



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06
The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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Sixth Decision on Specialist Prosecutor's Bar Table Motion

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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 through the bar table (“Bar Table Motion”).²
3. On 21 February 2023, the Panel, upon the request of the Defences 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 F01268, 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 23 March 2023, the SPO filed a notification where it corrected errors concerning two documents submitted in the Bar Table Motion (“Notification”).⁵

6. On 31 March, 9 June, 27 July, 8 August and 3 October 2023, the Panel issued decisions in which it partially addressed the Bar Table Motion (“Decision on Bar Table Motion”, “Second Decision on Bar Table Motion”, “Third Decision on Bar Table Motion”, “Fourth Decision on Bar Table Motion” and “Fifth Decision on Bar Table Motion” respectively).⁶

II. SUBMISSIONS

7. The SPO requests the admission through the bar table of items falling into six general categories: (i) Kosovo Liberation Army (“KLA”) General Staff communiques, political declarations and other announcements; (ii) drafts of KLA public statements, seized from 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) re-publications 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.⁷

8. The Defence responds that the Bar Table Motion is an unreasonable and prejudicial attempt to admit a large volume of evidence while avoiding fair scrutiny and the requirements that the documents be authenticated and verified by tendering them through the relevant witnesses.⁸ The Defence submits that the

⁵ F01393, Specialist Prosecutor, *Prosecution Notification Concerning Two Submitted Bar Table Items*, 23 March 2023, confidential.

⁶ F01409, Panel, *Decision on Specialist Prosecutor’s Bar Table Motion*, 31 March 2023, confidential; F01596, Panel, *Second Decision on Specialist Prosecutor’s Bar Table Motion*, 9 June 2023; F01705, Panel, *Third Decision on Specialist Prosecutor’s Bar Table Motion*, 27 July 2023; F01716, Panel, *Fourth Decision on Specialist Prosecutor’s Bar Table Motion*, 8 August 2023, confidential; F01832, Panel, *Fifth Decision on Specialist Prosecutor’s Bar Table Motion*, 3 October 2023.

⁷ Bar Table Motion, para. 2.

⁸ Response, para. 1.

SPO has failed to adhere to the Panel's direction to use a high threshold of evaluation to ensure that only evidence of high probative value is tendered.⁹ 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 principle of orality, publicity and adversarial argument, which will neither expediate the trial nor facilitate the fair adjudication of the case.¹⁰ In addition, the Defence raises general objections to the admission through the bar table of 13 categories of documentary evidence and raises further specific objections to a number of items.¹¹

III. APPLICABLE LAW

9. The applicable law regarding the present matter is set out, in particular, in Article 40(6)(h) and Rule 138(1), and has been laid out extensively in the Decision on Bar Table Motion.¹² The Panel will apply these standards to the present decision.

⁹ Response, para. 3.

¹⁰ Response, para. 4.

¹¹ Response, paras 14-105. See generally, F01387/A01, Specialist Counsel, *Annex 1 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential; F01387/A02, Specialist Counsel, *Annex 2 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential; F01387/A03, Specialist Counsel, *Annex 3 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table* ("Annex 3 to the Response"), 21 March 2023, confidential; F01387/A04, Specialist Counsel, *Annex 4 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table* ("Annex 4 to the Response"), 21 March 2023, confidential; F01387/A05, Specialist Counsel, *Annex 5 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential; F01387/A06, Specialist Counsel, *Annex 6 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential.

¹² See Decision on Bar Table Motion, paras 8-13.

IV. DISCUSSION

A. PRELIMINARY MATTERS

10. The Panel notes that, in its previous decisions on the Bar Table Motion, it prioritised: (i) those items which the SPO had identified as being linked to the first six witnesses; (ii) those items which the SPO had identified as being linked to the following six witnesses; (iii) Annex 1 to the Bar Table Motion; (iv) Annexes 3-5 to the Bar Table Motion; and (v) items allegedly seized from Mr Selimi's and Mr Krasniqi's residences, respectively. The present decision addresses the remaining items in Annex 6 to the Bar Table Motion.¹³

11. The admission of a number of items contained in Annex 6 to the Bar Table Motion need not be addressed here. Ten such items have already been found appropriate for admission under Rule 154 in whole or in part, as "associated exhibits".¹⁴ A portion of one of these items has already been admitted into

¹³ The Panel notes that all references to items in the Annexes to the Bar Table Motion in this decision include their corresponding translations (if any) unless otherwise stated.

¹⁴ See F01901, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request*, 2 November 2023, confidential (a public redacted version was filed the same day, F01901/RED), paras. 22, 68, 90(c) (finding SPOE00126370-00126370, SPOE00126373-00126373, pp. SPOE00209329-SPOE00209332 of SPOE00209321-00209428, and sequence 01:13-01:26 of 106389-01 appropriate for admission); F01848, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W00208, W02082, W02475, W04147, W04325, W04491, and W04753 Pursuant to Rule 154*, 10 October 2023, confidential (a public redacted version was filed on 14 November 2023, F01848/RED), paras 56, 67, 104(b) (finding 075413-075414, 075409-075412, 075395-075402, 075392-075394, 075382-075387, 075378-075381, 075349-075360, 075336-075348, 075316-075335, 075309-075315, and 075300-075308 appropriate for admission); F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154 ("Fourth Rule 154 Decision")*, 24 July 2023, confidential (a public redacted version was filed on 7 November 2023, F01700/RED), paras 60, 68, 92 (finding the sequence 0:00:00-00:05:07 of 054010-03, sequence 00:04:55-00:05:07 of 011795-06, pp. U007-9618 through U007-9620 of U007-9607-U007-9661, U002-3339-U002-3340, U000-5851-U000-5851 and SITF00021875-SITF00021876 appropriate for admission); F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential, paras 34, 38 (finding p. U007-9617 of U007-9607-U007-9661 appropriate for admission); F01595/COR, Panel, *Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154*, 10 August 2023, confidential (a public redacted version was filed on 9 November 2023, F01595/COR/RED), paras. 50, 100(b) (finding pp. 074666-074675 of 074666-074681 appropriate for admission); Transcript of Hearing, Panel, 25 September 2023, p. 8203 (admitting pp. 074666, 074667, 074668, 074669, 074671 and

evidence.¹⁵ Two items have been found to be inappropriate for admission under Rule 154.¹⁶ 16 items have also been admitted into evidence in court.¹⁷ For these reasons, the request for the admission of these items from the bar table has become moot.

12. The Panel notes that 008348-008351 was offered as an item listed in Annex 3 to the Bar Table Motion under the same ERN, and was previously admitted.¹⁸ The request for this item's admission through Annex 6 to the Bar Table Motion is therefore also moot.

13. The Panel also notes that one item is a duplicate of other documents offered in the Bar Table Motion.¹⁹ It is not apparent to the Panel why more than one copy of the same document needs to be admitted. Accordingly, the Panel denies without prejudice the admission of SITF00242579-00242579.²⁰

074672 of 074666-074681 as P0412); F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* ("First Rule 154 Decision"), 16 March 2023, confidential (a public redacted version was filed on 7 November 2023, F01380/RED), paras 92, 95 (finding SPOE0033039-00330391 and IT-05-87 P00456 appropriate for admission via Rule 154).

¹⁵ P. U007-9617 of U007-9607-U007-9661 admitted into evidence as P00236 on 18 July 2023.

¹⁶ First Rule 154 Decision, paras 39, 52, 56, 92 (finding 067269-067710 and SPOE00198098-00198366 inappropriate for admission).

¹⁷ U000-4847-U000-4852 (admitted as P00074 on 11 May 2023); SPOE00330390-00330391 (admitted as 1D0007 on 20 April 2023); p. SPOE00209330 of SPOE00209321-00209428 (admitted as P00509 on 11 October 2023); SITF00242581-00242581 (admitted as P00226 on 12 July 2023); SPOE00056149-00056200 (admitted as P00201 on 20 June 2023); SITF00437785-00437792 (admitted as P00067 on 10 May 2023); IT-05-87.1 P00446 (admitted as P00228 on 13 July 2023); SITF00069018-SITF00069021 (admitted as P00225 on 12 July 2023); SPOE00119161-00119161 (admitted as 1D00029 on 14 July 2023); 069758-01 (admitted as P00323 on 28 August 2023); 061427-12 (admitted as P00093 on 22 May 2023); 050084-01 (admitted as P00088 on 11 May 2023); 034172-034173 (admitted as P00320 on 28 August 2023); 034157-034158 (admitted as P00319 on 28 August 2023); 011795-06 (sequence 00:04:55-00:05:07 admitted as P00502 on 11 October 2023); 034155-034155 (admitted as P00683 on 7 November 2023); *See also* Annex 6 to the Bar Table Motion, items 170, 203, 332 (partial), 369, 394, 419, 452, 469, 491, 564, 602, 624, 633, 639, 641, 649 (partial).

