



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi, and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 13 March 2025

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Sixth Motion for Admission
of Evidence pursuant to Rule 155**

Specialist Prosecutor

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TRIAL PANEL II ("Panel"), pursuant to Articles 19, 21 and 37 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 137, 138(1), 139 and 155 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 13 December 2024, the Specialist Prosecutor's Office ("SPO") filed a motion for the admission pursuant to Rule 155 of the evidence of six witnesses, who it says are unavailable, and a related request ("Motion").¹
2. On 23 January 2025, upon authorisation from the Panel,² the Defence teams for the four Accused (collectively, "Defence") filed a joint response to the Motion ("Response").³
3. On 31 January 2025, the SPO filed a reply to the Response ("Reply").⁴

II. SUBMISSIONS

4. The SPO seeks admission pursuant to Rule 155 of the witness statements, exhibits associated therewith and other written records where applicable (collectively, "Proposed Evidence") of the following witnesses: W00200, W00207, W00490, W00778, W00025 and W02135 (collectively, "Witnesses").⁵ The SPO

¹ F02783, Specialist Prosecutor, *Prosecution Sixth Motion for Admission of Evidence Pursuant to Rule 155 and Related Request*, 13 December 2024, confidential, with Annexes 1-7, confidential (a public redacted version was filed on the same day, F02783/RED).

² F02800, Panel, *Order on the Extension of Time for Filings and Private Session Transcript Reviews During Winter Recess Period*, 19 December 2024, para. 15(b).

³ F02855, Specialist Counsel, *Joint Defence Response to 'Prosecution Sixth Motion for Admission of Evidence Pursuant to Rule 155 and Related Request'*, 23 January 2025, confidential, with Annex 1, confidential (a public redacted version was filed on 6 March 2025, F02855/RED).

⁴ F02889, Specialist Prosecutor, *Prosecution Reply to 'Joint Defence Response to Prosecution Sixth Motion for Admission of Evidence Pursuant to Rule 155'*, 31 January 2025, confidential (a public redacted version was filed on 3 February 2025, F02889/RED).

⁵ Motion, para. 1. *See also* Motion, para. 3, *referring to* Annexes 1-6 to the Motion.

submits that: (i) the Witnesses are unavailable;⁶ and (ii) the Proposed Evidence meets the admissibility criteria and its admission is in the interest of justice.⁷ The SPO further seeks the addition of one prior statement of W02135 to its list of exhibits⁸ (“Exhibit List”).⁹

5. The Defence recalls its concerns regarding the necessity of orality as a means of preserving the fairness of the proceedings and points to what it says is untested evidence already on the case record.¹⁰ The Defence argues that the changing circumstances related to W02135 have created a unique situation that precludes the opportunity to challenge central allegations in these proceedings.¹¹ The Defence proposes that portions of W02135’s evidence be excluded from the trial record, together with evidence related to any alleged bad characteristics personal to an Accused.¹² The Defence further argues that the assertion that W02135’s evidence is corroborated by other international witnesses is not wholly accurate, and therefore it should be assessed accordingly by the Trial Panel.¹³ The Defence does not object to the admission of the Proposed Evidence of W00025, W00200, W00207, W00490 and W00778 pursuant to Rule 155.¹⁴

6. The SPO replies that the Response ignores the applicable law and the Panel’s previous findings and that the Proposed Evidence satisfies the relevant criteria and its admission will assist the Panel in determining the truth in this case.¹⁵

⁶ Motion para. 2. *See also* Motion, para. 3, referring to Annex 7 to the Motion.

⁷ Motion, para. 2. *See also* Motion, paras 4-6.

⁸ F02971, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 28 February 2025, with Annex 1 (“Exhibit List”), strictly confidential and *ex parte*, and Annex 2, confidential.

⁹ Motion, para. 1.

¹⁰ Response, para. 8.

¹¹ Response, para. 8.

¹² Response, para. 8.

¹³ Response, para. 8.

¹⁴ Response, paras 9-13.

¹⁵ Reply, para. 1.

III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in its first Rule 155 Decision.¹⁶

IV. DISCUSSION

1. W00200

8. The SPO submits that the Proposed Evidence of W00200¹⁷ is relevant,¹⁸ authentic and reliable,¹⁹ and that its probative value is not outweighed by any prejudice.²⁰

9. The Defence does not object to the admission of W00200's Proposed Evidence pursuant to Rule 155.²¹

10. The Panel notes that the SPO has submitted W00200's death certificate.²² The Defence did not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

11. With regard to the *prima facie* reliability of W00200's Statements, the Panel notes that: (i) items 1-2 of Annex 1 to the Motion²³ consist of records of the witness's interviews on official templates and contain the witness's personal details, the stamp and signature of an authorised official, indications of the case

¹⁶ F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, paras 10-19 (a public redacted version was filed on 8 September 2023, F01603/RED).

¹⁷ W00200's Proposed Evidence consists of the following statements, including any translations thereof: (i) 093391-093400-ET RED, pp. 093392-093394-ET RED; (ii) 000207-000209-ET RED; and (iii) 093391-093400-ET RED, p. 093398 ("W00200's Statements"). See Annex 1 to the Motion.

¹⁸ Motion, paras 8-9.

¹⁹ Motion, para. 10.

²⁰ Motion, para. 11.

²¹ Response, para. 10.

²² Annex 7 to the Motion, item 1.

²³ 093391-093400-ET RED, pp. 093392- 093394-ETRED; 000207-000209-ET RED.

number, date, time and place of the interviews, the signature of the witness, the recording clerk and the investigating judge, witness warnings and witness acknowledgement; and (ii) item 3 of Annex 1 to the Motion²⁴ is recorded on an official template and contains the witness's personal details, the stamp and signature of an authorised official, indications of the case number, date, time and place of the interview, the signature of the witness, the recording clerk and the investigating judge, witness warnings and witness acknowledgement.²⁵ For these reasons, the Panel finds that W00200's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

12. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W00200's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

13. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that the proposed evidence contained in W00200's Statements is relevant in respect of alleged crimes committed in or around Rahovec/Orahovac in or around June 1999 and associated issues relevant to the charges.²⁶ In light of its findings above,²⁷ the Panel is also satisfied that W00200's Statements are *prima facie* authentic and probative within the meaning of Rule 138(1). Furthermore, as noted above,²⁸ the evidence contained in W00200's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment, and the Defence does not object to its admission. In addition, the Panel notes the SPO's submission that W00200's Proposed Evidence is consistent with, and corroborated in material

²⁴ 093391-093400-ET RED, p. 093398.

