



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The 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

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Second Decision on Specialist Prosecutor's Bar Table Motion

Acting Specialist Prosecutor

Alex Whiting

Counsel for Jakup Krasniqi

Venkateswari Alagenda

TRIAL PANEL II (“Panel”), pursuant to Articles 21, 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 16 December 2022, the Panel invited the Specialist Prosecutor’s Office (“SPO”) to file a bar table motion pertaining to: (i) proposed exhibits on its list of exhibits which it intends to use for any of its first 40 witnesses; and (ii) evidentiary material that the SPO considers important to the clear and effective presentation of its case at this stage (“Fourth Oral Order”).¹
2. On 8 February 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request for admission of material from the bar table (“Bar Table Motion”).²
3. On 21 February 2023, the Panel, upon the request of the Defence for Hashim Thaçi (“Mr Thaçi”), Kadri Veseli (“Mr Veseli”), Rexhep Selimi (“Mr Selimi”) and Jakup Krasniqi (“Mr Krasniqi”) (“Accused” and “Defence”), extended the time for response to the Bar Table Motion until 21 March 2023.³
4. On 21 March 2023, the Defence responded to the Bar Table Motion (“Response”).⁴

¹ Transcript of Hearing, Panel, 16 December 2022, p. 1775, line 6 to p. 1776, line 5.

² F1268, Specialist Prosecutor, *Prosecution Application for Admission of Material through the Bar Table*, 8 February 2023, with Annexes 1-4, 6, 7, confidential, and with Annexes 5, 8.

³ F01309, Panel, *Decision on Defence Request for a Revised Bar Table Motion and a Suspension and an Extension of Time*, 21 February 2023, paras 15, 16(c).

⁴ F01387, Specialist Counsel, *Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential, with Annexes 1-8, confidential.

5. On 31 March 2023, the Panel issued a decision in which it decided the admission of a number of documents offered pursuant to the Bar Table Motion (“Decision on Bar Table Motion”).⁵

II. SUBMISSIONS

6. The SPO requests the admission from the bar table of items falling into six categories: (i) Kosovo Liberation Army (“KLA”) General Staff communiques, political declarations and other announcements; (ii) Drafts of KLA public statements, seized from the residence of Mr Krasniqi; (iii) Published archives of KLA General Staff media agency “Radio Free Kosovo” (“RFK”); (iv) Published archives of KLA General Staff media “Kosovapress”; (v) Republications of “Kosovapress” material in other media; and (vi) Other items that do not fit a specific category but fall within the scope of the Panel’s Fourth Oral Order.⁶

7. The Defence responds that the Bar Table Motion is an unreasonable and prejudicial attempt to admit an enormous volume of evidence while avoiding fair scrutiny and the requirements that the documents be authenticated and verified by tendering them through the relevant witnesses.⁷ The Defence submits that the SPO has failed to adhere to the Panel’s direction to use a high threshold of evaluation so as to ensure that only evidence of high probative value is tendered.⁸ The Defence adds that the present approach will create a bloated trial record and undermine the fairness of proceedings by departing significantly from the guiding principles of orality, publicity and adversarial argument, and will neither expedite the trial nor facilitate the fair adjudication of the case.⁹ In addition, the Defence

⁵ F01409, Panel, *Decision on Specialist Prosecutor’s Bar Table Motion*, 31 March 2023, confidential.

⁶ Bar Table Motion, para. 2.

⁷ Response, para. 1.

⁸ Response, para. 3.

⁹ Response, para. 4.

raises general objections to the admission from the bar table of 13 different categories of documentary evidence and raises further specific objections to a number of other items.¹⁰

III. APPLICABLE LAW

8. The applicable law regarding the present matter is set out in Article 40(6)(h) and Rule 138(1), and has been laid out extensively in the Decision on Bar Table Motion.¹¹ The Panel will apply these standards to the present decision.

IV. DISCUSSION

A. PRELIMINARY MATTERS

9. The Panel notes that in the Decision on Bar Table Motion, it prioritised those items which the SPO identified as being linked to its proposed first six witnesses. This decision supplements that decision by addressing those items which the SPO has identified as being linked to witnesses W04746, W01236, and W04290.¹² There are no items, or only duplicate items, identified as being linked to W04323, W04337 and W03165 and, therefore, documents connected to these witnesses will not be addressed.

10. The Panel notes that while SPOE00053729-SPOE00053730-ET¹³ and SPOE00053796-SPOE00053797-ET¹⁴ have been identified as linked to W04290, the Panel is deferring its ruling on these two items to its next bar table decision.

¹⁰ Response, paras 14-105; Annexes 1-6 to the Response.

¹¹ See Decision on Bar Table Motion, paras 8-13.

¹² F01243/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of First 12 Witnesses and Associated Information*, 1 February 2023, confidential, pp. 15-33.

¹³ See Annex 4 to the Bar Table Motion, item 1A2.

¹⁴ See Annex 4 to the Bar Table Motion, item 1I2.

11. The Panel further notes that three documents have already been found appropriate for admission under Rule 154 as “associated exhibits”,¹⁵ and one of these documents has subsequently been admitted into evidence.¹⁶ For the reasons specified in the Decision on Bar Table Motion,¹⁷ the request for their admission from the bar table has become moot.

B. CATEGORIES OF PROPOSED EVIDENCE

12. The Panel will now address the SPO’s requests for admission from the bar table of items which the SPO intends to use with W04746, W01236, and W04290. The Panel has assessed these items based on the following categories: (i) photographs and videos; (ii) books; (iii) press reports, newspaper articles and interviews; (iv) decrees and communiques published in RFK and “Kosovapress”; (v) official documents from organisations; (vi) KLA-related documents; and (vii) documents seized from Mr Krasniqi’s or Mr Selimi’s residences.

1. Category 1: Photographs and Video

13. The SPO seeks admission of three photographs and one video.¹⁸ The SPO submits that these photographs and the video are relevant, authentic, probative and that no undue prejudice to the Defence would arise from their admission.¹⁹

14. The Defence objects to the admission from the bar table of numerous photographs and videos as many have been produced by, or are related to, SPO

¹⁵ **W04746**: SPOE00330390-00330391, SPOE00198098-00198366 and IT-05-87 P00456; *See* Annex 6 to the Bar Table Motion, items 197, 203, 335; *See also* Rule 154 Decision, paras 85, 92, 95, fn. 158.

¹⁶ *See* 1D00007.

¹⁷ *See also* Decision on Bar Table Motion, para. 21.

¹⁸ **W04290**: 058755-058755, SPOE00204138-00204138, IT-03-66 P248 and 054774-01; *See* Annex 6 to the Bar Table Motion, items 334, 512, 613, 622.

¹⁹ Bar Table Motion, para. 3.

witnesses, and should, therefore, be tendered through the relevant witnesses. The Defence submits that settled jurisprudence establishes that photographs and videos should not be admitted from the bar table without independent and admissible evidence.²⁰

15. The Panel considers that absent further details, such as a date, location, or other contextualisation by a witness, the relevance of photographs of the Accused, W04290, and others is uncertain. In addition, the Panel considers that the relevance of the video, without further contextualisation, cannot be ascertained. The Panel will therefore not admit the three photographs and the video from the bar table.

16. In light of the foregoing, the Panels denies admission of items 058755-058755, SPOE00204138-00204138, IT-03-66 P248 and 054774-01 from the bar table.

2. Category 2: Books

17. The SPO seeks to admit the following items²¹ in their entirety or in the form of excerpts: (i) “Book of War” by Nuhi Bytyci, which records his memories while working as a journalist during the conflict;²² (ii) “The KLA-OZ Llap” by Skender Zhitia, containing information obtained from KLA archives and interviews;²³ (iii) “War for Kosovo – Commander Remi Speaks” by Safet Zejnullahi, containing question and answer sessions between the author and W04746 regarding the conflict;²⁴ (iv) a book published by Mr Krasniqi;²⁵ and (v) an excerpt from a book titled “Gerilja Reporteren” by Pal Refsdal.²⁶ The SPO submits that these items are

²⁰ Response, paras 95-96; Annex 6.8 to the Response, pp. 2-3, 7-8, 34, 36.

²¹ The Panel notes that all references to items in this decision include their corresponding translations unless otherwise stated.

²² **W04746**: SPOE00128571-00128954; *See* Annex 6 to the Bar Table Motion, item 336.

²³ **W04746**: SPOE00055678-00056018; *See* Annex 6 to the Bar Table Motion, item 395.

²⁴ **W04746**: SPOE00053263-00053359; *See* Annex 6 to the Bar Table Motion, item 415.

²⁵ **W04290**: U015-8743-U015-9047; *See* Annex 6 to the Bar Table Motion, item 9.

²⁶ **W04290**: SPOE00209434 -00209512; *See* Annex 6 to the Bar Table Motion, item 329.

relevant, authentic, probative and that no undue prejudice to the Defence would arise from their admission.²⁷

18. The Defence objects to the admission of books from the bar table.²⁸ The Defence submits that the tendered books lack *prima facie* reliability because they are, to a large extent, based on hearsay information received from third parties who cannot be questioned directly by the Defence.²⁹ The Defence adds that the SPO has not demonstrated with clarity where and how various books fit into its case and seeks to tender lengthy books without identifying the relevant parts.³⁰

19. At the outset, the Panel notes that Nuhi Bytyci, the author of the “Book of War”, is a witness of the SPO.³¹ Accordingly, the Panel is of the view that it would be premature to admit this proposed exhibit before hearing from the author himself.

20. Regarding the relevance of SPOE00055678-00056018, SPOE00053263-00053359, and U015-8743-U015-9047, the Panel notes that the SPO has cited portions of these items in its pre-trial brief (“Pre-Trial Brief”).³² These portions are relevant, as they address, *inter alia*, the structure and function of the KLA, means and methods of communication within the KLA, specific actions in operational zones identified in the indictment, and the KLA’s issuance of political regulations.³³ Concerning SPOE00209434-00209512, while not referenced in the

²⁷ Bar Table Motion, para. 3.

²⁸ Response, para. 68; Annex 6.4 to the Response, pp. 1-16.

²⁹ Response, para. 69.

³⁰ Response, para. 70.

³¹ See F01296/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submissions Pursuant to Decision F01229*, 15 February 2023, confidential, p. 12.

³² F00709/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, confidential, (a lesser redacted confidential version was filed on 15 February 2023, F01296/A01) paras 25 (citing p. U015-8782), 58 (citing pp. U015-8758), 111 (citing p. U015-8878), 179 (citing p. U015-8757), 203-213 (citing pp. SPOE00055805, SPOE00055810, SPOE00055849, and SPOE00055911) 216 (citing p. SPOE00053322), 251 (citing U015-8876), 254 (citing pp. U015-8874-U015-8876).

³³ See *supra*, fn. 32; See also F00999/A01, *Submission of Confirmed Amended Indictment* (“Indictment”), 30 September 2022, confidential, paras 19, 53.

Pre-Trial Brief, the Panel considers it is relevant to the presence of Accused in various locations, and the means of communications available to the Accused.

21. Turning to authenticity, the Panel considers that SPOE00055678-00056018, SPOE00053263-00053359, U015-8743-U015-9047 and SPOE00209434-00209512 are *prima facie* authentic as they are published books.

22. The Panel is not, however, satisfied that the *prima facie* reliability of SPOE00209434-00209512 has been established. The origin of the information contained in that book is unclear and the author will not be called as a witness, making it difficult for the Defence to test that evidence and for the Panel to assess its reliability. The Panel will therefore not admit this item from the bar table.

23. The Panel is satisfied of the *prima facie* reliability and probative value of U015-8743-U015-9047. This item was authored and published by Mr Krasniqi and goes to the issues identified above.³⁴ The Panel is similarly satisfied of the *prima facie* probative value of SPOE00055678-00056018, and SPOE00053263-00053359 in light of their origins and content.

24. While the SPO relies upon passages from SPOE00055678-00056018, SPOE00053263-00053359 and U015-8743-U015-9047 at numerous places throughout its Pre-Trial Brief,³⁵ the Panel is not convinced that the admission of the books in their entirety is justified. Accordingly, the admission of the books and their English translations are limited at this point to those pages which the SPO has identified as relevant to its case in its Pre-Trial Brief.³⁶ Should the SPO seek to tender any other page(s) of these books, it shall make a new application to that effect in respect of the relevant page(s) or section(s) and explain their relevance to its case.

³⁴ See *supra*, para. 20.

³⁵ See *supra*, fn. 32.

³⁶ See *supra*, fn. 32.

