



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 29 May 2025

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Decision on Prosecution Motion for Admission of International Reports

Specialist Prosecutor

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TRIAL PANEL II ("Panel"), pursuant to Articles 21, 37 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 137 and 138(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 31 March 2025, the SPO filed a motion for admission of reports drafted by international organisations ("International Reports") ("Motion").¹
2. On 24 April 2025, the Defence for the four Accused (the "Defence" or "Accused") filed a joint response ("Response").²
3. On 5 May 2025, the SPO filed a reply ("Reply").³

II. SUBMISSIONS

4. The SPO requests the admission of International Reports ("Proposed Exhibits"), which it submits are *prima facie* authentic, relevant, and have probative value that is not outweighed by any prejudice.⁴
5. The Defence responds that the SPO is seeking admission of 132 items through the bar table procedure to avoid the process of authentication and verification in court where the Defence would be able to test it accordingly.⁵ The Defence submits

¹ F03066, Specialist Prosecutor, *Prosecution Motion for Admission of International Reports*, 31 March 2025, confidential, with Annexes 1-2, confidential (a public redacted version was filed on 8 April 2025, F03066/RED).

² F03144, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of International Reports*, 24 April 2025, confidential, with Annex 1, confidential (a public redacted version was filed on 21 May 2025, F03144/RED).

³ F03165, Specialist Prosecutor, *Prosecution Reply Relating to its Motion for Admission of International Reports (F03066)*, 5 May 2025, confidential (a public redacted version was filed on the same day, F03165/RED).

⁴ Motion, paras 1, 23, referring to Annex 1 to the Motion, Proposed Exhibits 1-132. See also Motion, paras 3-21.

⁵ Response, para. 2.

that it has made extensive submissions on the size of the record which has been recently exponentially increased by the SPO's last minute bar table motions.⁶ In addition, the Defence objects to the admission of all of the Proposed Exhibits,⁷ except Proposed Exhibits 1, 35, 49, 52, 54, and 56, as: (i) they support central and contested aspects of the case;⁸ (ii) they do not provide any basis for the conclusions contained therein;⁹ (iii) they contain statements attributed to the Accused;¹⁰ (iv) the methodology used, the identity of the authors of the reports, the standards relied upon in preparation of the reports, and the source of the information is unidentified or unexplained;¹¹ (v) the SPO has not established *prima facie* authenticity and reliability;¹² and (vi) the admission of the Proposed Exhibits would cause prejudice.¹³ The Defence submits that the Panel should reject the admission of the Proposed Exhibits for the reasons set out in the Response and Annex 1 thereto.¹⁴ The Defence does not object to Proposed Exhibits 1, 35, 49, 52, 54, and 56.¹⁵

6. The SPO replies that the Response: (i) repeats objections previously considered and dismissed; (ii) misrepresents and ignores submissions in the Motion and the record; and (iii) fails to successfully challenge the admissibility of the Proposed Exhibits.¹⁶ The SPO therefore requests that the Panel grant the Motion.¹⁷

⁶ Response, para. 2.

⁷ Response, para. 35.

⁸ Response, paras 3, 6-7.

⁹ Response, para. 4.

¹⁰ Response, para. 8.

¹¹ Response, paras 5, 9.

¹² Response, paras 11-18.

¹³ Response, paras 19-33.

¹⁴ Response, paras 10, 35. *See also* Annex 1 to the Response.

¹⁵ Annex 1 to the Response, pp. 1, 36, 55, 59, 65, 67.

¹⁶ Reply, para. 1. *See also* Reply, paras 2-13.

¹⁷ Reply, para. 15.

III. APPLICABLE LAW

7. The applicable law regarding the present matter is set out, in particular, in Article 40(6)(h) and Rules 138(1), and has been laid out extensively in the Panel's prior decisions.¹⁸ The Panel will apply these standards to the present decision.

