



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: 1 July 2025

Language: English

Classification: Public

**Decision on Joint Defence Request for Leave to Appeal Decision on the
Admission of Expert Evidence of Witness W04875**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 77 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 27 May 2025, the Panel rendered a decision admitting in evidence the items tendered in relation to expert witness W04875 (“Impugned Decision”).¹
2. On 3 June 2025, the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”) jointly filed a request for certification to appeal the Impugned Decision (“Request”).²
3. On 13 June 2025, the SPO responded to the Request (“Response”).³
4. On 23 June 2025, the Defence replied to the Response (“Reply”).⁴

II. SUBMISSIONS

5. The Defence requests leave to appeal the Impugned Decision in respect of the following five issues (collectively, “Issues”):

1. The Panel erred in finding that DNA profiling and sequencing reports from the International Commission on Missing Persons (“ICMP”) setting out (i) their scientific findings from DNA bone analysis on recovered degraded

¹ F03202, Panel, *Decision on the Admission of Expert Evidence of Witness W04875*, 27 May 2025, paras 41, 47(b).

² F03222, Specialist Counsel, *Joint Defence Request for Leave to Appeal Decision on the Admission of Expert Evidence of Witness W04875 (F03202)*, 3 June 2025, confidential (a public redacted version was filed on 30 June 2025, F03222/RED).

³ F03260, Specialist Prosecutor, *Prosecution Response to “Joint Defence Request for Leave to Appeal Decision on the Admission of Expert Evidence of Witness W04875 (F03202)”*, 13 June 2025, confidential.

⁴ F03286, Specialist Counsel, *Joint Defence Reply to Prosecution Response to “Joint Defence Request for Leave to Appeal Decision on the Admission of Expert Evidence of Witness W04875 (F03202)”*, 23 June 2025, confidential.

skeletal remains; and (ii) conclusions on the probability of relatedness, are not expert reports (“First Issue”);

2. As a result of the error in the First Issue, the Panel erred in law by failing to apply Rule 149 to the source material to W04875’s expert reports (“Second Issue”);
3. The Panel applied the incorrect legal test for admission of source material with expert statements under Rule 149 (“Third Issue”);
4. The Panel erred in finding that the irregularities identified in the source material to W04875’s expert reports were not relevant to admissibility under Rule 138 (“Fourth Issue”); and
5. The Panel erred in its assessment of the prejudice caused to the Defence by the admission of the source material to W04875’s expert reports (“Fifth Issue”).⁵

6. The Defence submits that the Panel misinterpreted and misapplied the law, and made incorrect findings of fact requiring timely appellate intervention.⁶ The Defence further submits that the Issues: (i) arise from the Impugned Decision;⁷ (ii) significantly affect the fair conduct of the proceedings;⁸ and (iii) require immediate resolution by the Court of Appeals Panel to materially advance proceedings.⁹

7. The SPO responds that the Request should be dismissed, as the Issues fail to meet the criteria for certification under Article 45 and Rule 77.¹⁰ In addition, the SPO recalls the considerable discretion afforded to triers of fact in deciding whether to admit evidence,¹¹ and contends that the Request fails to identify any

⁵ Request, paras 1, 5, 34.

⁶ Request, para. 4. *See also* Request, paras 2-3.

⁷ Request, paras 8-29.

⁸ Request, para. 30.

⁹ Request, paras 31-33.

¹⁰ Response, paras 1, 29. *See also* Response, paras 2-27.

¹¹ Response, para. 1, *referring to* F02157, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960*, 29 February 2025, para. 11; KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment* (“Appeal Judgment F00114”), 2 February 2023, paras 34-35.

error in the Impugned Decision, let alone one warranting the exceptional relief of certification to appeal.¹²

8. The Defence replies that the SPO misunderstands and mischaracterises the Issues, which identify discrete errors and are appealable.¹³ The Defence further replies that the Issues are of significant legal import and may impact the fairness of proceedings and the trial judgment, so they should clearly be dealt with during the trial.¹⁴

III. APPLICABLE LAW

9. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth therein has been met. Rule 77(2) provides that:

The Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

10. The Panel incorporates by reference the applicable law on the legal standard for certification to appeal set out in past decisions.¹⁵

¹² Response, para. 1.