25. Regarding whether the probative value of these pages of SPOE00055678-00056018, SPOE00053263-00053359 and U015-8743-U015-9047 is outweighed by the material's prejudicial effect, the Panel notes that while some of the passages of the books contain unsourced material, and/or hearsay from unidentifiable sources, the Panel can address these issues by assigning the appropriate weight to such passages and/or disregard those claims or assertions that are unsubstantiated. Additionally, as the Defence remarks in its submissions, the SPO intends to call numerous witnesses who can contextualize the information found in these books.³⁷ Accordingly, the Defence will have an opportunity to challenge aspects of the information contained in the admitted extracts by means of the cross-examination of SPO witnesses.

26. In light of the foregoing, the Panel admits into evidence SPOE00055678-00056018 (pp. SPOE00055805, SPOE00055810, SPOE00055849, and SPOE00055911), SPOE00053263-00053359 (p. SPOE00053322) and U015-8743-U015-9047 (pp. U015-8757-U015-8758, U015-8782, U015-8874-U015-8876 and U015-8878). The Panel denies admission of SPOE00209434-00209512 and SPOE00128571-00128954 in their entirety and the remaining portions of SPOE00055678-00056018, SPOE00053263-00053359 and U015-8743-U015-9047 from the bar table.

3. Category 3: Press Reports, Newspaper Articles and Interviews

27. The SPO seeks admission of 14 items, namely: (i) three items from the published archives of the RFK and "Kosovapress", which contain information or statements attributable to W04746 and/or the Accused;³⁸ (ii) three articles which

³⁷ Response, para. 63.

³⁸ **W04746:** SPOE00054318-SPOE00054320, SPOE00054513-SPOE00054514 and SPOE00054878-SPOE00054879; *See* Annex 4 to the Bar Table Motion, items 2H, 2M, 3G.

are interviews with W04290 published in “Zëri i Kosovës”;³⁹ (iii) five articles published in the “Washington Post”, “Zëri i Kosovës”, and in response to an article in “Zëri i Kosovës”, which contain, *inter alia*, statements which are attributable to the KLA or the Accused;⁴⁰ (iv) two articles which discuss the nature of special warfare;⁴¹ and (v) one article which addresses Mr Thaçi’s appointment of W04746 as an advisor in 2019.⁴² The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁴³

28. The Defence objects to the admission of interviews between SPO witnesses and third parties from the bar table. The Defence submits that the risk that such items have been subject to journalistic analysis or interpretation, or may have been manipulated in another way, require that the Accused has the opportunity to verify the truth of their content.⁴⁴ The Defence adds that the SPO had the opportunity to put these interviews to witnesses during SPO interviews and any failure to do so by the SPO should result in these interviews being attributed low evidentiary weight.⁴⁵

29. The Defence also objects to media articles that attribute statements to the KLA or the Accused being tendered from the bar table because the Defence is unable to confront such out-of-court statements and the circumstances in which such statements were made. The Defence adds that the admission of such hearsay

³⁹ **W04290**: 043853-043854, IT-05-87 6D00067 and SPOE00230134-SPOE00230134; *See* Annex 6 to the Bar Table Motion, items 231, 498, 630.

⁴⁰ **W04290**: SITF00437747-00437748, SITF00243018-00243022, SITF00243005-00243010, SITF00242993-00242999 and 055828-055829; *See* Annex 6 to the Bar Table Motion, items 421, 438, 440, 444, 621.

⁴¹ **W04746**: SPOE00056463-SPOE00056463 and SPOE00056447-SPOE00056447; *See* Annex 6 to the Bar Table Motion, items 390 and 392.

⁴² **W04746**: 076701-076704; *See* Annex 6 to the Bar Table Motion, item 550.

⁴³ Bar Table Motion, para. 3.

⁴⁴ Response, para. 56.

⁴⁵ Response, para. 57; *See also*; Annex 4 to the Response, pp. 30-31, 39-41, 72-73, 76-77, 90-91; Annex 6.1 to the Response, pp. 84-85; Annex 6.3 to the Response, pp. 5-6, 12-17, 20-21; Annex 6.11 to the Response, pp. 3-6.

statements from the bar table is especially likely to cause unfair prejudice because they are attributed to centrally important figures in the case.⁴⁶ The Defence avers that such statements were, in many instances, intended to serve other purposes, such as boosting KLA morale, garnering international support, reassuring scared and vulnerable civilian population, or self-promotion. The Defence submits that without a witness speaking to whether such statements are accurate, they cannot be regarded as reliable and should not be tended from the bar table.⁴⁷

30. Admissibility of press reports, newspaper articles and interviews from the bar table generally requires that the item on its face provides sufficient indicia of its origin and *prima facie* authenticity and the moving party has explained the probative value (including reliability) of the item.⁴⁸ The fact that the author of a document cannot be identified does not render it inadmissible. Similarly, the fact that information contain therein might not be sourced does not necessarily disqualify it for admission. However, if admitted, those considerations call for caution when assessing what weight, if any, should be given to it.⁴⁹

31. The Panel notes that it will consider 008555-008555-ET despite that the SPO has not asserted that this item relates to a witness discussed in the present decision. 008555-008555-ET is a news report broadcast by the RFK, which took place shortly after SPOE00054878-SPOE00054879, an article in which Bujar Bukoshi is denounced, was published. As these items use the same, or similar

⁴⁶ Response, para. 59.

⁴⁷ Response, para. 60.

⁴⁸ KSC-BC-2020-07, F00334, Trial Panel II, [Decision on the Prosecution Request for Admission of Items Through the Bar Table](#), 29 September 2021, paras 31-35, 39-41; ICTY, *Prosecutor v. Ratko Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Defence's Fifth Motion for the Admission of Documents from the Bar Table](#), 30 May 2016, paras 13-15; *Prosecutor v. Ratko Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Prosecution Motion for Admission of Documents from the Bar Table \(Military and Residual Documents\)](#), 13 February 2014, paras 16-17.

⁴⁹ International Criminal Court, *Prosecutor v Bemba Gombo*, ICC-01/05-01/08-2721, Trial Chamber III, [Decision on the Admission into Evidence of Items Deferred in the Chamber's Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64\(9\) of the Rome Statute" \(ICC-01/05-01/08-2299\)](#), 27 June 2013, para. 25.

language, the Panel considers that these items are closely related, and 008555-008555-ET's consideration is merited.

32. The Panel considers that a number of the above-mentioned items encompass, statements, in relation to the Drenica and Llap operational zones, articles about and interviews with W04290, and public statements attributed to the Accused, which are relevant as they concern, *inter alia*: (i) the KLA General Staff's awareness of events in the Drenica and Llap operational zones; (ii) the KLA's alleged targeting of those perceived as opponents; (iii) W04290's connection to Mr Selimi; and (iv) the KLA's structure and organisation.⁵⁰ Regarding the article and broadcast denouncing Bujar Bukoshi, the items are relevant to the alleged policy of the KLA towards those perceived to be opposed to its agenda.⁵¹

33. Regarding the two articles pertaining to "special warfare", the Panel notes as follows. The first article discusses the KLA's views on the use of special warfare and its effect, making it relevant to the proceedings.⁵² The second article deals with psychological warfare from a historical perspective covering its use in various conflicts from 1877 to 1974.⁵³ Notably absent is a discussion of the KLA or events occurring within the temporal jurisdiction of these proceedings. While this article appears to contain the same general language as that found in a portion of U002-2800-U002-2822,⁵⁴ which has also been offered for admission from the bar table, this does not remedy the lack of apparent relevance to the present case. Accordingly, the SPO has failed to establish that this article is relevant to these proceedings.

⁵⁰ Indictment, paras 35-40, 62, 99.

⁵¹ SPOE00054878-SPOE00054879 and 008555-008555-ET; *See* Annex 4 to Bar Table Motion, item 3G; Annex 3 to the Bar Table Motion, item 1B3

⁵² SPOE00056463-SPOE00056463; *See* Annex 6 to the Bar Table Motion, item 390.

⁵³ SPOE00056447-SPOE00056447; *See* Annex 6 to the Bar Table Motion, item 392.

⁵⁴ *See* pp. U002-2803 to U002-2806.

34. Regarding the article addressing Mr Thaçi's appointment of W04746 to the role of advisor,⁵⁵ the SPO has failed to establish its relevance to this case. The document could become relevant in the context of W04746's testimony. At this stage, however, it has not been shown to be relevant to a fact or issue material to this case.

35. Turning to authenticity, the Panel considers that all items determined above to be relevant are *prima facie* authentic as they are dated, numbered and are from the published archives of RFK and "Kosovapress" and/or have been published in official newspapers, such as the newspaper "Zëri i Kosovës".

36. The Panel considers, however, that 043853-043854, IT-05-87 6D00067, SPOE00230134-SPOE00230134, SITF00437747-00437748, SITF00243018-00243022, SITF00243005-00243010, SITF00242993-00242999 and 055828-055829, lack *prima facie* probative value without further contextualisation by a witness. First, the Panel considers that the *prima facie* probative value of articles about, or interviews with, W04290,⁵⁶ may be more accurately determined through the testimony of the witness who can contextualise their content. Secondly, the SPO has failed to establish the probative value of certain items which contain statements attributed to the Accused.⁵⁷ The Panel considers that the *prima facie* reliability and probative value of these items remain unclear and that the admission of such items at this stage without additional context would raise issues of confrontation and unfair prejudice to the Accused

37. The Panel is satisfied of the *prima facie* probative value of SPOE00056463-SPOE00056463, SPOE00054318-SPOE00054320 and SPOE00054513-

⁵⁵ 076701-076704; See Annex 6 to the Bar Table Motion, item 550.

⁵⁶ **W04290**: 043853-043854, IT-05-87 6D00067 and SPOE00230134-SPOE00230134; See Annex 6 to the Bar Table Motion, items 231, 498, 630.

⁵⁷ See *supra*, fn. 40.

SPOE00054514.⁵⁸ These items provide insight into KLA operations regarding the use of propaganda, messaging, and the use of communiques. In addition, their probative value is enhanced when their content is considered together.

38. The article and broadcast denouncing Bujar Bukoshi⁵⁹ are *prima facie* probative as they consist of published material that addresses how perceived enemies of the KLA are viewed. The consistency between the content of SPOE00054878-SPOE00054879 and 008555-008555-ET with regard to the language and bases cited in the denouncements of Bujar Bukoshi is mutually corroborative, further establishing their respective *prima facie* probative value.

39. With regard to prejudice to the Defence, the Panel is satisfied that the probative value of SPOE00056463-SPOE00056463, SPOE00054513-SPOE00054514, SPOE00054318-SPOE00054320, SPOE00054878-SPOE00054879 and 008555-008555-ET is not outweighed by any prejudice to the Accused as the Defence will be able to challenge the content of these items via cross-examination of, *inter alia*, W04290 and W04746. The Panel has not identified any other circumstance that would suggest that any prejudice would arise from the admission of these documents.

40. In light of the foregoing, the Panel admits into evidence SPOE00056463-SPOE00056463, SPOE00054513-SPOE00054514, SPOE00054318-SPOE00054320, SPOE00054878-SPOE00054879 and 008555-008555-ET and denies admission of items SITF00437747-00437748, SPOE00230134-SPOE00230134, SITF00243018-00243022, SITF00243005-00243010, SITF00242993-00242999, IT-05-87 6D00067, 055828-055829, 043853-043854, SPOE00056447-SPOE00056447 and 076701-076704 into evidence from the bar table.

⁵⁸ See Annex 4 to the Bar Table Motion, items 2H and 2M; Annex 6 to the Bar Table Motion, item 390.

⁵⁹ SPOE00054878-SPOE00054879 and 008555-008555-ET; See Annex 4 to Bar Table Motion, item 3G and Annex 3 to the Bar Table Motion, item 1B3.

4. Category 4: Decrees and Communiqués Published in RFK and Kosovapress

41. The SPO seeks admission of (i) decrees from the provisional government of Kosovo;⁶⁰ and (ii) a communiqué issued by the headquarters of the Drenica operational zone, which originate from the published archives of the RFK and the Kosovapress.⁶¹ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁶²

42. The Defence objects to admission from the bar table of statements that contain public statements by the KLA and the General Staff in particular.⁶³

43. The Panel is satisfied that 008557-008559 and SPOE00054898-SPOE00054902-ET are admissible. These decrees are clearly relevant to this case as they provide evidence of the actions and decisions of the Provisional Government of Kosovo ("PGoK") during the relevant timeframe, and therefore of its powers, authority and areas of competence. This, in turn, could be relevant to establishing the power and responsibility of some of the Accused during that period as members and officials acting under the umbrella of the PGoK and how the PGoK interacted with the KLA. These are *prima facie* authentic and probative. They all come from the published records of the RFK. Nothing on their face suggest that they are not authentic. Instead, the Panel notes that they are published in chronological order and that Decree no. 83/99 is a decree of 28 April 1999 adopted by the PGoK. The document is signed by Mr Thaçi, as Prime Minister. Paragraph 3 of this document is of particular relevance to the case, namely:

⁶⁰ **W04290**: SPOE00054898-SPOE00054902-ET; *See* Annex 4 to the Bar Table Motion, item 3I; 008557-008559; *See* Annex 6 to the Bar Table Motion, item 652.

