

1 Thursday, 7 September 2023

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

5 --- Upon commencing at 9.08 a.m.

6 PRESIDING JUDGE SMITH: Go ahead.

7 MR. EMMERSON: Your Honour, before we start, may I apologise to
8 all members of the Panel and all other parties and participants in
9 court for the delay this morning for which I'm solely responsible.

10 PRESIDING JUDGE SMITH: Thank you. It's happened to all of us,
11 I'm sure, so we'll survive.

12 So, Madam Court Officer, please call the case.

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

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 I note that the accused are all present in court today with the
18 exception of Mr. Krasniqi, who is appearing via videolink.

19 Before I invite the witness to the courtroom, I remind you that,
20 as previously communicated, today we will not be sitting in the third
21 session. Therefore, we will adjourn at 1.00 p.m.

22 SPO, are you ready to advise us as to the witnesses you intend
23 to call next week?

24 MR. TIEGER: Yes, Your Honour. That was confirmed in an e-mail
25 sent yesterday at about 1741, but those numbers would be W03827,

1 W04255, and W03724.

2 PRESIDING JUDGE SMITH: Say it again?

3 MR. TIEGER: 3724.

4 PRESIDING JUDGE SMITH: Okay.

5 We will be continuing the cross-examination.

6 Mr. Emmerson, just a request from us, from the Panel. When you
7 read from a document that you don't have the ability to put on the
8 screen, please give us the paragraph or page number of what it is
9 you're reading so that we are making an adequate record.

10 MR. EMMERSON: [Microphone not activated]

11 PRESIDING JUDGE SMITH: Yes. Yes. I know it was inadvertent,
12 but just remember to do that.

13 And, number two, as often as possible get it on the screen,
14 because it's much easier for all of us to read along with you and
15 then we can scroll back if necessary.

16 Madam Usher, you may call the witness in.

17 [The witness takes the stand]

18 PRESIDING JUDGE SMITH: Good morning, Witness.

19 THE WITNESS: Good morning, Judges.

20 PRESIDING JUDGE SMITH: Today we will continue with your
21 cross-examination by the Defence. I remind you to please answer the
22 questions clearly with short sentences. If you don't understand a
23 question, feel free to ask counsel to repeat the question, or tell
24 them you don't understand and they will clarify.

25 Also, please try to remember to try to indicate the basis of

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7489

1 your knowledge and the facts and circumstances upon which you will be
2 questioned.

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

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

8 If you feel the need to take a break, please let us know and we
9 will accommodate you.

10 Now, we'll continue with the cross-examination by the Veseli
11 Defence. Mr. Emmerson will be asking you the questions again at this
12 time.

13 Go ahead, Mr. Emmerson.

14 THE WITNESS: Thank you.

15 WITNESS: W04408 [Resumed]

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

17 Q. Mr. Abrahams, whilst -- overnight, in the light of the answers
18 that you gave yesterday about the way that you approached the
19 reliability of sources when simply lifting information from previous
20 reports of Humanitarian Law Centre, we have, obviously, looked in
21 more detail at the sources used by the Humanitarian Law Centre. And
22 would it surprise you to know that in a number of instances where you
23 have described an event having occurred, citing the Humanitarian Law
24 Centre report as your source, the source that's cited by the
25 Humanitarian Law Centre for that proposition is the Serbian media?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7490

1 Does that surprise you?

2 A. I would have to look at what you're referring to --

3 Q. Well, I'll show you if we need to use the time in that way. But
4 can you answer my question: Would it surprise you to know that when
5 you are signing off allegations as attributable to the Humanitarian
6 Law Centre, you are, in fact, citing to instances where the
7 Humanitarian Law Centre has used Serbian media as the source for its
8 allegation?

9 A. I can't answer that question unless I am presented with the
10 example.

11 MR. EMMERSON: So we've added this document to our queue, and,
12 therefore, request the Court's permission to call it up. We have
13 added it since the answers that the witness gave last night precisely
14 anticipating a response such as this.

15 PRESIDING JUDGE SMITH: [Microphone not activated]

16 MR. TIEGER: No, Your Honour.

17 PRESIDING JUDGE SMITH: [Microphone not activated]

18 MR. EMMERSON: Thank you. So the document --

19 PRESIDING JUDGE SMITH: I'm sorry. Call it up and put it on the
20 screen.

21 MR. EMMERSON: Yes. The document in the queue should be
22 SITF00413220, 220.

23 Q. Now, you recognise that as the Humanitarian Law Centre report,
24 and we see the title at the top, "Kosovo - Disappearances in Times of
25 Armed Conflict."

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7491

1 A. Yes.

2 Q. And if we look at -- I'll just do it once for you so that we can
3 then give you some other references. But if we start with page 3230
4 so that's instead of 3224 -- sorry, instead of the title page 3220,
5 it's 3230. And if we look at the entry at paragraph 2.14 just below
6 the halfway point.

7 MR. EMMERSON: Could we perhaps enlarge that.

8 Q. You'll see a reference to the abduction of Branko Staletic of
9 Mlecane, and then there is a description of the events that are said
10 to have occurred. And you'll see there very clearly the source cited
11 is the Belgrade media; correct?

12 A. Correct.

13 MR. EMMERSON: Could we now call up your report in which that
14 issue is dealt with. It's now got P380 - thank you very much for
15 that - and it will be at page marked 0364871.

16 Q. If we look at the entry on the top of the page, this is your
17 report that followed a month later. Do you see that?

18 A. Yes.

19 Q. There the facts are related exactly the same. Yes, Ratko and
20 Branko Staletic. And you cite that -- well, you see it in the text,
21 according to the Humanitarian Law Centre. And then if we look at
22 142, it's the footnote at the bottom of the page, it is a reference
23 to the document we just looked at. Do you see?

24 A. Yes.

25 Q. So, I mean, I can take you through other examples, but I think

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7492

1 that's sufficient to make the point.

2 So when you then deal with these issues in the following
3 report -- in other words, that, what we just looked at, that is your
4 report published in October 1998. The Humanitarian Law Centre's
5 report had been published on 5 August. You're publishing your report
6 in October.

7 And then very shortly afterwards, in December, you publish
8 "Detentions and Abuse in Kosovo," in which the same information is
9 repeated but this time it's no longer cited to the Humanitarian Law
10 Centre. This time you cite to your earlier report. So what we see
11 having happened here is it goes from the Serbian media to the
12 Humanitarian Law Centre, from the Humanitarian Law Centre to you, and
13 from you then, without citation, backwards to yourself. Do you see?

14 PRESIDING JUDGE SMITH: Yes.

15 MR. TIEGER: Maybe the witness can be excused if no questions
16 are going to be asked of him.

17 MR. EMMERSON: No, I'm sorry, the witness asked to have the
18 point illustrated. I've illustrated it to him because he wouldn't
19 answer the question in the first place.

20 PRESIDING JUDGE SMITH: Please ask him the question now because
21 you've made a statement. There's no question.

22 MR. EMMERSON:

23 Q. Well, first of all, do you accept that chronology?

24 A. The chronology of the reporting --

25 Q. The chronology that I've just shown you. Do you accept that

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7493

1 that is correct?

2 A. With some distinctions.

3 Q. Well, what are the distinctions?

4 A. Well, the distinction, first of all, is not related to the
5 chronology, but it is worth asking --

6 Q. No, you --

7 A. -- for clarification. Well, to answer your question I would
8 require some elucidation on your part.

9 Q. On the question? You want the question elucidated?

10 A. I would like to know -- well, yes, please, what are you asking
11 precisely.

12 Q. I am asking do you accept as a foundational principle that there
13 we have an example of something that has ended up in your report as a
14 fact which is, in fact, simply circulated from the Serbian media as
15 the source?

16 A. So, first of all, you began your question by saying the Serbian
17 state, and now you're saying --

18 Q. If I did, then that was a -- I don't --

19 PRESIDING JUDGE SMITH: [Microphone not activated]

20 THE WITNESS: I believe that you did.

21 MR. EMMERSON:

22 Q. Well -- but -- but --

23 A. And now -- I -- to answer your question, first of all, I would
24 want to know what media, because in our work we did make a
25 distinction between the state-run media and -- no, excuse me, I --

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7494

1 Q. Well, you -- I'm sorry, I'm --

2 MR. TIEGER: Your Honour, there are many ways of interrupting
3 the witness --

4 PRESIDING JUDGE SMITH: Just a second.

5 Mr. Emmerson, please, let him finish his answer. You're
6 interrupting him.

7 MR. EMMERSON: I didn't interrupt him.

8 PRESIDING JUDGE SMITH: Yes, you did.

9 THE WITNESS: That we make a distinction between -- within the
10 media, because the state had a strong control over some media outlets
11 and there are also more independent media outlets, which means we
12 would place a higher degree of credibility on those outlets. So I
13 would want to know, first of all, what media they were referring to.

14 MR. EMMERSON:

15 Q. Yes. And you don't say in your report it's cited to any
16 particular media or to any media at all or to Serbian media. They
17 say that; you don't. You say you cite to them; correct?

18 A. That is correct.

19 Q. And you told us yesterday, you gave a long evidence about how
20 because it was the Humanitarian Law Centre you could trust the
21 reliability of their conclusions.

22 A. I have a high degree of faith --

23 Q. In their --

24 A. -- in their --

25 Q. -- conclusions.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7495

1 A. In their methodology.

2 Q. Very well. So you had a high degree of faith in their
3 methodology. So in this instance, what does that mean? Your high
4 degree of faith is that they must have only relied on reliable media?

5 A. That is my assumption and my belief, yes.

6 Q. And yet it becomes a statement of fact in your account without
7 any indication. It's just a recycling of a newspaper report.

8 A. We placed a high degree of faith in the Humanitarian Law Centre.
9 We believed they had reasons to include this report. I don't recall
10 if I had conversations with the researchers or the authors of their
11 report about this particular case.

12 Q. Or did you just lift the facts because you wanted to make your
13 report look balanced and so you thought, "Well, we haven't been
14 focusing on the KLA. There's a bit there. We'll just take the facts
15 and cut and paste them into our report in different language"?
16 Because that's effectively what's happened, isn't it?

17 A. I don't agree with that assessment.

18 Q. Okay. Let me ask you this. And I don't think I need to call it
19 up, but I'll be guided by the Bench. I'm simply thinking about
20 speed. This is from your own witness statement to the Prosecution
21 here, which I think you self-wrote, didn't you?

22 A. The witness statement to --

23 Q. That you have given to the Specialist Prosecutor's Office in
24 these proceedings.

25 A. The initial draft I wrote. Correct.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7496

1 Q. Yes. And I'm reading from paragraph 13, which is 13 of his
2 witness statement, which is dated 20 April 2020. It reads as
3 follows:

4 "All of the research conducted by HRW between 1990 and 1999
5 shared a common methodology. Trained and experienced researchers
6 interviewed victims and witnesses of abuses usually in lengthy
7 one-on-one interviews. Multiple sources with corroborative evidence
8 were required to make credible claims and Human Rights Watch erred on
9 the side of caution when making allegations public. Whenever
10 possible, Human Rights Watch got information from alleged
11 perpetrators, whether it was a government or a non-state actor."

12 That's your statement of your methodology in the preparation of
13 these reports, and that's the basis on which you have presented
14 yourself to this Court in order to assess the reliability of what you
15 say.

16 Now, we've looked at that last example where it's a recycled
17 Serbian news report in your report, and then where, in the subsequent
18 report, you cite these things back to yourself. In other words, it
19 no longer -- the involvement of the media, even the involvement of
20 the Humanitarian Law Centre is concealed because now it's Human
21 Rights Watch citing back --

22 MR. TIEGER: Okay, I'm going to object again. Continuing
23 commentary. There need to be questions asked of the witness --

24 MR. EMMERSON: There are questions --

25 MR. TIEGER: -- one more time without the commentary.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7497

1 MR. EMMERSON: -- as you well know.

2 PRESIDING JUDGE SMITH: Thank you. The motion is sustained.
3 Please put a question every once in a while so that we know what
4 you're doing.

5 MR. EMMERSON:

6 Q. No, my question is you -- and it's, I would have thought,
7 patently obvious what the question is. The passage --

8 PRESIDING JUDGE SMITH: It isn't to me and, therefore, it isn't
9 to the witness.

10 MR. EMMERSON: Very well.

11 Q. The passage in your witness statement that I've just read to you
12 where you talk about the need for multiple sources with corroborative
13 evidence and lengthy one-on-one interviews with victims and
14 witnesses, that is not reflected, is it, in the inclusion in your
15 report of something which is taken from the media by another NGO
16 without any additional evidence and then reproduced in your report
17 citing to the NGO? The two are not compatible, are they?

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. EMMERSON: All right. [Overlapping speakers] ...

20 PRESIDING JUDGE SMITH: Could you at least just ask him --

21 MR. EMMERSON: [Overlapping speakers] ...

22 PRESIDING JUDGE SMITH: -- a straightforward question so that we
23 can move on with this.

24 MR. EMMERSON: Well, I'm bound to say I feel these interruptions
25 and the rulings on them are not designed to make this clearer or more

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7498

1 easy but are designed to obstruct. May I please cross-examine the
2 witness? It's not lengthy.

3 PRESIDING JUDGE SMITH: You may but you need to ask questions --

4 MR. EMMERSON: But I am asking questions.

5 PRESIDING JUDGE SMITH: -- not make speeches.

6 MR. EMMERSON: I'm not making a speech. I'm asking a question.
7 I mean, in a sense, the aim -- if the witness objects to answering
8 the question, Mr. Tieger is on his feet and the Bench sustains the
9 objection. And all I'm trying to do is make a very clear and obvious
10 point, which is that the witness --

11 Q. I suggest, Mr. Abrahams, the use of that material from a news
12 report through the Humanitarian Law Centre into your report is not
13 consistent with the methodology you describe in your witness
14 statement.

15 A. So I have described repeatedly how we approached that section of
16 the report which is, I believe, all about -- I think it's 11 pages of
17 a 130-page report. We cite the sources that we used, and I have
18 discussed how it was difficult and challenging to investigate
19 allegations of KLA misconduct at that time due to fear and
20 intimidation and the unwillingness of individuals to speak.

21 So in our view, our mandate was best fulfilled by collecting the
22 full compilation of cases from an assortment of reliable sources.
23 And I also include here you -- it's not just Humanitarian Law Centre,
24 but I did interview, there's UNHCR, there's a foreign journalist,
25 there were a couple of other sources in that 11-page section.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7499

1 And taken in their entirety, we believed that there was enough
2 prevalence and enough of a pattern to justify us putting out these
3 claims and putting out these abuses as they were alleged with the
4 sourcing so that people could go back and look at the sourcing, as
5 you have today, in order to make the point that these people are
6 missing, also from ICRC, publicly known, some still missing today,
7 and to enforce the point that while Serbian and Yugoslav forces were
8 primarily responsible -- were responsible for the vast and
9 overwhelming majority of abuses, the KLA was still beholden before
10 the law. And we wanted to stress that point with what we believed to
11 be credible information in order to promote our mandate of civilian
12 protection.

13 Q. Could you answer my question now, please? I'll read it to you
14 again.

15 "The use of that material from a news report through the
16 Humanitarian Law Centre into your report is not consistent with the
17 methodology you describe in your witness statement," is it?

18 MR. TIEGER: Objection. Asked and answered. I think the
19 witness just responded to that question.

20 MR. EMMERSON: Well, he didn't respond to the question. The
21 question, I'll put it again --

22 PRESIDING JUDGE SMITH: Overruled. You may answer the question.

23 MR. EMMERSON: Yes.

24 Q. Well, is it consistent with your claimed methodology?

25 A. It is a different methodology, yes.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7500

1 Q. So when you said all of the research in your statement conducted
2 by Human Rights Watch shared a common methodology and then you
3 describe it, that part of your statement is not true, is it?

4 A. All -- can you re-read my statement [Overlapping speakers] ...

5 Q. "All of the research conducted by Human Rights Watch between
6 1990 and 1999 shared a methodology. Trained and experienced
7 researchers interviewed victims and witnesses of abuses usually in
8 lengthy one-to-one interviews," and so forth.

9 A. I believe it's consistent because I'm laying out the methodology
10 that we perform. I said "usually." I believe it says "usually."

