

1 Wednesday, 15 September 2021

2 [Opening Statements]

3 [Open session]

4 [The accused entered the courtroom]

5 --- Upon commencing at 9.30 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning. Welcome.

7 Before we start, I would like to give the photographers the
8 opportunity to make some pictures. Please proceed. Thank you.

9 Madam Court Officer, please call the case.

10 THE COURT OFFICER: Good morning, Your Honours. This is
11 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 Before asking those present to introduce themselves, I first
14 would like to remind everyone of a few rules that must be observed at
15 all times.

16 Please, before speaking make sure you activate your microphone
17 and as you finish you switch it off. Speak slowly and clearly,
18 because we have interpretation into and from Albanian and Serbian,
19 and in this way the interpreters can do their work properly. And
20 before intervening, kindly wait five seconds before -- in order to
21 allow the interpreter to finish with the last sentence.

22 I would also like to remind that this hearing is held in open
23 session, unless otherwise requested by the parties and the
24 Victims' Counsel or decided by the Panel. And I also would like to
25 remind the parties and the Victims' Counsel that certain information

1 is subject to protective measures and confidentiality orders, so
2 confidential information shall not be disclosed in open session.

3 And I remind you to give me prior notice should any submission
4 require the disclosure of confidential information so that we can go
5 into private or closed session.

6 And I also remind the parties to adhere to the procedure as
7 foreseen in paragraphs 43 and 44 of the Decision on the Conduct of
8 Proceedings with regard to in-court redactions.

9 Now, I would kindly ask the parties to introduce themselves, the
10 Victims' Counsel, and the Registry, and I want to start with the
11 Specialist Prosecutor's Office.

12 MR. MICHALCZUK: Good morning, Your Honours. Good morning,
13 everyone. Today the Prosecution is represented by Mr. Jack Smith,
14 the Specialist Prosecutor; Filippo de Minicis, Associate Prosecutor;
15 Silvia D'Ascoli, another Associate Prosecutor; myself,
16 Cezary Michalczuk, Prosecutor in this case; and today with us, we
17 have Julie Mann, who is our Case Manager.

18 Thank you very much.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

20 Now I turn to the Victims' Counsel. You have the floor.

21 MS. PUES: Good morning, Your Honours, and good morning,
22 everybody. The Victims' Counsel's team is today represented by
23 Liesbeth Zegveld, my co-counsel; by Marie-Pier Barbeau, who is my
24 Senior Legal Associate; and Nimoza Haxhibeqiri, who is my Junior
25 Legal Associate; and, lastly, myself, Anni Pues, as Counsel.

1 Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel.

3 Now I turn to you, to the Defence. You have the floor.

4 MR. VON BONE: Thank you very much, Your Honour, Honourable
5 Members of the Court. Today the Defence is represented by
6 Mr. Betim Shala, who is joining us via remote, he's my co-counsel.
7 Mr. Fatmir Pelaj, who is our investigator, also joining via remote.
8 Today Mr. Mustafa is present. And myself, I'm the lead counsel. My
9 name is Julius von Bone.

10 I thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel.

12 Now I turn to the Registry, please.

13 THE REGISTRAR: Good morning, Your Honours. Present today,
14 myself, the Registrar, Fidelma Donlon. And joining me, the Deputy
15 Registrar, Mr. Stephane Wohlfahrt.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 THE REGISTRAR: Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: For the record, my colleagues for
19 Trial Panel I are Judge Roland Dekkers, Judge Gilbert Bitti,
20 Judge Vladimir Mikula, Reserve Judge, and I am Mappie Veldt-Foglia,
21 Presiding Judge for Trial Panel I.

22 Today's hearing is dedicated to the procedure as set out in the
23 Rules 124 and 125 of the Rules and the opening statements.

24 The opening statements will be heard in three sessions, starting
25 this morning till 11.00, then we will continue at 11.30 till 1.00,

1 then from 2.30 till 4.00, and there might be an extra session at 4.30
2 till 5.30. We shall endeavour to finalise the hearing today at the
3 end of the fourth session at 5.30 to avoid to put additional burden
4 on the interpreters.

5 We have also scheduled a hearing, of course, for tomorrow,
6 the 16th. It's our reserve day, and it gives the possibility, if we
7 don't finish today, to continue tomorrow.

8 The Defence had indicated, Mr. von Bone, that it intends to make
9 an opening statement after the conclusion of the presentation of the
10 evidence by the Prosecutor and before the presentation of the
11 Defence. Yes, I see you nodding.

12 Before we begin with the procedure as set out in 124 and 125 of
13 the Rules, I will provide a short procedural history of this case.

14 On 13 February 2020, the SPO submitted to the Pre-Trial Judge
15 for confirmation an indictment against Mr. Mustafa, together with
16 evidential material in support of the factual allegations, along with
17 a request to arrest and to transfer Mr. Mustafa.

18 On 12 June 2020, the Pre-Trial Judge issued a decision on the
19 confirmation on the indictment against Mr. Mustafa, and on that same
20 day the Pre-Trial Judge also granted the request for an arrest
21 warrant and the transfer order for Mr. Mustafa.

22 Then on the 24th, Mr. Mustafa was arrested -- of 2020
23 Mr. Mustafa was arrested and transferred to the Specialist Chambers
24 detention facilities in The Hague.

25 And then 7 May of this year, this case was transmitted by the

1 Pre-Trial Judge to the Panel.

2 On 18 June, we have taken a decision as a Panel to set the
3 commencement of the trial date for today.

4 And then both the Pre-Trial Judge and the Panel have issued
5 decisions on the participation of victims participating in the
6 proceedings, and up till now, we have admitted nine victims to
7 participate in this case.

8 In accordance with Rule 124(2) of the Rules, the trial shall
9 proceed now with the reading of the indictment as confirmed by the
10 Pre-Trial Judge by the Specialist Prosecutor's Office.

11 You have the floor.

12 MR. MICHALCZUK: Your Honours, as per your directions, and as
13 there was no objection from the Defence, we'll just read the charges
14 against Mr. Mustafa and we will not read the indictment in its
15 entirety.

16 In the Confirmed Indictment, the Specialist Prosecutor charges
17 Mr. Salih Mustafa with:

18 Count 1: The war crime of arbitrary detention, under
19 Article 14(1)(c) of the Law on the Specialist Chambers and the
20 Specialist Prosecutor's Office ("Law"), committed in a detention
21 compound located in Zllash, Kosovo, against at least six individuals
22 between approximately 1 April 1999 and 19 April 1999;

23 Count 2: The war crime of cruel treatment, under
24 Article 14(1)(c)(i) of the Law, committed in a detention compound
25 located in Zllash, Kosovo, against at least six individuals between

1 approximately 1 April 1999 and 19 April 1999;

2 Count 3: The war crime of torture, under Article 14(1)(c)(i),
3 committed in a detention compound located in Zllash, Kosovo, against
4 at least six individuals between approximately 1 April 1999 and
5 19 April 1999; and

6 Count 4: The war crime of murder, under Article 14(1)(c)(i) of
7 the Law, committed in a detention compound located in Zllash, Kosovo,
8 against one individual between approximately 19 April 1999 and around
9 the end of April 1999.

10 In relation to these crimes, there is a well-grounded suspicion
11 that Mr. Mustafa is criminally responsible, pursuant to
12 Article 16(1)(a) of the Law, for:

- 13 - Physically committing the crimes under Counts 1 to 3;
- 14 - Committing, as a member of a joint criminal enterprise, the
15 crimes under Counts 1 to 4; and alternatively for Count 4,
16 committing, as a member of the aforementioned joint criminal
17 enterprise, the crime of murder by being aware that such a crime
18 might be perpetrated in carrying out the common purpose of the joint
19 criminal enterprise and by willingly taking that risk;
- 20 - Ordering the crimes under Counts 1 to 3;
- 21 - Instigating the crimes under Counts 1 to 3; and
- 22 - Further and alternatively, aiding and abetting the crimes
23 under Counts 1 to 4;
- 24 - Further and alternatively to the alleged responsibility
25 pursuant to Article 16(1)(a) of the Law, there is a well-grounded

1 suspicion that Mr. Mustafa is criminally responsible for the crimes
2 under Counts 1 to 4 as a superior pursuant to Article 16(1)(c) of the
3 Law.

4 Thank you very much, Your Honours.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Mr. Mustafa, please stand up.

7 Mr. Mustafa, I trust that you understand the nature of the
8 charges brought to you; is that correct?

9 THE ACCUSED: [Interpretation] Yes, I understand. But there is
10 no truth in them.

11 PRESIDING JUDGE VELDT-FOGLIA: Very well.

12 Mr. Mustafa, during your appearance on 28 October of last year,
13 you pleaded not guilty to all counts of the Confirmed Indictment.

14 THE ACCUSED: [Interpretation] [No interpretation].

15 PRESIDING JUDGE VELDT-FOGLIA: Wait, wait, I will ask you a
16 question.

17 You have now the opportunity to confirm the plea. Do you
18 confirm your initial plea of not guilty to all counts?

19 THE ACCUSED: [Interpretation] Yes, I do. I am not guilty of any
20 of the counts brought here before me by this gestapo office.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Mustafa. You may
22 sit.

23 THE ACCUSED: Thanks. [Interpretation] Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Mr. Mustafa, let me inform you of
25 some important rights that are afforded to you under the legal

1 framework of this Court.

2 You have the right to remain silent and such silence cannot be a
3 consideration in the determination of your innocence and guilt.

4 You have the right not to be compelled to confess guilt or to
5 testify.

6 You have the right not to incriminate yourself or your immediate
7 family members.

8 You have the right to be represented by a counsel, and I note
9 that Mr. von Bone and his team are representing you.

10 You have the right to have adequate time and facilities for the
11 preparation of your Defence and the right to communicate with your
12 counsel.

13 You have the right to be tried within a reasonable time.

14 And you have the right to examine, or have examined, witnesses
15 against you, and to obtain the attendance and examination of
16 witnesses on your behalf.

17 You have the right to make an unsworn statement and to appear as
18 a witness under oath.

19 I also have to inform you that I can order your temporary
20 removal of this courtroom should you adopt disruptive behaviour
21 during trial.

22 Now the Panel will proceed with hearing the opening statements.
23 We will hear first from the Specialist Prosecutor's Office, with the
24 first part delivered by the Specialist Prosecutor Jack Smith, and I
25 was informed that the second part will be by Prosecutor

1 Cezary Michalczuk, and then we will have the Victims' Counsel doing
2 the opening statement.

3 According to the Decision on the Conduct of Proceedings, we have
4 three hours for the opening statements of the Specialist Prosecutor's
5 Office and one and a half hours for the Victims' Counsel.

6 And before I would be giving you the floor,
7 Specialist Prosecutor, could you tell me if you and your colleague
8 will be using the three hours allocated to you to do it or that you
9 will be using less time? It's just for our planning.

10 MR. SMITH: Of course, Your Honour. Yes, we will be much
11 shorter than three hours. I think it will be closer to an hour in
12 total.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you for this information.
14 Mr. Smith, you have the floor.

15 MR. SMITH: Your Honours, Madam Registrar, counsel, good
16 morning.

17 As Specialist Prosecutor, I am pleased to have the privilege of
18 addressing you today as we begin the first trial of this Court.

19 Today marks a milestone in the life of this institution, the
20 Kosovo Specialist Chambers, and in the work of my office, the Kosovo
21 Specialist Prosecutor's Office. I want to thank each of the
22 countries of the European Union and the contributing states of
23 Norway, Switzerland and the United States whose generosity and
24 commitment to the rule of law has made this process possible. I also
25 want to thank all our staff, both current and former, as well as the

1 staff of the other organs of this Court, whose dedication has made
2 this day possible.

3 Finally, and most importantly, I am grateful for the essential
4 support of the many individuals who have cooperated with our Court in
5 Kosovo and elsewhere, providing us evidence, telling us their stories
6 and those of their loved ones, and above all placing their trust in
7 this institution to do justice. Without them, my office would not
8 have been able to carry out its mandate to date. It is the synergy
9 of all these efforts that has made it possible to be here today to
10 mark the start of the first trial of this institution.

11 Our Court, and these proceedings, represent different things to
12 different people. First and foremost, ours is a court that was
13 inspired by Kosovar voices and created by acts of the Kosovar people.
14 On 3 August 2015, the Kosovo Assembly created this Court by passing
15 the Law on the Specialist Chambers and Specialist Prosecutor's
16 Office. That very same day, the Assembly also voted to amend the
17 Kosovo Constitution specifically to ratify the existence of the
18 Specialist Chambers and Prosecutor's Office within the legal
19 framework of Kosovo.

20 The Assembly, through its actions, and speaking on behalf of the
21 Kosovo people, gave a mandate to these institutions to build on the
22 work of the Special Investigative Task Force and to bring to trial
23 those responsible for grave international and transnational crimes
24 committed in the territory of Kosovo and parts of Albania between
25 1 January 1998 and 31 December 2000. Six years later, as we commence

1 this first trial, this Court speaks proudly to the commitment of the
2 people of Kosovo, to the rule of law, and to transparent justice.