¹⁸ *Compare* Annex 6 of the Bar Table Motion, item 653 *with* F01268/A03, Specialist Prosecutor, *Annex 3 to Prosecution Application for Admission of Material through the Bar Table*, 8 February 2023, confidential, item 1O2; *See also* Fourth Decision on Bar Table Motion, para. 50(c).

¹⁹ The Panel notes that one page in SITF00242579-00242579 is duplicated in SITF00069018-SITF00069021, which was admitted in court as P00225 on 12 July 2023; *see* Annex 6 to the Bar Table Motion, items 454, 469.

²⁰ *See* Annex 6 to the Bar Table Motion, item 454.

14. The Panel will not consider the admission of two documents at this stage for which the SPO has failed to offer corresponding translations in either Albanian or English.²¹ The SPO has also failed to offer complete English versions of nine individual reports on human remains,²² of “How We Waged War” by Xhavit Haliti,²³ and of documents and newspaper clippings associated with a prior statement of W04644.²⁴ Accordingly, the Panel denies, without prejudice, the admission of U009-1596-U009-1662, SITF00069180-SITF00069180, R111-7289-R111-7291-AT, R111-7286-R111-7288-AT, R111-7282-R111-7285-AT, R111-7278-R111-7281-AT, R111-7275-R111-7277-AT, R111-7271-R111-7274-AT, R111-7267-R111-7270-AT, R111-7264-R111-7266-AT, R111-7258-R111-7263-AT, SITF00245017-00245111 and pp. 074675A-074681 of 074666-074681.

B. CATEGORIES OF PROPOSED EVIDENCE

15. The Panel will now address the SPO’s requests for admission of the remaining items contained in Annex 6 to the Bar Table Motion. The Panel has assessed these items in the context of the following categories: (i) photographs and videos; (ii) books; (iii) newspaper articles; (iv) official documents from organisations; (v) KLA-related documents; and (vi) documents from domestic and international legal proceedings.

²¹ U009-1596-U009-1662 (only a partial English translation is available), SITF00069180-SITF00069180; *see* Annex 6 to the Bar Table Motion, items 34, 467.

²² R111-7289-R111-7291-AT, R111-7286-R111-7288-AT, R111-7282-R111-7285-AT, R111-7278-R111-7281-AT, R111-7275-R111-7277-AT, R111-7271-R111-7274-AT, R111-7267-R111-7270-AT, R111-7264-R111-7266-AT, R111-7258-R111-7263-AT; *see* Annex 6 to the Bar Table Motion, items 478-486.

²³ SITF00245017-00245111; *see* Annex 6 to the Bar Table Motion, item 434.

²⁴ *See* 074666-074681, pp. 074670, 074673-074681; Annex 6 to the Bar Table Motion, item 563. Note: pp. 074666-074675 were found suitable for admission via Rule 154, and pp. 074666, 074667, 074668, 074669, 074671 and 074672 were admitted as P0412, as reflected in para. 11, fn. 14.

1. Category 1: Photographs and Videos

16. The SPO seeks admission of nine photographs²⁵ and 12 videos.²⁶ The SPO submits that these photographs and videos are relevant, authentic, probative and that their probative value is not outweighed by their prejudicial effect.²⁷ The SPO asserts that the relevance and probative value of the photographs is based upon their depiction of specific crime scenes²⁸ and their demonstration of the close relationship between Mr Thaçi, Mr Veseli and other members of the alleged joint criminal enterprise.²⁹ The SPO asserts that the basis for the relevance of the videos is that they also depict specific crime scenes,³⁰ contain content that goes to modes of liability,³¹ or both.³²

17. The Defence objects to the admission of numerous photographs and videos from the bar table as many have been produced by or are related to SPO witnesses, and should therefore be tendered through those witnesses.³³ The Defence submits that settled jurisprudence establishes that photographs and videos should not be admitted from the bar table in the absence of additional evidence regarding their content and the circumstances in which they were taken or recorded.³⁴

²⁵ U003-2456-U003-2458, U002-4992-U002-4995, SPOE00113615-00113639, SPOE00072818-SPOE00072818, SPOE00072817-SPOE00072817, SPOE00072816-SPOE00072816, SPOE00072810-SPOE00072810, IT-03-66 P1.9, 058755-058755; *see* Annex 6 to the Bar Table Motion, items 50, 51, 373, 378, 379, 380, 381, 523, 613.

²⁶ IT-03-66 P34, 106389-01, 077571-01, 061427-30, 061427-17, 061427-16, 061427-11, 061427-05, 061427-04, 055928-01, 054010-03, 011795-06; *see* Annex 6 to the Bar Table Motion, items 509, 524, 543, 593, 596, 599, 604, 607, 610, 618, 623, 649.

²⁷ Bar Table Motion, para. 3.

²⁸ *See* Annex 6 to the Bar Table Motion, items 50, 51, 373, 378, 379, 380, 381, 523.

²⁹ *See* Annex 6 to the Bar Table Motion, item 613.

³⁰ *See* Annex 6 to the Bar Table Motion, items 509, 524, 543, 618, 623, 649.

³¹ *See* Annex 6 to the Bar Table Motion, items 593, 596, 599, 607, 610.

³² *See* Annex 6 to the Bar Table Motion, 604.

³³ Response, para. 95.

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

(a) Photographs

18. Regarding their relevance and probative value, the Panel considers that, while the SPO asserts that the photographs depict relevant locations, this is not self-evident based upon their content and without further contextualisation. Witness testimony which provides that the photographs are fair and accurate depictions of the asserted locations is necessary to establish their relevance. While the photograph of Mr Thaçi, Mr Veseli and other members of the alleged joint criminal enterprise allegedly demonstrates the close relationship between these men, the context in which the photo was taken is necessary to fairly ascertain its relevance. The Panel therefore denies, without prejudice, admission of U003-2456-U003-2458, U002-4992-U002-4995, SPOE00113615-00113639, SPOE00072818-SPOE00072818, SPOE00072817-SPOE00072817, SPOE00072816-SPOE00072816, SPOE00072810-SPOE00072810, IT-03-66 P1.9 and 058755-058755 from the bar table.

(b) Videos

19. With regard to relevance, the videos appear to depict events related to the charged crimes, including hostage negotiations that occurred in Kosovo during the indictment period. The videos are relevant to the suggestion that KLA members took civilian hostages and to the further suggestion of an organisational policy underlying such deeds.

20. With regard to authenticity, nothing in the videos indicates that they depict events other than those allegedly recorded, or that they have been tampered with in any way. Additionally, the authenticity of number of these videos is corroborated by evidence that has already been entered into the record.³⁵ The Panel finds that the *prima facie* authenticity requirement satisfied.

³⁵ For example, compare P00093 with 061427-05 and 055928-01; see Annex 6 to the Bar Table Motion, items 607, 618.

21. Regarding their probative value, the content of the videos provides information regarding, *inter alia*, the organisation and structure of KLA forces during the indictment period,³⁶ the holding and release of detainees by the KLA,³⁷ and KLA media policies.³⁸ 061427-05 and 055928-01 are corroborated to some extent by the testimony of W03880³⁹ as well as the video that was shown during W03880's testimony.⁴⁰

22. In considering whether the *prima facie* probative value of these items is outweighed by their prejudicial effect, the Panel notes that some of the videos contain some hearsay evidence. This, however, does not render those inadmissible and will be accounted for when assessing the weight, if any, of that evidence. The Panel further notes that the content of those videos could be subject to questioning through relevant witnesses. Finally, the Panel notes that the Defence did not point to any particular aspects of those videos the admission of which would cause unfair undue prejudice. The *prima facie* probative value of these items is therefore not outweighed by any prejudicial effect.

23. In light of the foregoing, the Panels admits IT-03-66 P34, 106389-01 from 00:00 to 01:12 and from 01:27 to 02:00, 077571-01, 061427-30, 061427-17, 061427-16, 061427-11, 061427-05, 061427-04, 055928-01, 054010-03, from 00:05:08 to 35:54,⁴¹ and 011795-06 from 00:00:01 to 00:04:54 and from 00:05:08 to 00:15:00,⁴² from the bar table.

³⁶ See IT-03-66 P34, 077571-01, 061427-17, 061427-16, 061427-04.

³⁷ See 106389-01; 011795-06.

³⁸ See 061427-11.

³⁹ Transcript of Hearing, Panel, 9 October 2023, pp. 8472-8474.

⁴⁰ See 061427-12, admitted as P00093 on 22 May 2023.