11 Q. It says "all of the research."

12 A. Well, can I pull up -- can you pull up the statement so I may --

13 Q. Yes, of course. Of course. Of course.

14 MR. EMMERSON: Just give us a moment. You can see why I'm
15 trying to do it a little bit more quickly, because these things take
16 some time. So it's 075552.

17 Q. First of all, do you recognise your signature, Mr. Abrahams?

18 A. Yes, I do.

19 Q. So is that your witness statement?

20 A. Based on the first page, yes, it is.

21 Q. Yes. Do you want to look at every page? Your signature on
22 every page? Is that what you're implying?

23 A. No, I --

24 Q. No. Let's move then to 075556, paragraph 13. Could you read
25 out for us, please, the first four -- five words of paragraph 13.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7501

1 A. "All of the research conducted by HRW between 1990 and 1999
2 shared a common methodology. Trained and experienced researchers
3 interviewed victims and witnesses of abuses, usually in lengthy
4 one-on-one interviews."

5 Shall I continue?

6 Q. Yes, please.

7 A. "Multiple sources with corroborative evidence were required to
8 make credible claims, and Human Rights Watch erred on the side of
9 caution when making allegations public."

10 Q. All right. Pausing there. That's not a proper description, is
11 it, of how you have adopted, in the one instance I've taken you to, a
12 report from the Humanitarian Law Centre?

13 A. Correct.

14 MR. TIEGER: Excuse me, but I think it's important to note that
15 there is a witness preparation note provided to the Defence which did
16 clarify --

17 MR. EMMERSON: I'm sure that's appropriate for re-examination.
18 I'm not quite sure why it's an interruption to my cross-examination.
19 If you wish to re-examine --

20 MR. TIEGER: Well, my understanding of the question is the
21 witness is being drawn to alleged contradictions between the
22 methodology he described in his statement and what appears in the
23 reports, and that has been addressed during the course of the process
24 by the witness.

25 PRESIDING JUDGE SMITH: I'll overrule it at this time. You can

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7502

1 address it on redirect, if necessary.

2 Go ahead.

3 MR. EMMERSON:

4 Q. You may answer the question then, Mr. Abrahams. The passage
5 you've just read out does not accurately describe the methodology I
6 have just shown you this morning where you take something cited to
7 the media, Serbian media by the Humanitarian Law Centre, and then
8 cite the Humanitarian Law Centre, and then repeat it and cite back to
9 your own report.

10 A. So I think I want to make a distinction, because, you know, when
11 we conduct investigations into cases, we pursue this methodology to
12 the best of our abilities. And I believe I have explained that the
13 11 pages of the report you're referencing, which is different from
14 the other reports, the later reports, which rely on primary
15 resources --

16 Q. We'll come to that in a minute.

17 A. -- on primary sources, that this report used, for reasons I've
18 explained, secondary sources, such as the Humanitarian Law Centre.
19 So that explains the difference between what you are pointing out and
20 my statement here.

21 Q. Yes, but, obviously -- I mean, you will accept for the Court to
22 place weight on anything in your reports, I'm sure, the source used
23 by the Humanitarian Law Centre is going to be important; correct?

24 A. That's a question for the Court.

25 Q. Well, let me put it another way: Would you accept that when a

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7503

1 statement is made by you based on the Humanitarian Law Centre report,
2 it makes a difference whether they've interviewed the witness and had
3 lengthy one-to-one interviews with them, corroborative evidence, and
4 so forth, or whether they've just pulled down something from the
5 Serbian media?

6 A. I mean, so, first, I just want to make a point. I do -- I am
7 not comfortable with the term "Serbian media" because --

8 Q. That's the term used in the HLC report.

9 A. Okay. I cannot speak to how the HLC has described it. I would
10 not use that term because it is applying an ethnic description to a
11 media outlet, and there are distinctions within the media that is
12 based in Serbia. So that's one point that I do feel strongly about.

13 MR. TIEGER: I'm sorry, now I'm going to rise. I really
14 apologise but there is a provision in the Order on Conduct of
15 Proceedings regarding courtesy in court. I think that precludes
16 eye-rolling and utterances while the witness is speaking.

17 PRESIDING JUDGE SMITH: Sustained.

18 MR. EMMERSON: Well, I accept that that is not appropriate, but
19 I don't understand why the comment is being made at this point.

20 PRESIDING JUDGE SMITH: Your physical actions interrupt the
21 witness. That's the simplest way to say it. Please don't do that.

22 MR. EMMERSON: Okay.

23 Q. So just to be clear on that. There may well be different
24 qualities of Serbian media, and I'm sure you're absolutely right to
25 say that. But we're talking here about what you were using as your

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7504

1 source, and the source you used was the Humanitarian Law Centre. And
2 unless I'm much mistaken, their reports says "Source: Belgrade
3 Media." So Belgrade media.

4 A. That's a geographic location and not an ethnic description.

5 Q. Okay. Very well. Fine. So if we use the term in my question
6 Belgrade media, you won't feel uncomfortable?

7 A. No, I'm -- it's not a question of comfort or discomfort. It's a
8 question of accuracy and relevance.

9 Q. Okay, well, you said it made you uncomfortable, that's why I
10 used the word "comfort."

11 A. Fair.

12 Q. And, obviously, we can spend time on these things, but my
13 question, to go back to the actual question I was asking you, is if
14 this has come from the Belgrade media into the Humanitarian Law
15 Centre, it's going to be important to know in evaluating the factual
16 allegation whether it is as a result of the methodology you describe
17 Human Rights Watch adopting, i.e., interviewing the witness, or it's
18 simply recycling something from the Belgrade media?

19 A. I apologise. I don't understand the question.

20 Q. Well, in terms of the reliability of an assertion that you make,
21 do you accept that an assertion following the interview of the
22 witness is more likely to be credible, reliable, and true than
23 something that is merely a recirculated media report?

24 A. Yes.

25 Q. Thank you. So looking again at your methodology, as you

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7505

1 described it, and as you just read out, do you agree with me that
2 the, as we discussed yesterday, description in the 2001 report that
3 you changed from the 1998 report is inconsistent with the methodology
4 you describe?

5 A. I would say -- you're referring to the "Under Orders" --

6 Q. I'm referring to the description where we -- we looked at the
7 two descriptions yesterday. In the one, it was dealt with totally
8 fairly as a description of an allegation by the end with nothing
9 having changed in between. The language used was assertive of a fact
10 and of the criminal responsibility of the commander, and nothing had
11 changed between the two. Do you remember that cross-examination
12 yesterday?

13 A. Yes, I do.

14 Q. Now, do you accept that's inconsistent with the methodology you
15 describe? Because you say -- I mean, to be specific, "we would err
16 on the side of caution when making allegations public," and here, on
17 an entirely -- without any basis whatsoever, you told us yesterday,
18 you made a specific allegation with no information there had been
19 anymore detail than the information you had when you had called it
20 nothing more than a report.

21 A. So, I wouldn't say there was nothing. You know, there were
22 people who went missing. There were people who are still missing
23 today. But I do accept the phrase, as we discussed yesterday, the
24 phrase in the "Under Orders" report was poorly constructed, and I --

25 Q. And not consistent, you accept, with the way you describe

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7506

1 yourself as a careful, meticulous, organisation?

2 A. No, I'm not satisfied with those, I believe, two lines in a
3 593-page report.

4 Q. Yes, well, the reference to what was considered a major incident
5 and, in fact, one of the two cases that was ever prosecuted by the
6 ICTY --

7 MR. TIEGER: Okay, excuse me. I'm sorry, counsel. I apologise
8 for that.

9 MR. EMMERSON: Fine.

10 MR. TIEGER: But this has -- as we've heard from both
11 Mr. Emmerson and the witness, this has been asked and answered and
12 covered repeatedly.

13 PRESIDING JUDGE SMITH: Sustained.

14 MR. EMMERSON: Very well. Let's move on to a different topic.

15 Q. Do you remember testifying in the Milutinovic case?

16 A. Generally, yes.

17 Q. Yes. It need only be general, because you presumably kept a
18 close eye on how Human Rights Watch's evidence in that case was
19 received by the court?

20 A. At the time, yes.

21 Q. Yes.

22 A. Today, my recollection is less clear of that --

23 Q. No, I --

24 A. -- period.

25 Q. No, I want to make it clear. I entirely accept that some of

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7507

1 your materials are the product of genuine research, and we see that
2 in particular in relation to the research that you did on the ground
3 with your colleague, Mr. Bouckaert, in Drenica following the terrible
4 attacks in Gornje Obrinje, where you, I think, arrived on the scene
5 the day after a massacre of Albanian civilians; is that right?

6 A. That's correct. I believe it was two days after, but you are
7 correct.

8 Q. And can you give us a date for that investigation? When was it
9 that you were there, in Drenica?

10 A. Well, to the best of my recollection, the killings of the
11 Delijaj family were on September 27th, and I remember my time and the
12 suffering of that family intensely.

13 Q. And I think am I right in saying that you -- this was, in
14 effect, this was part, therefore, of what has been perhaps
15 inadequately described in public as the Serbian September offensive
16 in 1998; is that right?

17 A. This event, this killing, this mass murder occurred at the end,
18 in the closing days of the Serbian offensive which had begun some
19 months before.

20 Q. And I'm not sure whether I've asked you this already, but you
21 arrived -- at the time you arrived, the bodies were still *in situ*; is
22 that right?

23 A. Some of the bodies. I believe seven of the 21 victims.

24 Q. And it must have been a shocking and difficult experience for
25 you, because it was a horrific scene you arrived on; is that right?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7508

1 A. I have testified to that effect. Yes.

2 MR. EMMERSON: And could we just call up briefly the -- yes, "A
3 Week of Terror in Drenica," which is IT-05-87.1, P00753.

4 Q. I'm just going to take you to a couple of excerpts.

5 MR. EMMERSON: Could we turn, first of all, to page 25
6 internally of the report, which should have the number 0634959 on the
7 top. There we are.

8 Q. If we can just start at the bottom of the page. I'll just read
9 this passage and a further passage in. The description that's given
10 here, I think, is a description of literally what you saw as you
11 arrived or when you were looking around the scene. It's almost a
12 real-time narrative note -- well, narrative description. Is that
13 fair?

14 A. You're speaking of the last paragraph?

15 Q. Well, I mean, I think generally speaking. Obviously, you mix,
16 you know, reported speech as, for example, in the previous paragraph,
17 with your own observation. But just the way this was worded:

18 "About sixty feet down the forest path from Ali's body was the
19 temporary shelter ..."

20 I mean, that's you observing that at the time, isn't it?

21 A. That is correct.

22 Q. Yeah. So you're not basing that on any hearsay or any
23 reporting. You're there on the ground. And you're almost a crime
24 scene investigator; is that right? I mean, you're doing it for
25 different purposes, but you're there investigating exactly what has

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7509

1 happened in the freshest way possible.

2 A. I believe the methodology is included in this report and it
3 explains our presence in the location at that time.

4 Q. Could you explain it to the Judges then?

5 A. Well --

6 Q. Just exactly what I was just asking you.

7 A. Yes, well, we arrived at the scene. It was either a day or a
8 day after this attack and witnessed seven of the 21 bodies in this
9 location in the forest as they were being carried out for burial.

10 Q. If we can just then -- under that heading:

11 "About sixty feet down the forest path from Ali's body was the
12 temporary shelter the Delijaj family had constructed in the forest, a
13 wooden frame with a green tarp covering three foam mattresses."

14 Just pausing there for a second. This was a family that had
15 fled their homes and taken refuge from the Serbian offensive in the
16 forest?

17 A. Correct. They were from the village so it was in the vicinity
18 of their home.

19 Q. It was near, but away from -- so they were hiding, basically?

20 A. Correct.

21 Q. "Human Rights Watch saw that the middle mattress was soaked with
22 blood, and that a human brain remained on the mattress on the left
23 side of the shelter. According to diplomatic observers and
24 journalists who visited the scene while all of the bodies were" --

25 PRESIDING JUDGE SMITH: Excuse me. Scroll the page, please.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7510

1 MR. EMMERSON: Oh, I'm sorry. I apologise.

2 Q. "According to diplomatic observers and journalists who visited
3 the scene while all of the bodies were still in the forest, the
4 bodies of Hava Delijaj, a sixty-two-year-old woman, and Pajazit
5 Delijaj, a sixty-nine-year-old man, were found in the tent. Those
6 sources described Hava Delijaj as having a gunshot wound to the head
7 and a cut throat. The diplomatic sources further observed that
8 Hava's right foot was almost severed from the body, apparently in an
9 attempt to remove the foot with a knife. Pajazit was nearly
10 decapitated with his brain fully removed from the cranium and lying
11 next to his body."

12 There's then a direct quote from an interview with Zejnjije
13 Delijaj on what she found when she opened the tent. And we can see
14 she describes the left head -- or the left side of Pajazit's head as
15 having been missing, brain in the mattress, and so forth. The
16 mattress full of blood, and so on.

17 So that's -- although you could see some of this for yourself,
18 this was the person saying: When I first got there, this is what I
19 found. So directly -- I mean, essentially you were corroborating the
20 on-the-scene descriptions yourself; correct?

21 A. Yes, we spoke with those individuals who had been there prior to
22 us.

23 Q. Yes, exactly. And then if we turn, perhaps, a little further
24 down to -- it should be page 29, I think, which should have 364963 on
25 it. Under the heading "Zahide Delijaj and Her Two Daughters ..."

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7511

1 Now, we're still in the forest with the same family, the extended
2 family; is that right?

3 A. The Delijaj family, yes.

4 Q. Yes. So Zahide -- it's pronounced Delija?

5 A. Delijaj.

6 Q. Delijaj.

7 "Zahide Delijaj and her two daughters, Donjeta and Gentjana.

8 "On top of the thickly wooded gully, Human Rights Watch saw
9 three more bodies. Zahide Delijaj, twenty-seven, was found at the
10 edge of the gully, apparently shot as she was trying to climb out. A
11 bullet had shot away the back of her head. Zahide was only wearing
12 socks, not shoes, suggesting that she may have been resting in the
13 tent at the time of the attack. Her two daughters lay dead
14 immediately behind her. Five-year-old Donjeta had an apparent
15 gunshot wound that had removed part of the right side of her face."

16 PRESIDING JUDGE SMITH: [Microphone not activated]

17 MR. EMMERSON: Sorry.

18 Q. "Five-year-old Donjeta had an apparent gunshot wound that had
19 removed part of the right side of her face. Seven-year-old Gentjana
20 had the top of her head removed, apparently by a bullet."

21 So, again, this is not you summarising what you've been told.
22 You're actually seeing this and recording what you've seen?

23 A. That's correct.

24 Q. And last passage I want to go to is on page 26 of the internal
25 pagination, K0364960, at the bottom of the page. And we have to --

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7512

1 yeah, if we can start the last few lines. So this is Hamide, Jeton,
2 Luljeta, and Valmir Delijaj.

3 "A group of four bodies was found by family members, diplomatic
4 observers and journalists a few feet up the narrow gully. This group
5 included one of the youngest victims of the attack,
6 eighteen-month-old Valmir Delijaj, found with a blood-splattered
7 face. Jeton Delijaj, a nine-year-old boy, was found close by,
8 reportedly with his throat cut from the jugular to the lower lip by a
9 knife or a bullet."

10 And then there is an interview with Imer Delijaj describing how
11 the bodies were found initially.

12 First of all, may I ask, were these bodies *in situ* when you were
13 there or can't you remember?

14 A. I would have to spend time looking back at this report to give
15 you --

16 Q. Fair enough.

17 A. -- an accurate --

18 Q. But, I mean, you have a picture in your mind's eye of seeing
19 babies dead, obviously, or had they already been taken away?

20 A. I recall the -- oh, no. Whether there was a baby when we
21 arrived, I do not recall.

22 Q. Very well. Very well. But there was a photograph that was
23 taken of the crime scene, wasn't there, of the baby that had been
24 killed at close range in that way?

25 A. There was.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7513

1 Q. Yes. And we look a little bit further down, in that description
2 given to you by Imer Delijaj, at the very bottom of the page:

3 "The other body was that of Valmir, the eighteen-month-old son
4 of Adem. He had a wound on the right side of his face near his jaw,
5 and on his right hand he had a hole but not from a bullet, and other
6 small wounds on his body. His pacifier was hanging on his chest."

7 Now, I'm not going to make the obvious point that that is
8 evidence where you're really in a position to describe what you saw,
9 and, obviously, that's a completely different methodology from, for
10 example, reporting from the media. Clearly.