²⁵ See Motion, para. 10; Annex 1 to the Motion, pp. 1-2.

²⁶ See Motion, paras 7-9, and references cited therein.

²⁷ See, in particular, above para. 11.

²⁸ See above paras 9, 12.

respects by, *inter alia*, statements of other witnesses in the case,²⁹ including witnesses whom the Defence had the opportunity to cross-examine.³⁰ In light of the foregoing, the Panel finds that the probative value of W00200's Statements is not outweighed by their prejudicial effect.

14. Accordingly, the Panel finds that W00200's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

2. W00207

15. The SPO submits that the Proposed Evidence of W00207³¹ is relevant,³² authentic and reliable,³³ and that its probative value is not outweighed by any prejudice.³⁴

16. The Defence does not object to the admission of W00200's Proposed Evidence pursuant to Rule 155.³⁵

17. The Panel notes that the SPO has submitted W00207's death certificate.³⁶ The Defence did not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

²⁹ See Motion, para. 11, *referring to* W01163's statements: 009819-TR-ET Parts 1 and 4 RED2, Parts 2-3 RED (admitted as P01701.1-4_ET); W00207's statements: SITF00408985-SITF00408986-ET, 007613-TR-ET Parts 3 RED; W00490's statements: 088748-088749-ET RED; 088746-088747-ET RED; SPOE00298658-00298659.

³⁰ See Motion, para. 11, *referring to* W01163; W02153; W00208.

³¹ W00207's Proposed Evidence consists of the following statements, including any translations thereof: (i) 007613-TR-ET Part 1 RED2, Part 2, Parts 3-4 RED; (ii) 007613b Parts 1 and 3-4 RED, 007613b Parts 2 and 5; and (iii) U000-0017-U000-0021 ("W00207's Statements"). See Annex 2 to the Motion.

³² Motion, paras 12-13.

³³ Motion, paras 14-15.

³⁴ Motion, para. 16.

³⁵ Response, para. 11.

³⁶ Annex 7 to the Motion, item 2.

18. With regard to the *prima facie* reliability of W00207's Statements, the Panel notes that: (i) item 1 of Annex 2 to the Motion³⁷ consists of the transcript of the audio-video recorded SITF interview with W00207 and contains indications of the date, time, place, reference number, the witness's details, details of other persons participating in the interview, witness warnings and witness acknowledgement; (ii) item 2 of Annex 2 to the Motion³⁸ consists of the audio-video recording of the SITF interview with W00207 including the original packaging and sealing of the DVD with chain of custody information, signatures of the witness and interviewers on the DVD, indications of the date, time and place of the interview, the witness's personal details, details of other persons participating in the interview, witness warnings and witness acknowledgement; and (iii) item 3 of Annex 1 to the Motion³⁹ is recorded on the official template of the ICTY and contains the witness' signature, indications of the date and place of the interview, the witness's details, details and signatures of other persons participating in the interviews, witness warnings and witness acknowledgements.⁴⁰ For these reasons, the Panel finds that W00207's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

19. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W00207's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

20. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that the proposed evidence contained in W00207's Statements is relevant in respect of alleged crimes committed in or around Rahovec/Orahovac in or around June 1999

³⁷ 007613-TR-ET Part 1 RED2, Part 2, Parts 3 and 4 RED.

³⁸ 007613b Parts 1 and 3-4 RED, Parts 2 and 5.

³⁹ U000-0017-U000-0021.

⁴⁰ See Motion, paras 14-15; Annex 2 to the Motion, pp. 1-2.

and associated issues relevant to the charges.⁴¹ In light of its findings above,⁴² the Panel is also satisfied that W00207's Statements are *prima facie* authentic and probative within the meaning of Rule 138(1). Furthermore, as noted above,⁴³ the evidence contained in W00207's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment, and the Defence does not object to its admission. In addition, the Panel notes the SPO's submission that W00207's Proposed Evidence is consistent with, and corroborated in material respects by, *inter alia*, statements of other witnesses in the case,⁴⁴ including witnesses whom the Defence had the opportunity to cross-examine.⁴⁵ In light of the foregoing, the Panel finds that the probative value of W00207's Statements is not outweighed by their prejudicial effect.

21. Accordingly, the Panel finds that W00207's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

3. W00490

22. The SPO submits that the Proposed Evidence of W00490⁴⁶ is relevant,⁴⁷ authentic and reliable,⁴⁸ and that its probative value is not outweighed by any prejudice.⁴⁹

⁴¹ See Motion, paras 7, 12, 13, and references cited therein.

⁴² See, in particular, above para. 18.

⁴³ See above paras 16, 19.

⁴⁴ See Motion, para. 16, referring to W00490; W01163; W00200.

⁴⁵ See Motion, para. 16, referring to W01163; W02153; W00208.

⁴⁶ W00490's Proposed Evidence consists of the following statements, including any translations thereof: (i) 088748-088749-ET RED; and (ii) 088746-088747-ET RED ("W00490's Statements"). See Annex 3 to the Motion.

⁴⁷ Motion, para. 17.

⁴⁸ Motion, para. 18.

⁴⁹ Motion, para. 19.

23. The Defence does not object to the admission of W00490's Proposed Evidence pursuant to Rule 155.⁵⁰

24. The Panel notes that the SPO has submitted W00490's death certificate.⁵¹ The Defence did not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

25. With regard to the *prima facie* reliability of W00490's Statements, the Panel notes that: (i) item 1 of Annex 3 to the Motion⁵² contains the witness's details, indications of the date, time and place of the statement, the signature of record taker, the stamp and signature of an authorised official, the witness's signature, indications of the relevant legal provisions, witness warnings and acknowledgement; and (ii) item 2 of Annex 3 to the Motion⁵³ is recorded on an official template and contains indications of the case number, date, time and place of the interview, witness warnings and signed witness acknowledgement, the witness's details, the signature of the witness, the recording clerk and the investigating judge, indications of the relevant legal provisions, and the stamp and signature of an authorised official.⁵⁴ For these reasons, the Panel finds that W00490's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

26. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W00490's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

27. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that the proposed evidence contained in W00490's Statements is relevant in respect of

⁵⁰ Response, para. 12.