⁴¹ See Fourth Rule 154 Decision, para. 60 (finding the sequence 0:00:00-00:05:07 of 054010-03 appropriate for admission); *See also above*, fn. 14.

⁴² See Fourth Rule 154 Decision, para. 60 (finding the sequence 00:04:54 to 00:05:07 of 011795-06 appropriate for admission); *See also above*, fn. 14.

2. Category 2: Books

24. The SPO seeks admission of five books, in whole and/or in part. The titles of these books are “Book of War”,⁴³ “How We Waged War”,⁴⁴ “The Movement: A Birth in Blood”,⁴⁵ “Flakë e Pashuar”,⁴⁶ “We Were the Future”,⁴⁷ and “KLA War in Nerodime Operation Area”.⁴⁸ The SPO submits that these items are relevant, authentic, probative and that their probative value is not outweighed by their prejudicial effect.⁴⁹

25. The Defence objects to the admission of books from the bar table.⁵⁰ 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.⁵¹ The Defence adds that the SPO has not demonstrated with clarity where and how various books fit into its case and that the SPO seeks to tender lengthy books without identifying the relevant parts.⁵²

26. The Panel ordered in the Order on the Conduct of the Proceedings that:

In relation to lengthy documents or books of which only a part is relevant or relied upon by the Party, the offering Party shall indicate the pages of the document, in both the original language and in English, which it seeks to have admitted into evidence. Where the entire document is tendered in evidence, the Party should likewise endeavour to the greatest extent possible to identify those sections of the document on which it seeks to rely for the purpose of its case.⁵³

⁴³ SPOE00128571-00128954; *see* Annex 6 to the Bar Table Motion, items 336-360.

⁴⁴ SITF00245022-SITF00245096; *see* Annex 6 to the Bar Table Motion, item 435.

⁴⁵ 076891-076903; *see* Annex 6 to the Bar Table Motion, item 546.

⁴⁶ 043900-044239; *see* Annex 6 to the Bar Table Motion, item 625.

⁴⁷ SPOE00209321-00209428; *see* Annex 6 to the Bar Table Motion, item 332. *See* fn. 17 *above*, noting that p. SPOE00209330 was already admitted into evidence as P00509 during trial proceedings on 11 October 2023, and will therefore not be considered here.

⁴⁸ 036622-036837; *see* Annex 6 to the Bar Table Motion, item 632.

⁴⁹ Bar Table Motion, para. 3.

⁵⁰ Response, para. 68; Annex 6.4 to the Response, pp. 1-16.

⁵¹ Response, para. 69.

⁵² Response, para. 70.

⁵³ F01226/A01, Panel, *Annex 1 to Order on Conduct of the Proceedings*, 25 January 2023, para. 50.

27. The Panel notes that the “Book of War” was considered for admission by the Panel in its Second Decision on Bar Table Motion.⁵⁴ In that decision, the Panel noted that the author, W04410, is a proposed SPO witness,⁵⁵ and found that that it would be premature to admit the book before hearing from the author.⁵⁶ The Panel adopts the same position with regard to the individual excerpts of the “Book of War”⁵⁷ offered by the SPO through Annex 6, and denies, without prejudice, admission of the excerpts from the bar table at this point in time.

28. Two of the other books offered by the SPO, “Flakë e Pashuar”⁵⁸ and “KLA War in Nerodime Operation Area”,⁵⁹ were written by SPO witness W04576, who has yet to testify.⁶⁰ “We Were the Future”⁶¹ was written by W04765, who is also scheduled to testify.⁶² For the same reasons as those provided above, without prejudice, the Panel denies admission of these books at this stage.⁶³

⁵⁴ Second Decision on Bar Table Motion, para. 19.

⁵⁵ Second Decision on Bar Table Motion, para. 19 (*citing* F01296/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submissions Pursuant to Decision F01229*, 15 February 2023, confidential, p. 12).

⁵⁶ Second Decision on Bar Table Motion, paras 19, 26, 180(d).

⁵⁷ SPOE00128614-SPOE00128614, SPOE00128617-SPOE00128631, SPOE00128632-SPOE00128636, SPOE00128636-SPOE00128637, SPOE00128640-SPOE00128647, SPOE00128649-SPOE00128660, SPOE00128665-SPOE00128669, SPOE00128670-SPOE00128677, SPOE00128684-SPOE00128693, SPOE00128699-SPOE00128700, SPOE00128702-SPOE00128703, SPOE00128740-SPOE00128743, SPOE00128746-SPOE00128751, SPOE00128754-SPOE00128755, SPOE00128758-SPOE00128767, SPOE00128770-SPOE00128776, SPOE00128778-SPOE00128785, SPOE00128785-SPOE00128850, SPOE00128903-SPOE00128905, SPOE00128906-SPOE00128908, SPOE00128909-SPOE00128911, SPOE00128912-SPOE00128912, SPOE00128913-SPOE00128914, SPOE00128927-SPOE00128929; *see* Annex 6 to the Bar Table Motion, items 337-360.

⁵⁸ 043900-044239; *see* Annex 6 to the Bar Table Motion, item 625.

⁵⁹ 036622-036837; *see* Annex 6 to the Bar Table Motion, item 632.

⁶⁰ F01296/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submissions Pursuant to Decision F01229* (“Lesser Redacted Witness List”), 15 February 2023, confidential, p. 13.

⁶¹ SPOE00209321-00209428; *see* Annex 6 to the Bar Table Motion, item 332.

⁶² Lesser Redacted Witness List, p. 16, line 274.

⁶³ Regarding SPOE00209321-00209428, The Panel denies pp. SPOE00209321-SPOE00209328 and SPOE00209333-SPOE00209428 as p. SPOE00209330 has already been admitted as P00509 and pp. SPOE00209329-SPOE00209332 have been found appropriate for admission pursuant to Rule 154; *See also above*, fns. 14, 17.

29. Regarding the relevance of “How we Waged War”⁶⁴ and “The Movement: A Birth in Blood”,⁶⁵ the Panel notes that both books’ central focus is KLA activities in Kosovo during the indictment period. The Panel finds these books are relevant to the KLA General Staff’s organisation, structure and authority, the implementation of KLA policies, the general functioning of the KLA, its organisation, and operational capabilities, as well as KLA activities in specific operational zones.⁶⁶

30. Regarding authenticity, each book bears details regarding its authorship and publication. The Panel is satisfied that each item *prima facie* authentic.

31. Regarding probative value, as indicated above, the central focus of these books and the associated excerpts are KLA activities in Kosovo during the indictment period. They address KLA General Staff’s organisation, structure and authority, the implementation of KLA policies, as well as KLA activities in specific operational zones.⁶⁷ The Panel notes that the SPO did not fully comply with paragraph 50 of the Order on the Conduct of the Proceedings direction as it did not endeavour to identify those parts of the sections of the books on which it seeks to rely for the purpose of its case. However, despite the fact that certain parts of these books appear to have little or no relevance to the case, the Panel finds that they contain information of relevance of these proceedings, which carry sufficient *prima facie* probative value to warrant their admission.

32. The *prima facie* probative value of these is not outweighed by any prejudice resulting from the fact that some of the information contained in those is hearsay in character. As repeatedly noted, the hearsay nature of such evidence will be

⁶⁴ SITF00245022-SITF00245096; see Annex 6 to the Bar Table Motion, item 435.

⁶⁵ 076891-076903; see Annex 6 to the Bar Table Motion, items 546-549.

⁶⁶ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* (“Amended Indictment”), 30 September 2022, confidential (a public redacted version was filed the same day, F00999/A03) (lesser redacted versions were filed on 15 February 2023 and 27 February 2023, F01296/A03 and F01323/A01), paras 19, 37, 80.

⁶⁷ Amended Indictment, paras 19, 37, 80.

accounted for when being weighed. Furthermore, the Defence will be able to put the content of these books with which issue is being taken to relevant witnesses. The Panel is therefore satisfied that the *prima facie* probative value of these proposed items is not outweighed by their prejudicial effect.

33. In light of the foregoing, the Panel admits SITF00245022-SITF00245096 and 076891-076903 and denies, without prejudice, admission of SPOE00128614-SPOE00128614, SPOE00128617-SPOE00128631, SPOE00128632-SPOE00128637, SPOE00128640-SPOE00128647, SPOE00128649-SPOE00128660, SPOE00128665-SPOE00128669, SPOE00128670-SPOE00128677, SPOE00128684-SPOE00128693, SPOE00128699-SPOE00128700, SPOE00128702-SPOE00128703, SPOE00128740-SPOE00128743, SPOE00128746-SPOE00128751, SPOE00128754-SPOE00128755, SPOE00128758-SPOE00128767, SPOE00128770-SPOE00128776, SPOE00128778-SPOE00128785, SPOE00128785-SPOE00128850, SPOE00128903-SPOE00128914, SPOE00128927-SPOE00128929, SPOE00209321-SPOE00209328, SPOE00209333-SPOE00209428, 036622-036837 and 043900-044239.