⁶¹ **W04290**: 007948-007949-ET; *See* Annex 3 to the Bar Table Motion, item 1T.

⁶² Bar Table Motion, para. 3.

⁶³ Response, para. 14; Annex 3 to the Response, pp. 23-24; Annex 4 to the Response, pp. 92-94; Annex 6.11 to the Response, pp. 12-13.

Establish a Doctrine and Military Training Command as a separate structure tasked with the training of military units. This structure shall be under the direct leadership and command of the GS of the KLA.

44. The document comes from a collection of official documents published in a book. The Panel has not received any official, alternative, records of decisions rendered during that time by the PGoK. The document contains several indications of authenticity. First, its numbering is generally consistent and chronological. The extent to which there is corroboration of the measures envisaged in these documents will be verified at trial. Second, it refers as legal basis to the legal decree on the functioning of the Government of Kosovo. Third, it refers to an order of general mobilization. SPOE00054519-SPOE00054522-ET dated 29 March 1999 appears to be such an order. It was issued, on its face, by the KLA General Staff. The timing of that order and the reference in Decree 83/99 are consistent.⁶⁴ SPOE00054519-SPOE00054522-ET is also offered in the Bar Table Motion, and the Panel considers that it otherwise meets the requirements of Rule 138(1). It is relevant, *prima facie* authentic and probative. In coming to that view, the Panel has taken into account the content of these documents as well as the fact that they corroborate each other to some extent. Lastly, there is no indication of its lack of authenticity.

45. 008557-008559 and SPOE00054898-SPOE00054902-ET also contain what purports to be Decree No 84/99, again signed by Mr Thaçi as Prime Minister, which provides:

At the proposal of the Ministry of Defence of Kosovo and in accordance with, Article 6, point F, of the legal decree on the functioning of the Provisional Government, in its meeting of 27 April 1999, the Government of Kosovo, decreed the appointment of Mr Agim Çeku as

⁶⁴ SPOE00054519-SPO0005422-ET (Decision No. 151 dated 31 March 1999); See Annex 4 to the Bar Table Motion, item 20.

Chief of the General Staff of the Kosovo Liberation Army. This decision shall enter into force with immediate effect.

46. The Panel notes that there are several indications of this document's authenticity and reliability. First, there is no dispute that Mr Ceku was in fact appointed to that position and that this occurred around the time mentioned in this document. Secondly, the numbering of this document again generally corresponds to similar documents purportedly adopted by the Government of the PGoK during that period. It forms part of the KLA's effort to transition from a rebel armed body to a military structure acting under executive authority.

47. The Panel is satisfied that other decrees of the PGoK contained in this document similarly fulfill the requirements of Rule 138(1).

48. The Panel is also satisfied that 007948-007949-ET is relevant as it is a communique from the Drenice operational zone which prohibits citizens from requesting travel documents from Serbian offices, which in turn goes to the relevant command and control within the KLA. The Panel is also satisfied of the item's *prima facie* authenticity and probative value as it is dated, and originate from the archives of the Kosovapress and goes to the issues identified above.

49. With regard to prejudice to the Defence, the Panel is satisfied that the probative value of these items is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant SPO witnesses. The Panel has not identified any other circumstance that would suggest that any prejudice would arise from the admission of these documents.

50. In light of the foregoing, the Panel admits into evidence SPOE00054898-SPOE00054902-ET, 008557-008559, SPOE00054519-SPOE00054522-ET, and 007948-007949-ET.

5. Category 5: Official Documents from Organisations

51. The SPO requests the admission of two items associated with the Organisation for Security in Europe (“OSCE”),⁶⁵ two items originating from the United Nations Mission in Kosovo (“UNMIK”),⁶⁶ and one item from the Kosovo Anti-Corruption Agency (“KACA”).⁶⁷ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁶⁸

52. The Defence responds that these documents should only be tendered through their respective authors.⁶⁹ The Defence submits that reports from the United Nations or non-governmental bodies have generally been considered inadmissible from the bar table.⁷⁰ The Defence avers that: (i) it has a right to challenge the evidence contained in such reports; (ii) in particular, as little or no information is provided as to how the document was obtained or the methodology of how facts were gathered; (iii) such reports often reach opinions or conclusions on matters central to the proceedings, which could result in abdication of the fact-finding functions of the Panel; and (iv) where such reports concern the acts and conduct of the Accused, or members of their alleged network, their admission would be unduly prejudicial to the Accused.⁷¹

53. The Panel considers the following items are relevant as: (i) SITF00012041-00012044 is a daily activity report from the Kosovo Verification Mission of the OSCE which states that W04290 advised the human rights members that 56 people continue to be detained and mistreated by KLA members and that

⁶⁵ **W04290:** SITF00012041-00012044; *See* Annex 6 to the Bar Table Motion, item 475; **W04746:** SITF00384552-00384553; *See* Annex 6 to the Bar Table Motion, item 429.

⁶⁶ **W04746:** SPOE00120826-00120838-RED, 068263-068267; *See* Annex 6 to the Bar Table Motion, items 368, 569.

⁶⁷ **W04746:** 076693-076700; *See* Annex 6 to the Bar Table Motion, item 551.

⁶⁸ Bar Table Motion, para. 3.

⁶⁹ Response, paras 52-55; *See also* Annex 6.6 to the Response, pp. 14-15, 20-21, 26-27.

⁷⁰ Response, paras 86-87.

⁷¹ Response, paras 87-89.

he had submitted names of these people to “Pristina”; (ii) SITF00384552-00384553, is an OSCE record, which provides information regarding two meetings with the Llap/Llapi zone commander and the head of military police from that zone in which efforts to obtain access to detention facilities were discussed; (iii) 068263-068267 is an UNMIK report, which provides details of a car-stop and a photocopy of an ordinance, allegedly seized during the stop, which appear to be issued by the commanders of the KLA Llap/Llapi operational zone, and which calls for the “liquidation” of those that obstruct the KLA; and (iv) SPOE00120826-00120838-RED is the official minutes of the *Latif Gashi et al.* trial, which provides details regarding KLA sites in Majac, Llapasthicë and Potok, which in turn is relevant to the organisation and structure of the KLA, to the alleged policy of targeting perceived opponents and collaborators, and crimes alleged in the indictment.⁷²

54. The Panel finds that the SPO has failed to establish the relevance of the KACA report elucidating payments allegedly received by W04746 for his work as an advisor to the Presidency.⁷³ As with the press announcement of W04746’s related appointment addressed above,⁷⁴ the document *could* become relevant in the future and be admissible. At this stage, however, the SPO has failed to establish what fact or circumstance material to this case the document would be relevant to.

55. The Panel recalls its approach to authenticity and reliability of reports which originate from international organisations, such as the OSCE and UNMIK, set out in the Decision on the Bar Table Motion.⁷⁵ The Panel considers that these items are *prima facie* authentic. The documents are dated, on letterhead, and appear to be official and contemporaneous records of the events. They were provided to the

⁷² Indictment, paras 15, 19, 35, 37-38, 71, 155, 157.

⁷³ 076693-076700; See Annex 6 to the Bar Table Motion, item 551.

⁷⁴ See *supra*, para. 34.

⁷⁵ Decision on Bar Table Motion, para. 43.

SPO by the OSCE and by UNMIK, and have all attendant markings of such official documents. They are, therefore, *prima facie* authentic.

56. The Panel is not satisfied that the SPO has established the *prima facie* probative value of SITF00012041-00012044. Specifically, without further contextualisation, the Panel considers that there is no evidence as to how this report was prepared and on what the information therein is based upon.

57. Regarding the probative value of SITF00384552-00384553, SPOE00120826-00120838-RED and 068263-068267, the Panel finds them probative as they address policies toward those perceived to be opposed to the KLA, matters related to detentions and detention facilities and crimes alleged in the indictment. Their origin is known and the basis of the information they contain is *prima facie* probative of the facts they assert. At the same time, the Panel notes that 068263-068267 contains important and potentially incriminating information. Where and in what circumstances and in the possession of whom the document was found is known. There is little or no information, however, regarding where the individual concerned would have obtained this document. The Panel will therefore approach this document and the information it contains with caution when deciding whether to attribute any weight to it. The Panel further notes that the SPO will have an opportunity to put this document to several prospective witnesses might be in a position to comment upon it and the reliability of its content.

58. With regard to prejudice to the Defence, the Panel is satisfied that the probative value of SITF00384552-00384553, SPOE00120826-00120838-RED and 068263-068267 is not outweighed by the prejudicial effect on the Accused as the Defence will be able to challenge the content and probative value of these items via cross-examination, including with W04746. The Panel has not identified any other circumstance that would suggest that any prejudice would arise from the admission of these documents.

59. In light of the foregoing, the Panel admits SITF00384552-00384553, SPOE00120826-00120838-RED and 068263-068267, and denies admission of SITF00012041-00012044 and 076693-076700 from the bar table.

6. Category 6: KLA-Related Documents

(a) KLA Documents Signed by W04290 and W04746.

60. The SPO seeks to admit 40 items which are KLA orders, requests, training programmes and other documents signed by W04290 or W04746.⁷⁶ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁷⁷

61. The Defence responds that documents which are related to SPO witnesses should be tendered through the relevant witness in accordance with the principle of orality.⁷⁸ The Defence avers that Trial Chambers before the International Criminal Tribunal for the former Yugoslavia ("ICTY") have repeatedly held that introduction of documents through a witness is the preferred method, whilst a bar table motion is a supplementary method which should be used sparingly.⁷⁹ Lastly, the Defence submits that, while the SPO was on notice of the importance to explain

⁷⁶ **W04290**: U001-7883-U001-7883, U000-8262-U000-8262, U000-8212-U000-8219, U000-8056-U000-8056, U000-8034-U000-8034, U000-8005-U000-8005, U000-7979-U000-7998, U000-7909-U000-7909, U000-7887-U000-7888, U000-7885-U000-7885, U000-7874-U000-7874, U000-7868-U000-7868, U000-7862-U000-7862, U000-7849-U000-7849, U000-7811-U000-7811, U000-7778-U000-7778, U000-7777-U000-7777, U000-7720-U000-7720, U000-7718-U000-7718, U000-7691-U000-7691, U000-7650-U000-7650, U000-2534-U000-2534, U000-1654-U000-1654, U000-1649-U000-1649, U000-1647-U000-1647, U000-1644-U000-1645, U000-1436-U000-1436, SPOE00225798-SPOE00225798, SITF00240682-00240682, IT-05-87 4D00037, IT-04-84 P00231, IT-03-66 P93, 097047-097056, 096746-096747 and 096318-096335; *See* Annex 6 to the Bar Table Motion, items 68, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 146, 148, 152, 154, 156, 158, 174, 178, 180, 182, 184-185, 270, 460, 499, 501, 503, 533, 535, 537; **W04746**: U001-0291-U001-0292, U000-2142-U000-2142-ET, SITF00242138-SITF00242141, SITF00069016-SITF00069016 and 099824-099827; *See* Annex 6 to Bar Table Motion, items 104, 106, 458, 472, and 526.

⁷⁷ Bar Table Motion, para. 3.

⁷⁸ Response, para. 52.

⁷⁹ Response, para. 53.

why items could not be tendered through a witness, it offers no such explanation rather it lists potentially important items which appear directly relevant to witnesses and therefore such items should be rejected.⁸⁰

62. At the outset, the Panel recalls its finding as to the timing of the Decision on the Bar Table Motion and that the Panel may rule upon the admissibility of evidence either *prior to or during the course of a trial*,⁸¹ which equally applies to the present decision.