¹³ See Reply, paras 3-4, 6, 10.

¹⁴ Reply, para. 13.

¹⁵ See e.g. F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8, referring to KSC-BC-2020-07, F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect*, 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, paras 15-17; F00484, Panel, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021, paras 4-14. See also F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17.

IV. DISCUSSION

11. In the Impugned Decision, the Panel admitted into evidence several items associated with expert witness W04875, including, pursuant to Rules 138(1) and 149: (i) two expert reports drafted by him; and, pursuant to Rule 138(1), (ii) several DNA analyses used in those reports (“Source Material”); (iii) W04875’s *curriculum vitae*; and (iv) the letters of instruction that the witness received from the SPO.¹⁶

12. The Panel considers that the First and Second Issues are predicated substantially on the same findings in the Impugned Decisions and will, therefore, be addressed jointly.

A. FIRST AND SECOND ISSUES

13. The Defence submits that the First Issue arises directly from the Impugned Decision, as the Panel failed to explain or justify its findings that the documents constituting Source Material are not expert reports, and that their authors are not experts.¹⁷ In the Defence’s submissions, these findings: (i) are unreasoned, irrational, incorrect, and inconsistent with previous findings of this Panel, established legal precedent, and W04875’s own testimony;¹⁸ and (ii) will have broader repercussions and likely impact future cases in the field of international criminal law.¹⁹

14. With regard to the Second Issue, the Defence submits that, as a result of the error identified in the First Issue, the Panel also erred by failing to apply Rule 149 to the Source Material, and thus wrongly deprived the Defence of the protections foreseen in Rule 149.²⁰

¹⁶ Impugned Decision, paras 29, 32, 41, 47(b).

¹⁷ Request, paras 8, 11.

¹⁸ Request, paras 9, 11-12.

¹⁹ Request, para. 13.

²⁰ Request, para. 15.

15. The Defence further submits that the First and Second Issues directly affect the fair conduct of the proceedings, because the Panel's alleged errors deprived the Defence of its procedural rights.²¹ Moreover, the Defence avers that an immediate resolution by the Court of Appeals Panel will materially advance proceedings,²² as resolution of the First and Second Issues may: (i) affect the Defence's choice whether to call a case and its preparation for closing submissions;²³ and (ii) have far reaching consequences beyond the scope of this trial.²⁴

16. The SPO responds that the First Issue misrepresents the Impugned Decision, merely disagrees with the Panel's findings therein, and repeats unfounded arguments already rejected by the Panel.²⁵ In the SPO's view, the Impugned Decision was, contrary to the Defence's submissions, consistent with the applicable legal framework, other similar decisions issued by the Panel, and the jurisprudence of other courts.²⁶

17. With reference to the Second Issue, the SPO responds that the Defence's submissions are unsubstantiated and unsupported, and that, as the Defence failed to articulate how or on what basis the Panel erred, the Second Issue does not meet the requirements of Rule 77.²⁷ The SPO further responds that the Impugned Decision was consistent with the applicable legal framework, and issued after receiving extensive submissions by the Defence and the conclusion of W04875's testimony.²⁸

²¹ Request, para. 30.

²² Request, paras 31, 33.

²³ Request, para. 31.

²⁴ Request, para. 32.

²⁵ Response, paras 3-5, 7-8.

²⁶ Response, para. 6. *See also* Response, para. 3.

²⁷ Response, para. 9.

²⁸ Response, para. 10.

18. Finally, the SPO avers that the Defence's claims that the First and Second Issues would significantly affect the fair and expeditious conduct of the proceedings and require immediate appellate resolution are speculative and unsubstantiated.²⁹

19. The Defence replies that the SPO misunderstands the Defence's arguments as to the First Issue, which, contrary to the SPO's submissions, successfully identifies an error in the Impugned Decision and is appealable.³⁰ The Defence further replies that the SPO's arguments in the Response are unclear and illogic.³¹

20. As to the Second Issue, the Defence replies that brevity is no bar to granting leave to appeal, and that the Second Issue is simple, does not require further explanation, and is rightly not being argued in full on the merits.³²

21. Finally, the Defence replies that, contrary to the SPO's submissions, issues of significant legal import which have the potential to impact the fairness of proceedings and judgment in this case should be dealt with during the trial, as this is what fairness and the interests justice mandate.³³

22. At the outset, the Panel notes that, in the Impugned Decision, it found that the source material to W04875's expert reports did not constitute "'expert witness reports' within the meaning of Rule 149", and was thus subject to and could be admitted pursuant to Rule 138(1).³⁴

23. The Panel is satisfied that the question of whether documents requiring or expressing some kind of expertise must be considered as expert reports and whether, as such, they can only be admitted in accordance with the procedure set out in Rule 149, constitute discrete topics arising from the Impugned Decision. The

²⁹ Response, paras 25-27.