IV. DISCUSSION

A. GENERAL CONSIDERATIONS

8. The Panel will first address the Defence's submissions on particular characteristics of the Proposed Exhibits set out in the Response and Annex 1 thereto. The Panel recalls that there is no requirement under the Specialist Chambers' legal framework that Proposed Exhibits be authenticated through witnesses.¹⁹ Similarly, there is no bar to the admission through the bar table of proposed exhibits on account of their alleged central importance to the Prosecution case.²⁰ The same conditions and requirements for admission, as set out in Rule 138(1), apply to all categories of proposed exhibits, regardless of their (perceived) importance to a Party's case.²¹ What matters is that the tendering Party satisfies the Panel of the relevance, *prima facie* authenticity and probative value of the tendered items pursuant to Rule 138(1). This being said, the Panel recalls that bar table motions should not be used as a way to render the principle of orality irrelevant to these proceedings. While the bar table procedure is in the interest of

¹⁸ See e.g. F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("Decision on Bar Table Motion"), 31 March 2023, confidential, paras 8-13.

¹⁹ See *Decision on Bar Table Motion*, para. 12. See also Rule 138(1). *Contra* Response, paras 4, 6, 8, 14; Annex 1 to the Response, Proposed Exhibits 2-9, 19-27, 38-40, 43, 46-48, 130.

²⁰ F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion* ("Second Decision on Bar Table Motion"), 9 June 2023, confidential and *ex parte*, para. 84 (a confidential redacted version was issued on the same day, F01596/CONF/RED; the *ex parte* marking of the decision was lifted on 22 June 2023, F01596/CONF; the decision was reclassified as public on 15 November 2023, F01596). *Contra* Response, paras 3, 6, 8-9, 23; Annex 1 to the Response, Proposed Exhibits 2-4, 6-18, 22, 28, 46, 48, 50, 51, 53, 55, 63, 65, 66, 68-72, 74-80, 85-87, 89, 90, 118, 120, 122, 124, 126-132.

²¹ F01983, Panel, *Sixth Decision on Specialist Prosecutor's Bar Table Motion* ("Sixth Decision on Bar Table Motion"), 5 December 2023, para. 92.

judicial economy, it should not become an alternative to presenting the most important exhibits through witnesses who are in a position to speak to them and to be cross-examined about them. Even when a proposed exhibit is admitted from the bar table, the tendering party should consider making use of it in court with relevant witness(es) where the good comprehension of that document and its place in the Party's case justifies it.²² Moreover, the use of proposed exhibits during testimony of witnesses might provide valuable context relevant, for instance, to the weight or reliability of those exhibits.²³

9. The Panel now turns to the argument that the Defence will be prejudiced by the admission of the Proposed Exhibits as the SPO has failed to identify specific witnesses through which the Defence will be in a position to challenge the contents of these documents.²⁴ In this regard, the Panel notes that the right to confrontation does not encompass a right for a Party to have each and every exhibit or document produced through a witness, which the Party is then able to question in respect of its content. However, if proposed exhibits are not put to witnesses who are able to contextualise them, this may negatively impact the weight that the Panel might be prepared to give to such an exhibit at the end of trial.²⁵

10. The Panel further recalls that proof of provenance or authorship of the tendered items is not required when assessing *prima facie* authenticity and reliability under Rule 138(1), as such proof pertains to the evidentiary weight of the tendered items rather than to their admissibility and, as such, will be duly assessed by the Panel at the end of trial, having regard to the entire body of evidence.²⁶ This being said, the Panel recalls that handwritten documents bearing

²² Decision on Bar Table Motion, para. 16.

²³ Decision on Bar Table Motion, para. 17.

²⁴ Response, paras 17, 22, 24-25; Annex 1 to the Response, pp. 14, 33, 37, 62, 64, 150.

²⁵ See Rule 139(2); See Second Decision on Bar Table Motion, para. 178; F02980, Panel, *Decision on Prosecution Motion for Admission of Shala Zone and Karadak Zone Documents*, 4 March 2025, para. 14.