11 But I wanted to ask you a little bit about the media reporting
12 of that incident, because this -- your investigation of this went on
13 for a matter of weeks; is that right?

14 A. Correct.

15 Q. And if we could just turn to internal page 63, that is K0365009.
16 You describe how the Serbian media -- and I'm sorry if -- to use that
17 term is offensive, but that's how you describe it in the report.
18 It's Serbian television. So it may not be so offensive if it's your
19 own words. If we look at the bottom of that page, page 63. Okay.

20 So this is -- the overall heading is about the response of the
21 Yugoslav authorities, but you put together under that heading also
22 the response of the Serbian, as you describe it, television channel
23 RTS and others. So if we use the term you were preferring before,
24 Belgrade media; is that right? These are Belgrade media?

25 A. Well, it -- since you raised the point. Here Serbian television

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7514

1 refers to the state --

2 Q. Very well.

3 A. -- television which is distinctive and very different --

4 Q. From independent, yeah.

5 A. -- from independent media. And having investigated press
6 freedom and published a report on press freedom in Serbia --

7 Q. Yeah.

8 A. -- I feel it's important to make a distinction and to respect
9 the independent journalists who worked under extreme pressure during
10 the Milosevic government.

11 Q. And I entirely accept that there's a world of difference between
12 independent media and state-run media, particularly in some
13 countries. But -- so that's an entirely legitimate point. And if I
14 may say so, I'll try and use that distinction, because, obviously,
15 the term "Belgrade media" could cover both, couldn't it?

16 A. Indeed.

17 Q. Whereas Serbian television, obviously, is state-run media. But
18 let's look at the state-run media.

19 "Most news programmes on the official Serbian television (RTS),
20 which is tightly controlled by the government, suggested that the
21 Gornje Obrinje massacre had either been staged by Western media or by
22 ethnic Albanian 'terrorists.' The RTS evening news even suggested
23 that a widely publicised photograph of eighteen-month-old Valmir
24 Delijaj was actually a photograph of a doll, and the reporter held up
25 what he claimed was a 'similar' doll smeared with blood."

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7515

1 Is that something you actually saw? You saw that happen -- it
2 doesn't perhaps matter, but did you watch that programme or a
3 recording of it?

4 A. Yes, I did.

5 Q. It must have made you extremely angry.

6 A. It was not surprising to see the propaganda, but it was very
7 disturbing having seen what I saw in person.

8 Q. Exactly. And, I mean, without being pedantic about the detail,
9 what you saw could only have been a massacre of civilians. There is
10 no possibility of collateral damage. The nature of the injuries and
11 the distribution of the people implies that whoever did that went in
12 and systematically murdered people one by one, including elderly
13 people, women, and very young children.

14 A. Our findings from this investigation were that there were very
15 serious laws of war violations that resulted in the deaths of these
16 civilians.

17 Q. Yeah. And the Serbian -- and I understand your point. The
18 Serbian state media were making this allegation that it was a staged
19 crime scene. It says, just in the passage a little further down,
20 that researchers from Human Rights Watch gave interviews to the
21 independent Serbian media of what they'd seen, such as Beta and Radio
22 B92, and international journalists, but never were approached by the
23 state-run media. That's a correct summary, is it?

24 A. That's correct. And useful to stress this point of the
25 difference between independent media and state media.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7516

1 Q. So can we just go back to the point -- I mean, if I may say so,
2 that has been recognised and held up as an example of the best of
3 Human Rights Watch reporting. The court in Milutinovic singled it
4 out as, you know, a classic example of admissible Human Rights Watch
5 analysis. We'll come to that in a second.

6 But if there is such a critical distinction between state media,
7 which holds up a baby -- a doll with fake blood on it as an
8 illustration, and the independent media, and given that you've told
9 us that Belgrade media is a term that covers both, when you look at
10 the Humanitarian Law Centre report which cites to Belgrade media, how
11 do you evaluate the reliability of their source?

12 A. Based on our faith and our belief in the methodology of the
13 Humanitarian Law Centre, which is in itself based on our personal
14 interactions with them, our regular communications with them, and our
15 first-hand knowledge of how they conduct their work.

16 Q. But even the non-state media at the time existed on a spectrum,
17 didn't they? There were much more independent, rigorous outlets at
18 one end of the spectrum and much closer to the state at the other end
19 of the spectrum, technically independent but much more sympathetic to
20 the state.

21 A. State-controlled and independent are non-nuanced ways --

22 Q. Yes.

23 A. -- to describe the full spectrum of media in Serbia at the time.

24 Q. Yes, but -- I agree. But a nuanced way is to say that there was
25 a spectrum of media with different degrees of proximity to the

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7517

1 Serbian propaganda machine; is that right?

2 A. There were -- there was media of all sorts --

3 Q. Yeah.

4 A. -- who took different positions also depending on the issues --

5 Q. Yeah.

6 A. -- in relation to the state.

7 Q. So it becomes critical to know before evaluating something what
8 the media outlet was that's publishing a report. Would you agree
9 with that?

10 A. Knowing the original source indeed helps to assess the veracity.

11 Q. Well, I mean, this is a great example, isn't it? If it was
12 state-run media, you wouldn't give it any credibility.

13 A. Correct.

14 Q. If it was very strongly independent or international media, you
15 would think that that was a potentially reliable strand of
16 corroborative evidence.

17 A. We would be more likely to consider it.

18 Q. Exactly. But with the range of in between, you could be dealing
19 with something as equally or almost equally unreliable as state-run
20 media or as independent as the most independent groups?

21 MR. TIEGER: Under other circumstances, I might let this process
22 continue to go on, but it -- there are time constraints today. This
23 particular issue has been addressed repeatedly. The witness has made
24 clear what factors he relied on, why. He's explained it multiple
25 times.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7518

1 PRESIDING JUDGE SMITH: [Microphone not activated] ... correct?

2 MR. TIEGER: Sorry, Your Honour. That is correct.

3 PRESIDING JUDGE SMITH: Go ahead with the questioning, but we're
4 getting towards the end.

5 MR. EMMERSON: Yes, I will definitely be finished before the
6 morning break, as I said.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 MR. EMMERSON: Yes, well, obviously, we're on an entirely
9 different report here.

10 PRESIDING JUDGE SMITH: I understand.

11 MR. EMMERSON:

12 Q. All I'm simply asking is -- you say that you cite the sources in
13 your reports so that people can go back and check just as I have
14 done. That was your comment earlier on. My question is if it simply
15 says "Belgrade media," how does that make the person any the wiser as
16 to the reliability of the source in the light of this kind of range
17 of reporting?

18 A. So I cannot speak for the Humanitarian Law Centre and if -- what
19 decisions they made into how they footnoted their material. But we
20 did have, and I still do have, a high degree of -- a high opinion and
21 a high degree of faith in the work of the Humanitarian Law Centre,
22 knowing their methodology and their independent nature, having
23 criticised Serbian and Yugoslav forces for many, many years, that
24 they would make decisions that they believed -- based on material
25 that they considered credible.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7519

1 Q. Coming back then to the Milutinovic case.

2 MR. EMMERSON: The decision again is in our queue. I'm not sure
3 that we need to bring it up at this stage, but I will if it's
4 necessary.

5 Q. But you know that before you testified there was litigation
6 about which of your reports would go in evidence, don't you?

7 MR. TIEGER: Your Honour, I'm going to object to what I
8 understand to be the approaching line of questioning on relevance
9 grounds.

10 MR. EMMERSON: Well, since it's approaching line of questioning,
11 it's premature.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 That's not relevant. Go on. Go on with your questioning.

14 MR. EMMERSON: Yes, I'm sorry, the objection isn't relevant or?

15 PRESIDING JUDGE SMITH: I'm sustaining the objection.

16 MR. EMMERSON: But what isn't relevant?

17 PRESIDING JUDGE SMITH: The discussion of the litigation that
18 went on beforehand. If you want to just ask him a straightforward
19 question, ask him a straightforward question.

20 MR. EMMERSON: Okay. Let me do it that way.

21 Q. In -- just give me a moment. In the evidence in that case, you
22 testified about the preparation of this report, the report we just
23 looked at. And as a result of that, I think you testified that,
24 obviously, as you testified here, it was a result of personal
25 observation and intensive interviews of over two dozen people with

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7520

1 regard to a single incident, a single incident in the sense of a
2 single compendious incident, the crime scene, the number of people
3 within it, and so forth, and that the investigation into that one
4 crime scene by Human Rights Watch took what you described, I think,
5 in your testimony as a matter of weeks, which is what I put to you
6 earlier on.

7 However, with respect to the "Under Orders" report -- this is,
8 of course, viewed from the Serbian defendants' perspective, in that
9 case it was a case against Serbian perpetrators. In relation to
10 that, you testified, I think, and this is a quote from your
11 testimony, that, in relation to the allegations in "Under Orders"
12 against Serbia for crimes falling within the Milutinovic indictment,
13 that is to say, people -- those who'd been the subject of the crimes
14 against humanity or were described as victims of the crimes against
15 humanity in the March to June period of 1999, your testimony was:
16 "These interviews in a few cases were quick ..."

17 So you were interviewing people but they were quick interviews,
18 you said.

19 "... because somebody was literally coming across the border in
20 their tractor and we only had time to ask: Where are you from and
21 why are you leaving?"

22 That was the evidence that you gave in that case. Is that --
23 that accords with your recollection?

24 A. Yes, I -- well, I don't recall --

25 Q. The testimony.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7521

1 A. -- the precise testimony. But that is what happened when we
2 were in northern Albania at that time, I and colleagues are
3 interviewing people fleeing or being expelled from Kosovo.

4 Q. Yes. And since the evaluation of the reliability of evidence
5 and testimony is obviously an important part of your work, I mean,
6 you would accept that there is a difference between those two, where
7 you've done several weeks of investigation into a very specific crime
8 site and the situation where you've had often snatched interviews of
9 refugees on their way out, in terms of the reliability, depth and
10 credibility of what's being said?

11 A. There are two differences. One is obviously in the amount of
12 time and intensity. The other is in the product that would stem from
13 that investigation. So in this case, the former is a detailed report
14 gathering all of that research, but we would -- but the interviews
15 briefly done from people fleeing would be compiled together. We
16 would not use that information to present a report based on a person
17 who was in haste and in trauma telling us what had happened.

18 Q. So that's an important distinction. So you're saying you
19 wouldn't describe the events, for example, that they're describing to
20 you as they rushed past you, so to speak, at the border into
21 Macedonia, for example, you wouldn't describe particular events, but
22 you'd look at the pattern of what seemed to be consistent stories; is
23 that right?

24 A. So -- I mean, we'd have to speak about specific incidents --

25 Q. Yes.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7522

1 A. -- but it's --

2 Q. Yes. No, I'm asking about your general methodology, actually.

3 A. Yes. No, but generally that second case of interview would feed
4 into a larger body of work --

5 Q. Yes.

6 A. -- and require interviews to gather a fuller --

7 Q. [Overlapping speakers] ...

8 A. -- complete picture of what had happened.

9 Q. But you're -- going back to this distinction between what you're
10 doing and what an investigator or a court of law is doing, you're not
11 preparing this for the purposes of evidence, are you? This is not
12 intended as evidence?

13 A. I'm sorry, preparing what?

14 Q. These reports? For example, the "Under Orders" report, which as
15 you know, because you would have followed it up, was excluded as
16 evidence from Milutinovic, that that -- on the basis that it wasn't
17 as in depth as the other one. My point is you -- in doing that, you
18 -- when you put a report like that together, it's not intended that
19 you would be -- the report would be relied on in evidence because
20 you're not doing any of the things that an investigator would
21 otherwise do, are you, in the latter case?

22 A. So our public publications of any sort have a variety of goals.
23 The ultimate one being civilian protection in times of war and the
24 promotion and protection of human rights, generally.

25 Beneath that goal are -- it depends on the situation. And it's

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7523

1 to inform the public and generate public pressure. It's to inform --

2 Q. Public pressure to do what?

3 A. For policymakers --

4 PRESIDING JUDGE SMITH: Just a second.

5 Don't interrupt. Let him finish the question --

6 MR. EMMERSON: [Overlapping speakers] ...

7 PRESIDING JUDGE SMITH: -- and then you can ask him the follow
8 up.

9 MR. EMMERSON: Very well.

10 PRESIDING JUDGE SMITH: Go ahead, sir.

11 THE WITNESS: I can, well, continue. Which is public pressure
12 on policymakers, on politicians, to promote and implement and pursue
13 policies that are respectful of human rights. And so our reporting
14 always had that as its aim.

15 MR. EMMERSON:

16 Q. Also -- and it -- and we can look at some examples if you like,
17 but would it also have the aim of spurring international criminal
18 prosecutors to investigate?

19 A. Accountability.

20 Q. Yes.

21 A. I would say accountability is a clear and articulated goal --

22 Q. Yes.

23 A. -- of our organisation.

24 Q. But more specific than accountability, you are also urging in
25 some of these reports that, at least regards the period of 1998 up to

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7524

1 the end of the war in June 1999, that Carla del Ponte, then
2 Prosecutor of the ICTY, should investigate those allegations --

3 A. Correct.

4 Q. -- that were not already under investigation. Specifically,
5 those allegations that were circulating about the Kosovo Liberation
6 Army.

7 A. We have long supported international criminal proceedings to
8 investigate and, as appropriate, prosecute serious allegations of
9 violations. Absolutely.

10 Q. Mm-hm. But that's because your work is not intended to
11 substitute for an investigation. It's intended to, if you like,
12 raise the fact that there are things to investigate.

13 A. Our job is to present as credible a body of evidence as we can
14 to encourage rights-respecting policies, including accountability and
15 justice.

16 Q. I want to look at one aspect of that with you, briefly. There
17 were two generalised areas of evidence in this case that you have
18 given evidence about but not sought to present as a finding or a
19 conclusion. There are things I wanted to just explore with you.

20 The first relates to your evidence about the reasons why certain
21 Albanian witnesses you spoke to might have been reluctant to testify,
22 and you gave us fear, loyalty to the cause, I think was the
23 expression, or a combination of both. I suppose we could add or
24 they've got nothing relevant to tell you. That's another reason why
25 someone might not say anything. And I'll come back to that in a

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7525

1 minute.

2 The second is whether the action in June -- the attacks that you
3 were aware of and your -- I think your colleague did some first-hand
4 more meticulous research, was it Ben Ward?

5 A. Correct.

6 Q. On Serb civilians and others who were the victim of a rush of
7 attacks when the refugees returned and the war was technically -- the
8 Kumanovo Agreements had been concluded. And you gave a description
9 to the Court about, you know -- and you gave a description in one of
10 your reports about the relative likelihood that this was individuals
11 with patches sewn on just to pretend they're KLA, with other private
12 individuals or with small groups of KLA or individual KLA members
13 acting outside authority or with the authority of the zone
14 commanders. Those were the options that you looked at. And you've
15 expressed some opinions about that.

16 And I just want to go through the process, because obviously to
17 be useful, we have to try and put some metric on your generalisation.
18 I don't mean that pejoratively. On the general conclusions that
19 you're drawing.

20 So let's look at the first group first of all. The reasons for
21 Albanians that you'd -- Albanian witnesses or people you were
22 interviewing being reluctant to talk.

23 Presumably you're not a -- yeah, I mean, first of all, you
24 wouldn't have kept a record of that, would you, to say, well, this
25 one was not doing it through fear, or this or this person said that?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7526

1 You wouldn't have kept a numerical record as to how many of the
2 Albanian people that you spoke to were unwilling to talk about the --
3 you wouldn't have quantified it?

4 A. To the best of our ability, we kept notes to reflect our work on
5 the ground.

6 Q. Sure. But would you have -- you would have quantified the
7 number of people as a proportion of the overall Albanian people that
8 you spoke to who seemed to you to be unwilling to testify or give
9 evidence, give an account?

10 A. We did not conduct a quantitative analysis --

11 Q. Exactly. No quantitative analysis. Exactly. That's exactly
12 the point I'm making. When I say an objective metric, that's what
13 I'm referring to.

14 But equally, presumably with any one individual it's going to be
15 difficult, unless they say something specific, to know whether it's
16 fear, whether it's loyalty or whether it's both.

17 A. In some cases, for sure, it would be difficult to assess.

18 Q. Yeah, in most cases if they're not talking to you. Unless
19 somebody says: The only reason I don't want to talk to you is I'm on
20 their side, or the only reason I don't want to talk to you is
21 somebody will threaten to kill me. It means you have no way of
22 knowing, do you, or it's just impressionistic, is it?