3 The Kosovo Specialist Chambers and Specialist Prosecutor's
4 Office are institutions of the Kosovo Republic. They apply
5 international law - the law applicable to war crimes and crimes
6 against humanity - as part of the Kosovo legal system and governed by
7 the Kosovo Constitution. While our Court is staffed by Judges and
8 lawyers from international countries outside Kosovo, make no mistake
9 the people of Kosovo have been the real moving force behind the work
10 of my office and the existence of this institution.

11 Without the cooperation and support of many, many Kosovar women
12 and men, we would not be here today.

13 This is a Kosovo court and it is also a court for and about
14 victims. For many of us, it is the victims and their stories that
15 drive this process and drive us in our work. In the course of this
16 very case, you will hear from victims who have waited two decades,
17 two decades to be heard, two decades to ask for justice for crimes
18 committed against them and against their family members who are no
19 longer with us.

20 If we are to properly serve these victims, there can never be an
21 expiration date on accountability. As we know from conflicts around
22 the world, it is not always possible to do justice for victims in the
23 immediate aftermath of a conflict. In such contexts, like the war in
24 Kosovo, it is terribly important for victims to know that there are
25 people who care and that some day, some way, the crimes that were

1 committed against them will be brought fully to light and the people
2 most responsible for those crimes will face justice.

3 Now, testifying about the brutal acts that were committed
4 against them can itself be traumatic for victims, but if done with
5 proper support it can also be affirming and even cathartic to be
6 heard, finally. I know the Registrar and her staff will do
7 everything within their power to provide the appropriate support to
8 these very brave people so they can tell their stories to you.
9 Playing our role in giving them this opportunity is an honour for
10 myself and for my staff.

11 We will call several victims of the accused in this case. Now,
12 while in other cases before this Court, we will bring a mix of
13 victims to the Court - Kosovar Albanians, Serbs, Roma, and other
14 ethnicities. In this particular case, however, you will see that the
15 victims of Mr. Mustafa, the accused, were all fellow Kosovar
16 Albanians. I say that again: The victims of Mr. Mustafa were fellow
17 Kosovar Albanians.

18 These people, they were not enemies of the state of Kosovo.
19 They were not spies. They were fellow community members, innocent
20 Kosovar Albanians whose only crime was to be viewed, for one reason
21 or another, as an impediment to the KLA and certain of its leaders
22 and, thus, labelled as collaborators.

23 Now, for those who have been opponents of this institution who
24 have sought to obstruct the work of this Court and my office at every
25 turn, this is an inconvenient fact, but it is a fact nonetheless. An

1 unassailable fact. The truth, the truth as will be laid before this
2 Court in the coming weeks, is that certain KLA leaders, including
3 Mr. Mustafa, used their power to victimise and to brutalise fellow
4 Kosovars, including individuals whose only crime was to have
5 political views that differed from those of the KLA and its leaders.
6 As you will see in the course of this case, there was no legitimate
7 military objective for their detention, no justification whatsoever
8 for the inhumane conditions under which they were held, or for the
9 manner in which they were brutalised and tortured during their
10 detainment.

11 This brings me to the issue of individual criminal
12 responsibility. The business of a prosecutor is accountability,
13 individual accountability for crimes that can be proven beyond a
14 reasonable doubt. Criminal responsibility before this Court is
15 personal. Article 9 of our Law enshrines this principle by giving
16 the Kosovo Specialist Chambers jurisdiction over natural persons.
17 And I want to stress this point because it is of fundamental
18 importance to understand the case you are about to hear against this
19 accused.

20 The SPO's investigations have been focused solely on
21 individuals, individuals who - as the evidence will show in this
22 trial - have caused immense suffering, often to the very people they
23 should have been fighting for and whom they were supposed to protect.
24 Mr. Mustafa violated the laws of war and other international laws
25 that exist for the protection of humankind against the abuses of the

1 powerful.

2 The SPO does not levy accusations against the KLA or against the
3 war it fought for its independence. It is neither the job nor the
4 desire of the SPO or myself to do so. Some people - often the same
5 ones who have tried to intimidate witnesses and victims - have tried
6 to create confusion on this matter, to blur this important
7 distinction. They claim that these trials are against Kosovo and its
8 people. Nothing - nothing - could be further from the truth. To the
9 contrary, that the people of Kosovo chose to create and empower this
10 institution, to do the work it is doing now, is evidence of its
11 commitment to the rule of law.

12 As this trial will show and those that follow will show, the
13 charges concern specific persons, named individuals who acted with
14 profound disregard for human life, dignity, and freedom. The charges
15 against the accused in this case concern his individual involvement
16 in detention, mistreatment, and torture of Kosovar people. The trial
17 of this case concerns the personal responsibility of the accused,
18 Mr. Mustafa, whose acts have caused suffering that left indelible
19 wounds in the bodies and the minds of the victims who suffered
20 through it.

21 Your Honours, in the course of this case you will also hear from
22 the family members of one of the accused victims who did not survive
23 it and who was killed after being brutally and repeatedly tortured.
24 The accused's individual and personal responsibility for what was
25 done to that young man, as well as the other crimes charged in this

1 indictment, that is why we are here today.

2 Now, part of the reason this Court was created, and certainly
3 why it was located in The Hague, is the often-recognised climate of
4 intimidation of witness and interference with proceedings that exists
5 in criminal trials against former KLA members. That climate
6 continues to exist, and it will be a backdrop for this trial.

7 As witnesses come before this Chamber to testify and tell you
8 their stories, witnesses who live in this climate every day, Your
9 Honours will be asked to consider if and how their testimony is
10 affected by the pressures that many of these witnesses face; the
11 pressures they feel not to come forward, not to tell the truth about
12 what they saw, what they experienced, or what happened to them.

13 To date, this climate of intimidation, the countering of which
14 remains the top priority of my office, has fallen well short of
15 achieving its objectives. We are here today because it has not
16 stopped the people you will hear from, the witnesses in this case,
17 from coming forward, from telling their stories. Their desire for
18 justice and reconciliation has proven stronger than that of a few
19 individuals who, for personal and other abject reasons, have been
20 trying to hinder the path of accountability and deny victims their
21 right to justice. We must be vigilant in appropriately supporting
22 these witnesses, given what we know many of them have gone through to
23 take the witness stand in this courtroom.

24 This institution, the Kosovo Specialist Chambers, represents
25 many things to many people. To a large number of people in Kosovo,

1 this Court represents a last chance for justice for a vast number of
2 victims.

3 Unfortunately, to others this Court is viewed as something to be
4 distrusted and therefore attacked.

5 Opponents of this institution will often describe the conflict
6 in which the KLA engaged as a clean war, the premise being that if
7 the cause was just, it was simply not possible that anyone in the KLA
8 could have acted illegally in the service of that cause. These same
9 opponents often cite crimes committed by their adversaries as a
10 complete justification for crimes committed by those on their side of
11 the conflict. The opponents of this Court use phrases like "clean
12 war" in a cynical attempt to manipulate the justifiable national
13 pride of Kosovars against an institution that is evidence of the
14 country's commitment to the rule of law and which will do justice for
15 many, including a great number of citizens for Kosovo, who suffered
16 as a result of the crimes alleged in the SPO's indictment.

17 As a prosecutor, it is beyond my remit to argue to you or decide
18 what wars were just and what wars were not, but I can say with
19 conviction that war crimes on one side do not justify war crimes on
20 the other side. Perhaps just as importantly, I know that truth never
21 damages a cause that is just. To those who do not have confidence in
22 the fairness and the transparency of these proceedings, I say watch
23 this trial and watch those that follow. What was how this Court
24 functions and then judge. The standards of due process have been,
25 and will no doubt continue to be, followed at this institution to the

1 highest degree. For this institution to truly fulfil its mandate,
2 each and every accused tried before it, beginning with Mr. Mustafa,
3 must receive a fair trial according to the highest standards of
4 international justice. I have no doubt that will be the case for
5 Mr. Mustafa and for each accused tried thereafter.

6 Your Honours, in the end, the work of this Court represents
7 opportunity. Opportunity for Kosovo to put the issues of this war
8 behind it once and for all. An opportunity for victims to have
9 their voices heard, and heard in a setting where they can speak the
10 truth without fear of retribution or intimidation. It is also an
11 opportunity for the accused to have the allegations against him
12 publicly aired and vigorously tested by able counsel, like
13 Mr. von Bone. If we cannot sustain our burden of proof in these
14 cases that we bring, it will be an opportunity to clear their names
15 once and for all.

16 I also firmly and deeply believe this Court represents an
17 opportunity to show that international criminal justice can work.
18 That trials do not need to take years to complete, that justice can
19 be thorough, reasoned, transparent, efficient, and fair. That we can
20 take the best from past tribunals, that we can apply rigorous
21 standards for lessons learned, and achieve a functionality and a
22 practicality for this institution that has, frankly, eluded other
23 criminal justice institutions in the past.

24 It's an opportunity to prove that creating and supporting courts
25 like this makes sense because they can function effectively, they can

1 contribute to justice, and to a public airing and understanding of
2 the facts and, hopefully, ultimately to some healing.

3 This Court is a contribution to the larger project of
4 international criminal justice, and each case that is litigated
5 fairly and justly before it adds to the whole of that contribution.

6 While this Court represents different things to different
7 people, for all it should and must represent an opportunity to seek
8 justice.

9 Thank you for the opportunity to address you this morning. I
10 will now turn the floor over to Prosecutor Michalczuk, who will
11 illustrate to Your Honours and to the public in further detail the
12 case we are about to present and how the SPO will prove that the
13 accused is personally responsible for the crimes with which he is
14 charged.

15 Thank you very much.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you,
17 Mr. Specialist Prosecutor.

18 Mr. Michalczuk, you have the floor.

19 MR. MICHALCZUK: Your Honours, the case that the Prosecution
20 will present to you is simple and straightforward.

21 In April 1999, during the war in Kosovo, the accused,
22 Mr. Salih Mustafa, along with his associates and subordinates,
23 unlawfully detained and severely mistreated a number of local Kosovar
24 Albanians. They were civilians. One of them was murdered. All of
25 the victims in this case, and I have to, again, emphasise that fact,

1 were Kosovar Albanians.

2 As I will describe in more detail in -- a bit later in this
3 opening, these unlawfully detained victims were held in deplorable
4 conditions, unfit for humans, and they were repeatedly mistreated,
5 abused, threatened, and severely beaten by their captors, including
6 the accused. The evidence will show that these crimes all happened
7 in the small and remote village called Zllash, Zlas in Serbian, in
8 the mountainous region of Gollak, Goljak in Serbian. The place was
9 not far from Prishtine, and the crimes were committed within a period
10 of about three weeks between approximately 1 and 19 April 1999.

11 In the village of Zllash, there was a rough makeshift detention
12 centre where the prisoners were held. We will refer to this place as
13 the Zllash detention compound, and it was run by members of the
14 Kosovo Liberation Army, in particular by the group called BIA - B-I-A
15 - which was commanded by the accused. I will tell you more about the
16 BIA unit and its purpose a bit later in this opening statement.

17 Why was a KLA unit illegally arresting, detaining, and abusing
18 Kosovar Albanians during the war? The evidence will show that the
19 men who were brought and illegally detained in the Zllash detention
20 compound were accused, among other things, of being so-called
21 collaborators in the war. To be accused of being a so-called
22 collaborator during the war was grave and often deadly. But let's be
23 very clear. These men, these prisoners, were not collaborators in
24 the sense of aiding the enemy in their military actions. No. Not by
25 any means. None of the men held in Zllash had done that, and nobody

1 in this trial - nobody - will claim that they did.

2 No. Instead, the collaboration label was one that was broadly
3 used and really misused for persons who socialised with Serbs, did
4 business with them, associated with them, or were simply perceived as
5 not sufficiently supporting the KLA or as displaying the wrong
6 political affiliations. The mere suspicion of any of these
7 activities or attitude could land you in Zllash. And once you ended
8 up there, the conditions and treatment were brutal. Your Honours
9 will hear from the men who were grabbed, arrested, brought to Zllash,
10 and imprisoned there by members of the Kosovo Liberation Army. They
11 will sit in that witness chair and will tell you about the conditions
12 of their detentions, the daily abuse, the beatings, and
13 interrogations. You will hear about the injuries they suffered,
14 about how their bodies were broken, and their spirits traumatised.
15 You will also hear evidence about one victim who did not survive and
16 was murdered by his captors.

17 The accused in this case, Mr. Salih Mustafa, was in charge of
18 the Zllash detention compound and participated himself in the abuse
19 and the beatings.

20 Your Honours, in this opening I will first tell you a bit about
21 the accused and his position within the Kosovo Liberation Army, with
22 a special emphasis on the BIA unit that he was commanding during the
23 time relevant to this indictment.