²⁶ See e.g. Second Decision on Bar Table Motion, para. 82. *Contra* Response, paras 8, 13, 17, 20; Annex 1 to the Response, Proposed Exhibits 2-12, 15-18, 20, 22, 24-26, 33, 34, 36, 37, 53, 55, 57, 59, 61-72, 76, 81, 84, 86-90, 92, 100.

no indication of a named source or which have yet to be corroborated are often considered to lack the requisite indicia of reliability unless they contain other relevant indications of their reliability.²⁷

11. In relation to the Defence's argument that some Proposed Exhibits do not identify the source of their information, are based on hearsay or anonymous sources,²⁸ the Panel recalls that the fact that evidence is hearsay or unsourced would not necessarily prevent its admission. Where such a document is admitted, these features would be accounted for when assessing the weight and probative value of the evidence.²⁹

12. Regarding the Proposed Exhibits allegedly containing testimonial documents,³⁰ the Panel notes that none of them constitute, or contain, statements or records of interviews prepared for the purposes of legal proceedings. As such, the Panel finds that the Proposed Exhibits challenged by the Defence due to their purported testimonial nature are not subject to Rules 153-155.³¹

13. Regarding the Proposed Exhibits allegedly containing statements or comments from the Accused,³² the Panel recalls that no provision of the Law or the Rules expressly governs the admissibility of statements or comments attributed to an Accused, save for provisions referring to evidence of the acts and conduct of the Accused as charged in the Indictment. Admission of statements or comments

²⁷ Decision on Bar Table Motion, para. 59.

²⁸ Response, para. 3; Annex 1 to the Response, Proposed Exhibits 2-8, 10, 11, 14, 16-18, 22, 28-34, 37-41, 43, 44, 46-48, 51, 53, 60-62, 64-67, 69, 70, 73-77, 81, 85, 87, 89, 90, 93, 107, 129-132.

²⁹ F02111, Panel, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153*, 8 February 2024, confidential, para. 22 (a public redacted version was filed on 8 February 2024, F02111/RED); F01904, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153*, 3 November 2023, confidential, para. 56 (a public redacted version was filed on 27 November 2023, F01904/RED).

³⁰ Response, para. 17; *See e.g.* Annex 1 to the Motion, Proposed Exhibits 66, 80, 101, 120-123, 125, 126, 128, 130.

³¹ F02951, Panel, *Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request*, 21 February 2025, para. 25.

³² Response, para. 15; *See e.g.* Annex 1 to the Response, Proposed Exhibits 74, 87, 107, 120.

from the Accused is subject to the general rules and principles regarding the admission of evidence.

14. The Panel notes the Defence's argument that expert evidence is not suitable for admission through the bar table and should have been submitted through Rule 149.³³ The Panel recalls that Rule 149 is *lex specialis* for the admission of expert reports³⁴ and agrees with the Defence that expert reports cannot be admitted through the bar table. The Panel recalls that according to Rule 149(1), "[t]he final report of any expert witness to be called by a Party shall be disclosed to the opposing Party".³⁵ Evidence may qualify as an expert report if it meets the requirements of Rules 149 and 138(1), and is therefore tendered through an expert witness called by a Party in that capacity. The Panel is satisfied that the Proposed Exhibits have been tendered by the SPO under Rule 138, and not through an expert witness under Rule 149, and therefore are not expert reports within the meaning of Rule 149 as demonstrated in previous decisions of the Panel.³⁶ The Panel further observes that although the evidence is not being tendered through an expert witness pursuant to Rule 149, this does not render it inadmissible under Rule 138.³⁷

15. Regarding the Defence's argument that some Proposed Exhibits contain opinion evidence,³⁸ the Panel recalls that the Rules do not provide any exclusionary principle for opinion evidence in respect of witnesses who are not

³³ Annex 1 to the Response, pp. 68, 75, 148.

³⁴ F02787, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 Pursuant to Rules 138, 149 and 154 and Related Request*, 16 December 2024, confidential, para. 41 (a public redacted version was filed the same day, F02787/RED).