3. Category 3: Newspaper Articles

34. The SPO seeks admission of articles originally published in Zëri i Kosovës,⁶⁸ Kosovapress,⁶⁹ Zikpress,⁷⁰ Bota Sat,⁷¹ Informatori,⁷² Reuters,⁷³ Dnevnik,⁷⁴ the Washington Post,⁷⁵ and collections of articles containing content from various

⁶⁸ U016-3286-U016-3287, SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-40010567, SITF00243000-00243003, 099794-099797, 043863-043863, 043853-043854; *see* Annex 6 to the Bar Table Motion, items 7, 195, 197, 199, 442, 528, 628, 630.

⁶⁹ 099786-099788; *see* Annex 6 to the Bar Table Motion, item 530.

⁷⁰ SPOE40000795-40000795; *see* Annex 6 to the Bar Table Motion, item 201.

⁷¹ 034162-034162A; *see* Annex 6 to the Bar Table Motion, item 635.

⁷² 034159-034159; *see* Annex 6 to the Bar Table Motion, item 637.

⁷³ 020396-020396; *see* Annex 6 to the Bar Table Motion, item 646.

⁷⁴ IT-03-66 P47; *see* Annex 6 to the Bar Table Motion, item 505.

⁷⁵ 021049-021056; *see* Annex 6 to the Bar Table Motion, item 645.

news outlets.⁷⁶ The SPO submits that these documents are relevant, authentic, probative and that their probative value is not outweighed by their prejudicial effect.⁷⁷

35. The Defence responds that these items contain hearsay, the admission of which would be unfairly prejudicial because the Defence will be unable to challenge the circumstances in which the statements were made or to cast doubt on their reliability.⁷⁸ The Defence also asserts that these documents do not contain sufficient indicators of authenticity⁷⁹ and fail to prove or disprove an issue relevant to the case thereby lacking relevance or probative value.⁸⁰ Finally, the Defence submits that the content of these items is unreliable because these out-of-court statements were not given for the purposes of legal proceedings; instead, their intended purpose may have been to boost morale, garner international support, reassure the civilian population, or for self-promotion.⁸¹

36. Regarding relevance, the materials address, *inter alia*, the following facts, issues and circumstances that are relevant to this case: (i) KLA General Staff command, control, monitoring, oversight and organisation;⁸² (ii) the existence of an armed conflict and constitutive elements of such a conflict;⁸³ and (iii) crimes allegedly committed in and around Shalë/Sedlare,⁸⁴ Likoc/Likovac,⁸⁵ Qirez/Ćirez⁸⁶

⁷⁶ 074666-074681; see Annex 6 to the Bar Table Motion, items 563.

⁷⁷ Bar Table Motion, para. 3.

⁷⁸ Response, para. 59.

⁷⁹ Annex 3 to the Response, item 1; Annex 4 to the Response, item 1.

⁸⁰ Annex 3 to the Response, item 1; Annex 4 to the Response, item 1.

⁸¹ Response, para. 60.

⁸² See e.g. U016-3286-U016-3287, SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-40010567, SITF00243000-00243003, 043853-043854; see Annex 6 to the Bar Table Motion, items 7, 195, 197, 199, 442, 630.

⁸³ See e.g. 099794-099797, 043863-043863; see Annex 6 to the Bar Table Motion, items 528, 628.

⁸⁴ 034162-034162A; see Annex 6 to the Bar Table Motion, item 635.

⁸⁵ 074666-074681; see Annex 6 to the Bar Table Motion, item 563.

⁸⁶ 034159-034159; see Annex 6 to the Bar Table Motion, item 637.

and Baicë/Banjica, as relevant to the charges.⁸⁷ The Panel therefore finds these newspaper articles to be relevant.

37. Factors relevant to establishing the *prima facie* authenticity of press reports, newspaper articles and interviews include, *inter alia*, indications regarding the origin of the item, the date of publication, name of the publication, the content of the item, and/or the name of the author (if an article or press release is attributed).⁸⁸ While the fact that the author of a document cannot be identified or the information contained therein is not sourced does not necessarily disqualify it for admission, but it may affect the weight attributed to it by the Panel.⁸⁹ The Panel notes that for most items under consideration, the news source, author, and/or date of the article is readily identifiable.⁹⁰ Additionally, each item containing these identifiers is also produced as a scan of the original newsprint⁹¹ or as a printout of an online edition, further supporting their authenticity.⁹² The Panel is therefore satisfied with *prima facie* authenticity of these items.⁹³

⁸⁷ 034159-034159; *see* Annex 6 to the Bar Table Motion, item 637.

⁸⁸ 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; International Criminal Tribunal for the Former Yugoslavia (“ICTY”), *Prosecutor v. 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. 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, para. 16.

⁸⁹ 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.

⁹⁰ SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-40010567, SPOE40000795-40000795, SITF00243000-00243003, 043863-043863, 043853-043854, 034162-034162A, 034159-034159, 021049-021056, 020396-020396; *see* Annex 6 to the Bar Table Motion, items 195, 197, 199, 201, 442, 628, 630, 635, 637, 645, 646.

⁹¹ SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-40010567, SPOE40000795-40000795, SITF00243000-00243003, 043863-043863, 043853-043854, 034162-034162A, 034159-034159; *see* Annex 6 to the Bar Table Motion, items 195, 197, 199, 201, 442, 628, 630, 635, 637.

⁹² 021049-021056, 020396-020396; *see* Annex 6 to the Bar Table Motion, items 645, 646.

⁹³ SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-40010567, SPOE40000795-40000795, SITF00243000-00243003, 043863-043863, 043853-043854, 034162-034162A, 034159-034159, 021049-021056, 020396-020396; *see* Annex 6 to the Bar Table Motion, items 195, 197, 199, 201, 442, 628, 630, 635, 637, 645, 646.

38. The Panel notes that the SPO failed to provide clear and verifiable indications of the origin of a number of proposed exhibits. First, the Panel was unable to establish the origin or source of 099794-099797⁹⁴ and 099786-099788.⁹⁵ It is unclear whether either of them come from published newspapers or other sources.⁹⁶ While U016-3286-U016-3287⁹⁷ is on newsprint, the newspaper, author and date are not clearly identifiable. IT-03-66 P47⁹⁸ appears to be a report published in Dnevnik on 29 June 1998.⁹⁹ The author is not identified other than through initials that have not been attributed. It provides no indication of the basis or origin of the information it records. The Panel finds that the SPO has failed to establish a sufficiently clear basis on which the Panel could have verified the *prima facie* authenticity of those items.

39. With regard to the items whose authenticity has been sufficiently established, as discussed above, the Panel further finds that they each have *prima facie* probative value regarding the matters identified above.¹⁰⁰

40. In assessing whether the *prima facie* probative value of these items is outweighed by their prejudicial effect, the Panel notes that approximately half of the remaining newspaper articles under consideration are related to the testimony of upcoming witnesses. Three are interviews of W01453.¹⁰¹ One is an interview with W04290.¹⁰² One article attributes certain statements to W04752.¹⁰³ Another is

⁹⁴ See Annex 6 to the Bar Table Motion, item 528.

⁹⁵ See Annex 6 to the Bar Table Motion, item 530.

⁹⁶ 099794-099797, 099786-099788; see Annex 6 to the Bar Table Motion, items 528, 530.

⁹⁷ See Annex 6 to the Bar Table Motion, item 7.

⁹⁸ See Annex 6 to the Bar Table Motion, item 505.

⁹⁹ See Annex 6 to the Bar Table Motion, item 505.

¹⁰⁰ See above, para. 37.

¹⁰¹ SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-40010567; see Annex 6 to the Bar Table Motion, items 195, 197, 199; See also Lesser Redacted Witness List, p. 3, line 40 (identifying W01453 as a witness).

¹⁰² 043853-043854; see Annex 6 to the Bar Table Motion, item 630; See also Lesser Redacted Witness List, p. 9, line 146 (identifying W04290 as a witness).

¹⁰³ 020396-020396; see Annex 6 to the Bar Table Motion, item 646; See also Lesser Redacted Witness List, p. 15, line 267 (identifying W04752 as a witness).

alleged to be related to the testimony of W03827, W03825, and W03821.¹⁰⁴ The Defence will be able to test or challenge the content of these items via cross-examination of these witnesses. With regard to articles that attribute statements to the KLA and/or to any of the Accused,¹⁰⁵ the Panel notes that the hearsay nature of these items and any limitations that might bear upon the Defence's ability to challenge or dispute the content of these documents will be accounted for when assessing the weight of this evidence.¹⁰⁶ The Panel is therefore satisfied that the *prima facie* probative value of these items is not outweighed by any prejudicial effect attaching to these items.