⁵¹ Annex 7 to the Motion, item 3.

⁵² 088748-088749-ET RED.

⁵³ 088746-088747-ET RED.

⁵⁴ See Motion, para. 18; Annex 3 to the Motion, p. 1.

alleged crimes committed in or around Rahovec/Orahovac in or around June 1999 and related issues relevant to the charges.⁵⁵ In light of the above,⁵⁶ the Panel is also satisfied that W00490's Statements are *prima facie* authentic and probative within the meaning of Rule 138(1). Furthermore, as noted above,⁵⁷ the evidence contained in W00490's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment, and the Defence does not object to its admission. In addition, the Panel notes the SPO's submission that W00490's Proposed Evidence is consistent with, and corroborated in material respects by, *inter alia*, statements of other witnesses in the case,⁵⁸ including witnesses whom the Defence had the opportunity to cross-examine.⁵⁹ In light of the foregoing, the Panel finds that the probative value of W00490's Statements is not outweighed by their prejudicial effect.

28. Accordingly, the Panel finds that W00490's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

4. W00778

29. The SPO submits that the Proposed Evidence of W00778⁶⁰ is relevant,⁶¹ authentic and reliable,⁶² and that its probative value is not outweighed by any prejudice.⁶³

⁵⁵ See Motion, paras 7, 17, and references cited therein.

⁵⁶ See, in particular, above para. 25.

⁵⁷ See above paras 23, 26.

⁵⁸ See Motion, para. 19, referring to. W00200, W00207, W01163.

⁵⁹ See Motion, para. 19, referring to W01163, W02153, W00208.

⁶⁰ W00778's Proposed Evidence consists of the following statements, including any translations thereof: (i) 005211-TR-ET Part 1 Revised RED, Parts 2-5 Revised; and (ii) 005211b Parts 1 and 3 RED, Parts 2 and 4-5 ("W00778's Statements"). See Annex 4 to the Motion.

⁶¹ Motion, paras 21-22.

⁶² Motion, para. 23.

⁶³ Motion, para. 24.

30. The Defence does not object to the admission of W00778's Proposed Evidence pursuant to Rule 155.⁶⁴

31. The Panel notes that the SPO has submitted W00778's death certificate.⁶⁵ The Defence did not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

32. With regard to the *prima facie* reliability of W00778's Statements, the Panel notes that: (i) item 1 of Annex 4 to the Motion⁶⁶ consists of the transcript of the audio-video recorded SITF interview with W00778 and contains the witness's details, indications of the date, time, place and reference number, details of other persons participating in the interview, witness warnings and witness acknowledgement; and (ii) item 2 of Annex 4 to the Motion⁶⁷ consists of the audio-video recording of the SITF interview with W00778 including the original packaging and sealing of the DVD with information evidencing chain of custody, the signatures of the witness and interviewers on the DVD, indications of the date, time and place of the interview, and the witness's personal details.⁶⁸ For these reasons, the Panel finds that W00778's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

33. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W00778's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

34. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that the proposed evidence contained in W00778's Statements is relevant in respect of

⁶⁴ Response, para. 13.

⁶⁵ Annex 7 to the Motion, item 4.

⁶⁶ 005211-TR-ET Part 1 Revised RED, Parts 2-5 Revised.

⁶⁷ 005211b Parts 1 and 3 RED, Parts 2 and 4-5.

⁶⁸ See Motion, para. 23; Annex 4 to the Motion, p. 1.

alleged crimes committed in or around Vërban/Vrban in or around June 1999 and related issues relevant to the charges.⁶⁹ In light of the above,⁷⁰ the Panel is also satisfied that W00778's Statements are *prima facie* authentic and probative within the meaning of Rule 138(1). Furthermore, as noted above,⁷¹ the evidence contained in W00778's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment, and the Defence does not object to its admission. In addition, the Panel notes the SPO's submission that W00778's Proposed Evidence is consistent with, and corroborated in material respects by, *inter alia*, statements of other witnesses in the case,⁷² including witnesses whom the Defence had the opportunity to cross-examine.⁷³ In light of the foregoing, the Panel finds that the probative value of W00778's Statements is not outweighed by their prejudicial effect.

35. Accordingly, the Panel finds that W00778's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

5. W00025

36. The SPO submits that the Proposed Evidence of W00025⁷⁴ is relevant,⁷⁵ authentic and reliable,⁷⁶ and that its probative value is not outweighed by any prejudice.⁷⁷

⁶⁹ See Motion, paras 20-22, and references cited therein.

⁷⁰ See *in particular above* para. 32.

⁷¹ See *above* paras 30, 33.

⁷² See Motion, para. 24, *referring to*. [REDACTED].

⁷³ See Motion, para. 24, *referring to* [REDACTED].

⁷⁴ W00025's Proposed Evidence consists of the following statements, including any translations thereof: (i) 005402-TR-ET Parts 1-2 and 4 Revised RED2, Part 3 Revised; (ii) 005402b Parts 1-2 and 4 RED, Part 3; and (iii) SITF00195535-SITF00195552-ET RED; and (iv) 005400-005401-ET RED ("W00025's Statements"). See Annex 5 to the Motion.

⁷⁵ Motion, para. 26.

⁷⁶ Motion, paras 27-28.

⁷⁷ Motion, para. 29.

37. The Defence does not object to the admission of W00025's Proposed Evidence pursuant to Rule 155.⁷⁸

38. The Panel notes that the SPO has submitted W00025's death certificate.⁷⁹ The Defence did not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

39. With regard to the *prima facie* reliability of W00025's Statements, the Panel notes that: (i) item 1 of Annex 5 to the Motion⁸⁰ consists of the transcript of the audio-video recorded SITF interview with W00025 and contains the witness's details, indications of the date, time, place and reference number, details of other persons participating in the interview, witness warnings and witness acknowledgement; (ii) item 2 of Annex 5 to the Motion⁸¹ consists of the audio-video recording of the SITF interview with W00025 including the original packaging and sealing of the DVD with information evidencing the chain of custody, the signatures of the witness and interviewers on the DVD, indications of the date, time and place of the interview, the witness's personal details, and details of other persons participating in the interview; (iii) item 3 of Annex 5 to the Motion⁸² consists of the transcript of the witness's interview and contains the witness's details, indications of the date, time, place and reference number, details of other persons participating in the interview, witness warnings and witness acknowledgement, the signature of the record taker and authorised official and the witness's signature; and (iv) item 4 of Annex 5 to the Motion⁸³ contains the witness's details, indications of the date, time and place of the statement, the signature of an authorised official, the witness's signature and indications of

⁷⁸ Response, para. 9.