24 I will then move to a description of the location where the
25 crimes charged in the indictment took place.

1 Following that, I will briefly discuss the armed conflict in
2 Kosovo, which was the context in which the crimes charged in the
3 indictment were committed by the accused and his subordinates.

4 After outlining the armed conflict, I will provide Your
5 Honours - and the public who is following this opening - with a
6 summary of crimes that took place in the Zllash detention compound
7 with a special emphasis on the plight of the victims and the
8 responsibility of the accused in this case.

9 Salih Mustafa, a Kosovar Albanian, born on 1 January 1972 in
10 Prishtine joined the Kosovo Liberation Army in early September 1997.
11 Prior to that, he had been a member of the National Movement for the
12 Liberation of Kosovo. From the very onset and until the end of the
13 conflict in Kosovo in June 1999, he was the leader and commander of
14 the Kosovo Liberation Army intelligence-gathering and support unit
15 called BIA.

16 The BIA unit was organised into subunits, and around March 1999
17 it numbered approximately 500 to 600 members. The accused was the
18 unit's overall commander. The BIA unit carried out tasks such as
19 reconnaissance, sabotage actions against enemy installations and
20 units, as well as the provision of medical supplies. One of its main
21 tasks was intelligence gathering, an activity led by the accused
22 himself. The evidence will further show that the BIA unit was
23 responsible for the Zllash detention compound. In March and April
24 1999, they were responsible for that place and the accused was in
25 charge of that compound and both was present for and was participant

1 in detentions and beatings that were occurring there.

2 The BIA unit covered the urban areas of Prishtine, Fushe Kosove
3 - in Serbian Kosovo Polje - and Obiliq, with a presence also in the
4 villages of Butovc, Rimanishte, and Zllash, within the Gollak region.

5 Madam Court Officer, could I kindly ask you to show slide
6 number 1, please.

7 Your Honours, you can see on that slide, slide number 1, the
8 approximate area of BIA operations. This area is encircled with this
9 blue, dark blue circle. I believe this slide can also be of
10 assistance with regard to the general geographical context of the
11 case.

12 Could we now please show slide number 2, which is the close-up
13 of the previous slide. This slide shows the approximate area of BIA
14 operation in more detail. We can see the city of Prishtine and the
15 areas around it where BIA unit operated in 1999 in time relevant for
16 this indictment.

17 The symbol of the BIA unit was a hawk, in Albanian "Skifteri."
18 The code-name of the BIA unit was, in fact, "Skifteri," which the
19 accused explained was used to identify the unit in radio
20 communications.

21 If we could now show slide number 3, please.

22 BIA members did not all wear the same uniforms. However, some
23 of them wore black uniforms with a patch featuring a hawk and the
24 word "Skifterat" around it, and you can see that emblem featuring on
25 this slide. Witness W01679 will testify that those who arrested him

1 wore, and I quote, "an insignia with a hawk and the word 'Skifterat'
2 written around it," and that description corresponds to the emblem
3 which is depicted on this slide, Your Honours.

4 In 1999, including in the period of the indictment, the accused,
5 as he himself admitted, mostly wore a military uniform and used a
6 black or red beret. The wearing of such a beret was something unique
7 to the accused and was not part of the BIA uniform. Your Honours
8 will learn in the course of this case that at least one witness
9 detained and mistreated in Zllash saw the accused in a red beret.

10 When the accused was arrested, his wallet contained a photograph
11 of himself in Kosovo Liberation Army uniform wearing such a red
12 beret, and his phone and some USB sticks on his person also contained
13 photographs of him during the war, again with the red beret. Here
14 are a few of those photographs.

15 And if you could show the next slide, please. Slide number 4.

16 Could we move to slide number 5.

17 Could we move now to slide number 6, please.

18 Slide number 7.

19 Slide number 8, please.

20 Slide number 9.

21 Let's move on to slide number 10.

22 And, finally, slide number 11.

23 The accused was formally appointed to the position of the BIA
24 unit commander in May 1999 by Mr. Rustem Mustafa, commander of the
25 Llap operational zone of the Kosovo Liberation Army. The BIA unit

1 was directly subordinated to the Llap operational zone command and
2 not to any brigade of the Kosovo Liberation Army operating in that
3 region.

4 In his voluntary interview with the Specialist Prosecutor's
5 Office, the accused admitted that he had ultimate authority over BIA
6 soldiers, a circumstance that was confirmed by other KLA members who
7 will testify in this trial, as well as by the interactions between
8 the accused and his subordinates witnessed by the victims in this
9 case.

10 A certain number of BIA members were involved with the accused
11 in the detention, mistreatment, and murder that took place in April
12 1999 at the Zllash detention compound. Your Honours will hear the
13 names of these subordinates from the victims. They heard the names
14 and nicknames of their captors and torturers during their detention
15 in Zllash.

16 Apart from BIA, a few other KLA units operated also in that same
17 area. One of them was 153rd Brigade, named Hyzri Talla, which had
18 the village of Zllash, as the entire Gollak region, with its area of
19 responsibility. That brigade was headquartered approximately 15 to
20 20 minutes on foot from the Zllash detention compound. The evidence
21 will show that this brigade operated separately from the BIA unit and
22 had no role running the detention compound.

23 Your Honours, from July/August 1999 until at least the end of
24 April 1999, the BIA unit had in Zllash what the accused described as
25 a safe house, which was located within the Zllash detention compound.

1 Zllash is a small, isolated village located approximately
2 10 kilometres east of Prishtine in the mountainous region of Gollak.

3 Could I ask Madam Court Officer to show us slide number 12.

4 This slide, and also the following slide, are aerial photographs
5 of the detention compound in Zllash taken in 2006 by the
6 United Nations Mission in Kosovo, UNMIK. In this slide, Your Honours
7 can see a small cluster of just a handful of buildings that formed
8 the compound. The evidence will show that the victims were held in a
9 small group of connected buildings within the compound and that the
10 accused spent time in the upstairs part of one of these buildings and
11 interrogated some of the detainees there. All of the crimes alleged
12 in this case occurred within this particular compound depicted on
13 that slide.

14 Could we now display slide number 13, please.

15 So if we now zoom out a little bit from the compound,
16 Your Honours, the compound that we have just seen on the previous
17 slide, we can see how isolated this compound is. There is nothing
18 around it. To one side of this small group of buildings are some
19 woods, and to the other a road. Given the small size of the compound
20 and its isolation, it should be clear that the detainees who were
21 seized and brought here to be held were cut off from anywhere, and
22 that persons present at this compound in April 1999 surely would have
23 known what was happening there.

24 Now let's talk for a moment about the armed conflict that was
25 happening at the time the alleged crimes were committed in April

1 1999, Your Honours.

2 During this time, and throughout the whole indictment period, a
3 non-international armed conflict existed between the Kosovo
4 Liberation Army and the forces of the Federal Republic of Yugoslavia
5 and the Republic of Serbia, including units of the Yugoslav Army,
6 police, and other units of the Ministry of Internal Affairs, as well
7 as other groups fighting on behalf of Yugoslavia and Serbia. There
8 should be no dispute about this fact.

9 The conflict was of high intensity with a series of offensives
10 of the Yugoslav and Serbian forces in February and March 1999 and
11 large-scale operations launched throughout Kosovo, including against
12 the Kosovo Liberation Army forces stationed in Gollak region, in
13 April 1999.

14 The conflict had a protracted character dating back to 1998,
15 well before the crimes alleged in the indictment, and continuing
16 throughout 1999, well past the dates of those crimes.

17 The level of organisation of the warring parties was sufficient
18 to qualify it as an armed conflict under international law. Yugoslav
19 and Serbian forces were a proper, modern state army, well organised
20 and structured with a unified and central command. And the Kosovo
21 Liberation Army, already in 1999, was an organised armed force under
22 a responsible command, had control over parts of the territory of
23 Kosovo, and had the ability to carry out sustained and concerted
24 military operations. It was issuing internal regulations, orders,
25 and public communiques, had a proper reporting and communication

1 system between its General Staff and the subordinate combat units -
2 brigades, battalions, companies, and squads. It was divided into
3 operational zones, with each having its commander. It had weapons
4 supplies, a recruitment system, training centres, and a system of
5 ensuring military discipline. Its soldiers had uniforms and unified
6 army markings. All these elements are indicia of a sufficiently
7 organised party to the armed conflict, which the Kosovo Liberation
8 Army undeniably was at the time relevant for this case.

9 There are several judgements from the International Criminal
10 Tribunal for the former Yugoslavia, ICTY, and Kosovo courts that have
11 made findings concerning the existence of a non-international armed
12 conflict in Kosovo in April 1999, including specifically the
13 Djordjevic and Milutinovic cases at the ICTY. And Your Honours have
14 taken judicial notice of relevant findings from those cases. No
15 judicial body has ever denied the existence of that armed conflict,
16 and nobody who was in Kosovo at that time would seriously contest
17 that such conflict existed.

18 As it will become clear in the course of the trial, the crimes
19 charged in this case took place in the context of, and were
20 associated with, this ongoing armed conflict between the Kosovo
21 Liberation Army and the forces of the Federal Republic of Yugoslavia
22 and Serbia. These crimes were committed by active-duty soldiers in
23 the Zllash detention compound used by the BIA unit as a base. The
24 accused himself, the commander of the BIA unit, was engaged during
25 this time-period in activities related to the armed conflict.

1 Notably, during interrogations, the accused and his subordinates
2 levied accusations against their victims about being spies and
3 collaborators. While vague, unsubstantiated, and, in fact,
4 unfounded, these allegations demonstrate the link, together with
5 other circumstances, between the ongoing armed conflict and the
6 crimes committed by the accused and his subordinates.

7 Now, allow me, Your Honours, to turn back to the buildings
8 within the Zllash detention compound where the crimes charged in the
9 indictment allegedly took place.

10 It was a two-storey building. As you have seen from the aerial
11 photographs of the compound, the building was part of a small handful
12 of buildings, isolated from other structures. Today this compound is
13 no longer standing and only one small building remains there.

14 Let me show you a few additional images of that compound taken
15 by the United Nations Mission in Kosovo in April 2006. I hope it
16 will assist Your Honours to better understand the composition and
17 layout of that place. I will start again with the 2006 aerial
18 photograph that I already displayed a few minutes ago.

19 And could I kindly ask Madam Court Officer to show us the next
20 slide, slide number 14.

21 The encircled building is the one where, as the Prosecution
22 alleges, crimes charged in this indictment took place.

23 Could we now move on to slide number 15, please.

24 This slide, Your Honours, depicts three buildings of the Zllash
25 detention compound where, in the Prosecution's submissions, in April

1 1999 a number of Kosovar Albanian detainees were unlawfully held and
2 mistreated. The blue arrow indicates the rooms in the upper floor
3 used by the BIA members as well as the accused when they stayed in
4 Zllash. The yellow arrow points to the lower part of the building
5 where the victims were detained.

6 Could we please display the next slide, slide number 16.

7 This slide presents the same buildings from a slightly different
8 angle. The building presented on the right-hand side of this
9 photograph is the one which is of our interest in this case. The
10 blue arrow is pointing at that building. We saw it also at the
11 previous slide, and we'll see it again in a moment.

12 Could I kindly ask Madam Court Officer to show us the next
13 slide, slide number 17. Thank you very much.

14 This slide depicts the main building where the alleged
15 mistreatment of some of the victims took place. They were kept in a
16 basement or shed in the lower part of the building, left from the
17 door with staircase, indicated by yellow arrow. And they were taken
18 by external stairs to a location upstairs where they were
19 interrogated and beaten, and it's marked -- this place is marked with
20 the blue arrow. The accused himself also provided a detailed
21 description of that building.

22 Your Honours will see the same building depicted also in photos
23 presented by the Defence, one of them being the photo on the next
24 slide, slide number 18.

25 And if I could kindly ask to show this one.

1 This is the slide I am talking about. On that slide, the
2 building is on the left-hand side of the photo. The blue and yellow
3 arrows indicate, respectively, the place occupied by BIA where
4 interrogations and mistreatment of victims took place, and the place
5 where the victims were held, which is the yellow arrow.

6 The adjacent small building, a wooden shed with triangular roof
7 covered with red tiles, the one next to the building we are talking
8 about, is the only building that remains on that site today.

9 Former members of the Kosovo Liberation Army Brigade 153
10 stationed in Zllash will testify that in 1999 this compound was
11 occupied exclusively by the BIA unit under the command of the
12 accused. The accused himself has admitted that he was often in
13 Zllash in March and April 1999. The Prosecution will present
14 evidence from several witnesses who will also place the accused in
15 the Zllash detention compound at different times critical to this
16 case.

17 We can now close the presentation, the PowerPoint presentation,
18 please. Thank you.

19 I will now turn Your Honours to the evidence, to what the
20 evidence will show concerning the defence put forth by the accused in
21 this case. The Defence has, in fact, noticed two defences in this
22 case. The first it has set forth is an alibi defence.