41. In light of the foregoing, the Panel admits SPOE40000795-40000795, SPOE40010569-40010569, SPOE40010568-40010568, SPOE40010567-400105679, SITF00243000-00243003, 020396-020396, 021049-021056, 034159-034159, 034162-034162A, 043853-043854, and 043863-043863 into evidence and denies, without prejudice, admission of 099794-099797, 099786-099788, IT-03-66 P47 and U016-3286-U016-3287.

4. Category 4: Official Documents from Organisations

42. The SPO requests the admission of items originating from the International Committee of the Red Cross ("ICRC"),¹⁰⁷ the Organisation for Security and Cooperation in Europe ("OSCE"),¹⁰⁸ the United Nations Mission in Kosovo

¹⁰⁴ 034159-034159; *see* Annex 6 to the Bar Table Motion, item 637.

¹⁰⁵ Response, paras 59-60.

¹⁰⁶ Response para. 59.

¹⁰⁷ U008-9781-U008-9974; *see* Annex 6 to the Bar Table Motion, item 36.

¹⁰⁸ U007-9607-U007-9661, SPOE00233999-00234000, SPOE00233700-00233701, SPOE00109507-00109518, SPOE00061164-00061168, SPOE00060952-00060954, SPOE00060865-00060865; SPOE00060777-00060785, SPOE00059723-00059725, IT-03-66 P46; *see* Annex 6 to the Bar Table Motion, items 41, 211, 212, 375, 384, 386, 387, 388, 389, 507.

("UNMIK"),¹⁰⁹ the German Military Police operating as part of the NATO Mission in Kosovo ("KFOR"),¹¹⁰ the Serbian Ministry of Internal Affairs,¹¹¹ the United States Embassy in Belgrade¹¹² and the Special Prosecution of the Republic of Kosovo ("SPRK").¹¹³ The SPO submits that these documents are relevant, authentic, probative and that their probative value is not outweighed by their prejudicial effect.¹¹⁴

43. The Defence responds that these documents should only be tendered through their respective authors.¹¹⁵ The Defence submits that reports from inter-governmental organisations such as the United Nations or non-governmental bodies have generally been considered to be inadmissible from the bar table.¹¹⁶ 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 contain 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.¹¹⁷

¹⁰⁹ U007-9551-U007-9600, SPOE00073399-00073428, SPOE00068624-00068634, SITF00143980-00143983, IT-03-66 P111; *see* Annex 6 to the Bar Table Motion, items 42, 376, 382, 466.

¹¹⁰ SITF00189121-00189140 RED2; *see* Annex 6 to the Bar Table Motion, item 462.

¹¹¹ IT-03-66 P209; *see* Annex 6 to the Bar Table Motion, item 514.

¹¹² 102870-102875; *see* Annex 6 to the Bar Table Motion, item 525.

¹¹³ 034163-034165; *see* Annex 6 to the Bar Table Motion, item 634.

¹¹⁴ Bar Table Motion, para. 3.

¹¹⁵ Response, paras 86; *See also* Annex 6.6 to the Response, pp. 14-15, 20-21, 26-27.

¹¹⁶ Response, paras 86-87.

¹¹⁷ Response, paras 87-89.

(a) Missing Persons Reports

44. The ICRC Report on Missing Persons is relevant to the status of four victims referenced in the Amended Indictment. The ICRC Report identifies Nebojša Đjuričić, Veljko Marković, Rahim Elezi and Faik Reci as missing persons and provides the date and location where these victims were last seen.¹¹⁸ The SPO asserts that the entirety of this 194-page volume is relevant because it shows the widespread nature of the KLA's crimes.¹¹⁹ The report does not attribute to any individual or organisation the actions which resulted in the missing status of the listed individuals.¹²⁰ Nonetheless, the Panel finds that the entire volume is relevant to the allegation that there existed, at the time, a widespread and/or systematic attack on a civilian population and a pattern of conduct as might be relevant to certain inferences sought of the Panel. The UNMIK record from the "MPU database" on missing persons from 2002 is similar in nature.¹²¹ It contains entries for victims Rahim Elezi and Nezir Topojani, who is also referenced in the Amended Indictment, and their status as missing persons.¹²² This item is also relevant to the circumstances surrounding crimes against named victims, as well as the aforementioned contextual elements.¹²³ The Panel therefore finds these items to be relevant in their entirety.

45. The Panel recalls its approach to authenticity and reliability of reports which originate from international organisations set out in the Decision on the Bar Table

¹¹⁸ U008-9781-U008-9974, pp. U008-9795, U008-9796; *see* Annex 6 to the Bar Table Motion, "Relevance/Probative Value" heading for item 36. *See also* Amended Indictment, paras 164, 166, Schedule B, p. 63, line 4, p. 65, line 16.

¹¹⁹ U008-9781-U008-9974; *see* Annex 6 to the Bar Table Motion "Relevance/Probative Value" heading for item 36.

¹²⁰ *See generally* U008-9781-U008-9974; *see* Annex 6 to the Bar Table Motion "Relevance/Probative Value" heading for item 36.

¹²¹ SITF00143980-00143983; *see* Annex 6 to the Bar Table Motion, item 466.

¹²² SITF00143980-00143983, pp. SITF00143982, SITF00143983; *see* Annex 6 to the Bar Table Motion, item 466. *See also* Amended Indictment, para. 166.

¹²³ *See generally* SITF00143980-00143983; *see* Annex 6 to the Bar Table Motion, item 466.

Motion.¹²⁴ Both the ICRC and the UNMIK records contain the hallmarks of authenticity, including the expected logos, seals and/or letterhead.¹²⁵ The Panel considers that these items are *prima facie* authentic.

46. The entries in these items are of *prima facie* probative value, as they relate to the victims' status, approximate date of disappearance, and their last known location. They are also probative of the alleged contextual element and pattern referenced above.¹²⁶

47. As noted above, the disappearance of the individuals listed in these documents is not attributed to any group or person. This reinforces the view that the *prima facie* probative value of this material is not outweighed by any prejudicial effect. Additionally, the Panel can further address the fact that the authors of these documents will not appear to give evidence by assigning the appropriate weight to these entries at the close of case. The Panel finds U008-9781-U008-9974 and SITF00143980-00143983 admissible from the bar table.

(b) German Military Police (KFOR) Report

48. The records of the German Military Police, operating in the context of KFOR, pertain to a raid conducted on a KLA facility in Prizren in June 1999.¹²⁷ The records indicate that persons were killed, tortured, and detained at the facility.¹²⁸ These records are relevant to the SPO's charges in the Amended Indictment associated with the events in Prizren in June 1999.¹²⁹

¹²⁴ Decision on Bar Table Motion, para. 43.

¹²⁵ See U008-9781-U008-9974, p. U008-9781, SITF00143980-00143983, p. SITF00143980; see Annex 6 to the Bar Table Motion, items 36, 466.

¹²⁶ See *above*, para. 44.

¹²⁷ SITF00189121-00189140 RED2; see Annex 6 to the Bar Table Motion, item 462.

¹²⁸ See *generally* SITF00189121-00189140 RED2; see Annex 6 to the Bar Table Motion, item 462.

¹²⁹ See Amended Indictment paras 87-90, 125-128, 168.

49. The records have indicia of authenticity including the appropriate logos, letterhead, signatures and format.¹³⁰ The Panel therefore finds the records to be *prima facie* authentic.

50. The documents are of *prima facie* probative value with regard to the events and actions carried out at KLA facilities within the scope of the specific charges faced by the Accused, as referenced above. The included photos corroborate the findings in the records and further their reliability.¹³¹

51. The document principally consists of observations made by the officers involved in the raid.¹³² To the extent that that report contains hearsay, the Panel can address this by assigning the appropriate weight to such items and disregard those claims or assertions that are insufficiently substantiated or corroborated. The *prima facie* probative value of this item is not outweighed by its prejudicial effect. The Panel therefore finds SITF00189121-00189140 RED2 admissible from the bar table.

(c) Records Pertaining to Exhumations

52. A number of offered documents address recovered remains of victims. The International Commission on Missing Persons' report,¹³³ both versions of the UNMIK Findings of the Examination of Nine Sets of Human Remains,¹³⁴ and the addendum to the same¹³⁵ relate to the recovery and analysis of nine sets of remains

¹³⁰ SITF00189121-00189140 RED2, pp. SITF00189121, SITF00189138; see Annex 6 to the Bar Table Motion, item 462.