63. The Panel considers that the documents encompasses orders, requests, training plans, internal memos, booklets containing KLA disciplinary regulations and rules on conduct, as well as a KLA “amnesty” decision, and other documents signed by W04290 or W04736 which are relevant to the charges in the indictment as they relate to, *inter alia*: (i) the KLA’s organisation and chain of command; (ii) the structure and organisation of the Drenica operational zone; and (iii) alleged crimes committed in Likoc/Likovac.⁸²

64. Turning to the question of authenticity, the Panel considers that the documents are *prima facie* authentic as they are dated, signed by W04290, as commander of the Drenica operational zone, or by W04746 as commander of the Llap/Llapi operational zone,⁸³ or other relevant military personnel and many of the items have the KLA header.⁸⁴ The Panel notes that U000-7868-U000-7868 is not dated but finds that this does not undermine its authenticity as the request is numbered, has a formal heading and is signed by W04290.⁸⁵ The Panel further

⁸⁰ Response, para. 54; *See also* Annex 6.1 to the Response, pp. 51-52; Annex 6.2.1 to the Response, pp. 3-34, 36-42; Annex 6.2.4 to the Response, pp. 56, 18-20; Annex 6.5 to the Response, pp. 13-14

⁸¹ Decision on Bar Table Motion, paras 18-19.

⁸² Indictment, paras 32-57, 62, 99, 139-141.

⁸³ U001-0291-U001-0292, U000-0289-U0010290, U000-2142-U000-2142-ET, SITF00242138-SITF00242141, SITF00069016-SITF00069016, and 099824-099827; *See* Annex 6 to Bar Table Motion, items 104, 106, 107, 458, 472, 526.

⁸⁴ *See for example*, Annex 6 to the Bar Table Motion, items 140, 146, 270, 460, 499, 501, 537, 539, 541.

⁸⁵ *See* Annex 6 to the Bar Table Motion, item 136.

notes that SITF00240682-00240682 is also not dated. However, the SPO is relying upon this item to show the degree of organisation and structure within the KLA rather than to place an event to a specific date,⁸⁶ and as other indicia of authenticity are present, that the item has *prima facie* authenticity.

65. The Panel considers, however, that U000-8262-U000-8262, U000-2534-U000-2534, U000-1647-U000-1647, U000-1644-U000-1645, IT-03-66 P93, 097047-097056, and 096746-096747 require further contextualisation to verify the requirements of admissibility of these proposed exhibits. The Panel will therefore not admit U000-8262-U000-8262, U000-2534-U000-2534, U000-1647-U000-1647, U000-1644-U000-1645, IT-03-66 P93, 097047-097056, and 096746-096747 at this stage.

66. The Panel considers that the SPO has established the *prima facie* probative value of the remaining items, namely U001-7883-U001-7883, U000-8212-U000-8219, U000-8056-U000-8056, U000-8034-U000-8034, U000-8005-U000-8005, U000-7979-U000-7998, U000-7909-U000-7909, U000-7887-U000-7888, U000-7885-U000-7885, U000-7874-U000-7874, U000-7868-U000-7868, U000-7862-U000-7862, U000-7849-U000-7849, U000-7811-U000-7811, U000-7778-U000-7778, U000-7777-U000-7777, U000-7720-U000-7720, U000-7718-U000-7718, U000-7691-U000-7691, U000-7650-U000-7650, U000-1654-U000-1654, U000-1649-U000-1649, U000-1436-U000-1436, SPOE00225798-SPOE00225798, SITF00240682-00240682, IT-05-87 4D00037, IT-04-84 P00231, 096318-096335, U001-0291-U001-0292, U000-2142-U000-2142-ET, SITF00242138-SITF00242141, SITF00069016-SITF00069016 and 099824-099827. They relate to W04290's role and responsibilities as the commanders of the Drenica operational zone and W0476's role and responsibilities of the Llap/Llapi operational zone. They all, on the face of the documents, appear to be orders and requests signed by W04290 and W04746.

⁸⁶ See Annex 6 to the Bar Table Motion, item 460.

67. As regards prejudice to the Defence, the Panel is satisfied that the probative value of these documents is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination, including of W04290 and W04746, the individuals who allegedly signed the respective documents.

68. In light of the foregoing, the Panel admits into evidence U001-7883-U001-7883, U000-8212-U000-8219, U000-8056-U000-8056, U000-8034-U000-8034, U000-8005-U000-8005, U000-7979-U000-7998, U000-7909-U000-7909, U000-7887-U000-7888, U000-7885-U000-7885, U000-7874-U000-7874, U000-7868-U000-7868, U000-7862-U000-7862, U000-7849-U000-7849, U000-7811-U000-7811, U000-7778-U000-7778, U000-7777-U000-7777, U000-7720-U000-7720, U000-7718-U000-7718, U000-7691-U000-7691, U000-7650-U000-7650, U000-1654-U000-1654, U000-1649-U000-1649, U000-1436-U000-1436, SPOE00225798-SPOE00225798, SITF00240682-00240682, IT-05-87 4D00037, IT-04-84 P00231, 096318-096335, U001-0291-U001-0292, U000-2142-U000-2142-ET, SITF00242138-SITF00242141,⁸⁷ SITF00069016-SITF00069016 and 099824-099827 and denies admission of items U000-8262-U000-8262, U000-2534-U000-2534, U000-1647-U000-1647, U000-1644-U000-1645, IT-03-66 P93, 097047-097056, and 096746-096747 from the bar table.

(b) KLA General Staff Communiques

69. The SPO seeks to admit 10 items which are communiques allegedly attributed to the KLA General Staff, and responses to such communiques, which

⁸⁷ In addition to being submitted for use with the item's alleged author, W04746, this item was also submitted with regard to the testimony of W04323. Given that W04746 is scheduled to testify before W04323, the Accused will not be deprived of the opportunity to cross-examine its author before the item is potentially discussed during W04323's testimony.

it has identified as being linked to W04290.⁸⁸ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁸⁹

70. The Defence objects to the admission from the bar table of these communiques. Specifically, the Defence avers that many of the same communiques were tendered through witnesses before the ICTY where Trial Chambers accepted that: (i) these documents were written by different individuals, including zone commanders without the knowledge of the General Staff; (ii) were used as means of propaganda; and (iii) for the purpose of this campaign, their content was often exaggerated or altered.⁹⁰ The Defence argues that these findings by ICTY Trial Chambers cast significant doubt on the reliability and authenticity of these documents, which *prima facie* do not meet the test of Rule 138.⁹¹ In addition, the Defence submits that as some are unsigned, unstamped and sometimes undated, their authorship is unknown, it is unclear on what information these documents were written and the “original” versions are not available, these documents falls short of the requirements for admissibility without a witness providing context.⁹²

71. For the purpose of deciding admission, the Panel need not make a definite finding of attribution or authorship. It must only decide whether the requirements of Rules 138(1) are met in respect of these documents.

72. The Panel considers that the documents listed under this heading encompasses KLA General Staff communiques related to public statements made

⁸⁸ **W04290**: U016-2743-U016-2743-EDT, U016-2735-U016-2735 ET Revised, IT-04-84 P00966.E, U008-1614-U008-1614-AT, 086833-086833-ET, 043802-043802, 043800-043800, 043805-043805, 043861-043861 and 051864-051865; *See* Annex 1 to Bar Table Motion, items 1W, 1X, 1G2, 2J, 2M, 36, 38, 40, 43-44.

⁸⁹ Bar Table Motion, para. 3.

⁹⁰ Response, para. 16.

⁹¹ Response, para. 17.

⁹² Response, para. 17; *See also* Annex 1 to the Response, pp. 31-33, 46-48, 62-63, 66-67, 139-144, 149-152.

by the KLA and finds them relevant to, *inter alia*, the existence of an armed conflict, alleged targeting and legitimising of attacks on alleged collaborators, or opponents, and alleged crimes committed in Qirez/Ćirez and Baicë/Banjica.⁹³

73. Turning to the question of authenticity, the Panel is satisfied of the *prima facie* authenticity of these documents. The communiques were originally printed in “Zëri i Kosovës”, “Koha Ditore” and/or “Bota e Re”. Some of these were published in more than one of these outlets.⁹⁴ The SPO has provided the dates of publication and the communiques are numbered, which enables the Defence to further contextualise the communiques. The Panel has not yet received any evidence that any denial was issued at the time by the KLA General Staff or by any of its members to dispute the origin or authorship of these documents. The Defence points out that that some are unsigned, unstamped and sometimes undated. The Panel notes that the communiques addressed in the present decision are dated. Furthermore, the Panel notes that KLA communiques were generally unsigned and unstamped. The Panel will take into consideration the absence of signature in its final determination of the authenticity and probative value of the communiques.

74. Two documents require additional comments. 043800-043800 and 051864-051865 are expressions of disagreement with communiques by members of the KLA who are unknown or who have not yet been called as witnesses. Furthermore, it is not clear from the record what the information in these two items is based upon. Insofar as these documents are being offered to establish that certain members of the KLA disputed and took issue with the truth of the content of communiques issued by the KLA General Staff, the Panel is prepared to admit them for that limited purpose. The Panel notes, in this context, that these items

⁹³ Indictment, paras 17-20, 76, 110-111.

⁹⁴ See for example, Annex 6 to the Bar Table Motion, items 2M, 35-36, 37A, 39A, 40 where: (i) items 2M and 37A; (ii) items 35 and 36; and (iii) items 39A and 40, are mutually corroborative.

provide some corroboration of the authenticity of the communiques to which they respond. They also provide evidence that could be relevant to assessing the content and purpose(s) of KLA General Staff communiques. Accordingly, the Panel considers that 043800-043800 and 051864-051865 are *prima facie* probative to the limited purpose of establishing that certain members of the KLA disputed and took issue with the truth of the content of communiques issued prepared by the KLA General Staff.

75. The Panel is also satisfied that U016-2743-U016-2743-EDT, U016-2735-U016-2735 ET Revised, IT-04-84 P00966.E, U008-1614-U008-1614-AT, 086833-086833-ET, 043802-043802, 043805-043805, and 043861-043861 have *prima facie* probative value, including reliability, as they are published communiques on behalf of the KLA and which could be relevant to establishing facts and circumstances regarding this case, as indicated above.⁹⁵ The fact that one of the purposes of the communiques was of a propagandist nature does not render them inadmissible. The Panel will determine, on the basis of all of the evidence, what purpose or purposes these items were intended to serve. Regarding the Defence's suggestion that the content of some or all of these communiques might have been exaggerated, this also constitutes no ground to refuse admission. This would, where established, require the Panel to approach the evaluation of their content and the claims contained therein with the necessary degree of caution.

76. As regards prejudice to the Defence, the Panel is satisfied that the probative value of these documents is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

77. In light of the foregoing, the Panel admits into evidence items U016-2743-U016-2743-EDT, U016-2735-U016-2735-ET Revised, IT-04-84 P00966.E, U008-1614-

⁹⁵ See *supra*, para. 72.

U008-1614-AT, 086833-086833-ET, 043802-043802, 043805-043805 and 043861-043861. The Panel also admits into evidence 043800-043800 and 051864-051865 but limits the use of these items to establish that certain members of the KLA disputed and took issue with the truth of the content of communiqués issued by the KLA General Staff.

(c) KLA Regulations, Programme and Training Documents

78. The SPO seeks admission of five items constituting KLA regulations, programmes and training documents.⁹⁶ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁹⁷

79. The Defence responds that manuals, rules and regulations should not be admitted from the bar table absent information on where, when and how they were promulgated and to whom they apply.⁹⁸ The Defence submits that these items contain almost no indicia of authenticity, as they often contain virtually no information as to the authorship, beyond the KLA logo, the date of the document and the manner in which they were obtained beyond generic formulations, such as that it was provided by the ICTY, or seized from the Accused, and that the SPO has failed to sufficiently indicate the relevance of each item.⁹⁹ Lastly, the Defence argues that as the SPO intends to tender these items to prove elements central to its case, namely the level of organisation of the KLA and the authority of the KLA General Staff, admission from the bar table would be prejudicial to the Accused

⁹⁶ **W04290**: U000-9272-U000-9286 and IT-05-87.1 P00436 (also linked to W04746); *See* Annex 6 to Bar Table Motion, items 112, 493; **W04746**: U002-2800-U002-2822, U000-9858-U000-9888 and U000-9349-U000-9364; *See* Annex 6 to Bar Table Motion, items 60, 108, 110.

⁹⁷ Bar Table Motion, para. 3.

⁹⁸ Response, para. 102.

⁹⁹ Response, para. 103; *See* Annex 6.2.4 to the Response, pp. 1-3; Annex 6.5 to the Response, pp. 6-9, 14-15.

who would be unable to challenge the admissibility of this material through a witness. The Defence argues that this prejudice is amplified the SPO intends to call witnesses who held leadership positions within the KLA.¹⁰⁰

80. In respect of the Defence's submissions that these documents are too important to be admitted from the bar table, the Panel notes that while such rules and regulations might show that they were adopted and a certain degree of organisation of the KLA, it will ultimately base its findings on this issue in light of all relevant evidence. It will, in particular, consider not just the existence of those rules and regulations, but also the extent of their actual application and enforcement.