⁷⁹ Annex 7 to the Motion, item 5.

⁸⁰ 005402-TR-ET Parts 1-2 and 4 Revised RED2, Part 3 Revised.

⁸¹ 005402b Parts 1-2 and 4 RED, Part 3.

⁸² SITF00195535-SITF00195552-ET RED.

⁸³ 005400-005401-ET RED.

relevant legal provisions.⁸⁴ For these reasons, the Panel finds that W00025's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

40. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W00025's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

41. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that the proposed evidence contained in W00025's Statements is relevant in respect of alleged crimes committed in or around Gjilan/Gnjilane in or around June 1999 and related issues relevant to the charges.⁸⁵ In light of the above,⁸⁶ the Panel is also satisfied that W00025's Statements are *prima facie* authentic and probative within the meaning of Rule 138(1). Furthermore, as noted above,⁸⁷ the evidence contained in W00025's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment, and the Defence does not object to its admission. In addition, the Panel notes the SPO's submission that W00025's Proposed Evidence is consistent with, and corroborated in material respects by, *inter alia*, statements of other witness in the case,⁸⁸ some of which the Defence had the opportunity to cross-examine.⁸⁹ In light of the foregoing, the Panel finds that the probative value of W00025's Statements is not outweighed by their prejudicial effect.

42. Accordingly, the Panel finds that W00025's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

⁸⁴ See Motion, paras 27-28; Annex 5 to the Motion, pp. 1-2.

⁸⁵ See Motion, paras 25-26, and references cited therein.

⁸⁶ See *in particular above* para. 39.

⁸⁷ See *above* paras 37, 40.

⁸⁸ See Motion, para. 29, *referring to* [REDACTED].

⁸⁹ See Motion, para. 29, *referring to* [REDACTED].

6. W02135

(a) Request to Amend the Exhibit List

43. The SPO seeks authorisation to amend the Exhibit List by adding W02135's testimony, provided in 2016 ("W02135's 2016 Testimony").⁹⁰ The SPO submits that there is good cause for the requested amendment and very limited prejudice, if any, to the Defence.⁹¹ The SPO argues that W02135's 2016 Testimony, which was disclosed in June 2024 and concerns a witness known to the Defence since 2021, was not previously added to the Exhibit List because W02135 was initially expected to testify pursuant to Rule 154 and the SPO intended to elicit relevant evidence from W02135 in its supplemental questioning.⁹²

44. The Defence does not object to the addition of W02135's 2016 Testimony to the Exhibit List.⁹³

45. Pursuant to Rule 118(2), the Panel may permit the amendment of the exhibit list upon timely notice and a showing of good cause. In this regard, the Panel recalls that, as proceedings advance, any further requests to amend the exhibit list will be subject to greater scrutiny.⁹⁴ As previously stated,⁹⁵ the Panel has already permitted the SPO to add items to the exhibit list and the Exhibit List is already, by any standards, voluminous. With this in mind, the Panel will assess whether, at the current stage of proceedings, the SPO has provided timely notice and shown

⁹⁰ Motion, para. 39, referring to 121483-121658.

⁹¹ Motion, para. 39.

⁹² Motion, para. 39.

⁹³ Response, para. 16.

⁹⁴ See F02167, Panel, *Decision on Prosecution Requests to Amend the Exhibit List (F02099)* ("7 March 2024 Decision"), 7 March 2024, confidential, para. 10 (a public redacted version was filed on the same day, F02167/RED). See also Transcript of Hearing, 15 February 2023, pp. 2017-2018.

⁹⁵ 7 March 2024 Decision, para. 10; F01995, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01844)* ("8 December 2023 Decision"), 8 December 2023, confidential, para. 9 (a public redacted version was issued on the same day, F01995/RED); F01902, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01858)* ("3 November 2023 Decision"), 3 November 2023, para. 7; F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747)* ("12 September 2023 Decision"), 12 September 2023, confidential, para. 16 (a public redacted version was issued on 10 November 2023, F01785/RED).

good cause for the amendment of its Exhibit List, and that no undue prejudice is caused to the Defence as a result.⁹⁶

46. As regards the timeliness of notice, the Panel notes the SPO's submission that W02135's 2016 Testimony was not previously added to the Exhibit List because W02135 was initially expected to testify pursuant to Rule 154 and the SPO intended to elicit relevant evidence from W02135 in its supplemental questioning.⁹⁷ The Panel notes that W02135 was expected to testify in the 19 August to 7 November 2024 block,⁹⁸ before his passing.⁹⁹ The Panel is therefore of the view that the SPO could not have requested addition of W02135's 2016 Testimony to the Exhibit List sooner and, thus, finds the notice provided by the SPO to be timely.

47. As regards good cause and the question of the relevance and importance of W02135's 2016 Testimony, the Panel observes that it relates to, *inter alia*: (i) meetings W02135 attended with KLA members; and (ii) information that W02135 received about crimes allegedly committed by KLA members. In light of the above, the Panel is satisfied that the 2016 Testimony is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

48. As regards prejudice, the Panel recalls that the Defence does not object to the admission of W02135's 2016 Testimony to the Exhibit List.¹⁰⁰ The Panel further considers: (i) that W02135's 2016 Testimony was disclosed to the Defence on 20 June 2024 under Rule 102(1)(b);¹⁰¹ and (ii) the SPO's submission that W02135's

⁹⁶ 7 March 2024 Decision, para. 10; 8 December 2023 Decision, para. 9; 3 November 2023 Decision, para. 7; 12 September 2023 Decision, para. 16.

⁹⁷ Motion, para. 39.

⁹⁸ F02451/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Witnesses for 19 August to 7 November 2024*, 16 July 2024, confidential, pp. 89-104.