³⁵ Rule 149(1).

³⁶ See Sixth Decision on Bar Table Motion, paras 52-57, referring to Proposed Exhibits IT-03-66 P111; IT-03-66 P112; U007-9551-U007-9600; F03211, Panel, *Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request*, 29 May 2025, confidential, para. 18 (a public redacted version was filed the same day, F03211/RED).

³⁷ F03211, Panel, *Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request*, 29 May 2025, confidential, para. 18 (a public redacted version was filed the same day, F03211/RED).

³⁸ Response, para. 18; Annex 1 to the Response, pp. 32, 40, 63-64.

experts.³⁹ To be of any assistance to the Panel, opinion evidence must be clearly based on facts or circumstances that can be verified or corroborated.⁴⁰ Where this is not the case, the evidence will simply be disregarded or given little or no weight.⁴¹

16. Regarding the Defence's argument that some Proposed Exhibits are overly redacted not allowing the Defence to meaningfully review them,⁴² the Panel is satisfied that these redactions emanate from the Rule 107 provider.⁴³ The Panel is satisfied that the Defence was in a position to make meaningful and effective submissions in respect of all items containing redactions. The Panel is further of the view that the presence of redactions demanded by the Rule 107 provider for legitimate reasons does not constitute a bar to the admission of those documents through the bar table, however, this may negatively impact the weight that the Panel might be prepared to give to such exhibits at the end of trial.

17. The Panel will now turn to its assessment of whether the Proposed Exhibits are admissible pursuant to Rule 138(1). In doing so, the Panel will refer to the Proposed Exhibits as numbered in Annex 1 to the Motion and Annex 1 to the Response.

B. ASSESSMENT OF PROPOSED EXHIBITS

1. Relevance

18. Regarding the relevance of the Proposed Exhibits, the Panel notes that they consist of reports drafted by international organisations concerning events in Kosovo relevant to the charges. The SPO relies on the Proposed Exhibits to

³⁹ Transcript of Hearing, 18 July 2023, p. 5984, lines 19-21; F03012, Panel, *Decision on Prosecution Sixth Motion for Admission of Evidence pursuant to Rule 155* ("Sixth Rule 155 Decision"), 13 March 2025, confidential, para. 58 (a public redacted version was filed on 14 March 2025, F03012/RED).

⁴⁰ Transcript of Hearing, 18 July 2023, p. 5985, lines 8-9; Sixth Rule 155 Decision, para. 58.

⁴¹ Transcript of Hearing, 18 July 2023, p. 5985, lines 9-11; Sixth Rule 155 Decision, para. 58.

⁴² Response, paras 32-33; Annex 1 to the Response, Proposed Exhibits 53, 62, 64, 75, 78, 79.

⁴³ Reply, para. 5.

demonstrate, *inter alia*: (i) the existence of an armed conflict throughout the Indictment Period;⁴⁴ (ii) a widespread and/or systematic attack against the civilian population of Opponents;⁴⁵ and (iii) charged crimes.⁴⁶

19. The SPO submits that the Proposed Exhibits also corroborate and complement other evidence and noticed adjudicated facts, including concerning: (i) the effective control exercised by the Accused and JCE members; (ii) their knowledge and intent; and (iii) the practical assistance, encouragement, and/or moral support they provided to the perpetrators of the charged crimes.⁴⁷

20. Having carefully reviewed the Proposed Exhibits, the Panel is satisfied that all of them are relevant to allegations and charges in the Indictment⁴⁸ as well as certain witness testimony, documentary evidence, and judicially noticed adjudicated facts.⁴⁹

2. Authenticity

21. The Panel is satisfied that the SPO has established the *prima facie* authenticity of the Proposed Exhibits. Specifically, the Panel notes that these Proposed Exhibits: (i) are dated;⁵⁰ (ii) are signed;⁵¹ (iii) contain the name of the author;⁵² (iv) are provided by the originator;⁵³ (v) have an official header;⁵⁴ (vi) have a seal

⁴⁴ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, para. 16 (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

⁴⁵ The term 'Opponents' is defined in the Indictment. *See* Indictment, para. 32.