³⁰ Reply, paras 3-4, 6-7.

³¹ Reply, para. 5

³² Reply, paras 8-9.

³³ Reply, para. 13.

³⁴ Impugned Decision, para. 40.

Panel also notes that there appears to be no established jurisprudence in this jurisdiction on this point. Therefore, the Panel is of the view that the First and Second Issues are appealable issues arising from the Impugned Decision.

24. The Panel further finds that resolution of this question may impact the procedural rights of the Parties with regard to the admission of expert evidence under Rule 149, and thus the fairness of the proceedings. It could also affect the way in which the Panel should approach this evidence when assessing its weight and probative value. The Defence has therefore demonstrated that the First and Second Issues would significantly affect the fair conduct of the proceedings.

25. The Panel also considers it beneficial for the conduct of the proceedings and the rights of the Accused that any dispute regarding the application and interpretation of Rule 149 be addressed by the Court of Appeals Panel, as resolution of the First and Second Issues might affect the scope of the SPO's case, the ability of the Parties and participants to make informed submissions in respect of such evidence, and the Defence's presentation of their cases, if any. The Panel therefore finds that immediate resolution of the First and Second Issues by the Court of Appeals Panel will materially advance the proceedings.

26. In light of the above, the Panel finds that the requirements of the certification test arising from Article 45(2) and Rule 77(2) have been met and accordingly grants certification to appeal the First and Second Issues.

B. THIRD ISSUE

27. The Defence submits that the Third Issue arises directly from the Impugned Decision, as the Panel applied the incorrect legal test for admission of the Source Material.³⁵ More specifically, the Defence avers that the Panel erred in finding that: (i) whether the Source Material was necessary to understand an expert report is

³⁵ Request, para. 16.

the only relevant consideration for admission thereof;³⁶ and (ii) the Source Material can be relied upon for the truth of its content.³⁷ In doing so, the Defence submits, the Panel erred in law, and misapplied and disregarded established jurisprudence.³⁸ The Defence further submits that the Third Issue directly affects the fair conduct of the proceedings, because the Panel's alleged errors deprived the Defence of its procedural rights.³⁹ Moreover, the Defence avers that an immediate resolution by the Court of Appeals Panel will materially advance proceedings,⁴⁰ as resolution of the Third Issue may: (i) affect the Defence's choice to call a case and preparation for closing submissions;⁴¹ and (ii) have far reaching consequences beyond the scope of this trial.⁴²

28. The SPO responds that the Third Issue is not a discrete issue arising from the Impugned Decision,⁴³ as the Request, in this regard, merely mischaracterises the Panel's findings, or repeats arguments already raised before and considered by the Panel.⁴⁴ In addition, the SPO contests that the jurisprudence referred to in the Request lends support to the Defence's arguments therein,⁴⁵ and maintains that the Impugned Decision is consistent with the regulatory framework governing the present proceedings.⁴⁶ Finally, the SPO avers that the Defence's claims that the Third Issue would significantly affect the fair and expeditious conduct of the proceedings and require immediate appellate resolution are speculative and unsubstantiated.⁴⁷

³⁶ Request, paras 17-20, 26.

³⁷ Request, paras 24-26

³⁸ Request, paras 18, 21-23.

³⁹ Request, para. 30.

⁴⁰ Request, paras 31, 33.

⁴¹ Request, para. 31.

⁴² Request, para. 32.

⁴³ Response, para. 11.

⁴⁴ Response, paras 12-14.

⁴⁵ Response, paras 15, 17-18.

⁴⁶ Response, paras 16, 18-19.

⁴⁷ Response, paras 25-27.