⁹⁹ See Annex 7 to the Motion, item 6.

¹⁰⁰ Response, para. 16.

¹⁰¹ See Disclosure Package 1303.

2016 Testimony is cumulative of and supplementary to W02135's other statements.¹⁰² The Panel accordingly finds that no undue prejudice is caused to the Defence by the late addition of W02135's 2016 Testimony to the Exhibit List.

49. The Panel therefore grants the SPO's motion to amend its exhibit list in respect of this document.

(b) Rule 155 Request

50. The SPO submits that the Proposed Evidence of W02135¹⁰³ is relevant,¹⁰⁴ authentic and reliable,¹⁰⁵ and that its probative value is not outweighed by any prejudice.¹⁰⁶

51. The Defence opposes the admission of W02135's SPO Statement insofar as it alleges that the evidence contained therein: (i) goes to the alleged acts and conduct of two Accused;¹⁰⁷ (ii) is central to allegations in the Indictment;¹⁰⁸ (iii) contains speculative and unsupported opinion evidence, which is largely uncorroborated,

¹⁰² See Motion, para. 39.

¹⁰³ W02135's Proposed Evidence consists of the following items, including any translations thereof: (i) SPOE00000681-SPOE00000696 ("W02135's 2016 Statement"); (ii) 121483-121658 (defined above as "W02135's 2016 Testimony"); (iii) 087342-087360 ("W02135's SPO Statement"); and (iv) 122805-122808 ("W02135's Preparation Note") (collectively, "W02135's Statements"); and (i) 078236-01-TR-ET; (ii) SPOE00212616-SPOE00212616; (iii) SPOE00212620-SPOE00212620; (iv) SPOE00215009-SPOE00215012; (v) SITF00011523-00011528; (vi) SITF40000700-40000702; (vii) SPOE00000057-00000058; (viii) SPOE00215089-SPOE00215094; (ix) SPOE00215095-SPOE00215100; (x) SPOE00212674-SPOE00212674; (xi) SPOE00217519-SPOE00217918, pp. SPOE00217544-SPOE00217545; (xii) SPOE00000699-SPOE00000729, pp. SPOE00000700-SPOE00000706; (xiii) SPOE00000699-SPOE00000729, pp. SPOE00000715-SPOE00000716; (xiv) SPOE00000699-SPOE00000729, pp. SPOE00000717-SPOE00000722; (xv) SITF00412570-00412582; (xvi) SPOE00000749-SPOE00000790; (xvii) SPOE00215024-SPOE00215028; (xviii) SITF00194648-00194652; (xix) SITF00194707-00194710; (xx) SITF00194887-00194891; (xxi) SITF00194869-00194873; (xxii) SPOE00212586-00212692, pp. SPOE00212681-SPOE00212682; (xxiii) 020723-020725; and (xxiv) SITF00194688-00194691 ("W02135's Associated Exhibits"). See Annex 6 to the Motion.

¹⁰⁴ Motion, para. 31.

¹⁰⁵ Motion, paras 32-34.

¹⁰⁶ Motion, paras 37-38.

¹⁰⁷ Response, para. 18. See also Motion, paras 19-25.

¹⁰⁸ Response, para. 18. See also Motion, paras 28-29.

denying the Defence a fair opportunity to challenge the allegations;¹⁰⁹ and (iv) goes to an incident which is not charged in the Indictment and in relation to which the SPO has not provided adequate notice.¹¹⁰ The Defence opposes the admission of W02135's Preparation Note insofar as it alleges that the documents which the witness was referred to: (i) were not authored or created by W02135 or the organisation he represented;¹¹¹ (ii) do not contain any reference to W02135 specifically;¹¹² and (iii) concern the alleged acts and conduct of two Accused.¹¹³ The Defence does not oppose the admission of W02135's 2016 Statement.¹¹⁴ The Defence does not object in principle to the admission of W02135's 2016 Testimony; however, it objects to the admission of portions thereof that contain lengthy procedural discussions which have no bearing on W02135's testimony as well as the testimony of an unrelated person.¹¹⁵

52. Lastly, the Defence objects to the admission of ten of W02135's Associate Exhibits.¹¹⁶ The Defence does not object to the admission of the remaining Associated Exhibits.¹¹⁷

53. The SPO replies that: (i) the SPO does not object to the admission of the cover page and the particular substantive parts of W02135's 2016 Testimony as identified by the Defence in the Response;¹¹⁸ (ii) the Panel has been unequivocal that there is no bar to admitting evidence of acts and conduct of the Accused through

¹⁰⁹ Response, para. 18.

¹¹⁰ Response, para. 26. *See also* Motion, paras 22-27.

¹¹¹ Response, para. 30.

¹¹² Response, para. 30.

¹¹³ Response, para. 30.

¹¹⁴ Response para. 15.

¹¹⁵ Response para. 17.

¹¹⁶ Response, paras 31-39 *referring to* SITF00011523-00011528; SPOE00217519-SPOE00217918, pp. SPOE00217544-SPOE00217545; SPOE00212674-SPOE00212674; 020723-020725; SITF00194688-00194691; SITF00194648-00194652; SITF00194707-00194710; SITF00194887-00194891; SITF00194869-00194873; SPOE00212681-SPOE00212682.

¹¹⁷ Response, para. 31, footnote 54.

¹¹⁸ Reply, para. 2.

Rule 155;¹¹⁹ (iii) the evidence contained in the SPO Statement concerns the Accused's status, title or authority rather than a specific action in connection with a specific crime;¹²⁰ (iv) any opinion evidence contained in the SPO Statement does not bar its admission, but goes to its evidentiary weight, which will be assessed by the Panel at the conclusion of the proceedings;¹²¹ (v) the Preparation Note reflects the position of W02135 regarding relevant contemporaneous documents, reflecting events during or related to his mandate;¹²² (vi) the Panel has already ruled that the bulk of the proposed Associated Exhibits are an indispensable and inseparable part of W02135's statements;¹²³ (vii) the Associated Exhibits discussed in W02135's Preparation Note either contain direct references to W02135, were authored by W02135, or are military reports that W02135 could speak to;¹²⁴ (viii) even if certain evidence relates to an uncharged incident in the manner suggested, this would not be a bar to its admission insofar as that evidence is not tendered for the purpose of demonstrating propensity or bad character but because it is allegedly relevant, *inter alia*, to command and control, to the existence of parallel authorities which threatened the authority of Resolution 1244 and to W02135's evidence of his concerns about the risk that the KLA could react to international demands by turning on KFOR.¹²⁵

54. The Panel notes that the SPO has submitted a BBC news article reporting on and confirming W02135's death.¹²⁶ The Defence does not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

¹¹⁹ Reply, para. 3.