81. The Panel considers that the content of these documents encompasses programmes, training documents, rules and practices related to the responsibilities of the KLA. These are relevant to a number of issues in the case, including: (i) the authority of the KLA General Staff to adopt such regulations, and associated issues of powers and responsibilities of the KLA General Staff and its members; (ii) the level of coordination and organisation of the KLA; and (iii) the hierarchy within the KLA and the KLA General Staff's authority, in particular in regards to disciplinary matters.¹⁰¹

82. Turning to the authenticity of the documents, the Panel considers that the documents are *prima facie* authentic. All of these documents do, on their face, contain indicators suggesting that they came from the KLA. All are dated in "1998", three of the documents have a KLA logo¹⁰² and the other two documents have a typewritten KLA heading.¹⁰³ These indicators suggest that they were adopted by the KLA. The Panel notes that several of these are in turn referred to

¹⁰⁰ Response, para. 105.

¹⁰¹ Indictment, paras 15, 19, 37, 39.

¹⁰² U002-2800-U002-2822, U000-9349-U000-9364 and IT-05-87.1 P00436; See Annex 6 to the Bar Table Motion, items 60, 110, 493.

¹⁰³ U000-9858-U000-9888 and U000-9272-U000-9286; Annex 6 to the Bar Table Motion, items 108, 112.

in other KLA documents. The Panel need not determine the identity of the person who, on behalf of the KLA, wrote these documents for the purpose of their admission. And, if at all relevant to the Panel's findings, it will be determined at the end of the case in light of all relevant evidence before it.

83. In addition, these documents are all *prima facie* probative. There are sufficient indicia of reliability for the reasons set out in the preceding paragraph and they provide relevant evidence of facts and circumstances, in particular, in respect of issues of powers and competencies regarding disciplinary matters.¹⁰⁴

84. As regards prejudice to the Defence, the Panel is satisfied that the probative value of these documents is not outweighed by any prejudice to the Accused. The Defence will be able to put its case regarding these items via cross-examination of relevant SPO witnesses. As noted above, the purported centrality of these documents to the SPO case does not demonstrate prejudice within the meaning of Rule 138(1). "Prejudice" in this context does not refer to the evidential importance of a proposed item but to an unfairness that would arise from the admission of the document. The Panel considers that the potential centrality of a document does not bar its admission from the bar table as their centrality and potential attribution to the Accused is something to be established at trial.

85. In light of the foregoing, the Panel admits into evidence items U000-9272-U000-9286, IT-05-87.1 P00436, U002-2800-U002-2822, U000-9858-U000-9888 and U000-9349-U000-9364.

¹⁰⁴ See *supra*, para. 81.

(d) Handwritten Documents

86. The SPO seeks admission of seven handwritten documents.¹⁰⁵ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁰⁶

87. The Defence responds that these documents should only be tendered through their respective authors,¹⁰⁷ that the original source of documents is unknown, that they are inauthentic, that they are not sufficiently connected to the offenses or modes of liability in the indictment, and that their probative value is substantially outweighed by their prejudicial effect.¹⁰⁸

88. The Panel considers that the documents listed under this heading include handwritten: (i) invoices for logistical expenses on behalf of the Drenica operational zone;¹⁰⁹ (ii) notes which contain military abbreviations, extract from an interview, and minutes from a session of the KLA General Staff;¹¹⁰ (iii) documents which are daily reports dated 18 May and 1 June 1998 which include information about suspected collaborators;¹¹¹ (iv) an order, allegedly on behalf of W04290, for training of commanders;¹¹² (v) notes on lectures on military topics;¹¹³ and (vi) a KLA ambulance notebook.¹¹⁴

¹⁰⁵ **W04290**: U002-3436-U002-3441, U002-2855-U002-2868, U000-8363-U000-8363, U000-2419-U000-2420 and 098615-098626 (also linked to W04746); *See* Annex 6 to Bar Table Motion, items 54, 58, 114, 176, 531. **W01236**: U001-5195-U001-5244; *See* Annex 6 to the Bar Table Motion, item 78; **W04746**: U001-2310-U001-2319; *See* Annex 6 to the Bar Table Motion, item 82.

¹⁰⁶ Bar Table Motion, para. 3.

¹⁰⁷ Response, paras 52-55.

¹⁰⁸ Response, paras 97-101; *See also* Annex 6.1 to the Response, pp. 3-5, 10-11, 47-48; Annex 6.2.1 to the Response, pp. 2-5, 39-40.

¹⁰⁹ U002-3436-U002-3441; *See* Annex 6 to the Bar Table Motion, item 54

¹¹⁰ U002-2855-U002-2868; *See* Annex 6 to the Bar Table Motion, item 58.

¹¹¹ U000-8363-U000-8363 and 098615-098626; *See* Annex 6 to the Bar Table Motion, items 114, 531.

¹¹² U000-2419-U000-2420; *See* Annex 6 to the Bar Table Motion, item 176.

¹¹³ U001-2310-U001-2319; *See* Annex 6 to the Bar Table Motion, item 82.

¹¹⁴ U001-5195-U001-5244; *See* Annex 6 to the Bar Table Motion, item 78.

89. The Panel finds that these items are relevant to, *inter alia*, to: (i) the general functioning of the KLA and level of organisation; (ii) the powers and responsibilities of those concerned by these documents; (iii) alleged policy towards collaborators and implementation thereof; (iv) functioning and responsibilities of the General Staff; and (v) degree of operational sophistication and organisation of the KLA.¹¹⁵

90. The Panel notes that a handwritten document is not *per se* inadmissible. Like other tendered document, it must however reveal sufficient indicia of *prima facie* authenticity and probative value, including in respect of its reliability. The Panel considers that U002-3436-U002-3441, U002-2855-U002-2868, U000-8363-U000-8363, U000-2419-U000-2420, 098615-098626, U001-2310-U001-2319 and U001-51950-U001-5244, are not sufficiently authenticated and reliable, without further contextualisation by a witness, as some of the items are undated, and for some it is unclear who authored the items and based on what information. The Panel will therefore not admit these items from the bar table.

91. In light of the foregoing, the Panel denies admission of U002-3436-U002-3441, U002-2855-U002-2868, U000-8363-U000-8363, U000-2419-U000-2420, 098615-098626, U001-2310-U001-2319 and U001-5195-U001-5244.

(e) Other KLA Documents

92. The SPO seeks admission of a further seven items which also purport to come from the KLA.¹¹⁶ The SPO submits that these documents are relevant, authentic

¹¹⁵ Indictment, paras 15, 19, 37, 39.

¹¹⁶ **W04290**: U017-3349-U017-3363, U003-4775-U003-4784; See Annex 6 to Bar Table Motion, items 3, 46; **W04746**: U001-0504-U001-0504-RED, U001-0399-U001-0400, SPOE00119160-SPOE00119160, SITF0024242577-SITF00242577 and 056474-056474; See See Annex 6 to the Bar Table Motion, items 100, 102, 371, 456, 616.

and probative and that no undue prejudice to the Defence arises from their admission.¹¹⁷

93. The Defence responds that these documents should only be tendered through their respective authors, that the original source of documents is unknown, that they are inauthentic, that they are not sufficiently connected to the offenses or modes of liability in the indictment, and that their probative value is substantially outweighed by their prejudicial effect.¹¹⁸

94. While U003-4775-U003-4784 is only partially available in English this has not prevented the Panel from considering this item, nonetheless, the Panel finds that the SPO has failed to establish the relevance of U003-4775-U003-4784. The Panel, therefore, denies admission of U003-4775-U003-4784.

95. The Panel considers that the remaining documents listed under this heading encompasses: (i) records of proposed military police candidates for the 112th Brigade in the Drenica operational zone;¹¹⁹ (ii) an order for release of an individual from detention,¹²⁰ (iii) an order to detain Serbs wearing police uniforms;¹²¹ (iv) decision terminating the detention of an individual;¹²² (v) a combat order;¹²³ and (vi) a KLA military police summons forms.¹²⁴ The Panel finds that each and all of these items are relevant. They concern, *inter alia*: (i) the functioning, structure, responsibilities and operations of the KLA; (ii) the role, functions and responsibilities of the KLA General Staff; (iii) the power and authority to detain

¹¹⁷ Bar Table Motion, para. 3.

¹¹⁸ Response, paras 52-55; *See also* Annex 6.2.1 to the Response, pp. 1-2; Annex 6.2.4 to the Response, pp. 3-4, 20.

¹¹⁹ U017-3349-U017-3363; *See* Annex 6 to the Bar Table Motion, item 3.

¹²⁰ U001-0504-U001-0504-RED; *See* Annex 6 to the Bar Table Motion, item 100.

¹²¹ SPOE00119160-SPOE00119160; *See* Annex 6 to the Bar Table Motion, item 371.

¹²² SITF00242577-00242577; *See* Annex 6 to the Bar Table Motion, item 456.

¹²³ U001-0399-U001-0400; *See* Annex 6 to the Bar Table Motion, item 102.

¹²⁴ 056474-056474. *See* Annex 6 to the Bar Table Motion, item 616.

within the KLA; and (iv) crimes alleged in Bare and Bajgorë/Bajgora regions during the time period reflected in the indictment.¹²⁵

96. The Panel is satisfied that the documents are *prima facie* authentic as they contain indicators of authenticity including letterheads, reference numbers, dates, stamps, and/or signatures.

97. The Panel considers, however, that the SPO has failed to establish the *prima facie* probative value of U017-3349-U017-3363. The nature of this item makes it clear that further contextualisation would be required before the document could be admitted. The Panel will, therefore, not admit this item at this point of the proceedings.

98. The Panel considers that U001-0504-U001-0504-RED, SPOE00119160-SPOE00119160, SITF0024242577-SITF00242577, U001-0399-U001-0400 and 056474-056474 have been shown to be *prima facie* probative as they provide further evidential insight into, *inter alia*, the functioning of the KLA, the chain of command regarding operational activities of the KLA, police functions, and the process of detention by members of the KLA.

99. As regards prejudice to the Defence, the Panel is satisfied that the probative value of these documents is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of the relevant witnesses, including W04746 and W04290.

100. In light of the foregoing, the Panel admits into evidence items U001-0504-U001-0504-RED, SPOE00119160-SPOE00119160, SITF0024242577-SITF00242577, U001-0399-U001-0400 and 056474-056474 and denies admission of U017-3349-U017-3363 and U003-4775-U003-4784 from the bar table.

¹²⁵ Indictment, paras 37, 39, 70, 106, 156.

7. Category 7: Documents Seized from Mr Krasniqi or Mr Selimi's Residences

101. The SPO seeks admission of 20 documents, which it avers are linked to W04746's and/or W04290's evidence and, which were seized during SPO searches of Mr Krasniqi's and Mr Selimi's residences.¹²⁶

102. The Defence challenges the lawfulness of the seizures conducted at Mr Krasniqi's and Mr Selimi's homes based on: (i) alleged inadequacies of the inventory; (ii) failure to provide a copy of the inventory in the Albanian language; (iii) absence of counsel during (part of) the search operation at Mr Krasniqi's home; and (iv) alleged violations of the rights of the Accused.¹²⁷

103. As a preliminary matter, the Panel will deal with the question of whether the Defence is procedurally authorized to challenge the lawfulness of the search and seizure operations at this point in time.

104. Rule 39(1)(b) provides that:

Subject to paragraph (2), a search and seizure pursuant to either Rule 37 or Rule 38 shall be executed in the presence of the person concerned by the Specialist Prosecutor, who shall, prior thereto

[...]

(b) inform the person of his or her rights under Rule 42 or Rule 43, as applicable;

105. Rule 42(3) in turn provides that:

¹²⁶ **W04290**: 086833-086833 (this item is also linked to W04746), 043803-043803; *See* Annex 1 to the Bar Table Motion, items 37, 37A; SPOE00232092-00232094, SPOE00225221-SPOE00225223, SPOE00231386-SPOE00231387, SPOE00231388-SPOE00231389, and SPOE00232680-00232685; *See* Annex 2 to the Bar Table Motion, items 17A, 17B, 17C, 18-19; SPOE00232117-SPOE00232120, SPOE00231037-SPOE00231128, SPOE00230089-SPOE00230089, SPOE00230091-SPOE00230091, SPOE00230093-SPOE00230093, SPOE00227659-SPOE00227660, SPOE00226679-SPOE00226686, SPOE00226369-SPOE00226433, SPOE00226185-SPOE00226190, and SPOE00225799-SPOE00225799; *See* Annex 6 to the Bar Table Motion, items 217, 229, 232, 234, 236, 252, 258, 262, 266, 268; **W04746**: SPOE00229687-SPOE00229688, SPOE00228852-SPOE00228852 and SPOE00226662-SPOE00226674; *See* Annex 6 to the Bar Table Motion, item 238, 242, 260.