29. The Defence replies that the SPO mischaracterises the Third Issue, and that the submissions made in the Response in this regard are unsupported and irrelevant.⁴⁸ The Defence further replies that, contrary to the SPO's submissions, issues of significant legal import which have the potential to impact the fairness of proceedings and judgment in this case should clearly be dealt with during the trial, as this is what fairness and the interests justice mandate.⁴⁹

30. At the outset, the Panel recalls that, in the Impugned Decision, it found that the admission of source material to the reports of expert witnesses is justified when such material is necessary to understand the reports of an expert witness, as well as the expert witness's testimony.⁵⁰

31. While, in making this determination, the Panel did consider several of the arguments brought forward in the Request,⁵¹ the Panel is of the view that the identification of the correct legal test for the admission of source material to an expert report constitutes a discrete topic emanating from the Impugned Decision. Therefore, the Panel is of the view that the Third Issue is an appealable issue arising from the Impugned Decision.

32. The Panel further finds that, similarly to the First and Second Issues, resolution of this question may impact the procedural rights of the Parties, and thus the fairness of the proceedings. The Defence has therefore demonstrated that Third Issue would significantly affect the fair conduct of the proceedings.

33. As to whether immediate resolution of the Third Issue would materially advance proceedings, the Panel is of the view that the Defence failed to

⁴⁸ Reply, paras 10-12.

⁴⁹ Reply, para. 13.

⁵⁰ Impugned Decision, para. 33, referring to F01226/A01, Panel, *Order on the Conduct of Proceedings*, 25 January 2023, para. 123; ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Trial Chamber III, [Decision on the Admission of Evidence Presented During the Testimony of Andras Riedlmayer](#), 14 April 2010, para. 19.

⁵¹ See e.g. Request, paras 20-22, 24; F02836, Specialist Counsel, *Joint Defence Response to Prosecution Request for Admission of the Expert Report and Source Material of W04875* ("Supplemental Response"), 17 January 2025, paras 22-28.

convincingly articulate why appropriate remedy could not be effectively sought after the end of trial. The Panel considers the Defence's arguments as to the necessity of immediate appellate intervention for the upcoming stages of the case to be unsubstantiated in relation to the Third Issue.⁵² The Panel has granted certification to appeal the Impugned Decision on the First and Second Issues and is not persuaded that immediate resolution of the Third Issue would assist the Defence in the preparation of its case, if any. The Defence provides no explanation as to how it would be impacted and how immediate resolution of the Third Issue would, in practice, materially advance the proceedings and thus warrant the exceptional remedy of an interlocutory appeal. The Panel recalls it has considerable discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions should be granted only on an exceptional basis.⁵³ Any relief that could potentially be obtained through the exceptional remedy of an interlocutory appeal would, in the view of the Panel, have no substantial effect on the proceedings.

34. Accordingly, the Panel concludes that the Defence has not demonstrated that the Third Issue satisfies the criteria set out in Article 45(2) and Rule 77(2). The request for certification to appeal the Third Issue is, thus, rejected.

C. FOURTH ISSUE

35. The Defence submits that the Panel erred in finding that the deficiencies and the "unusual" aspects of the Source Material, brought forward by the Defence as challenges to its admission, were relevant to weight, rather than admissibility, in

⁵² Request, para. 31.

⁵³ F02241, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046*, 15 April 2024, para. 10; F02157, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960*, 29 February 2024, para. 11 and footnote 26 (with further references). See also ICTR, *Nyiramasuhuko v. Prosecutor*, ICTR-98-42-AR73.2, Appeals Chamber, [Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence](#), 4 October 2004, para. 5.

contradiction with the letter and purpose of Rule 138(1).⁵⁴ The Defence further submits that the Fourth Issue directly affects the fair conduct of the proceedings, because the Panel's alleged errors deprived the Defence of its procedural rights.⁵⁵ Moreover, the Defence avers that an immediate resolution by the Court of Appeals Panel will materially advance proceedings,⁵⁶ as resolution of the Fourth Issue may: (i) affect the Defence's choice to call a case and preparation for closing submissions;⁵⁷ and (ii) have far reaching consequences beyond the scope of this trial.⁵⁸