¹³¹ SITF00189121-00189140 RED2, pp. SITF00189124-SITF00189131, SITF00189133, SITF00189140; see Annex 6 to the Bar Table Motion, item 462.

¹³² See generally SITF00189121-00189140 RED2; see Annex 6 to the Bar Table Motion, item 462.

¹³³ IT-03-66 P112; see Annex 6 to the Bar Table Motion, item 37. Note that the Albanian translation of this item is contained in three other items with differing ERN numbers. U008-6123-U008-6129-AT, U008-6077-U008-6084-AT, U008-1653-U008-1665-AT; see Annex 6 to the Bar Table Motion, items 38-40.

¹³⁴ U007-9551-U007-9600, IT-03-66 P111; see Annex 6 to the Bar Table Motion, items 42, 477.

¹³⁵ U008-6010-U008-6033; see Annex 6 to the Bar Table Motion, item 487.

recovered in Berishë/Beriša, Kosovo.¹³⁶ The SPO submits that these items are relevant to crimes alleged to have occurred in Llapushnik/Lapušnik.¹³⁷ The documents reflect that the remains in question belong to individuals that are named victims in the Amended Indictment, who were allegedly murdered in the Berishë/Beriša mountains near Llapushnik/Lapušnik,¹³⁸ making their relevance apparent.

53. While the relevance of most of these documents is readily apparent, the relevance of one document requires further explanation. The SPO notes that the UNMIK exhumation report¹³⁹ relates to the alleged murder of a victim named in the Amended Indictment.¹⁴⁰ The report addresses an exhumation that occurred at Valujak Cave.¹⁴¹ While victims' names are not present in the document,¹⁴² its relevance becomes clear when assessed in tandem with the UNMIK forensic report.¹⁴³ The UNMIK forensic report states that, although the remains were found in Peja Cemetery, these remains were relocated to Peja Cemetery from Valujak Cave, where the murder allegedly took place.¹⁴⁴ Hence, the UNMIK exhumation report is relevant to the alleged murder of a named victim in the Amended Indictment. The Panel therefore finds that each item is relevant as it pertains to the alleged disappearance and murder of named victims in this case.

¹³⁶ IT-03-66 P112, U007-9551-U007-9600, IT-03-66 P111, U008-6010-U008-6033; *see* Annex 6 to the Bar Table Motion, items 37, 42, 477, 487.

¹³⁷ *See* Annex 6 to the Bar Table Motion, table section "Relevance/Probative Value" for items 37, 42, 477, 487.

¹³⁸ *Compare* IT-03-66 P112, U007-9551-U007-9600, IT-03-66 P111, U008-6010-U008-6033; *with* Amended Indictment, para. 146, Schedule B, line 1, p. 60; *see* Annex 6 to the Bar Table Motion, items 37, 42, 477, 487.

¹³⁹ SPOE00073399-00073428; *see* Annex 6 to the Bar Table Motion, item 376.

¹⁴⁰ *See* Annex 6 to the Bar Table Motion, , table section "Relevance/Probative Value" for item 376.

¹⁴¹ *See generally* SPOE00073399-00073428; *see* Annex 6 to the Bar Table Motion, item 376.

¹⁴² *See generally* SPOE00073399-00073428; *see* Annex 6 to the Bar Table Motion, item 376.

¹⁴³ SPOE00068624-00068634; *see* Annex 6 to the Bar Table Motion, item 382.

¹⁴⁴ SPOE00068624-00068634, p. SPOE00068631; *see* Annex 6 to the Bar Table Motion, item 382.

54. Each item contains hallmarks of authentic documents including letterhead, logos, names of preparers and signature blocks.¹⁴⁵ The Panel is satisfied that these documents are *prima facie* authentic.

55. The information provided in these documents addresses the circumstances surrounding the disappearance and murder of victims identified in the Amended Indictment. The Panel therefore finds them *prima facie* probative of these matters.

56. The Panel notes that while all the items contain some hearsay information, the Panel can address these issues by assigning the appropriate weight to such items and disregard those claims or assertions that are insufficiently substantiated or corroborated. The *prima facie* probative value of these items is not outweighed by their prejudicial effect.

57. Based upon the foregoing, the Panel finds IT-03-66 P112, U007-9551-U007-9600, SPOE00073399-00073428, SPOE00068624-00068634, IT-03-66 P111 and U008-6010-U008-6033 admissible from the bar table.

(d) Records of the Serbian Ministry of Internal Affairs

58. The Serbian Ministry of Internal Affairs document is a receipt for the return of personal effects of a policeman following his death and alleged kidnapping by a “terrorist gang”.¹⁴⁶ The SPO asserts that this document is relevant to charged crimes having occurred in Llapushnik/Lapušnik.¹⁴⁷ While the Panel recognises that the document does not reference a region or date of the alleged kidnapping or killing¹⁴⁸ and the alleged victim is not listed in the Amended Indictment where

¹⁴⁵ See generally IT-03-66 P112, U007-9551-U007-9600, SPOE00073399-00073428, SPOE00068624-00068634, IT-03-66 P111, U008-6010-U008-6033; see Annex 6 to the Bar Table Motion, items 37, 42, 376, 382, 477, 487.

¹⁴⁶ IT-03-66 P209; see Annex 6 to the Bar Table Motion, item 514.

¹⁴⁷ See Annex 6 to the Bar Table Motion table section “Indictment Primary Paragraphs” for item 514.

¹⁴⁸ IT-03-66 P209; see Annex 6 to the Bar Table Motion, item 514.

Llapushnik/Lapušnik is discussed, or in the associated tables,¹⁴⁹ the document is nonetheless relevant. The document is relevant, *inter alia*, to establishing an alleged crime which, if attributed, could be relevant to establishing the existence of a widespread and/or systematic attack on a civilian population and/or a pattern of conduct relevant to inferences sought from the Panel.

59. With regard to authenticity, the document bears all the attendant markings, seals and signatures consistent with an official record of the Serbian Ministry of the Interior. The Panel therefore finds that the document is *prima facie* authentic.

60. Regarding *prima facie* probative value, this document is probative of the contextual element of an alleged widespread or systematic attack on a civilian population in general, and the alleged targeting of those affiliated with the Serbian authorities in particular.

61. The Panel finds that the *prima facie* probative value of this document is not outweighed by its prejudicial effect. The Panel notes, in particular, that it does not attribute any of the alleged actions to alleged members of the KLA or to the Accused, can be put to witnesses in cross-examination, and the fact that the information contained therein has not been verified through a witness will be accounted for when deciding what weight to attribute to it.

62. Based upon the foregoing, the Panel finds IT-03-66 P209 admissible from the bar table.

¹⁴⁹ See generally Amended Indictment, paras 64, 101, 145-146, Schedule B, p. 62.

(e) Cable from the US Embassy in Belgrade, Serbia

63. The content of the cable originating from the US Embassy in Belgrade, Serbia principally provides descriptions of circumstances in the field in November 1998, including sites where KLA members allegedly detained and tortured two policemen, and a KLA checkpoint.¹⁵⁰ The Panel therefore finds this document to be relevant, in particular, in respect of the alleged existence of patterns of crimes attributable to members of that organisation and the alleged existence of a widespread and/or systematic attack on a civilian population.

64. The cable appears to be authentic. It contains labels referring to the U.S. Department of State, an assigned case number, and classification.¹⁵¹ It also contains the date upon which this document was declassified.¹⁵² The Panel is satisfied that it is *prima facie* authentic.

65. The cable appears to provide information regarding alleged crimes attributed to members of the KLA, as well as a KLA checkpoint during the indictment period. The Panel finds this information to be *prima facie* probative.

66. The hearsay nature of some of the evidence contained therein is no ground, without more, to refuse admission. This will be accounted for when assessing the weight of such evidence. The Panel further notes that the Defence will be able to put questions regarding this item to at least two SPO witnesses who are yet to appear. The Panel is, therefore, satisfied that the *prima facie* probative value of this item is not outweighed by any prejudicial effect.

67. The Panel therefore finds 102870-102875 admissible from the bar table.

¹⁵⁰ 102870-102875; see Annex 6 to the Bar Table Motion, item 525.

¹⁵¹ See generally 102870-102875; see Annex 6 to the Bar Table Motion, item 525.

¹⁵² See generally 102870-102875; see Annex 6 to the Bar Table Motion, item 525.