⁴⁶ Motion, para. 2. *See also* Motion, paras 3-16.

⁴⁷ Motion, para. 2. *See also* Motion, paras 3-16.

⁴⁸ *See e.g.* Indictment, paras 13-57, 62-63, 65-68, 78-80, 84, 87-90, 92, 94, 99-100, 102-104, 115-117, 122, 125-128, 133, 135, 141-144, 147-149, 153-155, 161-166, 168, 172-173. *Contra* Response, para. 9; Annex 1 to the Response, R.1 and R.2 Objections.

⁴⁹ Motion, para. 2. *See also* Motion, paras 3-16, and references cited therein; Annex 1 to the Motion, pp. 2-97.

⁵⁰ Annex 1 to the Motion, Proposed Exhibits 1-131.

⁵¹ Annex 1 to the Motion, Proposed Exhibits 21, 32, 45, 54, 60, 62, 66, 74, 80, 83, 85, 91, 93, 95, 97, 100, 101, 103, 105, 114, 115, 120, 122, 124, 126, 131.

⁵² Annex 1 to the Motion, Proposed Exhibits 19, 21, 23, 27, 30-32, 38, 50, 82, 101.

⁵³ Annex 1 to the Motion, Proposed Exhibits 11, 12, 14-23, 27-34, 36-43, 45-48, 50-53, 55-73, 75-131.

⁵⁴ Annex 1 to the Motion, Proposed Exhibits 1, 13, 16, 17, 20, 22, 25, 28-34, 36, 37, 39, 41, 42, 44-52, 58, 74, 77, 86, 87, 93, 95, 96, 99, 100, 102-104, 106, 108, 110, 112, 116, 117, 120, 121, 124-127, 130.

or stamps;⁵⁵ (vii) constitute open source material that can be independently authenticated;⁵⁶ (viii) have consistent formatting;⁵⁷ (ix) have a reference or case number;⁵⁸ (x) are templates;⁵⁹ (xi) have a security classification;⁶⁰ (xii) provide details regarding the sender and/or recipients;⁶¹ and (xiii) include the contact details of members of the organisation.⁶²

22. In addition, the Panel considers the SPO's submissions that Proposed Exhibits 2-11, 14, 15, 16-20, 24-26, 30-34, 36-41, 43, 44, 46, 48-53, 57, 60, 61, 65, 67, 68, 70, 71, 73-75, 77, 82, 86, 87, 89, 90, 93, 96, 99, 101-103, 108, 110-116, 120, 127, 128, and 130 contain overlapping information and/or information of a similar nature to that included in relevant parts of admitted exhibits, other Proposed Exhibits, adjudicated facts, or the testimony of witnesses.⁶³ The Panel is of the view that these overlaps, which will be assessed when weighing the evidence at the end of trial, may assist in providing further indication of the origin and source of the material in question. The Panel notes the Defence's submissions in regards to Proposed Exhibit 24 that W04752 was shown this document in the *Prosecutor v. Milutinović*, at the ICTY, during his public testimony on 7 November 2006, and was unable to corroborate certain incidents.⁶⁴ The Panel is of the view that there is

⁵⁵ Annex 1 to the Motion, Proposed Exhibits 55, 57, 59, 67, 70, 71, 73, 76, 84, 88, 89, 100, 118, 119, 122, 124, 126.

⁵⁶ Annex 1 to the Motion, Proposed Exhibits 1, 13, 35, 129, 132.

⁵⁷ Annex 1 to the Motion, Proposed Exhibits 2-9, 11, 14, 16-24, 27-34, 36-43, 45-52, 54, 55, 57-59, 61, 63, 65, 67, 69-73, 75, 76, 78, 80, 82-84, 86-89, 92-95, 97-99, 103-106, 109-112, 114-119, 120-123, 124-127, 129, 131, 132.