¹²⁷ Response, paras 31-51.

Any challenge to a summons, order or investigative undertaking by the Specialist Prosecutor on the basis that it adversely affects the person's rights, shall be brought before a Single Judge to be assigned pursuant to Article 25(1)(f) of the Law, if a Panel has not otherwise been assigned. Any such challenge shall be brought no later than one month from the official notification of such summons, order or investigative undertaking and acknowledgment thereof by the person concerned.

106. The Panel notes that no such challenge was brought within the time-limit set by Rule 42(3). Mr Krasniqi and Mr Selimi may, therefore, be taken to have waived their right to do so under the Rules. And there is also no indication before the Panel that good cause exists that would justify regarding the present challenge as being validly before the Panel.

107. Nevertheless, the Panel has decided to consider the merits of the challenges raised by the Defence to the lawfulness of the search and seizure operations in order to ensure and guarantee the fairness of proceedings and the integrity of the record.

108. In respect of the inadequacies of the inventory, the Defence alleges that the search and seizure at Mr Krasniqi's and Mr Selimi's residences did not fulfil the requirements of Rule 39 and violated the rights of the Accused because: (i) the inventory was incomplete, unsubstantial or too generic;¹²⁸ (ii) no list of individual items seized was provided to the relevant Accused or their representatives at that time;¹²⁹ (iii) an updated inventory produced on 28 April 2021 cannot be matched against the original inventory;¹³⁰ (iv) items described as "collections" of documents violate the requirement of "detailed description" provided under Rule 39(4);¹³¹ and (v) items offered for admission were extracted from files

¹²⁸ Response, para. 36.

¹²⁹ Response, para. 36.

¹³⁰ Response, para. 37.

¹³¹ Response, para. 38.

contained on a “workstation” taken from Mr Krasniqi’s residence, but no inventory of the extracted files was made and no investigator’s note produced to show that files were extracted from that computer.¹³²

109. In respect of these arguments, the Panel rules as follows. First, as noted in the *Gucati* case, Rule 138(1), proof or a record of chain of custody is not a condition for the admission of evidence.¹³³ Furthermore:

[t]he existence, specificity and reliability of such a record, if it exists, are factors of potential relevance to evaluating the conditions of admissibility of the collected evidence. The Panel also notes that there is no international consensus or standard regarding the manner and form in which a record of a chain of custody must be made. The admissibility of collected evidence would only be affected if the purported shortcomings of the chain of custody would raise questions about the authenticity and/or reliability of that evidence. In any event, the reliability and authenticity of evidence collected in a seizure operation must always be assessed in light of all relevant circumstances and not merely on the basis of the formal record that was made, if any, of the seizure operation.¹³⁴

110. The Defence has argued in favour of a level of specificity of the inventory not required by the Rules. The Panel is satisfied that the records of the searches fulfil the requirement of Rule 39(4) for an itemized and detailed inventory.

111. Regarding the second complaint, the Rules do not require that the person concerned be given contemporaneously a copy of the inventory at the time of the search or seizure (let alone in Albanian). The Rules only require that where the person concerned and his or her counsel is present he/she shall sign the inventory

¹³² Response, para. 43.

¹³³ KS-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Jugement*, 18 May 2022, para. 28.

¹³⁴ *Ibid.*

and may comment in writing on the execution of the search and seizure.¹³⁵ This was done in the present case.

112. Regarding the third complaint, the SPO was not under an obligation to provide an updated inventory. The SPO did so to the benefit, rather than to the detriment, of the Defence. The Defence's complaints regarding the tenor and/or form of this supplementary inventory or record are therefore immaterial to the question of the lawfulness of the search.

113. The Defence objection to the use of "collections" of documents is likewise without merit. While Rule 39(4) requires the inventory to record each "item seized", this requirement is to be interpreted in light of what is being seized in a given case, the quantity, state and condition of the material when seized. Documents are to be recorded in the inventory as they are found at the location of the search. If they are found as a bundle or collection of documents, their description as such would meet the requirement of itemization foreseen by Rule 39(4).

114. Regarding the last complaint, the Panel notes that, at the time of seizure, the SPO seized and sealed all items in evidence bags, or boxes,¹³⁶ and was, therefore, not able to determine what files, if any, the work-station contained and was only required to register and itemize what it had seized, namely the work-station. The Rules do not require the SPO to produce a separate inventory of the files subsequently extracted from a seized computer or other electronic device. Nor has the Defence referred to a rule or legal principle, applicable before this jurisdiction, that would have required the SPO to do so.

¹³⁵ See Rule 39(4).

¹³⁶ F00095, Specialist Prosecutor, *Prosecution Report on Search and Seizure pursuant to KSC-BC-2020-06/F00031/COR* ("Krasniqi Search and Seizure Report"), 19 November 2020, confidential and *ex parte*, para. 8.

115. Concerning the issue of language, the Defence submits that the inventory of items seized during the search and seizure should have been made in Albanian, not English. Rule 39 contains no such requirement. The Defence's reliance on Rule 42(1)(c)¹³⁷ is without merit as this Rule pertains to the assistance of an interpreter in the context of questioning of a person.¹³⁸ The Parties do not assert that such questioning took place during the search and seizures in question.

116. Regarding the presence of counsel, Rule 43(3) and (4) provide that:

3. Any investigative act requiring the presence of a suspect, in particular any questioning, confrontation, identity parade or reconstruction of a crime scene shall not proceed without the presence of Specialist Counsel. A suspect may waive this right provided that the Specialist Prosecutor ensures that the suspect understands the nature of this right and the consequences of waiving it. When providing such information, the Specialist Prosecutor shall take into account the personal circumstances of the suspect, including his or her age, mental and physical condition. A waiver and the circumstances in which it was given shall be recorded in writing by the Specialist Prosecutor and shall be signed by the suspect.

4. A suspect shall be informed that he or she may revoke the waiver at any point during his or her interview. Where a suspect revokes a waiver, the questioning shall cease and shall only resume in the presence of Specialist Counsel. Questioning or any other act carried out prior to the revocation of the waiver shall be valid and shall not be repeated.

117. As a preliminary matter, the Panel notes that, as is apparent from Rule 39(2), search or seizure do not require the presence of a suspect. Rule 43(3) only requires the presence of counsel if the investigative act in question requires the presence of the suspect. As the presence of the suspect is not required for search and seizure operations under Rule 39, it must mean that the presence of counsel is not itself required.

¹³⁷ Response, para. 40, fn. 76.

¹³⁸ See also Rule 43(2).

118. However, where the Rules provide for the right to presence of counsel, the individual concerned can waive his right to counsel. The Panel is satisfied that Mr Krasniqi waived his right to counsel being present in this case. He initially waived the possibility of having counsel present (from 8:26 a.m. until 10:34 a.m.).¹³⁹ At 10:34 a.m., Mr Krasniqi's counsel arrived and Mr Krasniqi indicated that he wanted him to be present during the remainder of the search. His counsel was provided with a copy of the search and seizure order and signed for receipt at 10:39 a.m. Mr Krasniqi's counsel left the premise at 11:46 a.m., leaving a phone number that the SPO agreed to contact when the search was completed.¹⁴⁰ Mr Krasniqi raised no objection to that course of action at the time. Mr Krasniqi's counsel returned to the premises at 2:39 p.m.¹⁴¹ Neither Mr Krasniqi, nor his counsel, raised any objections to the continuation of the search in those circumstances and did not raise a challenge to it in accordance with Rule 42(3). In those circumstances, the Panel finds that Mr Krasniqi initially waived his right to have counsel present during the search and had his counsel present thereafter when he requested his presence.

119. Mr Selimi has raised no similar objection about counsel being present and the Panel is satisfied that the search of his residence was conducted in a manner consistent with the Law and the Rules.

120. Based on the above, the Defence has failed to establish that the rights of the Accused or the integrity of proceedings was in any way materially affected by the manner in which the search and seizures operations were conducted in this case.

121. The Panel will therefore consider the admissibility of the items seized from Mr Krasniqi's and Mr Selimi's residences. The Panel has, as far as possible, assessed the 20 documents using the same categories as above, namely:

¹³⁹ Response, para. 39; *See also* Krasniqi Search and Seizure Report, paras 4, 8-9.

¹⁴⁰ Krasniqi Search and Seizure Report, para. 9.

¹⁴¹ Krasniqi Search and Seizure Report, para. 12.

(i) photograph; (ii) book; (iii) press reports and newspaper articles and interviews; (iv) document signed by W04290; (v) KLA General Staff communiques; (vi) KLA draft public statements; (vii) handwritten KLA documents; and (viii) other KLA documents.

(a) Photograph

122. The SPO seeks admission of a photograph of Mr Selimi in the company of W04746, which was seized from Mr Selimi's residence.¹⁴² The SPO submits that the photograph is relevant, authentic and probative and that no undue prejudice to the Defence arises from its admission.¹⁴³

123. The Defence objects to the admission from the bar table of numerous photographs and videos as many have been produced by, or are related to SPO witnesses, and should, therefore, be tendered through the witness or witnesses concerned. The Defence submits that settled jurisprudence establishes that photographs and videos should not be admitted from the bar table without independent and admissible evidence.¹⁴⁴

124. The Panel considers that absent further details, such as a date, location, or other contextualisation by a witness, the relevance of this photograph is not apparent. The Panel will therefore not admit the photograph from the bar table.

125. In light of the foregoing, the Panels denies admission of SPOE00229687-SPOE00229688.

¹⁴² **W04746**: SPOE00229687-SPOE00229688; See Annex 6 to the Bar Table Motion, item 238

¹⁴³ Bar Table Motion, para. 3; See Annex 6 to the Bar Table Motion, item 238.

¹⁴⁴ Response, paras 95-96; See also Annex 6.8 to the Response, p. 2

(b) Book

126. The SPO seeks admission of an unpublished manuscript titled “The KLA at the Rambouillet International Conference on Kosovo and the NATO Bombings” dated February 2020, which refers to Mr Krasniqi as its author and which was seized from his residence.¹⁴⁵ The SPO submits that this document is relevant, authentic and probative and that no undue prejudice to the Defence arises from its admission.¹⁴⁶

127. The Defence objects to the admission of books from the bar table.¹⁴⁷ The Defence adds that the SPO has not demonstrated with clarity where and how various books fit into its case and seeks to tender lengthy books without identifying the relevant parts.¹⁴⁸

128. The Panel finds that SPOE00231037-SPOE00231128 is relevant as it concerns the presence of the Accused in various locations during the temporal scope of the indictment, the means of communication available to KLA members, and details on the role of Mr Krasniqi and others within the KLA.

129. The Panel considers that this item bears indicia of *prima facie* authenticity, such as an internal attribution to Mr Krasniqi as the author, a corresponding date, and the fact that it was found in Mr Krasniqi’s residence. This provides sufficient indications of the document’s *prima facie* authenticity.

130. The Panel is not, however, satisfied with the *prima facie* probative value, including reliability, of SPOE00231037-SPOE00231128. In particular, the Panel notes that this document is an unpublished draft manuscript and, therefore, without further contextualisation by a witness, the truth of the content therein remains uncertain. Furthermore, the Panel notes that the SPO did not specifically

¹⁴⁵ **W04290**: SPOE00231037-SPOE00231128; *See* Annex 6 to the Bar Table Motion, items 229.

¹⁴⁶ Bar Table Motion, para. 3.

¹⁴⁷ Response, para. 68; *See also* Annex 6.4 to the Response, pp. 6-7.

¹⁴⁸ Response, para. 70.

identify those parts or sections of the manuscript which they seek to rely upon which might have enabled the Panel to make a more specific assessment of those parts' *prima facie* probative value and reliability.