(f) OSCE Records

68. U007-9607-U007-9661 is a collection of OSCE records primarily consisting of missing person and incident reports.¹⁵³ The content of these documents relates to the alleged abduction of civilians by the KLA. SPOE00233999-00234000 is a document providing minutes of a meeting between OSCE staff and KLA members regarding the taking of five civilian prisoners.¹⁵⁴ SPOE00233700-00233701¹⁵⁵ is an OSCE Patrol Report. The document recounts an event in which KLA personnel at a roadblock lacked the authority to permit OSCE personnel to pass absent authorisation from superiors.¹⁵⁶ SPOE00109507-00109518¹⁵⁷ contains typed entries from W04067's notebook. These entries appear to memorialise meetings with KLA representatives regarding the alleged taking of hostages.¹⁵⁸ SPOE00061164-00061168¹⁵⁹ is an OSCE weekly mission report. The document contains alleged statements in which Mr Thaçi is recorded as promising that the KLA will not attack Yugoslav forces and that KLA members will stay in their strongholds until NATO troops arrive.¹⁶⁰ SPOE00060952-00060954¹⁶¹ is an interim OSCE report. The report, *inter alia*, discusses the release of four prisoners by the KLA. Two were journalists, and two were ethnic Albanians held for spreading anti-KLA propaganda.¹⁶² SPOE00060865-00060865¹⁶³ is an alleged OSCE spot assessment. It discusses the relationship and authority dynamics amongst members of the KLA

¹⁵³ U007-9607-U007-9661; see Annex 6 to the Bar Table Motion, item 41.

¹⁵⁴ See generally SPOE00233999-00234000; see Annex 6 to the Bar Table Motion, item 211.

¹⁵⁵ See Annex 6 to the Bar Table Motion, item 212.

¹⁵⁶ SPOE00233700-00233701; see Annex 6 to the Bar Table Motion, item 212.

¹⁵⁷ See Annex 6 to the Bar Table Motion, item 375.

¹⁵⁸ SPOE00109507-00109518; see Annex 6 to the Bar Table Motion, item 375.

¹⁵⁹ See Annex 6 to the Bar Table Motion, item 384.

¹⁶⁰ SPOE00061164-00061168; see Annex 6 to the Bar Table Motion, item 384.

¹⁶¹ See Annex 6 to the Bar Table Motion, item 386.

¹⁶² SPOE00060952-00060954; see Annex 6 to the Bar Table Motion, item 386.

¹⁶³ See Annex 6 to the Bar Table Motion, item 387.

General Staff.¹⁶⁴ SPOE00060777-00060785¹⁶⁵ memorialises conversations between OSCE representatives and a KLA Zone Commander in which the latter is recorded as suggesting that he is capable of providing OSCE personnel operating in the region protection from Serbian authorities.¹⁶⁶ The Zone Commander is also recorded as admitting to holding Albanian prisoners.¹⁶⁷ IT-03-66 P46¹⁶⁸ is an OSCE missing person report regarding a named victim.¹⁶⁹ It specifically provides that the victim was seized and taken away by KLA personnel.¹⁷⁰ Based upon the subject matter of these documents and their contents, which cover alleged abductions and detention of civilians by the KLA as well as Mr Thaçi's alleged authority over such actions, the Panel finds these documents to be relevant.

69. SPOE00059723-00059725¹⁷¹ is a document regarding a meeting in which various State representatives discussed the feasibility of Kosovo Diplomatic Observer Mission personnel and resources being absorbed into the Kosovo Verification Mission.¹⁷² The SPO asserts that SPOE00059723-00059725 is relevant because it provides a historical background to the conflict.¹⁷³ The KLA is not mentioned in this document. The SPO has failed to establish the relevance of this document to the proceedings. SPOE00059723-00059725 will therefore not be admitted. The Panel notes, furthermore, that this document includes information presented by upcoming SPO witness W04147 so that the SPO may seek to establish relevance through this witness.

¹⁶⁴ SPOE00060865-00060865; *see* Annex 6 to the Bar Table Motion, item 387.

¹⁶⁵ *See* Annex 6 to the Bar Table Motion, item 388.

¹⁶⁶ SPOE00060777-00060785; *see* Annex 6 to the Bar Table Motion, item 388.

¹⁶⁷ SPOE00060777-00060785; *see* Annex 6 to the Bar Table Motion, item 388.

¹⁶⁸ *See* Annex 6 to the Bar Table Motion, item 507.

¹⁶⁹ Amended Indictment para. 146.

¹⁷⁰ IT-03-66 P46; *see* Annex 6 to the Bar Table Motion, item 507.

¹⁷¹ *See* Annex 6 to the Bar Table Motion, item 389.

¹⁷² SPOE00059723-00059725; *see* Annex 6 to the Bar Table Motion, item 389.

¹⁷³ *See* Annex 6 to the Bar Table Motion, item 389.

70. The formatting and structure of the relevant documents are consistent with OSCE official reports,¹⁷⁴ and the Panel is satisfied with their *prima facie* authenticity, with two exceptions addressed below.¹⁷⁵

71. Regarding SPOE00109507-00109518¹⁷⁶ and SPOE00060865-00060865,¹⁷⁷ the Panel notes that they contain no letterhead or logo. While the SPO asserts that SPOE00109507-00109518 can be authenticated by W04067, and SPOE00060865-00060865 could be authenticated by W04401, the Panel is yet to hear W04067's or W04401's evidence. Both the authentication and probative value of these items would largely depend on the ability of the SPO to establish the basis, origin and authorship of these documents. The Panel therefore denies, without prejudice, admission of these documents.

72. With regard to probative value, the Panel notes that the remaining documents specifically address: (i) the alleged power of the KLA to detain civilians and take hostages;¹⁷⁸ (ii) specific abductions allegedly committed by the KLA;¹⁷⁹ (iii) the nature of KLA command structure during the indictment period;¹⁸⁰ and (iv) Mr Thaçi's alleged authority over the actions of the KLA.¹⁸¹ The Panel therefore finds these items are of *prima facie* probative value.

73. As to whether the *prima facie* probative value of the remaining items is outweighed by their prejudicial effect, the Panel notes that while all the OSCE records contain some hearsay information, the Panel can address these issues by assigning the appropriate weight to such items and disregard those claims or

¹⁷⁴ See e.g. Decision on Bar Table Motion, paras 47, 50 (finding six OSCE items with similar indicators to be *prima facie* authentic and admissible).

¹⁷⁵ SPOE00109507-00109518, SPOE00060865-00060865; see Annex 6 to the Bar Table Motion, items 375, 387.

¹⁷⁶ See Annex 6 to the Bar Table Motion, item 375.

¹⁷⁷ See Annex 6 to the Bar Table Motion, item 387

¹⁷⁸ SPOE00060952-00060954; see Annex 6 to the Bar Table Motion, item 386.

¹⁷⁹ U007-9607-U007-9661, SPOE00233999-00234000, SPOE00060777-00060785, IT-03-66 P46; see Annex 6 to the Bar Table Motion, items 41, 211, 388, 507.

¹⁸⁰ SPOE00233700-00233701; see Annex 6 to the Bar Table Motion, item 212.

¹⁸¹ SPOE00061164-00061168; see Annex 6 to the Bar Table Motion, item 384.

assertions that are insufficiently substantiated at the time of final deliberations. Elements of the documents with which issue is being taken by the Defence can effectively be tested through cross-examination of relevant witnesses. The Panel therefore finds that the *prima facie* probative value of these items is not outweighed by any prejudicial effect.

74. Based on the foregoing, the Panel admits IT-03-66 P46, , SPOE0006077-00060785, SPOE00061164-00061168, SPOE00060777-00060785, SPOE00060952-00060954, SPOE00233700-00233701, SPOE00233999-00234000, and U007-9607-U007-9661 pp. U007-9607 to U007-9617 and U007-9621 to U007-9661¹⁸² from the bar table and denies, without prejudice, admission of SPOE00059723-00059725, SPOE00060865-00060865 and SPOE00109507-00109518.

(g) Special Prosecution of the Republic of Kosovo (“SPRK”) Records

75. The SPO offers one document that the SPRK provided to the Special Investigative Task Force in 2015.¹⁸³ 034163-034165 is entitled “A visit of the representatives of political parties of Kosovo to dislocated civilian population”.¹⁸⁴ This title followed by a list of names and corresponding political positions and affiliations.¹⁸⁵ The SPO asserts that this document is relevant to the KLA’s alleged arrest and detention of individuals at Qirez/Ćirez in September 1998.¹⁸⁶ Evidence of this event is already present in the record in the form of W03825’s testimony¹⁸⁷

¹⁸² See Annex 6 to the Bar Table Motion, item 41 (noting that the SPO does not seek to admit pp. U007-9618-U007-9620, which contain a statement by W04395 and which were found to be appropriate for admission in the Fourth Rule 154 Decision, *see above* fn 14).