23 A. No, it's more nuanced than that.

24 Q. Mm-hm.

25 A. Because how someone conveys their willingness to share

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7527

1 information can tell you a lot, and it's not a guessing game.

2 Sometimes they let you understand in ways nonverbal. Or it is also
3 part of my job to understand and interpret the context in which we
4 are working.

5 Q. Sure. But if somebody's not willing to discuss it with you,
6 it's going to be hard to get to the bottom of which of those motives
7 or a combination of them it is?

8 A. Sometimes, yes --

9 Q. Yeah.

10 A. -- and sometimes no.

11 Q. Exactly. So we can say that they're -- well, I'm sure you can
12 say categorically that there were people you came across for whom you
13 judged that the overwhelmingly important motive for not willing to
14 cooperate was fear? There were some people in that category?

15 A. Definitely.

16 Q. And were there people in the -- one of the other categories that
17 you could judge the overwhelming reason was that they were Albanian
18 and were not prepared to say anything bad about their own side?

19 A. Yes.

20 Q. But within that category, you couldn't tell if they had anything
21 bad to say or not?

22 A. Within the second category --

23 Q. Yeah.

24 A. -- people who believed in the cause --

25 Q. Yeah.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7528

1 A. -- that --

2 Q. You wouldn't know whether they were concealing something or
3 just -- I mean, the implication of this analysis is that people are
4 holding back from telling you something potentially damaging to their
5 own side. But, of course, that presumes that there is something
6 damaging particularly that they have to tell you.

7 A. So the answer to your question is also from the other direction,
8 you know, which is that, you know, we encountered many cases -- I
9 encountered many cases --

10 Q. Yeah.

11 A. -- where people also tended to exaggerate because of the cause.

12 Q. Yes.

13 A. You know. And saying things that they felt was promoting,
14 drawing attention to the suffering of the ethnic Albanian people,
15 which was a real suffering, but in ways that didn't always reflect
16 the facts on the ground. So that's why our investigations had to be
17 cautious and asked details of them about where they were, did they
18 see something themselves, were they present. But that was a common
19 challenge when documenting the Serbian and Yugoslav abuses.

20 Q. So, again, all I'm trying to do at this stage is to work out if
21 there's anything in any of this that helps to give a metric or a
22 quantification on that issue, whether -- of how many of the Albanian
23 people that you spoke to, and you must have spoken to thousands over
24 the -- or hundreds, at least.

25 A. At least hundreds. At least.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7529

1 Q. Yes, because of course, many of them were testifying about
2 crimes against humanity perpetrated by the Serbian campaign. So that
3 issue didn't arise in that context, I suppose.

4 A. It did.

5 Q. It did as well?

6 A. Yes.

7 Q. So it could be fear of reprisals by the Serbs? Is that what
8 you're saying?

9 A. No. What I'm saying is to make as accurate as possible an
10 assessment of an IHL violation required also understanding the
11 location and activity of the armed group. In this case the KLA. And
12 often, not always, we found some interviews were reluctant to speak
13 about that and would say things like: No, they were nowhere in the
14 area.

15 Q. Sure.

16 A. So we had to dig into those claims.

17 Q. I see. But you can't tell if somebody -- it's a perfect
18 example. In the example you give, you don't know whether they're
19 saying -- you might later be able to disprove that -- I think you
20 mentioned an instance in one of your reports where you actually knew
21 there had been KLA in that area at that time, and, therefore, you
22 could deduce that the witness was -- either didn't know that, which,
23 perhaps, strains, as it seems unlikely, or knew it and didn't want to
24 tell you?

25 A. Correct.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7530

1 Q. Which they have obviously no obligation to do.

2 A. And sometimes we knew that going into these interviews.

3 Q. Yes. But my question is how do you decide whether that person
4 is -- I mean, they may not want to tell you about the military
5 movements of the KLA or who was where or what was what, but how do
6 you know or -- or are you not saying you know, that they have
7 anything to say which could be relevant to a crime against humanity?

8 A. In some cases, we were able to discern, or I could discern, that
9 there was a fear involved. They either said it or, more likely, made
10 it be known in nuanced ways that: I'm not going to discuss this.

11 Q. Yes, but they may say, "I'm not going to discuss it." But
12 what's the "it"?

13 A. Alleged misconduct by the KLA.

14 Q. I see. So you had asked them, people generally, "We're
15 investigating an alleged KLA atrocity or crime in this area," and
16 they would say to you, "I don't want to say or talk to you about that
17 at all. I won't discuss it with you"?

18 A. Either that or they would say, "I don't know about that."

19 Q. Yes.

20 A. Yes. But the way in which that is communicated can - can - mean
21 that there is a reason behind it. It can. And we're speaking --

22 Q. Can you just explain -- I mean, obviously, someone couldn't
23 write -- you know, couldn't signal with or put a sign in front of
24 them saying: I know everything, but I'm too afraid to tell you. But
25 I mean, they can signal in some way. What are you talking about?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7531

1 Can you give us an example of how when a witness says "I don't know
2 anything about that," how do you evaluate when it's done
3 non-verbally, as you said, which I think you said are the majority of
4 cases, more likely you said, more likely it would be done
5 non-verbally, so that's what your evidence was a minute ago.

6 So my question is: Can you give us an example of how that might
7 happen or maybe a demonstration? Is it a signal, a sign, a wink, or
8 something?

9 A. So I am -- I think I'm -- I'm going to answer that question by
10 stepping back because, I mean, the best way I can explain it is that
11 there was -- there was a highly intense politicised and fearful
12 environment generally given the war.

13 Q. Exactly.

14 A. And that, broadly speaking, my experience, from 1996 until 2001,
15 is that investigating crimes by the KLA was more challenging. It was
16 distinctly more challenging, which is not unique to Kosovo. And we
17 see it -- I've worked in about a dozen armed conflicts. And for a
18 spectrum of reasons, from loyalty to fear to intimidation to
19 instruction to understanding of instruction. Individuals are less
20 likely to share information about their own, quote/unquote, side
21 despite, perhaps, you know, disagreement, concerns about their
22 conduct, concerns about whether their conduct is also putting them at
23 risk from retaliation by other forces. For example, do not conduct
24 military activity in the vicinity of a civilian area because you are
25 making us vulnerable to counterattack.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7532

1 Q. I mean, you're -- but putting it that way, it is an explanation
2 for the challenges that you face in getting a thorough picture out of
3 that community in that period, because, A, there was a war going on
4 up until June 1999; but then you were dealing with the aftermath,
5 correct, where law and order took considerable time to be
6 re-established under UNMIK, I think; correct?

7 A. Correct.

8 Q. Yeah. So you wouldn't be suggesting from any of that that
9 people were -- that there's a proportion of people who, for example,
10 were withholding from you key information or information about the
11 commission of crimes?

12 A. I believe there were people who did withhold information.

13 Q. You believe it --

14 A. Yes, I'm --

15 Q. -- by their reaction in not telling you?

16 A. And also people -- there were people who said, "I will not talk
17 about that."

18 Q. Yes.

19 A. So I'm very confident in stating that there were cases, and I
20 cannot give you a percentage.

21 Q. Exactly.

22 A. Yes, I cannot give you a percentage.

23 Q. I mean, it could be one incident?

24 A. Well, it's not one incident. No, it could not be one incident.

25 Q. Okay. Fine. Could it be ten?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7533

1 A. I -- I don't feel in a position to give a concrete number --

2 Q. No, I --

3 A. -- like that. But I will say, in the full spectrum of our work,
4 more than ten.

5 Q. Yes, I -- I apologise for pressing you, and it may seem obtuse
6 to press you, but it's important for the Judges to know what can be
7 inferred from the evidence that you've given. And, essentially,
8 you're presumably unwilling to express a view of the percentage of
9 Albanians you interviewed from whom it was clear that they were able
10 to tell you about something relevant to a crime and were withholding
11 it for the predominant reasons of fear rather than loyalty.

12 A. I'm sorry, I --

13 Q. Well, I'll read it out to you again.

14 "... you are presumably unable or unwilling to express a view of
15 the percentage of Albanians you interviewed," and I mean by that you
16 collectively, Human Rights Watch, "from whom it was clear that they
17 were able to tell you," able to tell you, "about something relevant
18 to a crime but were withholding it for the predominant reason of fear
19 rather than loyalty."

20 MR. TIEGER: Objection, asked and answered.

21 MR. EMMERSON: No, it was asked and specifically --

22 PRESIDING JUDGE SMITH: Overruled.

23 MR. EMMERSON: -- asked to repeat it.

24 PRESIDING JUDGE SMITH: You may answer the question.

25 THE WITNESS: I cannot give you a quantified number.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7534

1 MR. EMMERSON:

2 Q. Exactly. Or even in a percentage?

3 A. A percentage? No, I'm not in a position to give you a numeric
4 number.

5 Q. No. Thank you. So I want now to just look at other issues
6 where you -- I mean, it doesn't make the evidence on any of these
7 things less relevant. It gives it its proper shape. And then I want
8 to ask you relatedly, using a sort of similar approach, about the
9 pattern that you describe based on Ben Ward's research of
10 mistreatment of Serbs and minorities at the time of the influx of
11 returning refugees and others post Kumanovo. Okay? I sort of saw
12 you furrowing your brow, but that's the period I'm asking you to
13 focus on for a moment.

14 A. I follow.

15 Q. Can I -- can we call up your witness statement, please.

16 MR. EMMERSON: Which, again, I'll just read -- we've done it
17 once before, but I'll read -- it's 075552.

18 Q. This is the witness statement that you self-drafted, and then
19 there was some discussion with the SPO, dated April 2019.

20 MR. EMMERSON: Now, could we turn to paragraph 79, which is
21 on -- oh, I think -- yeah, it's page 60. Page 16. Yes.

22 Q. You say there:

23 "I reviewed and edited the HRW report entitled *Abuses Against*
24 *Serbs and Roma in the New Kosovo ...* dated August 1999, which was
25 authored by Ben Ward. This report states, in part, the following:

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7535

1 "Ethnic Albanian civilians have taken part in much of the
2 burning and looting of Serb and Roma property ..."

3 Now, pausing there. As you understood it as the editor,
4 "civilians" means civilians in that sentence? It means
5 non-combatants?

6 A. Correct.

7 Q. And that's not because this is after the end of the war. You're
8 saying people who were just civilians, no connection to the KLA?

9 A. This would refer to non-KLA members.

10 Q. Exactly. I mean, in a sense, would you agree that there were a
11 lot of civilians directly participating in hostilities during the
12 conflict who were fighting alongside KLA or without uniforms in their
13 village but they were loyal to the KLA?

14 A. Well, I think you made -- you're more learned in IHL than I, but
15 when a civilian takes up arms and is actively contributing or
16 participating, they're --

17 Q. They're no longer a civilian.

18 A. [Overlapping speakers] ... they are no longer --

19 Q. Exactly.

20 A. They lose their civilian status.

21 Q. Exactly. But here you mean civilians proper, because with
22 post -- after the conflict, this is after the cease-fire; yeah?

23 A. They are not members of the KLA is what this is intended to
24 mean.

25 Q. Exactly. So:

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7536

1 "Ethnic Albanian civilians have taken part in much of the
2 burning and looting of Serb and Roma property, and, in a few
3 instances, in violent attacks on their neighbours. Returning
4 refugees, many of whom lost their own property through theft and
5 arson prior to June, have been particularly implicated in the
6 expulsion of Serb and Roma from their homes."

7 Now, again, "returning refugees" means civilians, doesn't it?

8 A. In this context, yes.

9 Q. Yes. Yes, I meant it specifically, yes. So we're talking about
10 civilians having been involved in much of the burning and looting and
11 some, only, of the violent attacks. And we're talking about
12 civilians also having been involved in the expulsions of Serbs from
13 their homes; correct?

14 A. Correct.

15 Q. Again, metric. Can you give us an idea? What does "much of it"
16 mean? How much of it would you say numerically, or can't you say?

17 A. I would have to go back --

18 Q. Yes.

19 A. -- in depth to this report to --

20 Q. There is clearly a difference intended between "much" and
21 "some," isn't there? The words are meant to apply a greater degree
22 in proportion than another?

23 A. Correct.

24 Q. Yeah. So at least we can say they made a significant
25 contribution. Civilians were responsible for a significant part. Is

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7537

1 that a reasonable thing to say?

2 A. Yes, I don't disagree with that.

3 Q. Yeah. Would you say that for, as far as you can recall, you're
4 trying to imply there that with the burning and the looting, not so
5 much the attacks on people, but the burning and the looting and the
6 driving out of Serb and Roma from their homes, that that was more
7 than half being done by civilians or you just can't say?

8 A. I -- yeah, I would have to review this report with greater
9 depth.

10 Q. Sure. Sure.

11 "The most serious incidents of violence ..."

12 And I think -- do you mean there violence against people in
13 context?

14 "The most serious incidents of violence, however, have been
15 carried out by members of the KLA."

16 A. Sorry, oh, the next sentence.

17 Q. Yes.

18 A. "The most serious incidents of violence, however, have been
19 carried out by members of the KLA."

20 Yes, sorry, what is the question?

21 Q. First of all, is that -- when you're talking about violence, if
22 you look at the preceding sentence, is that violence against people
23 or violence against property?

24 A. I -- again, I would have look back, but I'm assuming from this
25 it's people.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7538

1 Q. I see. And when you say "the most serious," do you mean --
2 that's not a numerical comment, is it? You're not saying the
3 majority. You're saying some, but the more serious ones, the murder
4 -- one or two or -- I think it's, would you agree, less than ten
5 instances of murder cited in that report or you can't remember?

6 A. Again, I really would have --

7 Q. It's in that kind of number, isn't it? It's the single digits.

8 A. Well, there are -- I mean, I'm familiar with a couple of the
9 major incidents --

10 Q. Yes.

11 A. -- in which there multiple -- I mean, one incident --

12 Q. Yes, yes.

13 A. -- that resulted in multiple deaths. So I assume this refers to
14 that.

15 Q. Is that four -- is that -- that's not the couple --

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

18 MR. EMMERSON: Apologies.

19 THE WITNESS: I'm sorry.

20 MR. EMMERSON: Apologies.

21 THE WITNESS: I'm sorry.

22 MR. EMMERSON:

23 Q. There was one instance described in the report where there was
24 two elderly couples, I think in Prizren, from my recollection, and
25 their husbands had gone out to get something from the market after

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7539

1 having been harassed by people with KLA insignia. And then when they
2 returned, they found their wives had been killed. You're not
3 referring to that incident?

4 A. I don't recall.

5 Q. But, in any event, the general thrust of what you're saying is
6 that there were some incidents, I mean in the context of the conflict
7 as a whole, a relatively small number of incidents in which it was
8 believed that KLA soldiers had been involved. And that might have
9 been because of uniforms. It might have been because they were
10 known. Is that right?

11 A. To the best of my recollection.

12 Q. Yeah.

13 A. There were some more prominent incidents post June that involved
14 attacks. I believe there was one in Kosovo Polje. I believe there
15 was one in Gracanica, if I'm not mistaken. There were two convoys
16 that were attacked. Even one with KFOR forces escorting Serbs out of
17 Kosovo.

18 Q. And the --

19 A. So two --

20 Q. And I think there was one in Bellopoje as well; is that right?

21 A. I don't recall that, that specific --

22 Q. But, in any event, there were a number of instances where it
23 could be identified that serious violence against individuals had
24 been perpetrated by people who were, let's just say, credibly
25 assessed to be members of the KLA.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7540

1 Now, this is all happening in the relatively compact period
2 between 12 June Kumanovo Agreement for the withdrawal of Serbian
3 forces from Kosovo. And, I mean, this report is dated is August, I
4 think, but in September, as you know, the Kosovo Liberation Army was
5 disbanded and disarmed. So it's -- those are the bookends of the
6 period that we're talking about.

7 Yes, I'm sorry. It's pointed out to me that you're nodding, but
8 it needs to go on the record, so could you just say "yes" in response
9 to what I just asked you.

10 A. The --

11 Q. We're dealing with a -- as I just said, we're dealing with a
12 relatively short period between Kumanovo, resulting in the withdrawal
13 of Serbian forces, and the date in September when the KLA was
14 disbanded and disarmed.