36. The SPO responds that the Fourth Issue is not appealable and that the Request distorts the findings made in the Impugned Decision, considering that the Panel's assessment complied with the requirements of Rule 138(1).⁵⁹ The SPO further recalls that the Panel has, in the past, rejected a similar request for leave to appeal, finding that the issue did not arise from the impugned decision.⁶⁰ Finally, the SPO avers that the Defence's claims that the Fourth Issue would significantly affect the fair and expeditious conduct of the proceedings and require immediate appellate resolution are speculative and unsubstantiated.⁶¹

37. The Defence replies that issues of significant legal import which have the potential to impact the fairness of proceedings and judgment in this case should be dealt with during the trial, as this is what fairness and the interests justice mandate.⁶²

⁵⁴ Request, paras 27-28.

⁵⁵ Request, para. 30.

⁵⁶ Request, paras 31, 33.

⁵⁷ Request, para. 31.

⁵⁸ Request, para. 32.

⁵⁹ Response, para. 20.

⁶⁰ Response, para. 21, *referring to* F02067, Panel, *Decision on Joint Defence Request for Certification to Appeal Decision F01963*, 19 January 2024, paras 12-16.

⁶¹ Response, paras 25-27.

⁶² Reply, para. 13.

38. The Panel recalls that, in the Impugned Decision, it assessed the *prima facie* authenticity and reliability of the Source Material in detail, and was satisfied that the Source Material is *prima facie* authentic and reliable under Rule 138(1).⁶³ Thereafter, the Panel acknowledged and partially accepted the challenges raised by the Defence with regard to certain “unusual” aspects of the Source Material.⁶⁴ The Panel ultimately found, based on various considerations, that the material’s probative value was not outweighed by any prejudice.⁶⁵ Finally, the Panel remarked that the arguments raised by the Defence would be carefully considered when assessing the weight of the Source Material in light of all the evidence before it at the end of trial.⁶⁶

39. The Panel therefore finds that, by claiming that the Panel merely deferred the challenges brought by the Defence to the assessment of weight, the Request mischaracterises the Impugned Decision. The Panel considered these challenges when assessing the Rule 138(1) requirements of the proposed evidence of W04875 and, in its assessment thereof, weighed them against the material’s probative value, including in respect of its *prima facie* reliability. In light of this assessment, the Panel was ultimately satisfied that the Source Material reached the admissibility threshold under Rule 138(1).⁶⁷ The fact that the Panel noted that these issues will also be taken into account when assessing the evidentiary weight of the proposed evidence of W04875 cannot be equated to a finding that they were wholly irrelevant to its admissibility assessment. The Panel considers that the Fourth Issue misrepresents its findings and merely disagrees with the Impugned Decision and the outcome thereof. Moreover, the Panel recalls that it has considerable discretion in deciding whether to admit evidence, and certification

⁶³ Impugned Decision, para. 37.

⁶⁴ Impugned Decision, para. 38.

⁶⁵ Impugned Decision, paras 38-39.

⁶⁶ Impugned Decision, para. 38.

⁶⁷ See e.g. Impugned Decision, para. 38, footnote 103.

to appeal admissibility decisions should be granted only on an exceptional basis.⁶⁸ This is reflected in the Court of Appeals Panel's holding that "appellate intervention in decisions relating to the admission of evidence is warranted only in very limited circumstances."⁶⁹ In light of the above, the Panel finds that the Defence has failed to establish that the Fourth Issue constitutes an issue emanating from the Impugned Decision.

40. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Fourth Issue. The request for certification to appeal the Fourth Issue is therefore rejected.

D. FIFTH ISSUE

41. The Defence submits that the Panel erred in its assessment of the prejudice deriving from the admission of the Source Material, insofar as it failed to consider the prejudice caused by the Defence's inability to cross-examine the authors of the documents within the Source Material, especially in light of serious unexplained irregularities therein and the lack of information as to the methodology used to produce them.⁷⁰ The Defence further submits that the Fifth Issue directly affects the fair conduct of the proceedings, because the Panel's alleged errors deprived the Defence of its procedural rights.⁷¹ Moreover, the Defence avers that an immediate resolution by the Court of Appeals Panel will materially advance proceedings,⁷² as resolution of the Fifth Issue may: (i) affect the Defence's choice

⁶⁸ See *above* para. 33 and references therein.