23 When Your Honours listen to the evidence about the alibi, you
24 will want to ask yourselves why the accused now is trying to claim
25 that he was not at the Zllash detention compound at certain times.

1 We say it is because the evidence will show that, in fact, the crimes
2 that we have alleged occurred there, and that now the accused is
3 trying to get as far away from those crimes as he can. Your Honours
4 will also want to scrutinise the evidence, by the Prosecution and by
5 the Defence, to assess whether there really is an alibi. We submit
6 that both Prosecution, as well as certain Defence evidence, will
7 clearly place the accused in Zllash at specific points in time in the
8 first 20 days of April 1999 relevant to this case. Moreover, the
9 evidence will show that when he was not at Zllash, he was in
10 locations that were easily reached in a matter of hours by car or on
11 foot.

12 At the end of the day, none of the alibi evidence of the Defence
13 refutes in any way the allegations set forth in the indictment. The
14 proposed alibi does not provide either a factual or legal shield from
15 responsibility.

16 In addition to putting forward this so-called alibi defence, the
17 Defence also alleges that the crimes at Zllash simply did not occur
18 at all. No arrests, no detainees, nobody held, no interrogations, no
19 beatings, no mistreatment, no abuse. None of it happened. In this
20 regard, the Chamber will want to consider the evidence from all the
21 witnesses, statements of the accused, as well as the accused's
22 conduct during the investigation of these crimes. We submit that the
23 evidence will leave no doubt whatsoever that these crimes occurred
24 and that the accused was responsible for them.

25 Turning now, Your Honours, to the crimes alleged and the victims

1 who were unlawfully brought to the Zllash detention compound,
2 illegally detained there in appalling conditions, interrogated, and
3 subjected to various sorts of brutal mistreatment virtually on a
4 daily basis. These victims were all local Kosovar Albanian civilians
5 and none was taking an active part in the hostilities at the time
6 that they were arrested, beaten, and killed. During their
7 interrogations, the detainees were accused of being spies, Serbian
8 collaborators, or thieves. The reality is that none of these men
9 posed any military threat to the Kosovo Liberation Army. Some were
10 trying to get by during the conflict by selling goods at the local
11 markets. Others were civilians, whose only fault was to belong to
12 another party, the Democratic League of Kosovo, LDK, that was
13 perceived by some members of the Kosovo Liberation Army as a
14 political opponent.

15 Your Honours will hear evidence about how different victims in
16 this case were arrested and brought to the Zllash detention compound,
17 including from some of the victims themselves. They will tell you
18 about the layout of the compound, how they were held, who else they
19 recognised there. You will hear that aside from baseless accusations
20 made during interrogations, they were not told why they had been
21 arrested or detained. No arrest or release documents were provided
22 to them.

23 You will hear how the victims were made to sleep on the floor in
24 an animal barn, given insufficient food and water, and kept in
25 extremely unsanitary conditions. No medical care was offered to mend

1 the wounds inflicted by the accused and his subordinates during the
2 frequent interrogation and beating sessions.

3 The victims will tell you about those interrogations and
4 beatings, who participated in them, and the instruments used to
5 assault them. You will learn what was asked of the victims and what
6 they were accused of. You will hear about the threats that were made
7 and about the conduct that rose to the level of torture.

8 You will also hear specifically about the role of the accused in
9 certain of the interrogations and beatings, that he oversaw them,
10 directed them, and participated in them. The victims will testify
11 that they could hear when others were being beaten, and they will
12 tell you about the severe physical and psychological injuries they
13 suffered, some of which continue to affect the victims to this day.

14 The evidence will show that one victim was singled out for
15 particularly harsh abuse and suffered particularly severe injuries.
16 When the victims were released from the Zllash detention compound in
17 April 1999 - on the 19 April, to be precise - because of an advancing
18 Serb offensive, this prisoner and one other were not allowed to
19 leave. Neither one was ever seen alive again. Sometime later, after
20 a painful and intense search by the family, the body of the severely
21 mistreated victim was found in a shallow grave, a very short distance
22 away from the Zllash detention compound, along with a second body.

23 Based on these facts, the indictment in this case charges the
24 accused with the war crimes of illegal detention, cruel treatment,
25 and torture, and murder of the severely beaten victim who was not

1 permitted to leave the compound and whose body was found sometime
2 later.

3 The accused is responsible for the crimes committed at the
4 Zllash detention compound through his personal participation in them
5 in concert with his subordinates. The accused ran the compound and,
6 by his own admission, he had ultimate authority over the BIA members
7 stationed there. He personally participated in interrogations and
8 beatings. He had the authority to prevent their mistreatment and to
9 release them, but he did not do that until he was forced to evacuate
10 the compound because of the advancing Yugoslav and Serb forces.

11 In addition to directing, overseeing, and participating in the
12 crimes alleged, the accused had ample knowledge of them. He slept in
13 the same house where the prisoners were kept. Screams of pain during
14 interrogations and beatings, which generally took place on the upper
15 floor, where the accused normally stayed, were so loud that they
16 could be heard from the other prisoners one floor below. The
17 detainees' bodies displayed obvious signs of the mistreatment that
18 they had received.

19 This is a preview of the evidence that will be offered in this
20 case. As I said at the beginning of my remarks, this case is
21 straightforward and simple. The crimes were committed by the accused
22 and his subordinates during a several-week period in April 1999 in a
23 contained, small, and isolated compound in Zllash. The accused was
24 there, he was in charge, and he is ultimately responsible for the
25 crimes.

1 For these reasons, at the end of the case, we will return before
2 Your Honours to ask that you find the accused guilty of the crimes
3 charged in this indictment.

4 Thank you very much.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

6 I look now at the time. It's quarter to 11.00. I propose, also
7 to the Victims' Counsel, that we take a break now of half an hour
8 till a quarter past 11.00 and then we resume. And then can you start
9 with your opening statement. Yes? Okay.

10 Now, the hearing is adjourned. See you at quarter past 11.00.

11 --- Recess taken at 10.45 a.m.

12 --- On resuming at 11.41 a.m.

13 [The accused not present]

14 PRESIDING JUDGE VELDT-FOGLIA: Please be seated.

15 Welcome back. Before we go to the opening statement of the
16 Victims' Counsel, there is another matter we should address.

17 Mr. von Bone, I was informed that your client does not want to
18 attend the hearing any further today. I note there is a procedure
19 for that, and I see you nodding, that's Rule 68(4) of the Rules. And
20 provided that all the conditions in paragraph (4) are met, the
21 accused can refuse to appear.

22 Do you want to make any submissions in this regard?

23 MR. VON BONE: Your Honour, thank you very much, and members of
24 the Court.

25 Indeed, it is what the accused clarified to me, that he does not

1 want to continue for this session, to attend this session further. I
2 do not have a particular submission about that. It is just what it
3 is.

4 I assume that he will just discontinue it for this session, and
5 I expect him to be there on Monday again. So that's all there is to
6 it. I will be, of course, remaining present, as I'm always here. So
7 I think that unless -- no. No, no. It is clear that -- he just told
8 me that he does not want to continue to be present at the hearing of
9 today.

10 PRESIDING JUDGE VELDT-FOGLIA: I'm going to ask you some
11 questions --

12 MR. VON BONE: Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: -- in this regard. And then even
14 if it's not provided for by the Rules, I will give the Specialist
15 Prosecutor's Office and the Victims' Counsel the floor to make any
16 observations in this regard, if they feel the need to.

17 But before I do that, I want to go through some conditions set
18 out in paragraph (4). There has, of course, been an
19 Initial Appearance. Mr. Mustafa is aware of the fact that his
20 presence is required, in principle. He is not here anymore. But in
21 principle, that he is required to be here. And a very important part
22 is that he has waived his right to be present here unequivocally and
23 voluntarily. And you can --

24 MR. VON BONE: Yes, I can say that he waived his right to be
25 here unequivocally, that is clear, for today's court session.

1 It stipulates the right to be tried. I'm not sure about the
2 trial in itself. The wording of the word "trial" in this sense, but
3 I mean for the hearing of today. I --

4 PRESIDING JUDGE VELDT-FOGLIA: I opened the trial this
5 morning --

6 MR. VON BONE: Yes.

7 PRESIDING JUDGE VELDT-FOGLIA: -- by default by being here so --

8 MR. VON BONE: Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: -- it's the trial. So I would
10 say there's no discussion about that.

11 Another point for me what is important, you will be present.
12 You confirmed that.

13 MR. VON BONE: Absolutely.

14 PRESIDING JUDGE VELDT-FOGLIA: And you will represent his
15 interests --

16 MR. VON BONE: Absolutely.

17 PRESIDING JUDGE VELDT-FOGLIA: -- during this hearing. Okay.
18 Then it's up to the Panel to see if they think it's necessary to have
19 him here for this hearing.

20 MR. VON BONE: Yes, Your Honour. Thank you very much.

21 PRESIDING JUDGE VELDT-FOGLIA: I now give the floor to the
22 Specialist Prosecutor's Office.

23 MR. MICHALCZUK: Yes, thank you, Your Honour.

24 The Prosecution's strong preference is for the accused to be
25 here with us during this hearing. However, in this regard, we defer

1 the decision to the Court as provided by Rule 64(4).

2 What we want to have is a clear record, especially of the fact
3 that the accused, pursuant to Rule 64(4)(c), has voluntarily and
4 unequivocally waived or forfeited his right to be tried in his
5 presence. So we've got to have it clear on the record to have it for
6 further proceedings. If something comes up later, for example, in
7 appeals proceedings later on that the accused was deprived of his
8 right to be present. We have to have it on the record that he did it
9 voluntarily, he did it consciously, and he waived his right knowing
10 that these proceedings will continue in his absence and that his
11 interest will be duly represented by his counsel.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

13 Those questions have been asked to the Specialist Counsel, and
14 they have been answered in the affirmative. So I think that for now
15 that is on record.

16 MR. VON BONE: And, excuse me, Your Honour. I take it that the
17 Specialist Prosecutor meant -- my learned counsel meant Rule 68,
18 not 64.

19 PRESIDING JUDGE VELDT-FOGLIA: I overheard that but --

20 MR. MICHALCZUK: Yes.

21 PRESIDING JUDGE VELDT-FOGLIA: -- we are talking about Rule 68.

22 MR. MICHALCZUK: Yes, Rule 68(4).

23 PRESIDING JUDGE VELDT-FOGLIA: Very well. That's clear.

24 MR. MICHALCZUK: Thank you. Sorry.

25 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel, do you have any

1 submissions in this regard?

2 MS. PUES: Yes, I do, Your Honours.

3 First of all, with regard to Rule 68. The clear principle set
4 out in Rule 68 is the presence of the accused. When you look at
5 paragraph (1):

6 "He shall be tried in his or her presence."

7 We do perceive this as a clear disregard and disrespect for
8 victims to leave just before the opening statement. But that's a
9 non-leading matter. But this is the principle. And then comes --
10 and the whole spirit of this rule is written or the whole purpose is
11 to secure the presence of the accused.

12 When an accused is at liberty, detention follows if you don't
13 attend trial. You need to show good cause to be exempt. If the
14 accused is not at liberty, and this is where paragraph (4) comes in,
15 the conditions, the sub-conditions in subparagraphs (a) to (e) are
16 cumulative, in my reading, because the end, at the end of
17 subparagraph (d), clearly indicates that all of those conditions need
18 to be met.

19 So ultimately it will be in your discretion, "the Panel is of
20 the opinion that the presence of the accused is not necessary for the
21 specific hearing," to take this decision, whether you order the
22 accused to be present or not. What I would request you to consider
23 in that context is: Will we see this game every day, every trial
24 hearing the same thing, that the accused chooses whether he's there,
25 whether he's not there, so that, for example, those witnesses

1 appearing for whom this would be a very traumatising event do not
2 even have the possibility to prepare for whether they will face the
3 accused sitting here, which is a very different matter to a person
4 not being there.

5 And those settings within the courtroom are of key importance.
6 And, of course, then just to finish off on these observations. Of
7 course, the presence or a trial in the presence of the accused is as
8 clearly all linked to fairness of the proceedings, and a fair trial,
9 of course, is a right of the accused, but it goes further. Fairness
10 of the proceedings is also relevant for the perceptions to the
11 outside world and ultimately to the legitimacy of this Court, of how
12 this Court is perceived.

13 And, therefore, I think it's important that this Court
14 emphasises, at the beginning, when you, Your Honours, are going to
15 shape the practice not just of this trial but of continuous future
16 proceedings that the default position should be the presence of the
17 accused so that this doesn't turn into a court that *de facto* tries
18 accused in absentia.