⁵⁸ Annex 1 to the Motion, Proposed Exhibits 12, 15, 28, 30, 33, 34, 36, 39, 42, 43, 46-48, 51, 52, 55, 56, 59, 61, 63, 66-71, 73, 75, 76, 78, 82, 84, 85, 87-89, 90, 92, 94, 97, 100, 101, 106, 107, 109, 111, 112, 114, 115, 118, 119, 128.

⁵⁹ Annex 1 to the Motion, Proposed Exhibits 101, 128

⁶⁰ Annex 1 to the Motion, Proposed Exhibits 11, 12, 34, 39, 42, 48, 51-53, 55, 57, 59, 61, 62, 64, 67, 71, 73, 75, 76, 79, 84, 87-89, 92, 94, 97, 106, 107, 109, 118, 119.

⁶¹ Annex 1 to the Motion, Proposed Exhibits 2-12, 14, 28, 29, 32, 33, 36, 40, 60, 68, 70, 71, 77, 86, 93, 95, 104, 105, 108, 110, 116, 120, 123, 126, 127, 131.

⁶² Annex 1 to the Motion, Proposed Exhibits 10, 25, 39, 46, 74, 85, 87.

⁶³ Motion, para. 2, referring to Annex 1 to the Motion. See in particular Annex 1 to the Motion, pp. 1-6, 8-11, 13-14, 16-23, 25-26, 28, 29-37, 39, 41-48, 50-54, 58, 62-65, 67, 69-73, 76-82, 85-86, 92, 94.

⁶⁴ Annex 1 to the Response, p. 25.

sufficient corroboration of this item by another witness and admitted items in this case to warrant admission.⁶⁵

23. In light of the above, the Panel finds that all the Proposed Exhibits are *prima facie* authentic.

3. Probative value not outweighed by prejudicial effect

24. Regarding the Defence's submissions that Proposed Exhibits 53, 57, 65, 66, 68, 73, 74, 80, 81, 86, 89, and 90 go to incidents which are not charged in the Indictment and which adequate notice was not provided by the SPO,⁶⁶ the Panel agrees with the Defence, in part. With regards to Proposed Exhibits 57, 65, and 89, in light of the relatively remote relevance of these incidents to the case and of the fact that the Defence will not have an opportunity to cross-examine witnesses in respect of it, the probative value of these Proposed Exhibits is outweighed by the prejudicial effect that would result from their admission. Consequently, the Panel declines to admit these Proposed Exhibits.

25. Proposed Exhibit 90 is a situation report which refers on page SITF00231805 to a purported altercation between Rexhep Selimi and British soldiers serving in KFOR in Kosovo. The Panel accepts that this may be of some relevance to the question of whether Mr Selimi accepted KFOR's mandate in Kosovo, but considers that it is of marginal relevance to the allegations in the Indictment. The Panel also notes that the Defence will not have an opportunity to cross-examine witnesses in respect of this assertion, and the probative value of these pages is outweighed by the prejudicial effect that would result from its admission. That being said, the Panel notes that Proposed Exhibit 90 also contains a paragraph titled "Armed forces in Kosovo" which is of relevance to the question of whether there was an armed conflict in Kosovo in August 1999. The Defence has had, and will have,

⁶⁵ See e.g. P01066, P00811, P00182.

⁶⁶ Response, paras 28-31.

multiple opportunities to make submissions on this point, and therefore no unfair prejudice results from its admission. Consequently, the Panel only admits this portion of this Proposed Exhibit.⁶⁷

26. Further, with regards to Proposed Exhibit 74, which is a public report by a non-governmental organisation called “Society for Threatened Peoples” published in 1999, the Panel notes that much of the information it contains is unsourced and of unknown origin. It is not apparent from the report what safeguards and procedure were used to collect the information and verify it, and by whom. Also, a portion of this proposed exhibit goes to acts and conducts of an Accused as charged in the Indictment.⁶⁸ This does not constitute a general bar to admission. However, considering the late tender of this item and the fact that the Defence will not have an opportunity to cross-examine the authors of this report, nor other witnesses in respect of this part of the report, the probative value of this Proposed Exhibit 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 this Proposed Exhibit.⁶⁹ The SPO is ordered to disclose a redacted version of the Proposed Exhibit, removing any references pertaining to the incident in question.