15 A. I believe September 19th.

16 Q. 19th. So, yeah, it's a three-month period.

17 A. Roughly. A tad more.

18 Q. Yeah.

19 A. Yes.

20 Q. And you've already explained that during that period there was a
21 great deal of civilian damage to property caused by civilians and
22 some returning refugees and so forth. But those particular instances
23 that you've cited of KLA violence stood out. I just want to ask you
24 some questions about that.

25 First of all, I think we've already got your agreement on this

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7541

1 proposition, but it is right, isn't it, that because the KLA was
2 thought of as -- in that period as a source of bit of a -- you know,
3 a victor, that they delivered a form of independence to Kosovo, and
4 so forth, and you described that part of it, that people did try to
5 claim to be members of the -- or having been fighters when, in fact,
6 it wasn't so clear?

7 A. I -- just pausing. I believe I said that there may have been
8 cases --

9 Q. Yeah.

10 A. -- where people did that. Yes.

11 Q. I mean, there is obvious motive for people to do that at a time
12 where victory has been achieved in the sense that the Serb forces
13 have been forced to withdraw, because when people look back, they
14 want to see -- they want to be able to claim, "I was with the people
15 who did this," not "I was one of the people who was not willing to
16 join."

17 A. So I think there are two responses to that question. One is no
18 doubt there were individuals who exaggerated --

19 Q. Yes.

20 A. -- their role in the struggle. And at the same time, I believed
21 then, and I believe now, that to do so prominently also posed some
22 risks because the individuals who genuinely sacrificed would not --

23 Q. That's what you said.

24 A. -- tolerate fakes and masqueraders or people who were trying to
25 benefit from the popularity of the KLA more broadly.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7542

1 Q. If -- I mean, in that context with people claiming these -- and
2 so forth, claiming to be more important than they were, I'm not
3 suggesting for the moment that the people responsible for the limited
4 number of incidents of killings, or the most serious ones, where
5 you're suggesting or your conclusion was that there was credible
6 evidence that KLA soldiers were involved. But the real issue is, as
7 you know, people could come and go from the KLA. We've heard
8 evidence of it already from individuals. I mean, they might be a
9 member of the KLA one day and then leave or come back later on, and
10 so forth. You know that's the way things operated.

11 A. No, I can't speak to that, but it's certainly possible --

12 Q. Yeah.

13 A. -- there were people coming and going.

14 Q. Very well.

15 PRESIDING JUDGE SMITH: Just a second. A pause, please. If
16 you'll go back and look at lines 4 through 25 of the previous line,
17 you will see you are interrupting. I know you're doing it
18 inadvertently, but you are interrupting the witness over and over
19 again, and it's very difficult for the interpreters.

20 MR. EMMERSON: Well, I'm definitely going to try to avoid it. I
21 have -- I'm afraid it is inadvertent.

22 PRESIDING JUDGE SMITH: I know. I know it is.

23 MR. EMMERSON: I shouldn't -- I shouldn't --

24 PRESIDING JUDGE SMITH: But I'm reminding you of it because it's
25 very difficult for the interpreters.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7543

1 MR. EMMERSON: Well, I'm not a spring chicken, and I shouldn't
2 be making those mistakes anymore, but I apologise.

3 Q. All right. So just getting a sense of all that. We're dealing,
4 aren't we, with the period June to September when KLA forces were all
5 returning to their homes as well as the civilians?

6 A. Correct.

7 Q. Yeah. So you had people who were in the process of returning
8 home who had been KLA members perhaps serving in a completely
9 different part of Kosovo but were now returning to their towns and
10 villages?

11 A. I think, first, largely, but not exclusively, KLA fighters
12 served in the regions from where they came.

13 Q. Yes.

14 A. And some of them may not have left their homes, but some may
15 have. So I can't speak --

16 Q. Well --

17 A. -- precisely to that.

18 Q. -- if we can just go back to your witness statement. And I'm
19 picking it up again in paragraph 79 in the quote from the human
20 rights report. You say, halfway down that paragraph:

21 "The most serious incidents of violence, however, have been
22 carried out by members of the KLA. Although the KLA leadership
23 issued a statement on July 20 condemning attacks on Serbs and Roma,
24 and KLA political leader Hashim Thaci publicly denounced the July 23
25 massacre of fourteen Serb farmers, it remains unclear whether these

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7544

1 beatings and killings were committed by local KLA units acting
2 without official sanction, or whether they represent a coordinated
3 KLA policy."

4 Stopping there, because you go on to say the KLA should be doing
5 something to investigate and prevent, which we'll come back to.

6 But it's -- what I want to -- what I want to explore with you is
7 it remains unclear whether these beatings and killings were committed
8 by local KLA units acting without official sanction or whether they
9 represent a coordinated KLA policy.

10 Now, it's that question of coordinated KLA policy that I want to
11 focus on with you, because you've already told us that right the way
12 through, including at this time, if there was authorisation for
13 activity in the zones, it would be the zone commander who would have
14 the autonomy to authorise or prevent that. You've told us yesterday
15 all about how powerful the strongly willed independent zone
16 commanders were and how, therefore, to that extent, these things were
17 decentralised.

18 You're not suggesting, I presume, because you've already told us
19 you're not making any allegations of crimes committed by any of the
20 people in this courtroom, you're not suggesting there that it
21 remained unclear whether it was a coordinated KLA policy at
22 General Staff level? That's not a suggestion you're making, is it?

23 A. What we're saying here in this -- from the report from --

24 Q. Yeah.

25 A. -- 1999 is, at the time, it was unclear to us to what extent

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7545

1 these attacks and violence, beatings and killings, were committed and
2 authorised by local forces or a coordinated policy, yes, at the
3 centre, including at the General Staff. At the time, it was unclear.
4 And we did not have evidence at the time to say that it did stem from
5 that.

6 Q. And you're not -- and, again, when you spoke to, for example,
7 Mr. Thaci, your point was they made these strong statements
8 disparaging, criticising, and so forth, but they need to do more
9 because there seemed to be acts of lawlessness breaking out
10 everywhere, and some of them, perhaps a limited number but some of
11 the worst, seemed to be being committed by people who were KLA in
12 uniform.

13 A. So our position at the time, and still today, is that the
14 prevalence, the persistence, and the intensity of the crimes being
15 committed at that time obligated a response from the still existing
16 KLA because it had risen to the level where the onus is on the
17 parties to the conflict --

18 Q. Yes.

19 A. -- although the conflict had officially ended by [Overlapping
20 speakers] ...

21 Q. Exactly, yeah.

22 A. That the onus was on them to at least investigate and, as
23 appropriate, take steps to minimise, mitigate --

24 Q. I understand.

25 A. -- and deal with these abuses.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7546

1 Q. And that's what you go on to say in the next page.

2 "What is indisputable, however" - and if we just go over the
3 page - "is that the frequency and severity of such abuses make it
4 incumbent upon the KLA leadership to take swift and decisive action
5 to prevent them."

6 A. Correct.

7 Q. You go on then in your statement to say -- to qualify -- I
8 remember I put it to you yesterday, you qualified that finding by
9 reference to things you'd read in the Dick Marty report, and you said
10 absolutely not. I just want to check then. Perhaps something got
11 misunderstood here. This is -- this is -- let us read through:

12 "This report was compiled using the same methodology described
13 above, and I believe it was accurate when written. With regard to
14 the sentence 'it remains unclear whether these beatings and killings
15 were committed by local KLA units acting without official sanction,
16 or whether they represent a coordinated KLA policy' ..."

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MR. EMMERSON: Sorry.

19 Q. "... the degree of coordination was not clear to me back then,
20 but over time it became clearer from other research, including the
21 findings in the Marty Report, that the violence was to a significant
22 extent coordinated."

23 So just to be clear, with respect, you're not here as an expert
24 witness, and so whatever views you may have had changed from reading
25 other things is, perhaps, not the crucial question. But you

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7547

1 obviously know that some of the central findings in the Dick Marty
2 report have, let's put it this way, after extensive multiyear
3 investigation been -- are found not to -- have not been pursued. For
4 example, there's no evidence or allegation in any court in this
5 jurisdiction or domestically of the use by the KLA of -- the central,
6 most notorious allegation of organ trafficking.

7 A. So --

8 Q. I'm just saying that -- my question to you is: At the time you
9 were clear that there was insufficient material to suggest it was
10 coordinated activity at a policy level. Are you seeking to undermine
11 that now?

12 A. So my answer to this question will require a little explanation,
13 if you will grant me --

14 Q. Yes, of course.

15 A. -- that. Do we have time before the break, Your Honours?

16 Q. Well, it depends on how long you need.

17 PRESIDING JUDGE SMITH: [Microphone not activated]

18 THE WITNESS: No, that should be more than adequate, yes. So --

19 MR. EMMERSON: I'm sorry to interrupt. I'm just concerned. I'm
20 going to stop in ten minutes, and so that will be the end of my
21 questions.

22 Q. What I would -- rather than push you into that now, my question
23 for you, really simply, without a ten-minute explanation, is at the
24 time that was the official position of Human Rights Watch; correct?

25 A. What was the official --

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7548

1 Q. As it's described in the --

2 A. Correct.

3 Q. Yeah. And whatever you've learnt since then is material that
4 you've read by somebody else.

5 A. Not correct.

6 Q. Okay. Could you tell us what the additional material is?

7 A. Gladly. And it won't take ten minutes. So the key term here is
8 "other research." So by that I'm referencing a list of things.
9 First of all, our own research, because after this report from August
10 we published "Under Orders", which includes additional material.

11 Q. Correct.

12 A. And also on KLA crimes. And so this was further research that
13 we conducted. In addition, there are the reports by international
14 organisations. I'm thinking about the OSCE's report "As Seen, As
15 Told" Volume 2, which addresses post-June abuses. I'm thinking about
16 reports by Amnesty International and other credible international
17 organisations. I'm thinking about reports that we obtained by UNMIK
18 and by KFOR, which pointed very clearly to abuses by the KLA despite
19 political pressure, I believe, from the leadership not to speak about
20 them. That's a separate issue.

21 And now -- and I do want to address something where I disagree
22 with your conclusion.

23 It also includes the Dick Marty report. And I want to stress
24 that the Dick Marty report was not the end of the story. The
25 Dick Marty report led to the creation of the European Union's Special

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7549

1 Investigative Task Force. It was a direct result of the SITF, which
2 was -- please, I just need to finish this thought. One more minute.
3 Which was run by a senior American diplomat, in fact, a former war
4 crimes ambassador in the State Department named Clint Williamson, who
5 also served as the director of justice in UNMIK in 1999.

6 And if you look at Mr. Williamson's concluding statement, the
7 result of the SITF in, I believe, 2014, it says very clearly that
8 their findings were -- and I -- I don't want to quote. You can check
9 the statement. But let's check -- we can check the statement. Were
10 largely consistent with the findings with the Dick Marty report.

11 So they interviewed hundreds of people -- the SITF. They found
12 an atmosphere of intimidation regarding these crimes --

13 Q. [Overlapping speakers] ...

14 A. No, I just need to finish my answer if I may, sir. Thank you.

15 And regarding -- because you raised the organ trafficking. What
16 they said, I'm referring to the SITF -- well, you said [Overlapping
17 speakers] ...

18 Q. I'm sorry, I am going to interrupt, just for a moment to address
19 the Bench, please.

20 PRESIDING JUDGE SMITH: Just a moment. I'll give you five extra
21 minutes.

22 MR. EMMERSON: Yes, I'm concerned also that we're now -- the
23 witness is traversing into the forerunner institutions to the SPO.
24 And, in fact, the -- well, sorry, the Bart [sic] Williamson
25 investigation, the Special Investigative Task Force is what led to

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7550

1 the establishment of the SPO. The case of the SPO is the case that's
2 before us. What -- what --

3 PRESIDING JUDGE SMITH: Just wrap it up, please.

4 THE WITNESS: Yes, Your Honour.

5 The point I'm making is because you claimed that the organ
6 trafficking allegations had been dismissed or I think you said not
7 pursued.

8 MR. EMMERSON:

9 Q. Not pursued.

10 A. Not pursued. Well, which is not accurate. Well, the SITF did
11 pursue them. And what they found was they were, I believe I am
12 quoting directly, "compelling indications of a handful of cases," "of
13 a handful of cases." But what remains are 400 missing persons post
14 June.

15 So that is -- when I speak about other research, that's the full
16 body of research to which I am referring.

17 PRESIDING JUDGE SMITH: All right. Thank you, Witness.

18 Go ahead, Mr. Emmerson.

19 MR. EMMERSON:

20 Q. I -- because of -- for various reasons, I'm not going to engage
21 with the suggestion that it's appropriate for an introduction of Bart
22 [sic] Williamson's conclusions about issues that have then been
23 investigated by the SPO and not pursued, which is exactly the
24 proposition that I put to you.

25 Let us move on. What I'm trying to establish with you is that

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7551

1 in relation to this period, you are -- the description that is given
2 in terms of coordination of a policy, you are not in a position in
3 relation to any single incident, of whom there are -- there are a
4 number, but they're still, you know, between 10 and 20 in total,
5 right, to suggest that these were authorised at any level at all.
6 They could have been unauthorised officials -- unauthorised KLA
7 members. They could have been authorised by their local commander.
8 They could have just been an outcrop of violence by KLA enlisted --
9 KLA most junior fighters, or they could have been authorised in the
10 zone or at zone level.

11 There is no evidence you can produce, I suggest, of anything
12 beyond that.

13 A. What I'm saying here is that based on the accumulated research
14 that was produced subsequent to the 1999 report, I, having read
15 those, came away with the conclusion that there was a higher degree
16 of coordination than I had believed and we had concluded at first.

17 Q. Obviously, it's a matter for submissions, but it's not for you
18 to reach the conclusions about whether there is a central policy.

19 The last topic I want to touch upon with you, and it won't take
20 a second or two because it follows on from these. In your reports on
21 detentions and the "Under Orders" report, you stopped calling any
22 events that you're referring to, any acts of violence, you stop using
23 the language of "war crimes" and you refer to them as "post-conflict
24 abuses."

25 Can you just explain why that is?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7552

1 A. I would have to look, but I take your word for it. If we're --
2 well, if we're changing the language. I mean, I can't speak to the
3 particular passages. I would have to look at the context. But more
4 broadly, the internal armed conflict came to an end on June 12, 1999.

5 Q. Exactly. And as a result, international humanitarian law ceased
6 to apply and the international human rights law became the applicable
7 legal framework?

8 A. That's my understanding. Correct.

9 Q. And that was Human Rights Watch's understanding of the legal
10 significance of the withdrawal following the Kumanovo Agreement?

11 A. To the best of my recollection, yes.

12 Q. So, yes, the international humanitarian law thereafter was not
13 the appropriate body of law to be applied?

14 A. For crimes that were committed or alleged crimes post-June 1999.
15 To the best of my knowledge, yes.

16 Q. Yes.

17 A. That's correct.

18 Q. And you describe in -- or Human Rights Watch describes in one of
19 the later reports how, although it had urged Carla del Ponte to focus
20 her attention on crimes committed by, at the time prosecution --
21 alleged to have been committed by the KLA -- and she had done so,
22 she'd opened investigations into two sets of circumstances at least.
23 That in October 2000, you note that she applied to the Security
24 Council, UN Security Council for an extension of the mandate of the
25 ICTY; correct?

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7553

1 A. Well, I'm --

2 MR. TIEGER: I'm going to object, Your Honour, now. I think
3 we're getting into an area of relevance, and this is not for the
4 witness. There have been constant complaints about -- earlier about
5 opinion evidence. This falls in that category --

6 MR. EMMERSON: May I respond?

7 MR. TIEGER: -- in relation to a legal issue.

8 MR. EMMERSON: May I respond?

9 PRESIDING JUDGE SMITH: Yes.

10 MR. EMMERSON: First of all, our complaints about opinion
11 evidence were rejected and, therefore, we're applying the rules that
12 were imposed at that stage.

13 And, secondly, this organisation claims expertise in
14 international humanitarian law. This witness claims expertise in
15 international humanitarian law. The organisation concluded that the
16 armed conflict ended on 12 June and that everything after that is not
17 subject to international humanitarian law. They, in their own
18 report, pointed out that the prosecutor at the ICTY, they've made the
19 point, she had to apply, unsuccessfully, to the Security Council to
20 extend the mandate until the further violence in Macedonia, which is
21 a separate conflict.