⁶⁹ KSC-CA-2022-01, Appeal Judgment F00114, para. 35. See also 29 February 2024 Decision, para. 11; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeals Chamber, [Judgement](#), 20 February 2001, para. 533.

⁷⁰ Request, para. 29.

⁷¹ Request, para. 30.

⁷² Request, paras 31, 33.

to call a case and preparation for closing submissions;⁷³ and (ii) have far reaching consequences beyond the scope of this trial.⁷⁴

42. The SPO responds that the Fifth Issue merely disagrees with the Impugned Decision and fails to articulate any error therein.⁷⁵ In particular, the SPO argues that the Panel properly assessed, in the Impugned Decision, the potential prejudice caused to the Defence by the admission of the Source Material, and specifically considered the Defence's arguments in this regard.⁷⁶ The SPO further responds that the Request ignores the fact that the Defence could cross-examine W04875 on the Source Material, and will have every opportunity to call witnesses and tender evidence in relation thereto.⁷⁷ Finally, the SPO avers that the Defence's claims that the Fifth Issue would significantly affect the fair and expeditious conduct of the proceedings and require immediate appellate resolution are speculative and unsubstantiated.⁷⁸

43. The Defence replies that issues of significant legal import which have the potential to impact the fairness of proceedings and judgment in this case should be dealt with during the trial, as this is what fairness and the interests justice mandate.⁷⁹

44. At the outset, the Panel observes that, in the Impugned Decision, it assessed whether the probative value of the Source Material was outweighed by any prejudice, and ultimately found that it was not, considering in particular that the Defence was able to effectively cross-examine W04875 on the purported absence of access by the witness to the data underlying the Source Material.⁸⁰

⁷³ Request, para. 31.

⁷⁴ Request, para. 32.

⁷⁵ Response, paras 22, 24.

⁷⁶ Response, para. 22.

⁷⁷ Response, para. 23.

⁷⁸ Response, paras 25-27.

⁷⁹ Reply, para. 13.

⁸⁰ Impugned Decision, para. 39.

45. The Panel is of the view that the Request mischaracterises the Impugned Decision by claiming that the Panel did not consider the “true prejudice” caused by the Defence’s inability to cross-examine the authors of the Source Material, given the “unexplained irregularities” thereof.⁸¹ The Panel considered these submissions and ultimately found that the opportunity to cross-examine W04875 on these matters was “sufficient at the stage of admission” to address this concern.⁸²

46. The Fifth Issue merely disagrees with the outcome of the Panel’s assessment and attempts to re-litigate the issue of prejudice, by reiterating the same objections made prior to the Impugned Decision.⁸³ In this regard, the Panel also recalls the considerable discretion it enjoys in deciding whether to admit evidence and the exceptionality of the remedy of certification to appeal admissibility decisions.⁸⁴ In light of the above, the Panel finds that the Defence has failed to establish that the Fifth Issue constitutes an issue emanating from the Impugned Decision.

47. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Fifth Issue. The request for certification to appeal the Fifth Issue is therefore rejected.

V. CLASSIFICATION

48. The Panel notes that the Response and the Reply were filed confidentially. The Panel also notes the SPO’s submission that the Response can be classified as public.⁸⁵ The Panel, therefore: (i) instructs the Registry to reclassify the Response, currently classified as confidential, as public; and (ii) orders the Defence to file a

⁸¹ See Request, para. 29.

⁸² Impugned Decision, para. 39.

⁸³ See e.g. Response, para. 29; Supplemental Response, paras 18-26, 28-39.

⁸⁴ See *above* paras 33, 39 and references therein.

⁸⁵ Response, para. 28.

public redacted version of the Reply, or request reclassification thereof, by **Tuesday, 8 July 2025**.

VI. DISPOSITION

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

- a) **GRANTS** leave to appeal the First and Second Issues;
- b) **DENIES** leave to appeal the remaining Issues;
- c) **INSTRUCTS** the Registry to reclassify the Response, currently classified as confidential, as public; and
- d) **ORDERS** the Defence to file a public redacted version of the Reply, or request reclassification thereof, by **Tuesday, 8 July 2025**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 1 July 2025

At The Hague, the Netherlands.