131. In light of the foregoing, the Panel denies admission of SPOE00231037-SPOE00231128 from the bar table.

(c) Press Reports, Newspaper Articles and Interviews

132. The SPO seeks to admit three press reports about, or containing statements attributable to, W04290 published in "Gazetë Shqiptare". These were seized at Mr Selimi's residence.¹⁴⁹ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁵⁰

133. The Defence objects to the admission of interviews between SPO witnesses and third parties being tendered from the bar table. The Defence submits that the risk that such items have been subject to journalistic analysis or interpretation or may have been manipulated in another way, require that the Accused has the opportunity to verify the truth of their content.¹⁵¹ The Defence also objects to media articles that attribute statements to the KLA or the Accused being tendered from the bar table because the Defence is unable to confront such out-of-court statements and the circumstances in which such statements were made.¹⁵²

134. The Panel finds that these three items are relevant as they concern, *inter alia*, activities in the Drenica operational zones, and KLA organisation and structure.¹⁵³

¹⁴⁹ **W04290**: SPOE00230089-SPOE00230089, SPOE00230091-SPOE00230091 and SPOE00230093-SPOE00230093; See Annex to the Bar Table Motion, items 232, 234, 236.

¹⁵⁰ Bar Table Motion, para. 3.

¹⁵¹ Response, para. 56; See also Annex 6.3 to the Response, pp.6-7.

¹⁵² Response, paras 59-60.

¹⁵³ Indictment, paras 35, 41.

135. Turning to authenticity, the Panel considers that all items bear *prima facie* indicia of authenticity as they are dated, and were published in “Gazetë Shqiptare”.

136. The Panel is also satisfied that these items are *prima facie* probative of facts relevant in the case. However, in the exercise of its discretion and to prevent any prejudice to the Defence, the Panel considers that the admission of these items should be decided after the testimony of W04290 where the content of these documents could be fully explored with the witness.

137. In light of the foregoing, the Panel denies admission of SPOE00230093-SPOE00230093, SPOE00230091-SPOE00230091 and SPOE00230089-SPOE00230089 from the bar table.

(d) Document Signed by W04290

138. The SPO seeks admission of one “request for compensation” signed by W04290, which was seized at Mr Krasniqi’s residence.¹⁵⁴ The SPO submits that this document is relevant, authentic and probative and that no undue prejudice to the Defence arises from its admission.¹⁵⁵

139. The Defence responds that documents which are related to SPO witnesses should be tendered through the relevant witness in accordance with the principle of orality.¹⁵⁶

140. The Panel finds that SPOE00225799-SPOE00225799 is relevant as it concerns a request for compensation for staff expenses addressed to the KLA General Staff from W04290, as the commander of the Drenica operational zone. This, in turn, is relevant to the question of the organisation and functioning of the KLA.

¹⁵⁴ SPOE00225799-SPOE00225799; See Annex 6 to the Bar Table Motion, item 268.

¹⁵⁵ Bar Table Motion, para. 3.

¹⁵⁶ See *supra*, para. 61; Response, para. 52; See also Annex 6.2.1 to the Response, pp. 35-36.

141. Turning to authenticity, the Panel considers that the document is *prima facie* authentic as it is dated, and signed by W04290, as commander of the Drenica operational zone, and bears the markings of its origin.

142. The Panel is further satisfied that this item is *prima facie* probative. It relates to W04290's role and responsibilities as the commanders of the Drenica operational zone and provides evidence of the facts outlined above.

143. As regards prejudice to the Defence, the Panel is satisfied that the probative value of this document is not outweighed by any prejudice to the Accused. The Defence will be able to ask questions of W04290 in relation to this document.

144. In light of the foregoing, the Panel admits into evidence SPOE00225799-SPOE00225799.

(e) KLA General Staff Communiques

145. The SPO seeks to admit two KLA General Staff communiques, originally published in "Koha Ditore" and "Zëri i Kosovës" where the relevant versions were seized from Mr Krasniqi's residence.¹⁵⁷ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁵⁸

146. The Defence objects to the admission from the bar table of these communiques arguing that some are unsigned, unstamped and sometimes undated, their authorship is unknown, it is unclear on what information these documents were written and the "original" versions are not available, these

¹⁵⁷ **W04290**: 086833-086833 (this item is also linked to W04746) and 043803-043803; See Annex 1 to the Bar Table Motion, items 37, 37A.

¹⁵⁸ Bar Table Motion, para. 3.

documents fall short of the requirements for admissibility without a witness providing context.¹⁵⁹

147. The Panel notes, at the outset, that while the SPO has not identified items 086857-086857 and 086866-086866, which were also seized from Mr Krasniqi's residence, as linked to any of the witnesses addressed in the present decision, these items are closely related to items 043802-043802 and 043805-043805 addressed above at paragraphs 72-77. Accordingly, the Panel will also address these items in this decision.

148. The Panel recalls that authorship of these documents is to be resolved at trial as set out at paragraph 71 above.

149. The Panel finds that the four communiqués are public statements made by the KLA and finds them relevant to various issues in the case, including the alleged existence of an armed conflict, the alleged targeting and legitimising of attacks on collaborators and opponents, and crimes allegedly committed in Qirez/Ćirez and Baicë/Banjica.¹⁶⁰

150. Turning to authenticity, the Panel is satisfied of the *prima facie* authenticity of these documents. The communiqués were originally printed in "Zëri i Kosovës", and/or "Koha Ditore". The SPO has provided the dates of publication and the communiqués are numbered and some of the communiqués are mutually corroborative.¹⁶¹ There is no indication before the Panel that would contradict their authenticity.

151. The Panel is also satisfied that they have *prima facie* probative value in relation to facts relevant to this case. They are communiqués published on behalf of the KLA. As already noted, the content of some of these is already corroborated.

¹⁵⁹ Response, para. 17; *See also* Annex 1 to the Response, pp. 141-143.

¹⁶⁰ Indictment, paras 17-20, 37, 39 76, 110-111.

¹⁶¹ *See for example*, Annex 6 to the Bar Table Motion, items 2M, 35-36, 37A, 39A, 40 where: (i) items 2M and 37A; (ii) items 35 and 36; and (iii) items 39A and 40, are mutually corroborative.

There is no indication before the Panel that would raise questions regarding the *prima facie* probative value and reliability of these documents. Issues of weight and what probative value can be given to them will be assessed at the end of the case on the basis of all relevant evidence.

152. As regards prejudice to the Defence, the Panel is satisfied that the probative value of the documents is not outweighed by any prejudice to the Accused. In particular, the Panel notes that the Defence will be able to challenge the content of these items via cross-examination of relevant SPO witnesses.

153. In light of the foregoing, the Panel admits into evidence 086833-086833, 043803-043803, 086857-086857 and 086866-086866.

(f) KLA Draft Public Statements

154. The SPO seeks to admit five items which are drafts of public statements of the KLA seized from Mr Krasniqi's residence.¹⁶² The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁶³

155. The Defence objects to the admission of the alleged drafts of political declarations and communiques in the absence of a witness to establish their relevance, probative value and reliability.¹⁶⁴ In addition, the Defence submits that these documents do not possess the required indicia of relevance and authenticity and that the ICTY has found that drafts for which authorship cannot be proven and which are lacking stamps, signatures or other formalised indicia, should not

¹⁶² **W04290**: SPOE00232092-00232094, SPOE00225221-SPOE00225223, SPOE00231386-SPOE00231387, SPOE00231388-SPOE00231389 and SPOE00232680-00232685; *See* Annex 2 to the Bar Table Motion, items 17A, 17B, 17C, 18-19.

¹⁶³ Bar Table Motion, para. 3.

¹⁶⁴ Response, para. 25; *See also* Annex 2 to the Response, pp. 69-79.

be accepted on the record.¹⁶⁵ The Defence adds that authorship cannot be presumed because of where the items were seized, that the SPO has not proved that the draft documents were written before the published versions and that they lack the requisite probative value absent authentication and proof of authorship by Mr Krasniqi.¹⁶⁶ Lastly, the Defence submits that the probative value is outweighed by the prejudicial effect on the Accused as admission from the bar table prevents the Defence from confronting a witness in respect of their authenticity and authorship.¹⁶⁷

156. The Panel notes that the Defence disputes the authorship of these documents, but considers that the fact that the authorship is disputed does not prevent their admission via the bar table. Rather authorship of these documents, and whether it is attributable to the Accused, is a matter to be resolved at trial. For the purpose of admission, it is enough to establish that the proposed documents are relevant and *prima facie* authentic and probative.

157. While the SPO provided further clarification about SPOE00232092-00232094 at the status conference on 20 March 2023,¹⁶⁸ the Panel is still not satisfied of the relevance of this item without further contextualisation. The Panel will therefore not admit this item from the bar table at this point of the proceedings.

158. The Panel finds the remaining four items to be relevant to the charges as they pertain, *inter alia*, to: (i) draft public statements made by the KLA, which are in turn relevant to charged crimes in Qirez; (ii) knowledge that members of the KLA General Staff might have had of such crimes; (iii) the alleged policy of targeting perceived opponents; (iv) the process of drafting communiques on behalf of the

¹⁶⁵ Response, para. 26.

¹⁶⁶ Response, paras 27-29.

¹⁶⁷ Response, para. 30.

¹⁶⁸ Transcript of Hearing, 20 March 2023, p. 2066, line 2 to p. 2067, line 22.

KLA General Staff; and (v) elements of the alleged non-international armed conflict.¹⁶⁹

159. Turning to authenticity of the documents, the Panel considers that the documents are *prima facie* authentic. They are dated and generally consistent with the published versions in “Zëri i Kosovës”,¹⁷⁰ and they were found at the residence of the one of the Accused.

160. The Panel is satisfied that these items have *prima facie* probative value. They provide *prima facie* reliable evidence relevant to establish facts and circumstances material to this case.¹⁷¹ What weight and probative value, if any, can be granted to those will be assessed at the end of the case in light of the evidence as a whole.

161. As regards prejudice to the Defence, the Panel is satisfied that the probative value of the remaining documents is not outweighed by any prejudice to the Accused. The Panel notes, in particular, that the published versions of the draft communiques are admitted in the present decision and the Defence will be able to put questions to SPO witnesses in relation to any of these items.

162. In light of the foregoing, the Panel admits into evidence items SPOE00225221-SPOE00225223, SPOE00231386-SPOE00231387, SPOE00231388-SPOE00231389 and SPOE00232680-00232685 and denies admission of item SPOE00232092-00232094 from the bar table at this point of the proceedings.

¹⁶⁹ Indictment, paras 18-20, 31-32, 36-39, 76, 110-111.

¹⁷⁰ See *supra*, paras 77, 153; See also Annex 1 to the Bar Table Motion, items 35, 36, 37A.

¹⁷¹ See *supra*, para. 158.

(g) Handwritten KLA Documents

The SPO seeks admission of three handwritten documents containing KLA-related contents that were seized from Mr Selimi's residence.¹⁷² The first document is a report containing details on various brigades within the Drenica operational zone.¹⁷³ The second document contains notes on inspections in various operational zones.¹⁷⁴ The third document contains notes on various meetings, including those with foreign representatives and KLA personnel.¹⁷⁵ The SPO submits that the handwritten documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from its admission.¹⁷⁶

163. The Defence responds that these documents should only be tendered through their respective authors,¹⁷⁷ that the original source of documents is unknown, that they are inauthentic, that they are not sufficiently connected to the offenses or modes of liability in the indictment, and that their probative value is substantially outweighed by their prejudicial effect.¹⁷⁸

164. The Panel considers these three items to be relevant. They concern, *inter alia*: (i) details of activities of various brigades in the Drenica operational zone; (ii) the functioning of the chain of command within the KLA; (iii) inspections and meetings which took place between November 1998 and March 1999, which in turn could be relevant to the KLA's degree of organisation and chain of command and the modes of liability; and (iv) the distribution of responsibilities between operational zones and the KLA General Staff.¹⁷⁹

¹⁷² **W04290**: SPOE00226679-SPOE00226686; *See* Annex 6 to the Bar Table Motion, item 258. SPOE00226639-SPOE00226433; *See* Annex 6 to the Bar Table Motion, item 262. **W04746**: SPOE00226662-SPOE00226674; *See* Annex 6 to the Bar Table Motion, item 260.

¹⁷³ SPOE00226679-SPOE00226686; *See* Annex 6 to the Bar Table Motion, item 258

¹⁷⁴ SPOE00226662-SPOE00226674; *See* Annex 6 to the Bar Table Motion, item 260

¹⁷⁵ SPOE00226639-SPOE00226433; *See* Annex 6 to the Bar Table Motion, item 262.

¹⁷⁶ Bar Table Motion, para. 3.

¹⁷⁷ Response, paras 52-55.

¹⁷⁸ Response, paras 97-101; *See also* Annex 6.1 to the Response, pp. 47-49; Annex 6.2.1 to the Response, pp. 34-35.

¹⁷⁹ Indictment, paras 19, 37, 39, 57.

165. Turning to authenticity, the Panel considers that the documents are *prima facie* authentic. They are dated, and some are signed by W04290. All were seized from Mr Selimi's residence.