22 PRESIDING JUDGE SMITH: The objection is overruled.

23 MR. EMMERSON: Thank you.

24 PRESIDING JUDGE SMITH: Please don't get into legal discussions
25 with this witness. He's not a lawyer.

Witness: W04408 (Resumed) (Open Session)
Cross-examination by Mr. Emmerson (Continued)

Page 7554

1 MR. EMMERSON:

2 Q. In your reports, you indicate that Carla del Ponte applied to
3 the UN Security Council for the extension of the mandate of the ICTY
4 to post 1999, post June 1999. And you then make the point that when
5 the conflict erupted in Macedonia, she decided that she had herself,
6 if you like, a re-established mandate because the ICTY mandate was
7 linked to the existence of an armed conflict; correct?

8 A. So I don't recall that precise --

9 Q. Well --

10 A. -- publication, but it does sound consistent with our work.

11 Q. Thank you very much.

12 MR. EMMERSON: Those are my questions.

13 PRESIDING JUDGE SMITH: Thank you, Mr. Emmerson.

14 We're going to take a break right now for a half an hour. We'll
15 come back at 25 minutes until 12.00.

16 THE WITNESS: Thank you.

17 PRESIDING JUDGE SMITH: The Court Usher will escort you out of
18 the room.

19 [The witness stands down]

20 MR. EMMERSON: I'm sorry, did you --

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 We are adjourned until 11.35.

23 --- Recess taken at 11.04 a.m.

24 --- On resuming at 11.35 a.m.

25 PRESIDING JUDGE SMITH: Madam Usher, you can please bring in the

1 witness.

2 Mr. Roberts, do you have a time estimate?

3 MR. ROBERTS: Yes, Your Honour, a very accurate one. I have no
4 questions at this stage. Thank you.

5 PRESIDING JUDGE SMITH: And, Mr. Ellis?

6 MR. ELLIS: Five to ten minutes.

7 PRESIDING JUDGE SMITH: Thank you.

8 [The witness takes the stand]

9 PRESIDING JUDGE SMITH: All right, Mr. Abrahams. We are ready
10 to proceed. The next questions will be from the Krasniqi Defence,
11 Mr. Ellis, who is to your far right.

12 Cross-examination by Mr. Ellis:

13 Q. Good morning, Mr. Abrahams.

14 A. Good morning.

15 Q. You'll be pleased to hear I only have a small number of
16 questions for you today, and they're based on the testimony that you
17 gave in 2009 at the ICTY, I believe.

18 MR. ELLIS: So if I could have on screen, please. It's from
19 IT-05-87.1 T3977 to T4052. And the relevant page is at page 4000,
20 beginning at line 19.

21 Q. Now, you were being asked some questions there about your
22 interviews. And the question, which you can hopefully see on your
23 screen, was:

24 "Yesterday, you told us that you started -- or interviews with
25 victims and witnesses started to be taped as with the onset of the

1 era of digitalisation. Can you tell us whether back in 1998 and 1999
2 this sort of method was applied in Macedonia, Albania, and in Kosovo
3 in general."

4 And your response was:

5 "In general, no, it was not used."

6 And that's correct, isn't it?

7 A. That is correct. Yes.

8 Q. And the question continued, and we'll need to follow this over
9 the page, so I'll pause after I read this line:

10 "Thank you. Were written statements given by victims and
11 witnesses signed by them at all?"

12 And over the page, your response was:

13 "No, that is not HRW, Human Rights Watch, procedure."

14 And, again, that is correct, isn't it?

15 A. That is correct, yes.

16 Q. I'll come back to that sort of issue in a moment, but just read
17 further down on this page, you were asked about the interpreters that
18 you used. And your response, beginning at line 7:

19 "Our interpreters were individuals from Kosovo, most of whom
20 were at that time working as journalists and have subsequently gone
21 on to careers as professional journalists in international media,
22 such as AP, Agence France-Presse and other agencies."

23 Again, that is correct, isn't it?

24 A. That is correct, yes.

25 Q. And you were then asked about what languages the Human Rights

1 Watch researchers working in Kosovo at the time spoke, and without
2 going through all of the names, I think it's correct that, apart from
3 yourself, the others did not speak Albanian?

4 A. That is correct.

5 Q. And, in particular, it was Ben Ward who worked on the 1999
6 report "Abuses ... in the New Kosovo." He didn't speak Albanian, did
7 he?

8 A. Correct.

9 Q. And then if we could jump forwards to page 4003. Towards the
10 bottom of the page, line 21, the question was asked:

11 "The victims and witnesses you interviewed, did they have an
12 opportunity to read the statement once you wrote it?"

13 And your response was:

14 "If they asked to review it, we would allow that, but usually
15 they didn't, and so that rarely came up."

16 And, again, that remains correct, doesn't it?

17 A. Yes, it does.

18 MR. ELLIS: Thank you, Your Honour. That was all I wished.

19 PRESIDING JUDGE SMITH: Thank you very much.

20 Redirect.

21 MR. TIEGER: Extremely briefly, Your Honour.

22 PRESIDING JUDGE SMITH: [Microphone not activated]

23 MR. TIEGER: Thank you.

24 Re-examination by Mr. Tieger:

25 Q. Witness, at page 104 through 105 of the realtime transcript, you

Re-examination by Mr. Tieger

1 were asked about expressing a view that during 1998, a central
2 command for the KLA was difficult to discern. And is it correct that
3 you were not provided with access to internal KLA documentation to
4 the extent that it existed?

5 A. That is correct.

6 Q. And is it correct, therefore, you were not provided with such
7 things as orders, reports, records of meetings, logbooks, and so on?

8 A. That is correct.

9 Q. Thank you.

10 MR. TIEGER: That's all I had, Your Honour. Thank you.

11 MR. KEHOE: I just have one comment on that, Your Honour, on
12 that question, Your Honour.

13 PRESIDING JUDGE SMITH: [Microphone not activated]

14 MR. KEHOE: I have one recross on that particular question.

15 PRESIDING JUDGE SMITH: One [Microphone not activated].

16 Further cross-examination by Mr. Kehoe:

17 Q. Just one question on this redirect, with all due respect, sir.
18 And based on your questions from Mr. Tieger, you told him, I guess
19 over the weekend - this is paragraph 36, page 6 of the note - that
20 you have a limited first-hand knowledge of the chain of command
21 within the KLA; isn't that right?

22 A. I'm sorry, to what are you referring?

23 Q. I'm referring to your preparatory note that was prepared by the
24 SPO prior to coming here, where you told them in paragraph 36, page
25 6, that you have a limited first-hand knowledge of the chain of

1 command within the KLA; isn't that right?

2 A. Do you mind pulling it up? Is it --

3 Q. Sure.

4 A. -- possible? Because I just don't recall.

5 Q. Absolutely.

6 A. I'm not trying to avert your question.

7 PRESIDING JUDGE SMITH: Please do so, Madam Court Officer.

8 MR. KEHOE:

9 Q. I can read it for you, sir. It might be easier just to read --

10 PRESIDING JUDGE SMITH: No, let's put it up on the screen.

11 MR. KEHOE: Okay, sure. I think they're calling it --

12 PRESIDING JUDGE SMITH: Do you have a page and line again?

13 MR. KEHOE: Yes, it's paragraph 36, Judge. I unfortunately am
14 doing the more primitive way of doing real paper.

15 PRESIDING JUDGE SMITH: We're okay. It's on the screen.

16 MR. KEHOE:

17 Q. And so it notes that:

18 "W04408 noted that his first-hand knowledge of the chain of
19 command was limited and he couldn't say much more about the issue
20 than that."

21 Now, did you tell them, did you tell the SPO when you gave --
22 you had your meeting with them on the 31st and 1st of September that
23 your first-hand knowledge of the chain of command within the KLA was
24 limited?

25 A. Yes, I did.

Witness: W04408 (Resumed) (Open Session)
Questioned by the Trial Panel

Page 7560

1 Q. Thank you, Your Honour.

2 PRESIDING JUDGE SMITH: Judge Barthe has a question -- some
3 questions.

4 JUDGE BARTHE: Indeed, some questions.

5 Questioned by the Trial Panel:

6 JUDGE BARTHE: Good morning --

7 A. Good morning, Judge.

8 JUDGE BARTHE: -- Mr. Abrahams. As I just said, I have a few
9 more questions for you. My first question is the following: In your
10 interview with the SPO in September 2019 and April 2020, you said
11 that, and I quote:

12 "By 1998, any Albanian working for the Serbian state could have
13 been considered a collaborator. Working for the state outside of
14 Pristina or in a rural area was a risky endeavour."

15 For the record, this is from 075552 to 075578, page 17,
16 paragraph 81.

17 Mr. Abrahams, do you remember saying this to the SPO in 2019,
18 2020?

19 A. Yes, I do, Your Honour.

20 JUDGE BARTHE: Could you explain this in more detail? In
21 particular, why was it risky to work for the state outside of
22 Prishtine and why did it make a difference if a person of Albanian
23 ethnicity had worked in or outside Prishtine at that time?

24 A. Yes. Broadly speaking, working for the Serbian state in any
25 capacity, but particularly the security services but not exclusively,

1 was commonly viewed as a disloyal act. And I think the distinction I
2 was trying to make between Prishtine and other regions was not
3 that -- that it was still an issue in Prishtine. It was still an
4 issue. But generally speaking, the armed wing and the armed movement
5 in the KLA was present and more active outside of Prishtine. And
6 there were less protections outside of Prishtine, mostly the less
7 international presence in -- I think we're speaking 1998. I'm --

8 JUDGE BARTHE: I think so.

9 A. Yes. Because in 1998, certainly after March and the Drenica
10 events, there was a high level of international attention and many
11 people in Prishtine, myself, I mean, diplomats, journalists, many,
12 many others, and that presence was less significant in other regions.
13 So I think -- if that answers your ...

14 JUDGE BARTHE: Yes, thank you. And in the following paragraph
15 of your SPO interview, that is paragraph 82, you said the following,
16 and I quote. I think it's not necessary to put that on the screen.
17 It's just one sentence.

18 "Especially after the Kumanovo Agreement, accusations of
19 collaboration began to be levelled against wider categories of
20 people. I do not recall having personally conducted research into
21 ethnic Albanians who had been targeted or killed, but I heard
22 credible allegations of intimidation and violence against individuals
23 who were accused of collaboration with the Serbian state."

24 And first of all, my question is: The Kumanovo Agreement was
25 concluded in June 1999; is that correct?

Questioned by the Trial Panel

1 A. That is correct, yes.

2 JUDGE BARTHE: And you said, Mr. Abrahams, that you cannot
3 recall having personally conducted research into ethnic Albanians who
4 had been targeted or killed, but you heard credible allegations of
5 intimidation and violence against individuals, you said, who were
6 accused of collaboration with the Serbian state.

7 My question is: Where and from whom did you hear these
8 allegations; or, in other words, what is the basis of this part of
9 your statement?

10 A. Yes, thank you. So the core research, as we heard, was
11 conducted by colleagues. I think the basis of my conclusions is from
12 two trips and two extended periods in Kosovo after June 1999. I
13 believe it was August and December. And these are conversations with
14 a wide range of individuals. So at that time we were in close
15 communication with local activists, local and international
16 journalists, diplomats, and members of the international
17 organisations active in Kosovo at the time - OSCE, UN, and NATO.

18 And I took particular -- I placed a particular weight on the
19 views of those people, some of whom were investigating these cases
20 for these international organisations, producing reports, some of
21 which we saw, also speaking more informally with even KFOR soldiers,
22 which I also did. And some of them expressed frustrations, I have to
23 say, frustrations that they were not -- that they were seeing
24 violations occurring against -- I mean, that they believed were
25 committed by KLA members, and were having trouble getting traction

1 within their organisations to report on these issues.

2 So they shared information with us about that because they felt,
3 and I do agree, there was a political pressure not to report. And we
4 reference that in our reporting as well, statements by individuals,
5 including the head of UNMIK, Bernard Kouchner, who, in our view,
6 dismissed these allegations inappropriately.

7 So those -- that's the basis on which I reach those conclusions.

8 JUDGE BARTHE: Thank you. And I think if I'm not mistaken, you
9 were referring to international organisations, and you mentioned the
10 OSCE and the others, UN, United Nations, and NATO. Were you also in
11 contact with NGOs, non-governmental organisations, at the time?

12 A. Yes, Your Honour, we were. We would have been in contact with a
13 range of international organisations, including humanitarians. You
14 know, at the time, from UNHCR, the refugee agency, to many, many
15 humanitarian -- non-governmental humanitarian groups. So those would
16 have been important interlocutors for us.

17 JUDGE BARTHE: Thank you. And still in paragraph 82, still in
18 paragraph 82 of your SPO statement, you expressed your opinion, in
19 that case:

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

23 And I believe you distinguish between six different categories
24 of collaborators; is that correct?

25 A. That is correct.

1 JUDGE BARTHE: Could you please elaborate on this? What were
2 the different categories of collaborators, if you can recall?

3 A. Yes. So in my view, there were -- the most -- those at greatest
4 risk were individuals who had worked as Serbian police or other
5 security forces of the Serbian state, and those were, you know,
6 clearly marked as collaborators or traitors.

7 The next level would be working not for security services but
8 the state in general, even in administrative functions. So you could
9 be a traffic policeman, but you may be also working, yeah, for a
10 ministry or a state entity.

11 Going down, and I -- I'm -- I don't know if I will break it into
12 six categories, but generally the trajectory are people who openly
13 criticised the KLA, condemned them, you know, either spoke out about
14 their policies or their practices. And those would include political
15 rivals who had different views politically, if it was from the LDK
16 party or others, were labelled as, you know, non-patriotic or against
17 the cause.

18 And then would be those who didn't necessarily contradict
19 publicly but didn't support adequately. And if there was a
20 perception that this person was not, you know, endorsing or
21 supporting the cause through their comments or their actions, that
22 could also put a person under this label.

23 The last category, and sorry if it was not six, but was
24 economic. And this -- this was a factor, in my opinion, because
25 there was a radical uprooting of the Kosovo economy, and an

1 opportunity to entrench oneself, a person financially or
2 economically, in ways legal and illegal in a very chaotic and lawless
3 environment. And my information, and I did have conversations with
4 people who told me about this, that some of these clashes were
5 motivated by economic interests and attempts to seize control of key
6 parts of the Kosovo economy, and that there were cases when a person
7 might be labelled as a collaborator as a way to marginalise them or
8 perhaps eliminate them - perhaps even physically, although I don't
9 have examples to point to that - for business reasons.

10 JUDGE BARTHE: I understand. And following up on this, in
11 paragraph 83 of your SPO statement, you said the following, and I
12 quote:

13 "According to my observations," you said, according to the
14 protocol, "and analysis, the attitude towards alleged collaborators
15 shifted after June 12, 1999 with less focus on those who had worked
16 with the security forces, largely because most of these people
17 promptly fled Kosovo when the Serbian and Yugoslav forces departed.
18 As such, the harassment, intimidation, and violence shifted to those
19 who had held civil functions or had competing political, economic, or
20 business interests."

21 First of all, is that still your evidence; and, if so, can you
22 please tell us more about how you came to these conclusions?

23 A. Yes, Your Honour. It still is my evidence. Clearly, the people
24 who worked for the security forces, most of them left. You know,
25 they understood the risks, and some of them very likely would have

Questioned by the Trial Panel

1 been implicated in serious crimes themselves and fled. So, yeah,
2 that is what shifted.

3 And the second part is -- the basis of my understanding is from
4 the conversations, the research, and my time in Kosovo during that
5 period when I was told repeatedly by individuals who I trusted, and
6 unofficially, meaning it was not, you know, formal Human Rights Watch
7 interviews per se, that there were intense - intense - struggles
8 going on for control of key economic sectors in Kosovo at that time.
9 And that the issue of collaboration was used within -- you know,
10 within that context.

11 You know, I became -- yes, well, if that -- I don't know if that
12 answers your question adequately.

13 JUDGE BARTHE: Thank you. And one last point on that topic. In
14 paragraph 84 of your SPO statement, you talked about "disagreements
15 between some commanders and influential members," as you said, of the
16 KLA, "over who would control key businesses and parts of the
17 economy." Do you remember that?

18 A. Yes, I do.

19 JUDGE BARTHE: And how did you learn about these disagreements?
20 And, again -- or, again, what was the basis for this part of your
21 statement?

