 THE WITNESS: -- that wouldn't be correct.

3 MR. HALLING: -- asked and answered.

4 PRESIDING JUDGE SMITH: Overruled.

5 Go ahead. Finish it up.

6 MR. DIXON: I think I got the answer which is that would be
7 correct.

8 Q. That's your answer, is it?

9 A. No, that is not correct.

10 Q. Sorry.

11 A. There was an active intelligence section --

12 Q. Sorry, I've been --

13 A. -- within the KLA architecture.

14 Q. But I'm talking about now in June 1999, when the provisional
15 government was formed, when we are talking here about the civilian
16 Kosovo intelligence service. Had that been formed in any meaningful
17 way at that time as far as you knew?

18 A. In June 1999?

19 Q. Yes.

20 A. I would say that from our understanding, whether it was civilian
21 or military, it was a self-standing intelligence service.

22 Q. Yes, I'm talking about a civilian intelligence service. Do you
23 know whether such a service was in existence at that time from what
24 you knew?

25 A. I don't think we could distinguish between the two. It was an

Witness: John Duncan (Resumed) (Open Session)

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Further Cross-examination by Mr. Dixon

1 intelligence service.

2 Q. Yes. Thank you.

3 MR. DIXON: I'm now going to go to one final topic, Your
4 Honours.

5 Q. And then I'll be finished, Mr. Duncan. And that's regarding a
6 question that was asked by His Honour Judge Mettraux. And the
7 question was in relation to the point you'd made, which you've
8 reiterated again, about where the power lay in the KLA and it not
9 lying in the General Staff as a collective.

10 And I wanted to just ask, you were put a question by
11 Judge Mettraux about whether or not you ever had access to records of
12 the General Staff, be it regulations, decisions, orders, or any
13 documents. This was at page 27. And you said:

14 "We -- not to my knowledge were we aware of that."

15 Do you remember that?

16 A. Yes.

17 Q. Is it right that getting access to such documents wasn't
18 relevant to your assessment at the time about what was practically
19 happening? You assessed it on the basis of information that you had
20 that you've given to us - we don't need to go into that - and then
21 acted on what you saw as you undertook your tasks on the ground.

22 A. I'm not sure that I follow your question. Could you be a bit
23 more precise?

24 Q. Yes. Perhaps it was the way I formulated it. My question is
25 like this: I'm putting to you that it wasn't relevant to you at the

1 time to get access to particular documents that the General Staff
2 might have put out. What you had was information that you've
3 described, and you needed to get a job done, and based on those
4 realities you formed your view?

5 A. It would have been relevant had I seen them, but I didn't see
6 any, so -- you know, I did not see such documents that he -- as
7 mentioned by His Honour.

8 Q. Yes.

9 A. So it's not really a question of relevance. I didn't see them.
10 Had I seen them, it would have been relevant --

11 Q. Yes.

12 A. -- but I didn't see them.

13 Q. Did you ask for any of those documents at the time?

14 A. I asked for all information that we had on the Kosovo Liberation
15 Army.

16 Q. But it's right, isn't it, that you formed your view, and it
17 wasn't only your view, it was the views of others, based on the
18 realities that you encountered, who you had to deal with, how you had
19 to get your job done?

20 A. That's one way of putting it.

21 Q. Yes. And your view was that power didn't lie with the
22 General Staff as a collective. That was based on all the information
23 that you had at the time and your work at the time?

24 A. That -- I really can't say more than I said in private session
25 on this matter.

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1 Q. Yes, we have that and we'll refer back to that.

2 A. Okay.

3 Q. Thank you, Mr. Duncan. Those are my questions.

4 MR. DIXON: Thank you, Your Honours.

5 THE WITNESS: Thank you.

6 PRESIDING JUDGE SMITH: Mr. Tully.

7 MR. TULLY: We haven't had a change of heart in the last
8 20 minutes, so I'll ask no questions. Thank you.

9 PRESIDING JUDGE SMITH: Mr. Ellis.

10 MR. ELLIS: Thank you, Your Honour. I have two questions, I
11 think. A couple of questions.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 Further Cross-examination by Mr. Ellis:

14 Q. Mr. Duncan, I want to go, I hope a final time, back to the
15 questions you were asked and answered at page 106 and 107 of the
16 provisional transcript which is about the 19 June, when you had the
17 smaller group negotiation at which you've identified General Ceku,
18 Hashim Thaci, and Jakup Krasniqi. And you said on page 107 of the
19 transcript that at that meeting:

20 "... I was very forceful in saying that, you know, this could
21 not continue, and the reasons why it could not continue. And I left
22 it to them to go and talk to their colleagues and subordinates and
23 explain the position."

24 And you've explained in the course of your answers to, I think,
25 all of the Judges the difference that you perceived between the

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1 political wing and the military wing.

2 A. Mm-hmm.

3 Q. It's right, isn't it, that you were expecting General Ceku to go
4 and speak to his military subordinates and colleagues and
5 Jakup Krasniqi to go to speak to his colleagues in the political wing
6 after that meeting?

7 A. That's correct. And, of course, Mr. Thaci would be -- I would
8 expect him to do the same thing.

9 Q. Thank you. And on the military side, that is, in fact, what you
10 observed happening because you saw General Ceku talking the zone
11 commanders through a diagram that you had given him; correct?

12 A. I believe the video shows part of that. I may be mistaken. But
13 that's what happened.

14 Q. Thank you.

15 PRESIDING JUDGE SMITH: Thank you, Mr. Ellis.

16 [Microphone not activated].

17 Thank you for being with us today. Thank you for sharing your
18 information with us and for being patient getting through these two
19 days. We appreciate all of that, and hope you have -- wish you well
20 in the future.

21 THE WITNESS: Thank you.

22 PRESIDING JUDGE SMITH: You may leave the courtroom now.

23 THE WITNESS: Thank you very much.

24 [The witness stands down]

25 PRESIDING JUDGE SMITH: Thank you all for your patience also and

1 for getting through this. I think it was important to get this
2 witness on his way. I think he'd been through enough.

3 Thank you all for being here. We'll see you next Monday at
4 9.00 a.m. with two new witnesses.

5 [Microphone not activated].

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

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