19 Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

21 Do we need a second round? So I look at Specialist Counsel.

22 MR. VON BONE: Yes, I just want to address two issues that my
23 learned counsel just addressed.

24 First of all, Your Honour, it is a common practice that with all
25 the hearings that we had until now the accused is present or not

1 present and he waives it by simply indicating that on a particular
2 document that is filed each time before the proceedings, so do I not
3 think that the cumulative issues that my learned counsel is
4 addressing is of that nature, that these are, in fact, cumulative. I
5 do not think that there is a decision to make on it. And, as I say,
6 he is being represented by counsel who is representing his interest
7 in that perspective, and that is further up to the accused how to go
8 about that.

9 Other than that, I can understand, obviously, that it may be --
10 the feelings that the Victims' Counsel has regarding issues of
11 victims or not. I cannot simply say that this is going to be a
12 standard or not. It is just for this day what it is, and I cannot
13 give anything for future appearances.

14 Once again, each time there will be a document to be filed
15 whether the accused will be present or not present or via video-link
16 present or not present. So those are the things that I wanted to
17 just address to that part of my counsel, the learned counsel of the
18 victims.

19 PRESIDING JUDGE VELDT-FOGLIA: For my information --

20 MR. VON BONE: Yes.

21 PRESIDING JUDGE VELDT-FOGLIA: -- just to understand --

22 MR. VON BONE: Sure.

23 PRESIDING JUDGE VELDT-FOGLIA: -- to make a good summary of what
24 you just said.

25 MR. VON BONE: Yes.

1 PRESIDING JUDGE VELDT-FOGLIA: Is your explanation of
2 paragraph (4) that it's not cumulative?

3 MR. VON BONE: It is indeed, yes. Presence is not required.

4 PRESIDING JUDGE VELDT-FOGLIA: No. Again. No, because maybe we
5 are not understanding each other. That cumulative in the sense that
6 he has to have made his Initial Appearance --

7 MR. VON BONE: Obviously, yes.

8 PRESIDING JUDGE VELDT-FOGLIA: -- and that happened.

9 MR. VON BONE: Yes, which he's already had.

10 PRESIDING JUDGE VELDT-FOGLIA: Duly notified that he should be
11 here.

12 MR. VON BONE: Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: And that he is. That he has
14 waived his right, yes?

15 MR. VON BONE: Correct.

16 PRESIDING JUDGE VELDT-FOGLIA: That you will be here.

17 MR. VON BONE: Yes.

18 PRESIDING JUDGE VELDT-FOGLIA: And then the last, that, in the
19 end, it's the Panel that thinks it's necessary. And that last
20 requirement, do you say that it's not cumulative?

21 MR. VON BONE: No. I understood my learned counsel different,
22 that it was the entire Rule 68 that she was citing as being
23 cumulative.

24 PRESIDING JUDGE VELDT-FOGLIA: Yes, and that is my question to
25 you.

1 MR. VON BONE: I think it is Rule 68(4) that is cumulative.

2 PRESIDING JUDGE VELDT-FOGLIA: I don't --

3 MR. VON BONE: The parts of --

4 PRESIDING JUDGE VELDT-FOGLIA: -- understand you.

5 MR. VON BONE: -- Rule 68(4), those issues are the cumulative
6 issues.

7 PRESIDING JUDGE VELDT-FOGLIA: (a) till (e)?

8 MR. VON BONE: Yes. So not from (1) until (6).

9 PRESIDING JUDGE VELDT-FOGLIA: Okay. But now you have answered
10 my question that the conditions set out in paragraph (4)(a) to (e),
11 you do regard them as you cumulative?

12 MR. VON BONE: That's right, yes.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay. That's then clear for me.
14 We were now in the second round, so I go back here to the SPO.

15 MR. MICHALCZUK: Your Honours, we've got nothing to add. Thank
16 you.

17 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel?

18 MS. PUES: No, thank you. Nothing to add either.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 I will now confer with my colleagues, but I will, however, do
21 that not here. We will go back. We will try not to make you wait
22 too long, but I think it's better to not do that in the courtroom.
23 Yes? Okay.

24 I adjourn just for --

25 --- Recess taken at 11.55 a.m.

1 --- On resuming at 12.08 p.m.

2 PRESIDING JUDGE VELDT-FOGLIA: Please be seated.

3 I will now give an oral order under Rule 68(4) of the Rules.

4 I note that in the present case there has been an Initial
5 Appearance, the accused has been duly notified that he is required to
6 be present, he has unequivocally and voluntarily waived his right to
7 be present, his counsel is present and will represent his interests
8 during this hearing, and, furthermore, in the specific circumstances
9 of the case, the Panel is of the opinion that however the presence of
10 the accused is required, it is not necessary to be here today.
11 However, this refusal to appear, and, Mr. von Bone, only concerns the
12 remainder of today's hearing, held today. The Panel retains
13 discretion in the future hearings to compel the accused to be
14 present, even when he has waived his right to do so.

15 This concludes my order.

16 Madam Court Officer, you can inform security that they can
17 proceed with making the necessary arrangements for the accused to go
18 to the detention centre.

19 And, Mr. von Bone, there is one last issue I would like to
20 discuss with you or share with you. The Panel would appreciate if
21 you could inform your client that we will not allow Mr. Mustafa, at
22 future hearings, to use disrespectful language with regard to any
23 party or participant to these proceedings such as the language used
24 by your client when referring to the SPO.

25 MR. VON BONE: I will certainly do that, Your Honour.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Good.

2 Now, I have a look at the clock. It's quarter past 12.00. I
3 think now the moment is there, Victims' Counsel, for you, Ms. Pues,
4 to take the floor for your opening statement, please.

5 MS. PUES: Your Honours, Specialist Prosecutor's Office,
6 Defence, and everyone else who may be following these proceedings
7 today.

8 Of course, first of all we note the absence of the accused, so
9 I've not said "Mr. Mustafa" or not addressed him explicitly, which I
10 intended to do because it is, indeed, very important that some form
11 of engagement with each other's position is being made.

12 We do see this as a note of disrespect, his absence. But
13 nevertheless, it is important to set out today what is important from
14 the victims' perspective. And I must say it is a very special moment
15 for all these victims participating in the proceedings. It is a
16 moment they have all been waiting for, and they all hope to finally
17 see some justice done.

18 It is 22 years after the victims, to whom I provide a voice and
19 who we all stand here to represent, experienced events that would
20 change their lives. I met with and spoke to all of them, all those
21 victims participating, and all meetings were loaded with grief and
22 trauma. None of the wounds inflicted in 1999 healed. Physically,
23 some might have. Others turned into scars, lumps in their heads,
24 bends in their limbs, or impaired a person's eyesight. None of the
25 invisible scars, though, those inflicted on the soul, ever had any

1 chance of healing. If anything, these injuries have overshadowed so
2 many other aspects of life, put a fog over all those other moments
3 that should have brought joy and happiness in a person's life.

4 And, personally, I was struck by how present the trauma is, how
5 stark the fear and intimidation, for all those victims admitted to
6 participate here in these proceedings.

7 Your Honours, we have heard the Prosecution's case, and the
8 office of the Specialist Prosecutor has set out the crimes committed
9 in Zllash. And we will neither repeat the indictment, nor the
10 Prosecutor's case. We will address, instead, the following issues:

11 Firstly, we will focus on what these trial proceedings mean for
12 the victims we represent here to allow you all a better understanding
13 of their interests, of their views and their concerns. We then turn
14 to the need for justice, for truth, and for reparations. And lastly,
15 we will end our opening statement with the voices of the
16 participating victims, their wishes and visions for the future. And
17 let us hope - this is my sincere hope - that we can contribute to
18 those wishes and work towards making them a reality.

19 So with that, the meaning of the proceeding for victims. And
20 let me say the disillusionment among victims is great. They have
21 been waiting for so long, and they are tired of unfulfilled promises.
22 Victims who suffered from the hands of KLA fighters have been failed,
23 as they have not had any chance to seek effective redress for their
24 suffering, not in any domestic, hybrid, or international courts.

25 And this failure, of course, is the backdrop of why it was

1 necessary to set up this Court. This is also why the work of this
2 Court will be the last chance to do so, to provide redress and to
3 provide justice.

4 This then leads me to appeal to the Panel that whichever
5 decision you must take within these proceedings, the aim, the guiding
6 aim should always be to provide justice now. No decision should be
7 taken based on considerations of procedural economy, for example, or
8 pragmatism. Instead, with any decision this Panel must take
9 throughout these proceedings, the test should be which decision would
10 best ensure that justice is being served now. For the victims
11 participating in these proceedings, it is important to be able to
12 achieve some closure and feel that their waiting is over.

13 But there is another dimension which adds such meaning to this
14 trial. It is the silence surrounding crimes committed by KLA
15 fighters. A veil of silence has been covering some of the crimes
16 committed during the war in Kosovo. The victims participating here
17 have been silent and silenced for all these years. They are living
18 in a country where in many places the KLA are celebrated as heroes,
19 where the pressure is tremendously high not to ask any questions that
20 would stain the shining image of heroes.

21 This trial may be a chance to slowly start a conversation to
22 allow dialogue in Kosovo to understand fully what happened during the
23 war. This is a chance to pierce this veil of silence surrounding
24 these crimes. It is an important chance also for future generations
25 in Kosovo and beyond to get a fuller picture of their history, to

1 learn and to understand.

2 To this day, an imbalanced war narrative determines perceptions
3 in Kosovo. This trial is an important opportunity to address this
4 imbalance. And because this is a critical aspect of this trial, let
5 me explain in more detail why the current narrative of the war in
6 Kosovo, 1998 to 1999, is imbalanced.

7 11.609 out of 13.535 victims of this war were civilians. A part
8 of those were direct victims of KLA fighters. This group of victims,
9 however, has systematically been marginalised. At many levels, they
10 were not and are not treated as equals with those celebrated as
11 martyrs, invalids, veterans, and the KLA members. It leaves a very
12 important slice of history untold and not acknowledged. The victims'
13 voices, as I've said before, were silent out of fear of retaliation
14 and further marginalisation.

15 They have not been victimised only once, when the crimes
16 occurred during the war, but they have suffered after the war by
17 being left completely alone, directly or indirectly intimidated and
18 silenced for decades. Intimidation of those who raised their voice
19 against Albanian perpetrators have been a problem in proceedings
20 before the International Criminal Tribunal for the former Yugoslavia,
21 in hybrid courts, as well as EULEX proceedings.

22 In cases against Serb perpetrators, intimidation has not been
23 the case. In contrast, individuals stepped forward voluntarily and
24 shared their stories in front of the public. Victims of the Serbian
25 regime had a platform to share their stories openly and received

1 sympathy from the rest of the population. Those victims of KLA
2 fighters, to this day, have to live in fear and face social apathy
3 towards them, and it takes a lot of courage for victims to
4 participate here and witnesses to testify in these proceedings and to
5 help correct the incomplete picture of the war.

6 The imbalance I have spoken about, and I'm addressing here, is
7 also reflected in domestic legislation. An illustrative example is
8 the law on the status and the rights of the martyrs, invalids,
9 veterans, members of the KLA, civilian victims of war and their
10 families. This law, which is also largely known as the Law on War
11 Reparations, provides access to reparations for specific categories
12 of people.

13 According to this law, a civilian victim of war is a person who
14 has died or was wounded by the enemy forces between February 1998 and
15 June 1999. A civilian hostage of war is a civilian person, again,
16 who, during the war, has been arrested and imprisoned in enemy camps
17 for at least three days.

18 And this use of the term "enemy" that runs through this law,
19 this same law which considers KLA members as martyrs, excludes any
20 victims of crimes committed by KLA fighters. The victims of KLA
21 fighters are, therefore, denied any acknowledgement in this law or
22 the modest pension that this law provides.

23 Basically, the situation can be summarised as follows: If one
24 is a victim of the Serbian regime, they are encouraged to come forth
25 with their stories, encouraged to seek justice, encouraged to get

1 compensation. If one is a victim detained arbitrarily, tortured, and
2 murdered by the hands of KLA fighters, their suffering is ignored.
3 They have been gaslighted, accused of harming the reputation of the
4 KLA, or of not being patriotic.

5 The commemorative landscape is no different when it comes to
6 memorialising victims of the war in Kosovo. It takes a short stroll
7 in most of the main squares in Kosovo to see statues of KLA members
8 but also to notice that there are only a handful of them
9 memorialising civilian victims, and there are none memorialising
10 victims of events where KLA soldiers were the perpetrators.

11 So the situation is so much more nuanced than the binary
12 narrative of the war that has been imposed so far. In the current
13 narrative, there is this glorious war, an affair between two fighting
14 groups - that of Serbian forces and the KLA. Yet, this is only one
15 part of the story, and this trial, therefore, is this unique
16 opportunity to help shed light on the hidden stories of those victims
17 who suffered from the hands of KLA fighters.

18 And this function of the trial is linked to the victims' right
19 to truth, a right I will come back to later in this statement. At
20 this point I want to recall a judgement that this Panel is well aware
21 of, the judgement of the European Court of Human Rights in El Masri,
22 because there the right of truth was found to be so important, not
23 for the victims but also for other victims in similar cases and the
24 general public, who have the right to know what happened.