¹²⁰ Reply, para. 3.

¹²¹ Reply, para. 3.

¹²² Reply, para. 5.

¹²³ Reply, para. 6.

¹²⁴ Reply, para. 6.

¹²⁵ Reply, para. 7.

¹²⁶ Annex 7 to the Motion, item 6.

55. *W02135's Statements*. With regard to the *prima facie* reliability of W02135's Statements, the Panel notes at the outset that W02135's 2016 Statement and SPO Statement have already been found to be, *inter alia*, *prima facie* authentic and probative.¹²⁷ The Panel further notes that: (i) item 1 of Annex 6 to the Motion¹²⁸ contains indications of the date and place of the statement, the witness's personal details, the signature of the witness, and indication of a case number; (ii) item 2 of Annex 6 to the Motion¹²⁹ consists of an official witness testimony and contains indications of the date, time, and attendees to the relevant hearing; (iii) item 3 of Annex 6 to the Motion¹³⁰ contains indications of the date and place of the interview, the witness's personal details, the names of the SPO staff, the witness's initials on all pages and his signed declaration, the signatures of the SPO staff, witness warnings, rights, and witness acknowledgement; and (iv) item 4 of Annex 6 to the Motion¹³¹ is recorded on the SPO's official template and contains details of the date, time, place and attendees, witness warnings, the names and signatures of the SPO personnel and confirmation by the witness of the accuracy and truthfulness of the record. For these reasons, the Panel finds that W02135's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

56. Turning to the assessment of the Rule 138(1) specific requirements, the Panel recalls that, in addition to *prima facie* authentic and probative, as mentioned above,¹³² W02135's 2016 Statement and SPO Statement have already been found to

¹²⁷ F02571, Panel, *Decision on the Remainder of Prosecution Motion for Admission of Evidence of Witnesses W02135, W04295, W04372, W04590, W04600, W04737, W01158, W01605, W04240, W04278, W04352, W04366, and W04427 Pursuant to Rule 154 (F02450 and F02460)* ("13 September 2024 Decision"), 13 September 2024, confidential, paras 17-18 (a public redacted version was issued on the same day, F02571/RED).

¹²⁸ W02135's 2016 Statement.

¹²⁹ W02135's 2016 Testimony.

¹³⁰ W02135's SPO Statement.

¹³¹ W02135's Preparation Note.

¹³² See above para. 55.

be also relevant.¹³³ The Panel notes that the Defence does not oppose the admission of W02135's 2016 Statement.¹³⁴

57. Regarding the Defence's argument that W02135's SPO Statement provides unique evidence that is central to the allegations in the Indictment and that concerns the acts and conduct of alleged subordinates to the Accused,¹³⁵ the Panel recalls that corroboration does not constitute a pre-requisite for admission of evidence.¹³⁶ The Panel further recalls that the importance of the proposed evidence and whether it goes to acts and conduct of the Accused are not, in and of themselves, grounds to refuse admission.¹³⁷ The Panel further considers that the Defence was able to question other witnesses in relation to various topics covered by W02135's Proposed Evidence, including on matters related to the alleged acts and conduct of the Accused.¹³⁸ Insofar as any aspect of the offered evidence could not be tested at trial through a witness, the Defence will be permitted to make submissions in relation to any such aspects of the proposed evidence in the course of final submissions and this would be accounted for by the Panel when evaluating the weight, if any, and probative value of that evidence and whether to place reliance upon that evidence in compliance with Rule 140(4)(a).¹³⁹

58. Regarding the Defence's argument that W02135's SPO Statement contains speculative and unsupported opinion evidence,¹⁴⁰ the Panel recalls that the Rules do not provide any exclusionary principle for opinion evidence in respect of witnesses who are not experts.¹⁴¹ To be of any assistance to the Panel, opinion

¹³³ 13 September 2024 Decision, para. 16.

¹³⁴ Response para. 15.

¹³⁵ See Response, paras 18-25.

¹³⁶ F02283, Panel, *Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155*, 3 May 2024 ("Fourth Rule 155 Decision"), confidential, para. 14 (a public redacted version was filed on the same day, F02283/RED).

¹³⁷ Fourth Rule 155 Decision, para. 14, and references cited therein.

¹³⁸ See e.g. W04410, W03881, W04147, W02161, W01453, W04408; W04746; W02144; W02183.

¹³⁹ Fourth Rule 155 Decision, para. 51.

¹⁴⁰ Response, para. 18.

¹⁴¹ Transcript of Hearing, 18 July 2023, p. 5984, lines 19-21.

evidence must be clearly based on facts or circumstances that can be verified.¹⁴² Where this is not the case, the evidence will simply be disregarded or given little or no weight.¹⁴³ As for the alleged speculative or unsupported character of certain aspects of the evidence, where established, this would be accounted for at the time when the Panel will consider what weight and probative value, if any, to attach to that evidence.

59. Regarding the Defence's submissions that W02135's SPO Statement goes to an incident which is not charged in the Indictment and in relation to which adequate notice was not provided by the SPO,¹⁴⁴ the Panel agrees that the Defence did not have a meaningful opportunity to cross-examine available witnesses in regards to this incident.¹⁴⁵ The Panel is therefore of the view that, in light of the relatively remote relevance of this incident to the case and of the fact that the Defence will not have an opportunity to cross-examine W02135 in respect of it, the probative value of W02135's evidence on that specific point is outweighed by the prejudicial effect that would result from its admission. Consequently, the Panel declines to admit the relevant portion of W02135's SPO Statement.¹⁴⁶ The SPO is ordered to disclose a redacted version of W02135's SPO Statement, removing any references pertaining to the incident in question.