22 A. Yes, again, the basis would be the information that I received
23 from the full spectrum of sources, which would be either KFOR or UN
24 or OSCE investigators or staff members. Not -- some of them not
25 formal investigators. Humanitarians or activists. Because we were

1 all trying to understand the context in which we were working. And
2 within that effort, it was important to try and figure out what
3 happened, you know? There was an incident and what took place? Was
4 there a human rights element to this? Is it something I should, and
5 we, as an organisation, should look at more closely? And in response
6 to those questions and our inquiries, we received sometimes --
7 sometimes cases of that, well, this was a -- this was an internal
8 conflict with an economic motivation.

9 JUDGE BARTHE: That would be my next question. Namely, whether
10 you have more information about these disagreements; for example, who
11 disagreed with whom? Which commanders were or influential members
12 were involved? And which disagreements there were, et cetera.

13 A. Your Honour, I don't have specifics that I can share today, but
14 I am willing to look at it more closely if it's of use to you.

15 JUDGE BARTHE: That's fine, thank you.

16 And, Mr. Abrahams, I have now some questions for you in relation
17 to the two meetings you had with Mr. Thaci in November 1998 and
18 August 1999. And my first question is the following: You told us
19 during your examination by the SPO that Mr. Thaci or Mr. Limaj, or
20 the person who introduced himself as Celiku, told you that the two
21 Serbian journalists were not present during that trial. Correct?

22 A. That's correct, yes.

23 JUDGE BARTHE: Do you remember which of the two, Mr. Thaci or
24 Mr. Limaj, told you that the two journalists were not present at
25 their trial?

Questioned by the Trial Panel

1 A. I would like to be precise and accurate with you --

2 JUDGE BARTHE: Please.

3 A. -- so I'm afraid I have to say I do not recall. I believe it
4 was Mr. Thaci, but I do -- I have to be cautious. I'm not
5 100 per cent certain.

6 JUDGE BARTHE: That's fine, thanks. And did you -- or did
7 Mr. Thaci and/or Mr. Limaj tell you why the two journalists were not
8 present during that trial?

9 A. I don't believe receiving an answer to that question.

10 JUDGE BARTHE: Did you ask that question?

11 A. I'm not sure. I mean, one general response we got in the -- was
12 security; right? That was one. I mean, that -- in particular, I
13 think, military secrecy was about the code of conduct, showing us the
14 code of conduct. But they did speak about the security environment
15 and the challenges which it posed.

16 JUDGE BARTHE: And you also told us during examination by the
17 SPO that Mr. Thaci or Mr. Limaj explained to you and Mr. Bouckaert,
18 if I'm not mistaken, that the two journalists did not have a lawyer
19 during their proceedings; is that correct?

20 A. That's correct, yes.

21 JUDGE BARTHE: Do you remember, again the question, whether it
22 was Mr. Thaci or Mr. Limaj who said that?

23 A. I'm sorry, Your Honour. I don't want to state something I'm
24 not --

25 JUDGE BARTHE: That's fine.

Questioned by the Trial Panel

1 A. -- certain about.

2 JUDGE BARTHE: Did they mention, either Mr. Thaci or Mr. Limaj,
3 again, why the journalists did not have a lawyer?

4 A. So to the best of my recollection, I believe they said that they
5 were allowed to contact someone. I believe that's -- and I think
6 that's in one of my statements or maybe we reported this, either
7 public reporting or a statement. They made a call, I believe, is
8 what we were told. I don't know if it is accurate or not. And this
9 person did not attend, did not come.

10 JUDGE BARTHE: I think you also told us yesterday that your
11 request to visit the two journalists was declined.

12 A. Correct.

13 JUDGE BARTHE: You recall saying this; right?

14 A. Yes.

15 JUDGE BARTHE: And again my question, I'm sorry for that, was it
16 Mr. Thaci or Mr. Limaj who declined, if you can remember, your
17 request to visit the two?

18 A. I'm not certain. I'm not certain.

19 JUDGE BARTHE: How would you describe, in general terms, or
20 maybe you can be more specific, the relationship between the two,
21 Mr. Thaci and Mr. Limaj? Could you tell, for example, if one of the
22 two was superior to the other, or were they of equal rank?

23 A. Yes, I can't speak to the ranking, but we definitely left that
24 meeting with the impression that Mr. Thaci was the senior of the two,
25 had the most authority. He spoke primarily at the meeting.

1 Although, I don't know if he answered -- with reference to your
2 previous question, if he provided that information. But he was the
3 predominant speaker and the position of -- with more authority, in
4 our perception.

5 JUDGE BARTHE: I believe it was in your -- during your
6 preparation, witness preparation session with the SPO, and I refer to
7 paragraph 24 of the SPO's preparation note, that you said one of the
8 two took notes during the meeting; is that right?

9 A. That's my recollection, yes.

10 JUDGE BARTHE: Can you say who took notes, which of the two?

11 A. I believe it was Mr. Thaci, but I'm not certain. I'm sorry.
12 I'm not able to answer with precision.

13 JUDGE BARTHE: That's fine. Coming back to what Mr. Kehoe from
14 the Thaci Defence suggested during his cross-examination, I think it
15 was yesterday, did Mr. Thaci or Mr. Limaj mention that one of the
16 detainees, one of the two Serbian journalists was suspected of being
17 involved in criminal activities in the Serb Republic of Krajina
18 and/or in Bosnia in 1991 or 1992? Did you one of the two mention
19 that to you?

20 A. No, that did not come up in the meeting.

21 JUDGE BARTHE: Now, I've only a few questions in relation to
22 your second meeting with Mr. Thaci in his office in Prishtine in, I
23 believe, August 1999. And I think you said yesterday that the
24 meeting was conducted in Albanian; is that right?

25 A. That's correct.

Witness: W04408 (Resumed) (Open Session)
Questioned by the Trial Panel

Page 7571

1 JUDGE BARTHE: So was that with or without the help of an
2 interpreter?

3 A. Without.

4 JUDGE BARTHE: And -- just a second. During the entire
5 conversation that means only Albanian was spoken and not, for
6 example, English?

7 A. That's a good question. My recollection is it was predominantly
8 Albanian, yes.

9 JUDGE BARTHE: So was it only you and Mr. Thaci who were present
10 during that conversation or other people?

11 A. Correct. Only us.

12 JUDGE BARTHE: But you cannot say whether you or -- either you
13 or Mr. Thaci spoke English?

14 A. I mean, there may have been phrases where we reverted or
15 switched to English, but the meeting was predominantly in Albanian.

16 JUDGE BARTHE: And did Mr. Thaci tell you at that meeting that
17 he was not -- or it was not within his competence or his
18 responsibility to deal with alleged human rights violations or --
19 human rights or violations of international humanitarian law by
20 members of the KLA, or that you should submit your report to the
21 competent or the relevant international authorities such as UNMIK or
22 that he would forward your report to these authorities?

23 A. I do not recall getting a response of that nature, Your Honour.
24 No.

25 JUDGE BARTHE: Thank you.

1 Mr. Abrahams, in the course of the meetings with Mr. Thaci in
2 November 1998 and August 1999, did Mr. Thaci tell you what he would
3 personally do to prevent human rights violations or violations of
4 international humanitarian law by members of the KLA in the future?

5 A. My recollection is that he condemned violations. He restated
6 the KLA's commitment to respect international humanitarian law or the
7 Geneva Conventions in particular, and that certainly was the first
8 meeting. And to the best of my recollection, in the second meeting.
9 And, of course, he did condemn some of the more significant attacks,
10 the attack on the 14 farmers.

11 In terms of concrete steps, I do not recall any information
12 about concrete actions that he would take to investigate our findings
13 or otherwise address this issue.

14 JUDGE BARTHE: And this brings me to my last question. As you
15 have indicated in your SPO preparation session, this is paragraph 35
16 of the preparation note, there was no follow up whatsoever from
17 Mr. Thaci, his office, or from the provisional government at the
18 time; is that right?

19 A. That is correct.

20 JUDGE BARTHE: Thank you. I have nothing further.

21 A. Thank you.

22 PRESIDING JUDGE SMITH: I have just one question for you.

23 At the first meeting between Mr. Thaci and Mr. Limaj and you,
24 and you were discussing the journalists' trial, did they mention a
25 judge making the decision?

Questioned by the Trial Panel

1 A. No, Your Honour. I do not recall mention of a judge. No.

2 PRESIDING JUDGE SMITH: Thank you. That's all.

3 Judge Mettraux.

4 JUDGE METTRAUX: Thank you, Judge Smith.

5 I have a series of questions for you, Mr. Abrahams, about two
6 aspects of your evidence that you were asked about by the parties.
7 One has to do with the role and the powers of Mr. Demaci and your
8 understanding of it, and the second part has to do with certain
9 aspects of your 10 November 1998 meeting with Mr. Thaci and Limaj.

10 So starting with Mr. Demaci's role and power and your perception
11 of it. Without putting words in your mouth, is it fair to suggest
12 that your understanding of his role and powers at the time was more
13 of a figurehead within the KLA rather than a decision-making
14 individual who had an impact on the action and the activities of the
15 KLA? Is that a fair description?

16 A. Yes, Your Honour. I consider that a fair description while also
17 saying that he was not a person with no influence whatsoever. He did
18 have a prominence and a respected name.

19 JUDGE METTRAUX: And I want to look at that in the context of
20 some of the items that were shown to you by the parties. The first
21 one is Exhibit P377, and I'll ask the Registry to please bring it up.
22 And you will see in a second, Mr. Abrahams, it's part of your 1998
23 report.

24 And I'll ask the Registry to please go to page 24 first. Thank
25 you.

Questioned by the Trial Panel

1 I hope you recall you were read and shown this section of the
2 report which starts "On October 18," and it goes on to discuss the
3 fate of Mr. Radosevic and Dobricic. Do you recall being shown that
4 part?

5 A. Yes, I do.

6 JUDGE METTRAUX: And as I understand, this is a part of the
7 report that you prepared; correct?

8 A. That is correct, yes.

9 JUDGE METTRAUX: And if we can please go to the next page, that
10 would be page 25, there's a paragraph there that starts, and I'll
11 read it for you, with the words:

12 "On November 27, in honour of the Albanian Flag Day, the KLA
13 released the two journalists in the presence of U.S. diplomat William
14 Walker, who heads the Organisation for Security and Cooperation
15 (OSCE) mission in Kosovo. Two ethnic Albanian political activists
16 from the Democratic League of Kosovo (LDK) in Malisevo, Jakup
17 Kastrati and Cen Desku, who had been in KLA detention for three
18 weeks, were also amnestied. A KLA communiqué released on November 27
19 said the amnesties demonstrated the KLA's commitment to international
20 conventions governing warfare."

21 And it goes on to say:

22 "On November 24, the KLA released a Serb policeman after a U.S.
23 diplomatic intervention."

24 And now if we can scroll down -- or maybe go back up, please.
25 I'm sorry. It's my fault. There is a footnote 66 about the amnesty.

1 Do you see that, Mr. Abrahams?

2 A. If they could please scroll -- yes, I see. Yes.

3 JUDGE METTRAUX: And if we scroll down to that -- to the actual
4 footnote, it refers as support for the suggestion a press article of
5 November 27, 1998, entitled "'The KLA General Headquarters Declares
6 an Amnesty for Two Tanjug Reporters and Two LDK Activists'."

7 And that was the basis, I understand, for your suggestion about
8 the existence of an amnesty and the rest of the sentence there;
9 correct?

10 A. To the best of my recollection, that's correct, Your Honour.
11 Yes.

12 JUDGE METTRAUX: Can we then please see Exhibit 1D47, please.
13 And that again, Mr. Abrahams, is a document you were shown by the
14 Thaci Defence earlier. And I'll give you a chance to acquaint
15 yourself with it, and just tell me when you've read it.

16 A. Yes, Your Honour. I've sufficiently reviewed it.

17 JUDGE METTRAUX: So is it fair to suggest that this appears to
18 be the communiqué that the article on which you rely makes reference;
19 correct?

20 A. That is correct. Yes.

21 JUDGE METTRAUX: And it also suggests, doesn't it, that the
22 amnesty in question had been granted by the General Staff of the KLA?
23 Would that be correct?

24 A. That is correct. That's my understanding from this communiqué.

25 JUDGE METTRAUX: And it also suggests, I think it's the third

1 paragraph, that consistent with the article and the report you cited,
2 that it contains a reference to the KLA's commitment, and I won't use
3 the exact term, but that it recognises the importance and relevance
4 of international conventions of warfare and peace; is that right?

5 A. That is correct, yes.

6 JUDGE METTRAUX: And it does, in the first paragraph, second
7 sentence, say:

8 "The prison term of the journalists was ceased ..."

9 And pausing there for a moment. It suggests, doesn't it, that
10 these journalists were, in fact, serving a sentence or prison term;
11 is that right?

12 A. That is my understanding from this, yes.

13 JUDGE METTRAUX: And that, if I understand your evidence
14 correctly, is consistent with what Mr. Limaj and/or Mr. Thaci would
15 have told you during your 10 November 1998 meeting; correct?

16 A. Yes, that they had been convicted.

17 JUDGE METTRAUX: And maybe just as a more general question.
18 You've been asked about your sources and what weight you gave to
19 various types of sources. What, if anything, was the relevance of
20 these types of communiqués for you in terms of what -- I don't want
21 to use the technical term "probative value," but what importance
22 would you give to these sorts of documents?

23 A. So we would place a high value on these communiqués because they
24 are produced by the official structures of, in this case, the armed
25 group. So statements produced by the parties to the conflict are,

1 for us, considered important information without any doubt.

2 JUDGE METTRAUX: Thank you.

3 Can we see Exhibit 1D48, and that was, again, something that was
4 shown to you by the Thaci Defence. These are purported notes of
5 Mr. Kurti that purport to reflect the views of Mr. Adem Demaci.

6 Can I ask you to reacquaint yourself with paragraph 5 in this
7 document.

8 A. Yes, Your Honour.

9 JUDGE METTRAUX: So here what we have is, as I understand these
10 notes, we have Mr. Demaci, or at least Mr. Kurti expressing the views
11 of Mr. Demaci, that it would be, and I quote, "a good idea" for the
12 journalists to be released. And the next sentence where he is
13 recorded as expressing the view that "it would be good for their
14 release to take place on the celebrations for the 28th November." Do
15 you see that?

16 A. I do, Your Honour.

17 JUDGE METTRAUX: And is that consistent with your views about
18 the roles and power of Mr. Demaci, that he expresses a wish or a hope
19 and that it's left to someone else to decide?

20 A. It is consistent. And that's how I read this material, that it
21 was their view -- or his view, and perhaps Mr. Kurti's view, that
22 this would be a good idea.

23 JUDGE METTRAUX: Can we then see document with ERN
24 061427-11-TR-ET Revised. And that, just to contextualise it for you,
25 Mr. Abrahams, is the transcript of a press conference, and you've

1 been discussing press conferences as well, where two individuals are
2 participating. It's Mr. Adem Demaci and Mr. Ibrahim Rugova.

3 And you will see from the content that the date of it would have
4 come towards the end of November but before the release of
5 Mr. Radosevic and Mr. Dobricic, so around the last week of November.

6 Now, can I ask you to focus first on the second paragraph. This
7 is a statement attributed to Mr. Demaci, and he says:

8 "You also know that on 19 I received a letter from Mr. Milan
9 Milutinovic in my Kosovo Liberation Army office in Prishtina. We
10 have prepared a response to that letter. In any case, we will try to
11 remain in contact, because our office, in the first place, and the
12 institution of the general ... representation of Kosovo Liberation
13 Army was set up primarily" --

14 Sorry:

15 "... was set up to primarily keep contact, get into contact with
16 the Serbian side, with which we are in conflict."

17 Now, again, I am asking you is that consistent or does that
18 conflict with your understanding of what the role and function of
19 Mr. Demaci in his office was at the time?

20 A. That is consistent with my perception of Mr. Demaci's role.

21 JUDGE METTRAUX: Can we then go to page 3 of that record, and
22 I'll ask you to look, sir, under the timestamp 0:10:53. And there's
23 a question by a journalist which says this:

24 "Following Goran Zbilic's release, families and relatives of
25 Nebojsa Radosevic and Kico Dobricic are voicing doubt that the two

Questioned by the Trial Panel

1 are still alive, despite your statements to the contrary."