25 The imbalanced narrative to date, therefore, matters hugely and

1 is not only a concern for the victims participating here but
2 important for the public. Finding acknowledgement of their suffering
3 and receiving reparations in these proceedings are not solely
4 important for victims here we are representing. It will also be
5 important as a signal and as encouragement to others who share a
6 similar story to come forward with their stories. Let them know that
7 they are not alone in these battles.

8 Your Honours and all those who might be following this session
9 from elsewhere, nothing can ever justify murder, torture, and cruel
10 treatment. It is not the fight for Kosovo's liberation, the fight
11 for Kosovo's independence that is on trial here. We've heard the
12 Prosecutor on this issue, and let me reinforce this point: But the
13 legitimacy of the KLA's fight, as the Defence has hinted at in
14 previous submissions, did, under no circumstances, ever justify
15 torture, arbitrary detention, cruel treatment, or murder. Those
16 fighting for independence or liberation, no matter whether in Kosovo
17 or elsewhere, must respect the rules of war and the rules of
18 humanity.

19 Now, let me cite here what one of the victims said to me in our
20 conversation:

21 "The enemy was Serbia. We helped and supported in the fight
22 against them. We invested in the fight of the KLA. We needed to
23 fight. The enemy were not my own countrymen and women. And we are
24 not accusing KLA values."

25 This is the story that needs to be told and heard in this trial.

1 The crimes committed were against fellow men and women wrongly
2 accused of being spies, arbitrarily detained, and brutally murdered.
3 But the victims couldn't mourn. They could not speak out about what
4 happened, as stigmatisation continued over the years. And as I've
5 said before, fear has kept them quiet.

6 For Kosovo to move on - and I say this not only to Your Honours
7 but to the broader audience out there - it is important for Kosovo to
8 grow as a beautiful country that it faces some uncomfortable truths.
9 Torture is prohibited, whether in peacetime or in war. Equally, the
10 right to life is the most basic human right. These provisions are
11 peremptory norms of international law and they are binding.

12 The KLA was obliged to respect the right to life, to respect the
13 prohibition of torture as much as any other fighting force. Crimes
14 were committed on all sides. This, however, does, under no
15 circumstances, justify any violation of those prohibitions, justify
16 any war crimes. The rules of war apply to all sides and are to be
17 respected. It is as simple as that.

18 What the victims are asking for is the acknowledgement of the
19 wrong that has been done to them. And this trial is important, as it
20 will uncover, and present in this courtroom, some of those
21 uncomfortable truths. It is a sincere hope that people in Kosovo
22 will engage with these proceedings, will listen and understand. This
23 trial is not about the legitimacy of the fight for independence.
24 This trial is about basic rules of humanity.

25 A single trial far away in The Hague, though, will not overnight

1 help to correct the unbalanced narrative of the war, lift the veil of
2 silence, remove the stigmatisation that victims of the KLA are
3 facing. But those victims brave enough to participate in these
4 proceedings do hope that this might be one first small step towards
5 change.

6 "Pika pika mbushet pusi." Drop by drop you fill the well. This
7 is what one of the victims said to me in our consultation, and I
8 think it sums up very well what drives their hopes, that this might
9 be a contribution, a small contribution and a first step towards
10 change.

11 With that, let me move to the themes of justice and truth.

12 All the victims participating here hope for justice. This
13 became very clear. But what does justice actually mean? From the
14 victims' perspective, they want to see those responsible held to
15 account. They want those responsible convicted of the crimes they
16 committed.

17 In this trial, we focus on the accused, on the accused Salih
18 Mustafa, who chose not to be present anymore. The victims hope that
19 he will face the consequences that the law provides for the acts he
20 stands accused of, the acts they had to endure. They hope that all
21 those who were responsible for the crimes committed are facing a
22 court of law at some point.

23 For justice to be done, though, we all need to develop an
24 understanding for the situation in Kosovo. And when I say "we," this
25 is addressed to most persons in this courtroom who are not from

1 Kosovo and who have neither lived nor worked there throughout our
2 careers. This shapes our perspectives and understanding, and we need
3 to be aware of this cultural gap that exists and that will impact our
4 work.

5 Let me touch at this point on a matter that has briefly been
6 discussed during the trial conference. Should the Panel visit the
7 crime site? There's nothing to see anymore, the Specialist
8 Prosecutor's Office suggested. And similarly, the Defence does not
9 see any value in such a visit. And from a criminalistic perspective,
10 this might be right. The immediate evidence has long disappeared.
11 Zllash, as a place, has changed.

12 This was confirmed in my conversations with the participating
13 victims. Nevertheless, as one of them said: "The Judges should go
14 there to see for themselves." But why should such a visit be
15 important, and what does it have to do with the cultural gap I
16 mentioned?

17 I went to Zllash to see for myself. Immediately on my arrival
18 near the village, men appeared and questioned my presence there. The
19 driver who took me became extremely nervous and anxious. What
20 appeared at first sight to be a very peaceful, quiet spot of land in
21 the hills, not too far from Prishtine, had a very oppressive
22 atmosphere. A KLA memorial and symbols dominate the village to this
23 day, and I learned a great deal during this very brief visit.

24 Its remoteness brings home - and we've heard that by the
25 Prosecutor - what an ideal place this was as a place of torture. Who

1 would hear the cries of those tortured or come to the victims' help?
2 It also brought home the dominant presence of the KLA. A glimpse of
3 Zllash now will allow us to better understand what those victims, who
4 will provide testimony in court, have gone through, what it must have
5 been like back 22 years ago.

6 Going to visit the crime site might be a challenge and might not
7 seem significant. However, we submit that such a visit would be in
8 the interests of justice. Rule 74 of the Rules of Procedure and
9 Evidence equips the Panel with discretion to that end, and in our
10 view the Panel should use it. It is in the interests of justice to
11 use these opportunities to at least try and bridge the cultural gap
12 that inevitably exists.

13 Now, the hope for justice is closely intertwined with the hope
14 to finally understand what happened and uncover the truth. The truth
15 is an empowering and healing force. We embrace it for the past, the
16 present, and the future. With these words, UN Secretary-General
17 Antonio Guterres acknowledged the victims' rights to truth, justice,
18 and reparations in international law. And this right to truth
19 implies knowing the full and complete truth as to the events that
20 transpired, their specific circumstances, and who participated,
21 knowing the circumstances in which violations took place, as well as
22 the reasons for them.

23 One of those indirect victims participating here summarised the
24 hope for truth aptly when stating: "We want to know who did it and
25 why." Two simple questions: Who and why. As we are representing a

1 group of victims, their experiences and hopes, of course, are not
2 uniform.

3 Why? This is the one question all of them share. None of them
4 has any explanation why they were subjected to the beatings, to the
5 violence, to the injuries they had to endure, and this will inform
6 the way victim representation will be conducted here by us.

7 We will exercise our right to ask questions and to uncover what
8 happened, as this is vitally important for the victims we represent.
9 And in this context, we have taken note of the Panel's decisions on
10 victims' procedural rights and the conduct of proceedings, and we
11 welcome the opportunity to be able to ask those questions, where
12 appropriate, to uncover the truth.

13 Now, the accused is not present here anymore, but I do hope that
14 the Defence will convey to Mr. Mustafa what I have to say to him.
15 That it is in his hands to help providing answers. We fully respect
16 his right to remain silent, and we understand the difficulty of his
17 situation. However, as Victims' Counsel, I want to emphasise how
18 much he could contribute to providing answers: Whose hands carried
19 out the murder of a beloved son?

20 We call on him to live up and own his responsibility and provide
21 such answers. We realise this appeal will remain without response
22 now while the empty chair speaks for itself, but we did not want to
23 miss this opportunity to highlight what a courageous and honourable
24 thing it would be to provide such answers.

25 Uncovering the truth also contains a component of exposing the

1 full extent of suffering. Victims participating here with dual
2 status will have the chance to provide testimony in court, and we
3 will notify the Panel in due course if victims wish to avail
4 themselves of the opportunity to additionally present their views
5 directly to the Panel beyond their witness statement.

6 Your Honours, we will now address the issue of reparations. And
7 for that, I will pass the baton on to my co-counsel,
8 Liesbeth Zegveld.

9 MS. ZEGVELD: Thank you.

10 Your Honours, Specialist Prosecutor, Defence counsel,
11 Mr. Mustafa - although, you're not here. The Diplomatic Conference
12 of the Geneva Conventions of 1949 emphasised:

13 "It is not enough to grant rights to protected persons and to
14 lay responsibilities on states. Protected persons must also be
15 furnished with the support they require to obtain their rights. They
16 would otherwise be helpless, from a legal point of view, in relation
17 to the power in whose hands they are."

18 The drafters of the Geneva Conventions were right. The position
19 of victims of humanitarian law violations must ultimately be assessed
20 on the basis of their rights to claim reparation. This right
21 includes their procedural capacity to go directly themselves to an
22 organ to make such a claim.

23 The need to create these very chambers based outside Kosovo and
24 staffed by non-Kosovars was justified on the basis that it would
25 facilitate other Kosovo domestic courts. Their work had been

1 impeded. This Court provides for witness protection and guards
2 against corruption and political interferences. The creation of this
3 Court has been heralded as a means by which Kosovo courts provide
4 justice for victims of past crimes.

5 However, the law of this Court still allows for referral victims
6 to civil litigation in other domestic courts. This is strange. It
7 is strange in view of all those impediments that have undermined
8 Kosovo courts. It's contradictory and it affects the goal underlying
9 these Chambers, as well as victims' fundamental rights.

10 Today, our focus on the practice of international tribunals that
11 did refer victims to domestic courts. What has come of these
12 referrals? What has come of this domestic practice? As we will see,
13 this domestic practice is really sad. I will then briefly address
14 what to expect from civil litigation when handled in Kosovo courts
15 other than this Court.

16 Finally, returning to these Specialist Chambers, I will stress
17 the importance of compensation, apart from truth, as a form of
18 reparation.

19 The right to reparation and remedy is by now, fortunately,
20 firmly established under both human rights law and humanitarian law.
21 It's understood to be a part of customary law. However, yes, there
22 has been by now no international criminal court or human rights court
23 that denied victims access, but a different question is whether this
24 should be a national or an international remedy or access.

25 The question in which forum victims can claim their rights is

1 unsettled. It's left to individual international courts or domestic
2 law to decide how to give effect to the right to a remedy.

3 The United Nations Basic Principles on the Right to Remedy are
4 not of much help here. I quote from these principles that they:

5 "... do not entail new international or domestic legal
6 obligations but identify mechanisms (...) for the implementation of
7 existing legal obligations under international human rights law and
8 international humanitarian law."

9 Article 13 of the European Convention stipulates that
10 individuals shall have a national remedy.

11 In 1993, at the creation of the ICTY, the Security Council
12 recognised victims' rights but did not, as we all know, provide a
13 remedy itself. At the ICTY, the idea was that they turn to domestic
14 courts.

15 So there doesn't seem to exist a victim's right to a remedy
16 before an international body. Be this as it may, at the same time
17 judges of the ICTY have time and again pointed out the domestic
18 courts failed victims.

19 In March 2011, the president of the ICTY addressed the
20 impossibility for victims to go through national courts. He first
21 observed, and I quote:

22 "The Tribunal cannot, through the rendering of its judgements
23 alone, bring peace and reconciliation to the region. Other remedies
24 must complement the criminal trials if lasting peace is to be
25 achieved, and one such remedy should be adequate reparations to the

1 victims for their suffering."

2 He then called for the establishment of trust fund for victims
3 falling under the ICTY's jurisdiction. He did so because domestic
4 courts in Yugoslavia had proven no option for victims.

5 This point was also addressed by the International Organisation
6 of Migration. At a request from the office of the ICTY, the IOM
7 wrote a report in 1993, I state from the top of my head -- 2013, I
8 must say. In this report, the IOM confirmed that many, if not most
9 victims had remained without an effective remedy, and it stated, and
10 I quote part of this report in full, given the importance of it:

11 "In practice, however, the IOM was told that victims in all
12 countries face a multitude of frequently insurmountable barriers to
13 obtain redress through the courts. These include the lack of
14 financial means for courts and lawyers' fees, the psychological and
15 physical burdens that the invariably long trials pose on victims, the
16 unavailability of sufficient documentary evidence, and a continued
17 lack of awareness amongst victims about the extent of their rights in
18 this respect. Finally --"

19 And I continue the quote.

20 "-- IOM was told that obtaining a reparations award does not
21 guarantee an effective remedy, as enforcement frequently turns out to
22 be every bit as cumbersome as obtaining the award itself. As a
23 result, the judicial route has not been able to offer effective
24 access to reparations for the vast majority of victims of
25 international crimes in the former Yugoslavia," the IOM said, and

1 finished, saying that this was an experience "that is common to many
2 other post-conflict settings."