60. Turning to W02135's 2016 Testimony and Preparation Note ('W02135's Remaining Statements'), the Panel agrees with the Defence that W02135's 2016 Testimony comprises lengthy procedural discussions which have no bearing on W02135's testimony as well as the testimony of an unrelated person.¹⁴⁷ The Panel is therefore of the view that only pages 121483 and 121575-121619 of W02135's 2016 Testimony shall be admitted. This being said, the Panel is satisfied that the

¹⁴² Transcript of Hearing, 18 July 2023, p. 5985, lines 8-9.

¹⁴³ Transcript, of Hearing 18 July 2023, p. 5985, lines 9-11.

¹⁴⁴ Response, paras 22-27.

¹⁴⁵ See Response, paras 23-24.

¹⁴⁶ 087342-087360, paras 62-63.

¹⁴⁷ Response para. 17.

remaining of such testimony as well as W02135's Preparation Note are relevant in respect to, *inter alia*: (i) the organisation of the KLA and the Provisional Government of Kosovo; (ii) meetings W02135 attended with KLA members; (iii) information that W02135 received about crimes allegedly committed by KLA members; (iv) detention centres allegedly run by the KLA; and (v) the Kosovo Protection Corps and Kosovo Police Service.¹⁴⁸

61. Regarding the Defence's argument that W02135's Preparation Note provides unique evidence that is central to the allegations in the Indictment and that concerns the acts and conduct of alleged subordinates to the Accused,¹⁴⁹ the Panel recalls its findings above,¹⁵⁰ and rejects the Defence's argument. Further, for the reasons set out below in relation to relevant Associated Exhibits,¹⁵¹ the Panel is not convinced by the Defence's arguments that W02135's Preparation Note is a vehicle to tender documents which have been inadequately authenticated and contextualised.¹⁵² Finally, for the reasons set out above,¹⁵³ the Panel declines to admit paragraphs 11-12 of W02135's Preparation Note and orders the SPO to disclose a redacted version of W02135's Preparation Note, removing any references pertaining to the incident in question.

62. In light of its findings above,¹⁵⁴ the Panel is also satisfied that W02135's Remaining Statements are *prima facie* authentic and probative within the meaning of Rule 138(1). Furthermore, the Panel notes the SPO's submission that aspects of W02135's Proposed Evidence are consistent with, and corroborated in material respects by, *inter alia*, adjudicated facts,¹⁵⁵ documentary and testimonial

¹⁴⁸ See Motion, para. 31, and references cited therein.

¹⁴⁹ See Response, paras 28-30.

¹⁵⁰ See *above* para. 57.

¹⁵¹ See below para. 70.

¹⁵² Response, para. 30.

¹⁵³ See *above* para. 59.

¹⁵⁴ See *above* paras 55, 60, 61.

¹⁵⁵ See Motion, para. 37, referring to F01534/A01, Panel, Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 17 May 2023, confidential, pp. 32-33, Adjudicated Facts 135-139 (a public redacted version was filed on the same day, F01534/A02).

evidence,¹⁵⁶ including of witnesses whom the Defence had the opportunity to cross-examine.¹⁵⁷ To the extent that W02135's evidence is contradicted or otherwise not corroborated by other evidence, the Panel may consider the impact that this should have on the weight to be assigned to W02135's evidence when that assessment is to be conducted at the end of trial and/or when applying Rule 140(4)(a).¹⁵⁸ In light of the foregoing, the Panel finds that, with the exception of the portion of W02135's SPO Statement comprising an incident which is not charged in the Indictment,¹⁵⁹ the probative value of W02135's Statements is not outweighed by its prejudicial effect.

63. *W02135's Associated Exhibits.* At the outset, the Panel notes that, since the filing of the Motion, SPOE00215009-SPOE00215012 and SITF40000700-40000702 from Annex 6 have been admitted into evidence as P01987 and 1D00233, respectively. The request for admission of these items is, therefore, moot.

64. The Panel also notes that the majority of W02135's Associated Exhibits have already been found to meet the admissibility requirements.¹⁶⁰ The Panel further notes that, with the exception of SITF00011523-00011528 and SPOE00212674-SPOE00212674, which are addressed below,¹⁶¹ the Defence does not object to the admission of these Associated Exhibits.

¹⁵⁶ See Motion, para. 37, referring to 1D00078; 1D00212; 1D00211; P00755; P01227; P01229; P01444; P01264_ET, pp. SPOE00128929, SPOE00128944; P00742.12, pp. 2-3, 10; P01066, paras 96-99; Transcript of Hearing, 27 March 2024, pp. 13826-13827, 13939; P00742.11_ET, pp. 8-10; P00760, pp. 076613-076614.

¹⁵⁷ See Motion, para. 37, referring to W04410, W03881, W04147, W02161, W01453, W04408; W04746; W02144; W02183.

¹⁵⁸ Fourth Rule 155 Decision, para. 43.

¹⁵⁹ See above para. 59.

¹⁶⁰ 13 September 2024 Decision, paras 20-27, referring to 078236-01-TR-ET; SPOE00212616-SPOE00212616; SPOE00212620-SPOE00212620; SPOE00215009-SPOE00215012; SITF00011523-00011528; SITF40000700-40000702; SPOE00000057-00000058; SPOE00215089-SPOE00215094; SPOE00215095-SPOE00215100; SPOE00212674-SPOE00212674; SPOE00000699-SPOE00000729, pp. SPOE00000700-SPOE00000706; SPOE00000699-SPOE00000729, pp. SPOE00000715-SPOE00000716; SPOE00000699-SPOE00000729, pp. SPOE00000717-SPOE00000722; SITF00412570-00412582; SPOE00000749-SPOE00000790.

¹⁶¹ See below paras 66, 68.

65. Regarding the remaining Associated Exhibits, the Panel agrees with the Defence that page SPOE00212682 of SPOE00212586-00212692 was not discussed by W02135 during the preparation session and it has not been satisfactorily established that they are relevant to facts at issue in these proceedings. Therefore, the Panel is not satisfied that page SPOE00212682 of SPOE00212586-00212692 forms an indispensable and inseparable part of his evidence, and rejects its admission without prejudice.

66. Regarding the Defence's arguments that SPOE00212674-SPOE00212674, 020723-020725, and SITF00194688-00194691 go to an incident which is not charged in the Indictment,¹⁶² the Panel recalls its findings above,¹⁶³ and rejects admission of these items without prejudice as they only pertain to the incident whose redaction has been ordered.