27. In regards to Proposed Exhibits 53, 66, 68, 73, 74, 80, 81, and 86, the Panel agrees with the Defence that these Proposed Exhibits address incidents not referred to in the indictment or in the SPO’s Pre-Trial Brief.⁷⁰ The Panel recalls that evidence of uncharged acts may be admissible for other valid purposes, including to clarify a given context or to demonstrate a deliberate pattern of conduct.⁷¹ The

⁶⁷ Annex 1 to the Motion, Proposed Exhibit 90, SITF00231806, paragraph under the heading “Armed forces in Kosovo” (including the heading).

⁶⁸ See e.g. Indictment, paras 36-37, 99-102.

⁶⁹ Annex 1 to the Motion, Proposed Exhibit 74, p. 011241, the fourth paragraph.

⁷⁰ F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, confidential (a public redacted version was filed on 3 April 2023, F01415/A01).

⁷¹ Transcript of Hearing, 18 September 2024, p. 19982, lines 2-5.

Panel is satisfied that the uncharged incidents in the Proposed Exhibits, alleging various crimes, are relevant for the purposes of clarifying a given context and demonstrating a deliberate pattern of conduct. The proposed evidence may also be relevant to establishing the existing of an alleged widespread or systematic attack against a civilian population, as alleged. Turning to the Defence's submissions about the lack of adequate notice causing prejudice to them, the Panel notes that the Defence had notice of the relevant incidents from 27 July 2021;⁷² 11 August 2021;⁷³ and 18 August 2021.⁷⁴ The Panel also notes that the Defence had the material in question in its possession since the beginning of these proceedings and was on notice of the SPO's intention to tender it. The Panel therefore finds that the probative value of Proposed Exhibits 1-56, 58-64, 66-88, and 91-132 is not outweighed by any prejudicial effect.

28. Having found Proposed Exhibits 1-56, 58-64, 66-88, and 90-132 to be relevant and *prima facie* authentic, the Panel is also satisfied that these items bear probative value regarding facts and circumstances relevant to this case as outlined above at paragraph 18.

29. The Panel finds that the probative value of Proposed Exhibits 1-56, 58-64, 66-88, and 90-132 is not outweighed by any prejudicial effect. The Panel notes, furthermore, that the Defence will be able to make submissions in respect of the weight and probative value of these items and could, if it so chooses, challenge the content of any of these items through the presentation of evidence, although it bears no onus to do so.⁷⁵

⁷² Annex 1 to the Motion, Proposed Exhibits 57, 65, 66, 68, 73, 74, 80, 81, 92. *See* Disclosure 54.

⁷³ Annex 1 to the Motion, Proposed Exhibit 86. *See* Disclosure 64.

⁷⁴ Annex 1 to the Motion, Proposed Exhibit 53. *See* Disclosure 69.

⁷⁵ *Contra* Response, paras 19-33; Annex 1 to the Response, PV.2 Objections.

4. Conclusion

30. In light of the above, the Panel is satisfied that Proposed Exhibits 1-56, 58-64, 66-88, and 90-132 are admissible pursuant to Rule 138(1), with redactions to Proposed Exhibit 74, as set out in footnote 69 and Proposed Exhibit 90, as set out in footnote 67, and denies, admission of Proposed Exhibits 57, 65, and 89.⁷⁶