3 The first ever compensation ruling in the former Yugoslavia was
4 handed down in June 2015. June 2015. Twenty years were needed for
5 this to happen. And still, this only happened because of great
6 support by non-governmental organisations.

7 Among the, in total, three cases in the former Yugoslavia in
8 which compensation has been awarded up to date, only one verdict is
9 final. The lawyer in this case said that the convicted does not own
10 any property, so it's going to be hard for the order for compensation
11 to be paid by him.

12 In general, there is no assurance that the compensation order
13 will ever be paid, be it in criminal or civil proceedings. And
14 nothing is done on this issue, neither by ICTY or the state of
15 Bosnia-Herzegovina.

16 Like the ICTY, also the Lebanon tribunal refers victims to
17 domestic courts. After the conclusion of the trial, victims can open
18 proceedings for compensation in Lebanese civil courts, using the
19 judgement of the international tribunal. However, the Trial Chamber
20 of that court confirms that Lebanon has no general national
21 compensation scheme for victims. It observed, and I quote the Trial
22 Chamber of the Lebanon Tribunal:

23 "Under Lebanese law, there is no general national compensation
24 scheme for victims of crimes. A victim of an offence can claim
25 compensation for damages suffered by initiating a civil action either

1 before the same criminal court, where the alleged perpetrators and
2 accomplices have been prosecuted, or separately before the competent
3 civil authority."

4 Now, I dug into the jurisprudence of the Lebanese courts, the
5 national courts, and I didn't find one single judgement in which
6 compensation had been granted to a victim.

7 In the proceedings before the Lebanese tribunal, some
8 participating victims stated that they had received a form of
9 compensation from the Hariri family. Others received some money from
10 an ex gratia scheme run by the Lebanese Prime Minister's office.
11 Some had insurance against which they could claim. Some had medical
12 expenses paid for them. But most victims were left with no
13 compensation whatsoever. And if they received some compensation, it
14 was wholly inadequate.

15 The sentencing judgement of Ayyash in 2020 addressed the
16 victims' inability to pursue compensation before national courts.
17 The Legal Representatives sought the establishment of a trust fund
18 for victims of Mr. Ayyash's crimes. Given the lack of a general
19 victims compensation scheme in Lebanon, they asked the Trial Chamber
20 to recommend the creation of one. They also submitted that the Trial
21 Chamber should order Mr. Ayyash to pay a fine or compensation to the
22 participating victims.

23 The Trial Chamber noted, and I quote:

24 "The evidence in the trial revealed a real inequality in how
25 victims of Mr. Ayyash's crimes were treated and compensated and that

1 most victims remain uncompensated."

2 The Trial Chamber found this to be contrary to the UN Basic
3 Principles on the Right to Remedy. It made it clear, and I quote
4 again, the Trial Chamber of the Lebanon tribunal is:

5 "... firmly of the view that it has a moral and legal duty to
6 the victims of crimes found to fall within the Special Tribunal's
7 jurisdiction to do anything it can to help them obtain redress."

8 However, the Trial Chamber of the Lebanon tribunal went on
9 noting that it has no power to make formal orders against Mr. Ayyash
10 or the Government of the Lebanese Republic. It therefore
11 recommended, and I quote again:

12 "(a) to the Government of the Lebanese Republic that it
13 establishes a national victims compensation scheme that conforms to
14 these UN principles; and

15 "(b) the establishment of a special trust fund for victims of
16 crimes determined within the Special Tribunal's jurisdiction."

17 Looking at this practice, only one conclusion can be drawn:
18 Referring victims to national courts to claim compensation can be no
19 option. Domestic legislation, the institutional framework, political
20 practice, and resources determine whether victims have access to
21 present their claims. The consequence is that redress may be
22 available to some victims but not to others.

23 International criminal tribunals offer victims far better access
24 to claim compensation. Examples are the Chambers of Cambodia, the
25 African Chambers in Senegal against Habre. Though we know that their

1 success was ultimately mixed, which was due to their own legal
2 boundaries, at least they made serious efforts to provide victims
3 with adequate reparation.

4 And the best example is, of course, the ICC. It's true that the
5 case-by-case approach of the ICC has resulted in an inconsistent
6 jurisprudence in our view. But the most recent case, Ntaganda, is a
7 landmark case on reparations for victims. In this case, the court
8 took a real victim-centred approach, placing emphasis on the goal of
9 repairing the harm for victims.

10 Now, I'll not go into details of this practice or the other
11 international courts that provided reparation, but my point is that
12 given that domestic courts have generally offered no recourse,
13 international tribunals should fully exhaust their competencies to
14 implement victims' rights to reparation. Leaving victims in the
15 hands of their domestic legal systems renders them dependent on
16 whether the national legislation foresees a real possibility of
17 compensation claims, and more often than not they do not.

18 These Specialist Chambers should open their doors to implement
19 victims' rights to reparation. We know that both routes are still
20 available under the law and the rules. This Court may make a
21 reparation order itself. It may also refer victims to civil
22 litigation in other courts in Kosovo. This Court should do the
23 first.

24 The sad experiences of the domestic courts should make us
25 extremely sceptical when it comes to referring victims to other

1 domestic courts in Kosovo.

2 The Trial Panel in this case has instructed an expert opinion to
3 be provided on this matter, and we are all awaiting this report early
4 November. But let me briefly address some of the risks already
5 looming for victims were they to be referred by the Trial Panel to a
6 national civil court in Kosovo.

7 A crime victim compensation law exists in Kosovo. It was
8 finally passed in 2015. Two years later, the crime victim
9 compensation programme was launched. Under these programmes,
10 compensation from the state can be requested when a victim is unable
11 to get restitution from the convicted defendant or from other
12 sources.

13 But here's the trouble. The Ministry of Justice declined to
14 confirm whether or not the programme covers victims of war crime
15 cases. Reparations for victims is currently an unknown area in war
16 crime trials in Kosovo, even where verdicts include jail sentences.
17 Kosovo's domestic system has been failing victims of war crimes ever
18 since the war ended.

19 Another problem that presents itself concerns the protection of
20 identity. What we've seen in Kosovo is that during criminal
21 proceedings, victims had their identities concealed to protect them.
22 But in civil cases, no such legal mechanisms exist. The result is
23 that victims cannot and will not claim compensation in civil
24 proceedings because they are at risk of exposure.

25 Another obstacle is the tendency to negatively stereotype

1 victims who claim compensation. We've seen this in the countries of
2 the former Yugoslav. Such an attitude demonstrates a lack of
3 sufficient awareness on the side of judges of fundamental war
4 crimes -- war victims' rights. We also learned from the former
5 Yugoslavia that even while some victims succeeded in accessing a
6 remedy, many others have not and will not.

7 We should learn from these experiences. Instead, these
8 Specialist Chambers, this Trial Panel, can and should deal with
9 victims' claims in full itself. Trials and judgements in this Court
10 are necessary. They are a painful last resort.

11 Now, please allow me to finish with a few observations on the
12 reparations that our clients seek in this case.

13 First and foremost, and it has been said already today, they
14 seek prosecution and conviction of the perpetrators of the crimes
15 committed against them. Prosecution is, in and of itself, a part of
16 reparation. Success of this case in the sense that the truth is
17 established is crucial to our clients, but victims also have
18 different interests, interests of their own.

19 One of them is that they are compensated. It's a fundamental
20 legal principle that harm inflicted by one person on another needs
21 redress and compensation. This principle exists in every national
22 legal system. It exists under international law. The right to
23 compensation is recognised by United Nations Basic Principles, and
24 the ICC also recognised this principle.

25 In the latest case dealing with victims reparation, the Trial

1 Chamber observed, and I quote "in determining the amount of the
2 convicted person's liability," monetary liability, "the primary
3 consideration should be the extent of the harm and the costs to
4 repair it."

5 We have noted the Trial Panel's observations in this case on the
6 importance of truth and that establishing the truth may even be more
7 important than compensation. We do agree on the prime relevance of
8 truth-finding, but we also ask your Panel to take the right to
9 compensation seriously.

10 And, of course, this begins with determining the scope and
11 extent of victims' damage and injury under Article 22(7) of the Law,
12 and we also explicitly request the Panel to do this.

13 With the right to compensation comes the right to enforce
14 awarded compensation. The law allows the Specialist Chambers to
15 order the sale and share of forfeited property, proceeds, and any
16 assets between victims. [REDACTED] Pursuant to instruction from Trial
17 Panel I.

17 [[REDACTED] Pursuant to instruction from Trial Panel I.

18 [REDACTED] Pursuant to instruction from Trial Panel I. Too often have
19 we

19 see the lack of enforcement of reparation awards. Examples are the
20 Cambodia Chambers and the Habre Tribunal.

21 Later in this trial, we will address the possible needs of the
22 establishment of a trust fund if it turns out that the accused, if
23 convicted, lacks the means to properly compensate the victims. For
24 now, I would like to say that we do appreciate the Trial Panel's
25 questions already included on this point to the experts.

1 Before handing over again to my colleague, let me conclude on
2 the matter of reparation. Reparation of war victims is an imperative
3 demand of justice. The relevance of their rights is questionable if
4 they have no legal capacity to enforce them.

5 As pointed out by Lord Denning:

6 "A right without a remedy is no right at all."

7 The Trial Panel will have to make a decision whether itself
8 issues an reparation order or whether it refers victims to civil
9 litigation in other courts. In doing so, the Panel should be guided
10 by the nominative weights that the international community attaches
11 to human rights and humanitarian law and to the Principles on the
12 Right to a Remedy.

13 The changes that the international legal order has undergone are
14 reflected in the recourse to international criminal courts.

15 Interests of justice demand that the Specialist Chambers resist
16 the temptation to refer to other civil courts in Kosovo. This would
17 be wrong, as the rights to a remedy demands different. Victims will
18 struggle to get their rights and damage recognised in Kosovo courts.
19 It would mean that their right would be hardly justiciable.

20 In the interests of the law, in the interests of justice, and in
21 the interest of our clients, we ask the Trial Panel to adjudicate
22 these claims itself.

23 Thank you. And with your permission, I would like to hand over
24 again to my colleague.

25 MS. PUES: Reparations should be granted for all the victims

1 participating in these proceedings.

2 Now, no money will bring back the lost family member. No money
3 can ever repair years of depression, of a life deprived of
4 opportunities to work as before and live a life which allows joy and
5 happiness. However, just to be very clear and follow on from what my
6 co-counsel has laid out here, we formally request that the
7 Trial Panel include a decision on the scope and extent of damage,
8 loss, and injury according to Article 22(7) of the Law.

9 And this request will also be filed as a formal submission in
10 due course to the record.

11 The victims have a right to reparations, as my co-counsel has
12 laid out in detail. Victims testifying as witnesses will provide the
13 opportunity for the Panel to understand this damage, loss, and
14 injury. Victims' Counsel will contribute to establishing this extent
15 of the impact of the crimes on their lives through questions put to
16 the victims where necessary, and we may additionally submit expert
17 evidence on this matter and will notify the Panel in due course so
18 that arrangements then could be made.

19 None of this comes, of course, as a surprise, as we have made
20 clear in our previous submissions. And this Panel is the most
21 appropriate judicial body to award reparations.

22 Now, Article 22(7) provides the opportunity, of course, to limit
23 a decision to establishing the identity of victims of any crimes
24 within the Panel's judgement. This, however, is only the case if the
25 requested decision to establish damages would unduly prolong the

1 criminal proceedings.

2 We are now here at the start of this trial. With our submission
3 today, at the very start of the trial proceedings, we are providing
4 every opportunity for the Panel to ensure that the request can be
5 addressed throughout those proceedings here without causing any undue
6 delay at all.

7 Article 22(8) of the law provides for the award of collective or
8 individual reparations, and it is requested that the Panel award
9 reparations on an individual basis. This is specifically the case
10 for those direct victims of torture, whose lives have been destroyed
11 forever. All of them deserve individual compensation for their
12 suffering they have endured. Any collective reparations should be
13 complementary to individual awards.

14 The award of reparations, however, will not mean much if this
15 cannot be enforced, and my co-counsel has made it clear that it
16 remains extremely difficult for victims to enforce reparations where
17 they have been awarded by courts. And we realise that this
18 Trial Panel, Your Honours, won't be able to change this.

19 Yet, this Court is the forum in which justice should be
20 delivered. Justice, however, is not just about the observance of
21 rules and the conduct of fair proceedings. It is not only the
22 arrangement in the courtroom that matters. The arrangements within
23 this forum of justice are not always sufficient to deliver justice.
24 Of course, fairness is critical. But this alone, applying the rules
25 as they have been drafted, does not automatically mean that justice

1 is perceived as having been served.

2 For us, it is important that justice is realised, that we
3 achieve a tangible outcome. Therefore, let me seize this opportunity
4 here and address a broader audience, because our clients, those we
5 represent, don't have any forum in which they can make any claims
6 because they have been so silenced. Call on the Government of
7 Kosovo, if anyone is listening from within there, the international
8 community, to ensure that victims will be able to realise their
9 rights to reparations.