67. The Panel is satisfied that W02135's remaining Associated Exhibits were shown to and/or discussed by the witness in his Statements and therefore form an inseparable and indispensable part thereof.¹⁶⁴ The Panel is also satisfied that W02135's remaining Associated Exhibits: (i) are relevant and provide relevant context to the written records; (ii) bear sufficient indicia of *prima facie* authenticity; and (iii) are *prima facie* probative, and their probative value is not outweighed by their prejudicial effect.

68. Regarding SITF00011523-00011528, the Defence argues that this document is: (i) speculative; (ii) uncorroborated; (iii) goes to issues at the heart of these proceedings; and (iv) go to acts and conduct of the Accused.¹⁶⁵ To the extent that SITF00011523-00011528 is speculative, the Panel may consider the impact that this should have on the weight to be assigned to SITF00011523-00011528 when that

¹⁶² Response, paras 35-36.

¹⁶³ See *above* para. 59.

¹⁶⁴ See e.g. W02135's SPO Statement, paras 14-15, 23, 26, 41, 44, 49, 53, 61, 63, 72; W02135's Preparation Note, paras 4-8, 10-12; W02135's 2016 Statement, paras 7, 12, 15, 24, 32-33, 40-46, 48, 51-53.

¹⁶⁵ Response, para. 32.

assessment is conducted at the end of trial.¹⁶⁶ In regards to the Defence's arguments that SITF00011523-00011528 is uncorroborated, goes to issues at the heart of these proceedings and to acts and conduct of the Accused, the Panel recalls its finding above,¹⁶⁷ and rejects the Defence's arguments.

69. Similarly, regarding the Defence's arguments that pages SPOE00217544-SPOE00217545 of SPOE00217519-SPOE00217918 address issues that are central to these proceedings,¹⁶⁸ the Panel recalls its findings above,¹⁶⁹ and rejects the Defence's argument.

70. Regarding the Defence's arguments that SITF00194648-00194652, SITF00194707-00194710, SITF00194887-00194891 and SITF00194869-00194873 were not authored or created by W02135 or the organisation he represented and do not contain any reference to W02135 specifically,¹⁷⁰ the Panel recalls that SITF00194648-00194652, SITF00194707-00194710, SITF00194887-00194891 and SITF00194869-00194873 are military reports that W02135 discussed in his Statements.¹⁷¹ Further, in relation to the Defence's argument that SITF00194648-00194652, SITF00194707-00194710, SITF00194887-00194891 and SITF00194869-00194873 address issues that are central to these proceedings,¹⁷² the Panel recalls its findings above,¹⁷³ and rejects the Defence's argument. The Panel is therefore satisfied that, contrary to the Defence's submissions, the documents form an indispensable and inseparable part of W02135's Statements.

71. Accordingly, the Panel finds that, with the exception of Associated Exhibits SPOE00215009-SPOE00215012 and SITF40000700-40000702 which have already

¹⁶⁶ See Fourth Rule 155 Decision, para. 43.

¹⁶⁷ See *above* para. 57.

¹⁶⁸ Response, para. 34.

¹⁶⁹ See *above* para. 57.

¹⁷⁰ Response, para. 38.

¹⁷¹ See W02135's Preparation Note, paras 5-8.

¹⁷² Response, para. 38.

¹⁷³ See *above* para. 57.

been admitted into evidence,¹⁷⁴ and SPOE00212674-SPOE00212674, 020723-020725, and SITF00194688-00194691 which have been rejected by the Panel,¹⁷⁵ W02135's Proposed Evidence is admissible pursuant to Rules 138(1) and 155, with only pages 121483 and 121575-121619 of W02135's 2016 Testimony to be admitted,¹⁷⁶ the SPO to disclose redacted versions of W02135's SPO Statement¹⁷⁷ and W02135's Preparation Note,¹⁷⁸ removing any references pertaining to the incident in question, and only page SPOE00212681 of SPOE00212586-00212692 to be admitted.

V. CLASSIFICATION

72. The Panel orders the SPO to file any application seeking to maintain the confidential nature of any of the admitted material by no later than Friday, 21 March 2025. Any response thereto shall be filed no later than Friday, 28 March 2025. No reply will be entertained.

¹⁷⁴ See above para. 63.

¹⁷⁵ See above para. 65.

¹⁷⁶ See above para. 60.

¹⁷⁷ See above para. 59.

¹⁷⁸ See above para. 61.

VI. DISPOSITION

73. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **GRANTS** the SPO leave to add the 2016 Testimony to the Exhibit List;
- c) **ORDERS** the SPO to file its amended Exhibit List no later than Friday, 21 March 2025;
- d) **DECLARES** the request to admit SPOE00215009-SPOE00215012 and SITF40000700-40000702 moot;
- e) **ADMITS** into evidence the following items, including any translations and audio-video recordings thereof: (i) W00200's Proposed Evidence;¹⁷⁹ (ii) W00207's Proposed Evidence;¹⁸⁰ (iii) W00490's Proposed Evidence;¹⁸¹ (iv) W00778's Proposed Evidence;¹⁸² (v) W00025's Proposed Evidence;¹⁸³ and (vi) W02135's Proposed Evidence under the conditions set out in paragraph 71;¹⁸⁴
- f) **REJECTS** the admission of the remaining items, without prejudice;
- g) **INSTRUCTS** the Registry to add SPOE00212586-00212692, p. SPOE00212681 to exhibit 1D00214, linking such item to W02135's Statements as indicated in footnote 103;
- h) **INSTRUCTS** the Registry to assign exhibit numbers to the remaining items referred to in paragraph 73(e), linking W02135's Associated Exhibits with W02135's Statements as indicated in footnote 103; and

¹⁷⁹ See above footnote 17.

¹⁸⁰ See above footnote 31.

¹⁸¹ See above footnote 46.

¹⁸² See above footnote 60.

¹⁸³ See above footnote 74.

¹⁸⁴ See above footnote 103.

- i) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material by no later than Friday, 21 March 2025. Any response thereto shall be filed no later than Friday, 28 March 2025. No reply will be entertained.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 13 March 2025

At The Hague, the Netherlands.