V. CLASSIFICATION

31. The Panel directs the Registry to assign the admitted items the classification indicated in Annex 1 to the Motion.

⁷⁶ The Panel notes that the SPO: (i) only tenders pages 28-96, 108-116, 151-152, 188-196 of the original version of Proposed Exhibit 11 (*see* Annex 1 to the Motion, p. 5); (ii) only tenders pages 1, 6-12 of the original version of Proposed Exhibit 13 (*see* Annex 1 to the Motion, p. 7); (iii) only tenders pages 1-2 of the original version of Proposed Exhibit 25 (*see* Annex 1 to the Motion, p. 13); (iv) only tenders pages 1, 4, 9-37, 40, 42, 44-47, 54, 61, 64-66, 70-72, 84, 94-95, 102, 110, 116, 121-127, 131-132, 134, 136, 155 of the original version of Proposed Exhibit 49 (*see* Annex 1 to the Motion, p. 32); (v) only tenders pages 18-38, 46-64, 191-200, 241-256, 383-393 of the original version of Proposed Exhibit 53 (*see* Annex 1 to the Motion, p. 34); (vi) only tenders pages 1-12 of the original version of Proposed Exhibit 55 (*see* Annex 1 to the Motion, p. 38); (vii) only tenders pages 1, 41-42 of the original version of Proposed Exhibit 56 (*see* Annex 1 to the Motion, p. 39); (viii) only tenders pages 6-9 of the original version of Proposed Exhibit 58 (*see* Annex 1 to the Motion, p. 40); (ix) only tenders pages 1, 123 of the original version of Proposed Exhibit 63 (*see* Annex 1 to the Motion, p. 42); (x) only tenders pages 1-2, 37-38, 41-42, 91 of the original version of Proposed Exhibit 69 (*see* Annex 1 to the Motion, p. 47); (xi) only tenders pages 2-3, 201-203 of the English version of Proposed Exhibit 74 (*see* Annex 1 to the Motion, p. 50); (xii) only tenders pages 32, 52, 54, 56, 60, 68, 70, 86, 107, 114, 116, 118, 120, 122-123, 127, 137 of the original version of Proposed Exhibit 81 (*see* Annex 1 to the Motion, pp. 56-57); (xiii) only tenders pages 1-2 of the original version of Proposed Exhibit 85 (*see* Annex 1 to the Motion, p. 60); (xiv) only tenders pages 1-2 of the original version of Proposed Exhibit 99 (*see* Annex 1 to the Motion, p. 70); (xv) only tenders pages 35-37, 47-49, 66-68 of the original version of Proposed Exhibit 107 (*see* Annex 1 to the Motion, p. 75); (xvi) only tenders pages 2-15 of the original version of Proposed Exhibit 131 (*see* Annex 1 to the Motion, p. 94); (xvii) only tenders pages 1-3, 5-15 of the original version of Proposed Exhibit 132 (*see* Annex 1 to the Motion, pp. 94-95). The Panel has only assessed and admitted the tendered pages of the relevant documents.

VI. DISPOSITION

32. For the above-mentioned reasons, the Panel hereby:

- (a) **GRANTS**, in part, the Motion;
- (b) **ADMITS** into evidence Proposed Exhibits 1-56, 58-64, 66-88, and 90-132 under the conditions set out in paragraph 30, including any translations thereof;⁷⁷
- (c) **DENIES** the admission of Proposed Exhibits 57, 65, and 89;
- (d) **DIRECTS** the SPO to disclose a redacted version of Proposed Exhibit 74, removing any references pertaining to the incident in question under the condition set out in footnote 69 and Proposed Exhibit 90, only including the relevant portions under the conditions set out in footnote 67;
- (e) **INTRUCTS** the Registry to add the admitted pages of: (i) Proposed Exhibit 13 to exhibit P00380; (ii) Proposed Exhibit 49 to exhibit 4D00096; (iii) Proposed Exhibit 132 to exhibit P01131;
- (f) **INTRUCTS** the Registry to assign Proposed Exhibit 11 the same exhibit number as SPOE00217544-SPOE00217545; and
- (g) **DIRECTS** the Registry to assign the admitted items: (i) exhibit numbers; and (ii) the classification indicated in Annex 1 to the Motion.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 29 May 2025

At The Hague, the Netherlands.

⁷⁷ See above footnote 76.