2 Now, to the extent you can recall, in your report that I read a
3 moment ago, you make reference to a policeman, a Serbian policeman
4 being released on 24 November. Can you recall if that was, in fact,
5 the individual who is mentioned here, Mr. Zbilic?

6 A. I'm sorry, Your Honour, I cannot.

7 JUDGE METTRAUX: That's okay. If we then look at the response
8 of Mr. Demaci, and it's under timestamp 00:11:08. He says:

9 "Let me reassure you and your families, with whom I sympathise,
10 I know how much my mother and sister worried about me, despite being
11 able to visit me perhaps once a month. I know what it means to be in
12 prison, and let me reassure you that the two journalists in question
13 are alive and well."

14 Is that consistent with what Mr. Demaci would have told you
15 before you had your meeting with Mr. Thaci and Mr. Limaj, or did he
16 tell you nothing about the state and the condition of the detainees?

17 A. No, that is consistent, Your Honour.

18 JUDGE METTRAUX: Then staying with the same paragraph, towards
19 the end of it, it starts with the words "However, I am not entitled,"
20 and Mr. Demaci is recorded as saying this:

21 "However, I am not entitled to interfere with these matters. I
22 can only interfere as a human, a humanitarian, and come up with good
23 proposals. You know very well that it is not up to me."

24 Now, again, I'll ask you the same question, is it consistent
25 with what Mr. Demaci told you when you met him, that he did not have

Witness: W04408 (Resumed) (Open Session)
Questioned by the Trial Panel

Page 7580

1 the decision-making power over the fate of these individuals, or does
2 this conflict with what he told you?

3 A. That is consistent. I left the meeting with Mr. Demaci in which
4 this was discussed with the distinct impression that he did not have
5 the authority to release these people.

6 JUDGE METTRAUX: Can we then go to page 5 now. And if you look
7 on the timestamp 19:25, you will see that they are back to discussing
8 the fate of Goran Zbilic, who is referred by a journalist as a
9 Serbian policeman, and Mr. Demaci corrects him and says he was an
10 inspector in the police.

11 And then in the next paragraph, 19:27, he is being asked about a
12 comment or a statement that Mr. Zbilic made upon his release, and
13 then Mr. Demaci says this, timestamp 19:42:

14 "I was not there when Mr. Zbilic talked to you. I deliberately
15 was not there. And I believe you when you quote his words, if those
16 were indeed the words said by Mr. Zbilic. As you can see, the
17 General Staff of the Liberation Army accepted my plea, my call that
18 one should have understanding for these people. So my call was
19 100 per cent heard. As far as that demand made by the General Staff
20 is concerned, this is a general demand to the Serbian forces to
21 refrain from making provocations in places where there are no Serbs
22 and where they have no reason to enter."

23 So, again the same question, is it consistent that -- here we
24 have Mr. Demaci, by his own words, talking of a plea to the
25 General Staff that was granted in relation to the release of these

Questioned by the Trial Panel

1 individuals, is that consistent or inconsistent with your
2 understanding of his role and position?

3 A. Your Honour, I find this consistent with his position.

4 JUDGE METTRAUX: And maybe last at page 7. If you go on the
5 timestamp 28:19, just read the paragraph for yourself. It talks
6 about political discussions and the formation of an assembly to form
7 a government. And the answer, 28:46, of Mr. Demaci to the
8 journalist's question is that:

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

11 Again, the same question: Is that consistent with your
12 understanding that Mr. Demaci would be acting, at least in this
13 particular context, under the authorisation of the KLA General Staff,
14 or is that conflicting with your understanding?

15 A. No, this is also consistent.

16 JUDGE METTRAUX: Thank you.

17 I want to ask you about something else you were asked, then. Do
18 you recall being asked about your reference -- and if you feel it
19 necessary I'll go back to your report, but about the existence of
20 Prison No. 7 and the basis of the origin of the information that led
21 you to make a reference to that prison? Do you recall these
22 questions?

23 A. I do, Your Honour.

24 JUDGE METTRAUX: I'll ask the Registry, please, to go into
25 private session for a moment for the security of the person

Witness: W04408 (Resumed) (Private Session)

Page 7582

Questioned by the Trial Panel

1 concerned.

2 [Private session]

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Witness: W04408 (Resumed) (Private Session)

Page 7583

Questioned by the Trial Panel

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Questioned by the Trial Panel

1 [Private session text removed]

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3 [Open session]

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

5 JUDGE METTRAUX: Thank you.

6 Mr. Abrahams, I want to ask you about something you said
7 Mr. Thaci and/or Limaj would have told you; namely, that the KLA was
8 effectively an army in the process of being made, in the process of
9 formalising its structures. And you recall, I hope, that you were
10 asked about what Mr. Bouckaert had said about it. Do you recall
11 these questions?

12 A. I do, Your Honour.

13 JUDGE METTRAUX: I want to go back to that statement. It's ERN
14 U008-1334, that's the statement of your colleague, Mr. Bouckaert.
15 And I will go to the paragraph in question that you were shown. It's
16 at page 7, please. And I'll ask the Registry, first, to go to
17 paragraph 36 it is.

18 So just take a second to read it.

19 And Mr. Kehoe asked you specifically about the second sentence,
20 which reads:

21 "At this stage, Thaci explained that the UCK was a new army and
22 only just formalising its structure."

23 Is that consistent with your own recollection of what Mr. Thaci,
24 it seems, told you about it?

25 A. It is, Your Honour. Yes.

1 JUDGE METTRAUX: And then the next sentence says:

2 "He," being Mr. Thaci, "and Limaj stated that the UCK had a
3 military court, military police and secret police, although they did
4 not provide details of these bodies."

5 Now, again, is that consistent with your own recollection of
6 what Mr. Thaci and Mr. Limaj told you about what already existed at
7 that time, 10 November 1998.

8 A. Yes, Your Honours.

9 JUDGE METTRAUX: Now, during that meeting, I understand you
10 and/or Mr. Bouckaert to have expressed concerns about the treatment
11 of detainees by the KLA and the KLA's general compliance with its
12 obligations under international -- is that how we should understand
13 it?

14 A. That is correct, yes.

15 JUDGE METTRAUX: And can you tell us what the reaction of
16 Mr. Limaj and/or Mr. Thaci, to the extent you can recall, was to
17 those criticisms or these concerns?

18 A. The reaction was with two points. One, a stated commitment, a
19 stated commitment to respect their obligations, an acknowledgement of
20 the obligations, and also these claims that the army was in -- was in
21 formation although it had -- and it had these bodies mentioned here,
22 military court, military police, and secret police. Of those three,
23 military police I had direct experience with. We met individuals who
24 said they were from the military police, so that I took to be true.

25 And so that was their -- that was their position at the time.

Questioned by the Trial Panel

1 JUDGE METTRAUX: And while we're on the statement of
2 Mr. Bouckaert, can we go to page 10 of that document, please. And
3 I'll ask the Registry to focus on paragraph 55, please.

4 And I'll let you, again, acquaint yourself with the content of
5 that paragraph.

6 A. 55, you say?

7 JUDGE METTRAUX: 55, please, yes.

8 A. Yes, Your Honour.

9 JUDGE METTRAUX: Now, do you recall whether in the context of
10 your discussions with Mr. Limaj and Thaci, whether you or
11 Mr. Bouckaert made a reference to that statement attributed to
12 Mr. Krasniqi about the KLA's commitment to abide by the Geneva
13 Conventions? Do you have a memory of that.

14 A. I don't believe we referenced Mr. Krasniqi's statements, no.

15 JUDGE METTRAUX: Thank you. That was all of my questions.
16 Thank you.

17 A. Thank you.

18 PRESIDING JUDGE SMITH: [Microphone not activated]

19 JUDGE GAYNOR: Thank you, Judge Smith.

20 Could I ask Madam Court Officer to bring up the witness's
21 preparation note at paragraph 26, please.

22 Now, Witness, I just want to follow on on some evidence you've
23 just given about your meeting on 10 November 1998 with Thaci and
24 Limaj. And setting aside your discussion about the two Tanjug
25 journalists, you were also discussing the other allegations of laws

Witness: W04408 (Resumed) (Open Session)
Questioned by the Trial Panel

Page 7587

1 of war violations by the KLA.

2 In the preparation note at paragraph 26, I just want to direct
3 your attention to the relevant part. You said you and "Mr. Bouckaert
4 raised the issue of other allegations of laws of war violations by
5 the KLA, it was not an abstract discussion; they made clear that
6 there were concrete allegations."

7 It says that:

8 "[You believed] that they discussed abductions, maltreatment,
9 and killings as among the forbidden acts about which [you] had
10 received allegations in relation to the KLA but the discussion was
11 obligations-based and not intended to be about specific incidents."

12 It then goes on to say that you might have discussed incidents
13 or allegations that were part of the October report, for example,
14 Orahovac and Belacevac.

15 First of all, is your reference to the October report, is that a
16 reference to the 1 October 1998 report entitled "Humanitarian Law
17 Violations in Kosovo"?

18 A. That's correct, Your Honour.

19 JUDGE GAYNOR: Did you provide a copy of that report to Thaci
20 and Limaj at that meeting?

21 A. Not that I recall, no.

22 JUDGE GAYNOR: And why not?

23 A. I'm not sure why. With retrospect, it would have been a good
24 idea to present the concrete information. I think at that time we
25 didn't know who -- with whom we were meeting or what to expect. And

Questioned by the Trial Panel

1 so we did not bring any material, to the best of my knowledge, with
2 us to that meeting.

3 JUDGE GAYNOR: Now, in that report of 1 October 1998, it states:

4 "The KLA has also committed serious violations of international
5 humanitarian law, including the taking of hostages and extra-judicial
6 executions. An estimated 138 ethnic Serbs and a number of ethnic
7 Albanians and Roma are missing in circumstances in which KLA
8 involvement is suspected. At least 39 of them were last seen in KLA
9 custody."

10 So you were the principal author of that report; isn't that
11 right?

12 A. That's correct, Your Honour.

13 JUDGE GAYNOR: So you had at least some details about the
14 missing 138 persons and, in particular, the 39 who were last seen in
15 KLA custody?

16 A. That's correct. As in our report.

17 JUDGE GAYNOR: Yes. Now, did you press details about the
18 missing 138 people with Thaci and Limaj to the best of your
19 recollection?

20 A. No, we did not.

21 JUDGE GAYNOR: And can I ask you, from your perspective as a
22 human rights organisation, you were having a meeting with senior
23 members of the KLA. Was this not a golden opportunity to press that
24 issue with them?

25 A. It's a good question. So the context of that meeting was our

Questioned by the Trial Panel

1 effort to make the initial contact with this armed group. And,
2 again, not knowing with whom we would meet. And I think our approach
3 at the time was to open a line of communication on human rights
4 issues, to continue this exchange, and to establish a relationship in
5 which we could continue to share our concerns and obtain information
6 relevant to our work.

7 So I think that part of the -- the reasons for our -- the manner
8 of our engagement was with that longer-term process in mind.
9 However, I'm relaying to you how I recall thinking about it in 1999.
10 Looking back with the retrospect of 25 years is another thing.

11 And, first of all, not knowing that we would not meet them again
12 until after the conflict, not knowing how long the conflict was going
13 to last at that point in November, of course, and if I had known this
14 was our one and only opportunity, I probably would have pursued it
15 with a different approach and dug more deeply into the specifics.

16 JUDGE GAYNOR: And you've partly answered my question, but I
17 just want to ask you about details of suspected KLA killings of
18 perceived collaborators of Albanian ethnicity.

19 At that time in your research, did you have details of such
20 killings?

21 A. By that time in November, we would have published -- the
22 information that we had would have been what was in our October
23 report.

24 JUDGE GAYNOR: And do you recall, at this stage, whether you may
25 have raised the issue of suspected KLA killings not of ethnic Serbs

1 but of suspected collaborators of Albanian ethnicity with Thaci and
2 Limaj?

3 A. I remember the broad strokes of our conversation, but I cannot
4 testify that we specifically raised attacks on collaborators. It is
5 definitely possible because that was a topic of concern. But I can't
6 say with certainty that we dug into it.

7 JUDGE GAYNOR: I understand. Thank you very much.

8 Thank you, Judge Smith.

9 A. Thank you, Your Honour.

10 PRESIDING JUDGE SMITH: Any follow-up questions --

11 MR. TIEGER: No, Your Honour. Thank you.

12 PRESIDING JUDGE SMITH: -- from the Prosecution?

13 Any follow-up questions, Mr. Laws?

14 MR. LAWS: No, thank you, Your Honour.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. KEHOE: Yes, Your Honour, I have significant follow-up
17 questions. Number one. Number two, there were two matters that came
18 during the Judges' questions on documents that weren't in anybody's
19 queue. I don't know what's in that document. This is really the
20 first time to review it. So if it's not in someone's queue,
21 certainly we don't prepare for it, so I need some time to be able to
22 go through that queue.

23 PRESIDING JUDGE SMITH: We have until 1.00 today, and it's
24 probably obvious that the witness is going to have to come back --

25 MR. KEHOE: Yes.

1 PRESIDING JUDGE SMITH: -- to complete matters. Is that what
2 you were going --

3 MR. EMMERSON: I was exactly going to say that. I have about an
4 hour arising out of the Judges' questions.

5 PRESIDING JUDGE SMITH: Okay.

6 So we will break now. The courtroom has to be -- is going to be
7 used by another body. So we will ask you to be back Monday morning
8 at 9.00, and we will commence at that time. You will, no doubt, be
9 finished on Monday, though.

10 So, Madam Usher, please escort the witness out. Remember not to
11 talk about this case with anyone outside the courtroom.

12 THE WITNESS: Yes, Your Honours. Thank you.

13 PRESIDING JUDGE SMITH: Thank you.

14 [The witness stands down]

15 PRESIDING JUDGE SMITH: [Microphone not activated]

16 MR. KEHOE: Excuse me, Your Honour?

17 PRESIDING JUDGE SMITH: [Microphone not activated]

18 MR. KEHOE: The two documents in the queue?

19 PRESIDING JUDGE SMITH: [Microphone not activated]

20 MR. KEHOE: I just saw them on the screen. I don't have them
21 with me now. No. No, no, obviously, I think we'll go through those
22 documents, but I don't have them. I haven't --

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 MR. KEHOE: I do believe so. I have to check -- may I check
25 with the brain trust here?

1 PRESIDING JUDGE SMITH: I just want to make sure you have it
2 all.

3 [Specialist Counsel confer]

4 PRESIDING JUDGE SMITH: All right. So we'll see you all Monday
5 morning --

6 MR. KEHOE: May I just have one mention, Judge.

7 So I'm going to have to look at these documents, and I would ask
8 leave to be able to upload any additional documents I may want to use
9 to respond to that, because I just don't know if I am or I'm not, but
10 I would like some leave to be able to do that. It won't be
11 extensive.

12 PRESIDING JUDGE SMITH: We've been fairly liberal about the
13 presentation queues up till now from all parties, so we will consider
14 that. I can't promise you anything because --

15 MR. KEHOE: I understand.

16 PRESIDING JUDGE SMITH: -- I don't know what it is.

17 MR. KEHOE: I understand.

18 PRESIDING JUDGE SMITH: We will see you Monday morning at 9.00.
19 We are adjourned.

20 MR. EMMERSON: I just want to make one observation, if I may.
21 Our presentation queue now includes the ruling in the Milutinovic
22 case, which I addressed you on briefly at the outset of this
23 witness's testimony.

24 I think I may have inadvertently misled the Court by saying that
25 was part of the court's final judgment. In fact, it was a ruling on

1 the admissibility of the "Under Orders" report which, of course, the
2 court in that case marked for identification but did not admit.
3 Having heard Mr. Abrahams' testimony now, Your Honour made the point
4 in the ruling that it was admitted and then evaluated.

5 The reason that's relevant is because at an appropriate moment,
6 I can do it -- certainly not during the examination of the witness,
7 I'm going to invite the Court to reconsider the ruling on that
8 particular document, Chapter 10, that -- because it was immediately
9 made admissible. It was given a P number and admitted. Whereas, in
10 fact, the appropriate course, we will submit, is having heard the
11 testimony in the light of the approach in that case, which is very
12 detailed, the "Under Orders" report falls very clearly on the wrong
13 side of the admission line.

14 PRESIDING JUDGE SMITH: Okay. Make that in writing, please.

15 MR. EMMERSON: Yes, very well.

16 --- Whereupon the hearing adjourned at 12.49 p.m.

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