10 We note that a recent initiative has been launched by the
11 government to work on a transitional justice strategy. And as we
12 have made clear throughout our opening statement today, the current
13 legislation and possibilities to receive war crimes reparations
14 exclude specific groups of victims, exclude those we speak for. A
15 trust fund for victims that would ensure that those victims of crimes
16 addressed here before the KSC can realise their claims would be a
17 significant step. We realise that this requires political will and
18 support from the international community and Kosovo.

19 To make victims' rights meaningful, this would be a most
20 significant step.

21 Although, the call for an inclusive trust fund for victims
22 entails a political dimension, it is very much embedded in the
23 realisation of the rights of victims participating here. Justice
24 cannot solely be achieved by establishing a court, by observing rules
25 that have been drawn up. Justice must also always be measured by its

1 outcomes.

2 The Indian philosopher Sen pointedly asked whether the analysis
3 of justice must be so confined to getting the basic institutions and
4 general rules right, should we not also have to examine what emerges
5 in society, including the kind of lives that people can actually
6 lead? This, for me, is the measuring stick.

7 To make a real difference, we hope that our call here today to
8 create a collective fund does not go unheard. The victims we
9 represent here do not have the agency or platform to speak out. We
10 have explained this at length, Your Honours, to the Government of
11 Kosovo, to all contributing to this Court: Setting up a trust fund
12 is a missing piece in the jigsaw. It is, indeed, squarely within the
13 interests of victims I have spoken to who stressed that they do not
14 want any individual recompense from the hands of the accused, whereas
15 a collective fund would be most welcomed.

16 With this call, let me draw to a close and summarise our legal
17 positions as follows:

18 We will exercise the opportunity to ask questions where
19 appropriate to contribute to uncovering the truth and to expose the
20 full impact of the crimes;

21 We submit that the Trial Panel should consider a crime site
22 visit to gain a better understanding for the place and context in
23 which the crimes were committed;

24 We will, in due course, notify the Panel if and how many victims
25 may want to seize the opportunity to present their views before this

1 Panel beyond providing witness testimony;

2 We request that the Panel include a decision on damage, loss,
3 and injury, according to Article 22(7) of the Law; and that the Panel
4 award individual reparations to participating victims according to
5 Article 22(8) of the Law.

6 With this, let me come to the closing aspect of this statement
7 and emphasise once more what an important chance this trial can be to
8 uncover the suffering of those victims that have been silenced for so
9 long.

10 I want to finish today with some of the hopes and wishes that
11 the victims who I have spoken to have expressed for their future:

12 "Harmony and a peaceful family life are what I hope for. I
13 would like to be free, free from fear as I am in danger."

14 "We want to create a state that really defends everyone's rights
15 equally."

16 "My biggest dream would be to live in peace, not to be scared,
17 everybody to respect the law, have equality where the law and the
18 rule of law is respected."

19 Thank you for your attention.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Ms. Pues.

21 This concludes the opening statements of the
22 Specialist Prosecutor and the Victims' Counsel.

23 Before we go and have our lunch break, some remarks. Very
24 short, because we are exactly at 90 minutes after we started.

25 The Panel will hear the testimony of the first two SPO witnesses

1 between Monday, 20 September, 2021, and Tuesday, 28 September, 2021.

2 And in preparation for the first testimonies, I would like to
3 inform the parties and the Victims' Counsel that in addition to the
4 considerations made in the Conduct of Proceedings regarding the mode
5 of questioning of the witnesses, after each examination of the
6 witness, the Panel might ask one or more questions to Mr. Mustafa
7 regarding the witness statement in line with Rule 142(2) of the
8 Rules. Mr. Mustafa will, of course, have the right to remain silent.

9 We will now have a lunch break till half past 2.00. We will
10 then continue with some disclosure issues I would like to discuss
11 with the SPO. There is another matter, another issue which we will
12 have to go for in private session. So we would do that too.

13 That's it for now. The hearing is adjourned.

14 --- Luncheon recess taken at 1.13 p.m.

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

16 PRESIDING JUDGE VELDT-FOGLIA: Please be seated.

17 I look around and I note that -- oh, yes. I note that the
18 presence has changed since the break. So I see that the
19 Specialist Prosecutor is not there anymore. Any other changes?

20 MR. MICHALCZUK: No, Your Honour.

21 PRESIDING JUDGE VELDT-FOGLIA: No, okay. I see the same faces,
22 Mr. von Bone and the Registry.

23 And, Mr. von Bone, the Defence team, there is a slight change I
24 see there or not?

25 MR. VON BONE: Yes, Your Honour. Maybe Mr. Shala will be

1 excused for the moment. Maybe he will join in later.

2 PRESIDING JUDGE VELDT-FOGLIA: That's all right. It's for the
3 record --

4 MR. VON BONE: Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: -- so that we know who --

6 MR. VON BONE: Yes. Mr. Pelaj is present.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay, good.

8 I would like to move, Madam Court Officer, into private session
9 to discuss with the SPO a matter that cannot be shared with the
10 public.

11 Madam Court Officer, could you inform me when we are in private
12 session.

13 [Private session]

14 [Private session text redacted]

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1 [Private session text redacted]

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23 [Open session]

24 THE COURT OFFICER: We are back in open session, Your Honours.

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

1 Before we conclude today's hearing, the Panel would like to
2 discuss, as I already mentioned, two disclosure related matters.

3 The first one is the following: The Panel noted that the SPO
4 recently disclosed a number of batches of evidence - namely, numbers
5 50 till 72. Now, for the Panel, when looking at the batches on
6 Legal Workflow, it is not clear what each of these batches contain,
7 whether they are re-disclosure of unredacted witness material, to
8 which witness each item relates, whether there is also exculpatory
9 material, and also the level of confidentiality of the items, and
10 also if they are on the list of material as presented by the SPO in
11 the recent filing F201.

12 And in order for us to obtain some kind of information like I
13 just mentioned, we need to open the items one by one. And it makes
14 it difficult to orientate through these batches. And from our side,
15 we would really appreciate if the SPO could file something like a
16 disclosure note, even if it would be in the form of a table,
17 outlining the information I just mentioned, as well as the ERN number
18 for the batches 50 till 72 and any future batches, because that would
19 help us and I can imagine the other party and participant to go
20 through the batches a little bit more quickly instead of opening it
21 one by one.

22 So would that be possible, Mr. Prosecutor; and, in the
23 affirmative, what timeframe? You have the floor.

24 [Specialist Prosecutors confer]

25 MR. MICHALCZUK: Your Honours, very few words of the explanation

1 in this regard.

2 Indeed, from Batch number 50, we have started the disclosure of
3 that material that had been already previously disclosed. This time,
4 we are disclosing this material in an unredacted format to the
5 Defence for the Defence to be able to better prepare for the
6 cross-examination of the incoming witnesses, especially the first
7 ones, and for Your Honours to have everything again in front of you
8 when we start interviewing witnesses from next week onwards.

9 If there is any unclarity as to the content of the package, and
10 we understand there might be, and if there is any unclarity, I hereby
11 solemnly apologise for it. We will, indeed, prepare a comprehensive
12 list indicating the batches and what the batch precisely contains,
13 and we'll provide it to Your Honours also by Friday this week, not
14 later than that.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay.

16 MR. MICHALCZUK: And then we'll have clarity, I believe. Thank
17 you.

18 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, thank you. In
19 this case, I will issue then an oral order on the matter to make it
20 clear what would be in the disclosure note.

21 The order is as follows.

22 I hereby order the SPO to file disclosure notes for evidentiary
23 Batches 50 till 72 and for any future batch, including the following
24 information: That would be the ERN number for each item disclosed in
25 the batches, a description of the content of each batch - including,

1 whether they are re-disclosure of lesser redacted or unredacted
2 material - and in relation to which witness it is applicable, if they
3 are on the list of Annex 1 of filing 201, the rule or rules under
4 which they are disclosed, and the level of confidentiality of the
5 items.

6 And this concludes the oral order.

7 And then the second issue. The Panel noted that some of the ERN
8 numbers of the items shown item witness during the SPO interviews
9 cannot be found on Legal Workflow, and we have the impression because
10 they were renumbered. I've some examples. For example, I could
11 mention Witness 3593. I see you already nodding. But can you
12 confirm this or give an ulterior explanation?

13 MR. MICHALCZUK: Your Honours, indeed, when we are presenting
14 some exhibits to the witnesses during the pre-trial proceedings, then
15 we were giving all the old exhibits, already the old ERN numbers new
16 ERN numbers. And the batches from 50 to 72 also intend to clarify
17 this issue, because they are released - if necessary, of course -
18 under the proper numbers that should be there and that will be used
19 during the examination of the witnesses.

20 So I think that with the provision of, as Your Honour named the
21 disclosure note, everything should be clear. Because the numbers
22 would be there, the correct ones, so there would be no confusion on
23 the part of anybody. And, again, if there was any conclusion [sic],
24 we again apologise for it.

25 It's easy for us because we conduct those proceedings, we assign

1 those numbers. It might not be easy for people who are not a part of
2 these proceedings in the pre-trial phase.

3 PRESIDING JUDGE VELDT-FOGLIA: Yes. In addition, would it be
4 possible to receive a conversion table with the old number and the
5 new exhibit number? Because if we have a table, then when we work
6 through the witness statement, we just have to look what the new
7 number is and then we can find it in Legal Workflow.

8 MR. MICHALCZUK: Yes, Your Honour. Of course we will provide
9 such a table.

10 Just to avoid confusion, because, indeed, sometimes, if you read
11 pre-trial statements, the old number is quoted later on. For
12 example, a photograph presented to the witness is then relabelled,
13 another number is assigned, and then which number is it, really, when
14 we use a certain document, photograph later on. So we understand.
15 We will also provide this table.

16 PRESIDING JUDGE VELDT-FOGLIA: Then I will make another oral
17 order in order to assure us of that now.

18 I hereby order the SPO to file a conversion table indicating the
19 old reference numbers and the current ERN number of all items shown
20 to the witness whom the SPO intends to call to testify.

21 And this concludes the oral order.

22 Thank you.

23 Now, at this point I am looking to the parties and to the
24 Victims' Counsel to see if they have any other matter they want to
25 raise today.

1 MR. MICHALCZUK: Your Honours, no other submissions from the
2 Prosecution.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 MS. PUES: Thank you, nothing from our side.

5 PRESIDING JUDGE VELDT-FOGLIA: Mr. von Bone.

6 MR. VON BONE: Your Honour, I noticed the SPO filed an
7 application for admission of material through a bar table motion, and
8 I was wondering what the status of that is now. Is there any ruling
9 on it, or is it -- it was the document --

10 PRESIDING JUDGE VELDT-FOGLIA: I know, exactly what --

11 MR. VON BONE: -- [Overlapping speakers] ...

12 PRESIDING JUDGE VELDT-FOGLIA: -- filing you are referring to.

13 MR. VON BONE: I would like to have some clarity about the
14 status of that document right now, honestly. Other than it is an
15 application for admission of material.

16 PRESIDING JUDGE VELDT-FOGLIA: As far as necessary, as provided
17 for in our decision on the admissibility of evidence, we will take a
18 positive ruling - for example, if there is an Article 37 request -
19 and on others, we won't take any ruling. But you can, of course, as
20 provided for in the Decision on Admissibility, you can, of course,
21 provide with observations. And we are still in that period that you
22 can provide with that.

23 So there will be, if needed, an explicit ruling of our side,
24 depending what is provided for in the law and the rules. And the
25 decision order will be no ruling, and that's also explained in our

1 Decision on the Admissibility.

2 Does that clarify your --

3 MR. VON BONE: By the latest, when would you like to have the
4 observations by the Defence, if any?

5 PRESIDING JUDGE VELDT-FOGLIA: If I'm right, we have arranged
6 for 24 September, Filing 169, paragraph 43 till 45, and paragraph 35
7 till 36.

8 Shall I repeat that for you?

9 MR. VON BONE: Would you repeat?

10 PRESIDING JUDGE VELDT-FOGLIA: Yes, I can understand. The
11 responses are due on 24 September, Filing 169, paragraph 43 till 45,
12 and also paragraph 35 and 36. And it's called a bar table motion in
13 the filing. The Panel will not call it a bar table but a list with
14 material.

15 Does that clarify? Is that an answer to your question?

16 MR. VON BONE: Yes, thank you very much, Your Honour.

17 PRESIDING JUDGE VELDT-FOGLIA: Good. So no other matters to
18 raise, and this concludes today's hearing.

19 I thank the parties and the Victims' Counsel and the team and
20 the Registry for their attendance. I also wish to thank the
21 interpreters and the stenographer back there, and the audio-visual
22 technicians, and the security personnel, and the Court Officer for
23 their assistance today.

24 The hearing is adjourned.

25 --- Whereupon the hearing adjourned at 2.47 p.m.