166. The Panel is satisfied that they all have sufficient indicia of their *prima facie* probative value to meet the threshold of admissibility. The Panel notes, however, that the question of their authorship and whether signatures can be attributed to particular individuals is a matter to be established at trial and which the Panel will decide at the end of the case, if indeed attribution of these documents to any one individual is material to the SPO's case. The Panel also notes that these documents are handwritten and that authorship remains an outstanding issue and that the basis of some of the information contained therein is, at this stage, unverified. All of these considerations impact the weight and probative value that the Panel might be prepared to give to any of these documents, unless corroborated and further contextualised.

167. In light of the foregoing, the Panel admits into evidence SPOE00226679-SPOE00226686, SPOE00226662-SPOE00226674 and SPOE00226369-SPOE00226433.

(h) Other KLA Documents

168. The SPO seeks admission of four additional KLA-related documents, namely: (i) a report by the KLA General Staff Directorate of Operations addressed to the Chief of the KLA General Staff which address the readiness of KLA units;¹⁸⁰ (ii) a General Staff order to arrest citizens showing loyalty to Serbia;¹⁸¹ (iii) a draft letter by W04290 to a newspaper article in "Bota Sora" clarifying the roles of KLA members;¹⁸² and (iv) minutes from a meeting on 18 February 2001 at "Jashari house" in Prekaz

¹⁸⁰ **W04290**: SPOE00232117-SPOE00232120; See Annex 6 to the Bar Table Motion, item 217.

¹⁸¹ **W04746**: SPOE00228852-SPOE00228852; See Annex 6 to the Bar Table Motion, item 242.

¹⁸² **W04290**: SPOE00227659-SPOE00227660; See Annex 6 to the Bar Table Motion, item 252.

attended by, amongst others, the Accused and W04290 where the creation of the KLA was discussed.¹⁸³ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁸⁴

169. The Defence responds that these documents should only be tendered through their respective authors,¹⁸⁵ that the original source of documents is unknown, that they are inauthentic, that they are not sufficiently connected to the offenses or modes of liability charged in the indictment, and that their probative value is substantially outweighed by their prejudicial effect.¹⁸⁶

170. The Panel finds that these items are relevant to a variety of issues in the case, including: (i) the operations and functioning of the KLA and its chain of command; and (ii) the role, functions and responsibilities of the KLA General Staff.¹⁸⁷

171. The Panel is satisfied that these documents are *prima facie* authentic. They are prepared on letterhead, and contain other indicators of authenticity including reference numbers, places, dates, stamps, signature blocks, names of relevant individuals and/or signatures. All documents were seized from the residence of Mr Krasniqi.

172. Regarding probative value of these items, the Panel notes that SPOE00232117-00232120 is *prima facie* probative of various issues in the case, including as regards the hierarchy and function of the KLA, the role and responsibilities of the KLA General Staff in that context, its operation involvement, information that was in its possession, and various organisational elements pertaining to the KLA. It is signed by W04752. However, it is neither dated nor numbered. Nor is there indication at this stage before the Panel that it was issued. It remains probative of the information it contains. If, however, the SPO suggests

¹⁸³ **W04290**: SPOE00226185-SPOE00226190; See Annex 6 to the Bar Table Motion, item 266.

¹⁸⁴ Bar Table Motion, para. 3.

¹⁸⁵ Response, paras 52-55.

¹⁸⁶ See Annex 6.1 to the Response, pp.31-33, 40, 50-52; Annex 6.2.1. to the Response, p. 34.

¹⁸⁷ Indictment, paras 37, 39.

that this document was issued and implemented, this would have to be established at trial.

173. Regarding the probative value of SPOE00226185-SPOE00226190, the Panel notes that it is the signed record of a meeting that took place on 18 February 2001 in Prekaz. Among the participants were Messrs Thaçi, Veseli and W04290. All three of them are recorded as making statements, some of which are relevant to these proceedings (including in respect of the circumstances of the creation of the KLA, their role therein, the publication of books by one of the Accused). Its *prima facie* probative value is established *inter alia* by the content of the record, the date and location of the meeting and the identification of the participants.

174. Regarding the probative value of SPOE00227659-SPOE00227660, the Panel notes that the item is a letter of two individuals addressed to the newspaper "Botes Sot". Like the previous two documents, it was seized from Mr Krasniqi's home. While the SPO avers that it was published in a newspaper, it did not produce a copy of the newspaper in which the document was said to have been published. It pertains to a public debate between high-ranking KLA members triggered by a KLA General Staff communique containing allegations against a particular individual. Its probative value is apparent from a number of factors including: its origin, its authorship, the fact that a copy of it was found at Mr Krasniqi's home, the fact that it constitutes one of several instances of public statements by members of the KLA in relation to that incident. The Panel notes also notes in this context that W04290 is a proposed SPO witness.

175. Regarding SPOE00228852-SPOE00228852, the Panel considers that it has *prima facie* probative value. In particular, it provides evidence relevant to, *inter alia*, the alleged policy of targeting those opposed to the KLA, the alleged involvement of the General Staff's involvement in the implementation of such a policy, the use of the KLA's chain of command to implement such a policy, and thus to alleged modes of liability.

176. As regards prejudice to the Defence, the Panel is satisfied that the probative value of SPOE00232117-00232120, SPOE00227659-SPOE00227660, SPOE00226185-SPOE00226190 and SPOE00228852-SPOE00228852 is not outweighed by the prejudice to the Accused. In particular, the Defence will be able to challenge the content of these items via cross-examination of SPO witnesses. The fact that one of these documents is signed by Mr Krasniqi does not alter this finding.

177. In light of the foregoing, the Panel admits into evidence SPOE00228852-SPOE00228852, SPOE00232117-00232120, SPOE00227659-SPOE00227660 and SPOE00226185-SPOE00226190.

C. ASSESSMENT OF WEIGHT OF ADMITTED DOCUMENTS

178. The Panel notes that all proposed items that it has found to be admissible in the present decision meet the requirements for admission under Rule 138(1). Admission is not the same, however, as deciding what weight, if any, the Panel will give to that evidence. Nor is a *prima facie* determination of probative value by the Panel the same as the assessment of the probative value of the evidence that the Panel will perform at the end of the trial. In accordance with Rule 139(2), the Panel is required to assess each piece of evidence in light of the entire body of evidence admitted before it at trial, and to carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established. Accordingly, while the Panel has found items admissible in the present decision, it will ultimately assess what weight to be attributed to these items in light of the entire body of evidence before it at trial.

V. CLASSIFICATION

179. The Panel notes that the Krasniqi Search and Seizure Report (F00095) is presently classified as confidential and *ex parte*. The Panel therefore orders the SPO to consider whether it can submit a confidential redacted version, or request the reclassification, of the same.

VI. DISPOSITION

180. For the foregoing reasons, the Panel hereby:

- a) **GRANTS**, in part, the Bar Table Motion in respect of documents which the SPO has identified linked to W04746, W01236 and W04290;
- b) **ADMITS** into evidence the following items: SPOE00056463-SPOE00056463, SPOE00054513-SPOE00054514, SPOE00054318-SPOE00054320, SPOE00054878-SPOE00054879, 008555-008555-ET, SPOE00054898-SPOE00054902-ET, 008557-008559, SPOE00054519-SPOE00054522-ET, 007948-007949-ET, SITF00384552-00384553, SPOE00120826-00120838-RED, 068263-068267, U001-7883-U001-7883, U000-8212-U000-8219, U000-8056-U000-8056, U000-8034-U000-8034, U000-8005-U000-8005, U000-7979-U000-7998, U000-7909-U000-7909, U000-7887-U000-7888, U000-7885-U000-7885, U000-7874-U000-7874, U000-7868-U000-7868, U000-7862-U000-7862, U000-7849-U000-7849, U000-7811-U000-7811, U000-7778-U000-7778, U000-7777-U000-7777, U000-7720-U000-7720, U000-7718-U000-7718, U000-7691-U000-7691, U000-7650-U000-7650, U000-1654-U000-1654, U000-1649-U000-1649, U000-1436-U000-1436, SPOE00225798-SPOE00225798, SITF00240682-00240682, IT-05-87 4D00037, IT-04-84 P00231, 096318-096335, U001-0291-U001-0292, U000-2142-U000-2142-ET, SITF00242138-SITF00242141, SITF00069016-SITF00069016, 099824-099827, U016-2743-U016-2743-EDT,

- U016-2735-U016-2735-ET Revised, IT-04-84 P00966.E, U008-1614-U008-1614-AT, 086833-086833-ET, 043802-043802, 043805-043805, 043861-043861, 043800-043800 (for the purposes set out in paragraph 77), 051864-051865 (for the purposes set out in paragraph 77), U000-9272-U000-9286, IT-05-87.1 P00436, U002-2800-U002-2822, U000-9858-U000-9888, U000-9349-U000-9364, U001-0504-U001-0504-RED, SPOE00119160-SPOE00119160, SITF0024242577-SITF00242577, U001-0399-U001-0400, 056474-056474, SPOE00225799-SPOE00225799, 086833-086833, 043803-043803, 086857-086857, 086866-086866, SPOE00225221-SPOE00225223, SPOE00231386-SPOE00231387, SPOE00231388-SPOE00231389, SPOE00232680-00232685, SPOE00226679-SPOE00226686, SPOE00226662-SPOE00226674, SPOE00226369-SPOE00226433, SPOE00228852-SPOE00228852, SPOE00232117-00232120, SPOE00227659-SPOE00227660 and SPOE00226185-SPOE00226190, and the following pages of SPOE00055678-00056018 (pp. SPOE00055805, SPOE00055810, SPOE00055849, and SPOE00055911) and SPOE00053263-00053359 (p. SPOE00053322) and U015-8743-U015-9047 (pp. U015-8757-U015-8758, U015-8782, U015-8874-U015-8876 and U015-8878);
- c) **DIRECTS** the Registrar to assign exhibit numbers to the aforementioned items;
- d) **DENIES** without prejudice the admission into evidence from the bar table of the following items: 058755-058755, SPOE00204138-00204138, IT-03-66 P248, 054774-01, SPOE00209434-00209512, SPOE00128571-00128954, SITF00437747-00437748, SPOE00230134-SPOE00230134, SITF00243018-00243022, SITF00243005-00243010, SITF00242993-00242999, IT-05-87 6D00067, 055828-055829, 043853-043854, SPOE00056447-SPOE00056447, 076701-076704, SITF00012041-00012044, 076693-076700, U000-8262-U000-8262, U000-2534-U000-2534, U000-1647-

- U000-1647, U000-1644-U000-1645, IT-03-66 P93, 097047-097056, 096746-096747, U002-3436-U002-3441, U002-2855-U002-2868, U000-8363-U000-8363, U000-2419-U000-2420, 098615-098626, U001-2310-U001-2319, U001-5195-U001-5244, U017-3349-U017-3363, U003-4775-U003-4784, SPOE00229687-SPOE00229688, SPOE00231037-SPOE00231128, SPOE00230093-SPOE00230093, SPOE00230091-SPOE00230091, SPOE00230089-SPOE00230089, and SPOE00232092-00232094, and the remaining portions of SPOE00055678-00056018, SPOE00053263-00053359 and U015-8743-U015-9047 not admitted in the preceding paragraph;
- e) **DEFERS** the assessment of SPOE00053729-SPOE00053730-ET and SPOE00053796-SPOE00053797-ET;
- f) **ORDERS** the SPO to prepare and file the following pages of the following books in accordance with the Panel's finding at paragraph 26 by no later than **Friday, 16 June 2023, 4:00 p.m.:**
- i. One document containing the cover page of SPOE00055678-00056018, and pages SPOE00055805, SPOE00055810, SPOE00055849, and SPOE00055911 and a separate translated version of the same;
 - ii. One document containing the cover page of SPOE00053263-00053359 and page SPOE00053322 and a separate translated version of the same; and
 - iii. One document containing the cover page of U015-8743-U015-9047 and pages U015-8757-U015-8758, U015-8782, U015-8874-U015-8876 and U015-8878 and a separate translated version of the same;
- g) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material no later than **Friday,**

16 June 2023, 4:00 p.m. Any response thereto shall be filed no later than
Friday, 23 June 2023, 4:00 p.m. No reply will be entertained; and

- h) **ORDERS** the SPO to consider whether it can submit a confidential redacted version, or request the reclassification, of the Krasniqi Search and Seizure Report by no later than **Friday, 16 June 2023, 4:00 p.m.**



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 9 June 2023

At The Hague, the Netherlands.