¹⁸³ 034163-034165; *see* Annex 6 to the Bar Table Motion, item 634.

¹⁸⁴ *See* Annex 6 to the Bar Table Motion, item 634.

¹⁸⁵ 034163-034165; *see* Annex 6 to the Bar Table Motion, item 634.

¹⁸⁶ *See* Annex 6 to Bar Table Motion, item 634.

¹⁸⁷ Transcript of Hearing, Panel, 6 November 2023, p. 9332, line 17 to p. 9333, line 8; p. 9338, line 15 to p. 9340, line 22.

and via previously admitted exhibits.¹⁸⁸ 034163-034165 is therefore relevant to specific alleged crimes and the SPO's allegation of a KLA policy of targeting of (political) opponents. It is also relevant because it corroborates evidence already in the record.

76. With regard to authenticity, the Panel notes that while no author or source organisation is provided on the document itself, it is dated, and has headings and structure representative of an official record. The typeface, format and its apparent intended purpose as a disclosure of those political representatives participating in a tour of locations in Kosovo is consistent with a document originating from UNMIK that has already been admitted into evidence.¹⁸⁹ Additionally, the document in question is dated 29 August 1998, and identifies Bellanice, Ngucat, and Senik as locations to be visited during the tour. This is consistent with information already in evidence.¹⁹⁰ The Panel therefore finds that the document is *prima facie* authentic.

77. The document has *prima facie* probative value, as it identifies the political positions of those alleged to have been subsequently kidnapped, and could therefore be relevant to establishing the reasons for their arrest and alleged mistreatment. As previously noted, it also corroborates evidence regarding this alleged kidnapping already in the record.

78. The Panel is satisfied that this document's *prima facie* probative value is not outweighed by any prejudicial effect. First, it does not specifically reference the KLA or the alleged criminal conduct. Secondly, evidence to the same effect was led from SPO witnesses and could be challenged by the Defence.

¹⁸⁸ See 034157-034158 (admitted as P00319 on 28 August 2023); 034172-034173 (admitted as P00320 on 28 August 2023); DHT01418-DHT01422 (admitted as 1D00038 on 28 August 2023).

¹⁸⁹ Compare SITF00055872-SITF00055873, p. SITF00055873 (admitted as P00682 on 6 November 2023).

¹⁹⁰ See 034138-034141-ET, p. 034138 (admitted as P00681-ET on 7 November 2023).

79. Based on the foregoing, the Panel finds 034163-034165 admissible from the bar table.

(h) Conclusion

80. Based on the foregoing regarding official documents from organisations, the Panel admits IT-03-66 P46, IT-03-66 P111, IT-03-66 P112, IT-03-66 P209, SITF00143980-00143983, SITF00189121-00189140 RED2, SPOE00073399-00073428, SPOE00068624-00068634, SPOE0006077-00060785, SPOE00060952-00060954, SPOE00233700-00233701, SPOE00233999-00234000, SPOE00061164-00061168, SPOE00060777-00060785, U007-9551-U007-9600, U007-9607-U007-9661 pp. U007-9607 to U007-9617 and U007-9621 to U007-9661, U008-6010-U008-6033, U008-9781-U008-9974, 034163-034165, 102870-102875 from the bar table and denies, without prejudice, admission of SPOE00059723-00059725, SPOE00060865-00060865 and SPOE00109507-00109518 from the bar table.

5. Category 5: KLA-Related Documents

(a) KLA General Staff Orders and Requests

81. The SPO seeks admission of 15 documents constituting orders and requests issued by members of the KLA.¹⁹¹ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹⁹²

¹⁹¹ U017-3162-U017-3162, U001-1387-U001-1387, U001-1383-U001-1383, U000-7803-U000-7803, U000-7734-U000-7734, U000-5385-U000-5385, U000-4400-U000-4400, U000-0529-U000-0529, SITF40001762-40001763, SITF00242605-00242605, SITF00242603-00242603, SITF00242583-00242583, IT-05-87_1 P00441, SITF00069017-SITF00069017, IT-05-87 P02461; *see* Annex 6 to the Bar Table Motion, items 5, 92, 94, 144, 150, 168, 172, 189, 418, 446, 448, 450, 489, 471, 495.

¹⁹² Bar Table Motion, para. 3.

82. The Defence responds that documents which are related to SPO witnesses should be tendered through relevant witnesses in accordance with the principle of orality.¹⁹³ The Defence avers that Trial Chambers before the 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.¹⁹⁴ Lastly, the Defence submits that, while the SPO was on notice of the importance to explain 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.¹⁹⁵

83. The Panel finds that the documents encompass: (i) a document from the KLA Military Police Directorate to the command of the Nerodime operational zone signed by the Head of the KLA Military Police Directorate;¹⁹⁶ (ii) two orders/ordinances to the Nerodime operational zone from the Commander of the First Battalion and Commander Graniti respectively;¹⁹⁷ (iii) two requests for additional personnel and for the local operational staff to have their personal effects returned signed by W04290;¹⁹⁸ (iv) three orders signed by W04752;¹⁹⁹ (v) a decision to discipline soldiers of the KLA 125 Brigade addressed to the Nerodime operational zone signed by Commander Graniti;²⁰⁰ (vi) a decision prohibiting communication with journalists signed by the KLA General Staff;²⁰¹ (vii) a request for some KLA commanding personnel to legally carry belt arms signed by

¹⁹³ Response, para. 52; *See also* Annex 6.1 to the Response, pp. 15-16, 19-20, 85-85, 89-90, 92-93; Annex 6.2.1 to the Response, pp. 19-20, 22-23; Annex 6.2.4 to the Response, pp. 7-11, 17-18; Annex 6.2.5 to the Response, pp. 2, 6-10.

¹⁹⁴ Response, para. 53.

¹⁹⁵ Response, para. 54.

¹⁹⁶ U017-3162-U017-3162; *see* Annex 6 to the Bar Table Motion, item 5.

¹⁹⁷ U001-1387-U001-1387, U001-1383-U001-1383; *see* Annex 6 to the Bar Table Motion, items 92, 94.

¹⁹⁸ U000-7803-U000-7803, U000-7734-U000-7734; *see* Annex 6 to the Bar Table Motion, items 144, 150.

¹⁹⁹ U000-5385-U000-5385, IT-05-87_1 P00441, IT-05-87 P02461; *see* Annex 6 to the Bar Table Motion, items 168, 489, 495.

²⁰⁰ U000-4400-U000-4400; *see* Annex 6 to the Bar Table Motion, item 172.

²⁰¹ U000-0529-U000-0529; *see* Annex 6 to the Bar Table Motion, item 189.

Mr Thaçi;²⁰² and (viii) four decisions depriving individuals of their liberty, terminating their detention, or granting amnesty.²⁰³

84. The Panel finds these documents relevant to, *inter alia*: (i) the organisation and functioning of the KLA and its chain of command and associated issue regarding the nature of the alleged armed conflict; (ii) the KLA Military Police Directorate's organisation, structure, authority and actions; (iii) W04752's role within the KLA; (iv) the detention of individuals in Llapashticë/Lapaštica; (v) the functioning of operational zones; and (vi) the implementation of rules and regulations by the KLA and the KLA General Staff.²⁰⁴

85. Turning to authenticity, the Panel is satisfied that all items are *prima facie* authentic. Specifically, the Panel notes that all the items: (i) are dated; (ii) except two, are numbered; (iii) except one, are either signed, or contain the unsigned signature block of a KLA member; and (iv) bear the KLA heading. Seven items also bear the KLA logo, KLA seal, or both. In addition, many of these items are also said to have been issued under the Internal Regulation of the KLA General Staff (P00648), which further adds to their *prima facie* authenticity.²⁰⁵

86. The Panel is satisfied of the *prima facie* probative value of all items. They relate to the issues outlined above, in particular, in respect of the roles and responsibilities of various KLA officials. They all, on the face of the documents, appear to be orders, and requests signed by them, which are relevant to the charges. The form of these items is consistent with other orders offered in this part, or admitted into evidence, which further adds to their *prima facie* probative value.²⁰⁶

²⁰² SITF40001762-40001763; *see* Annex 6 to the Bar Table Motion, item 418.

²⁰³ SITF00242605-00242605, SITF00242603-00242603, SITF00242583-00242583, SITF00069017-SITF00069017; *see* Annex 6 to the Bar Table Motion, items 446, 448, 450, 471.

²⁰⁴ Amended Indictment, paras 15, 19, 37, 71-73, 107-108.

²⁰⁵ *See, for example*, SITF00242605-00242605, SITF00242603-00242603, SITF00069017-SITF00069017, and IT-05-87 P02461; *see* Annex 6 to the Bar Table Motion, items 446, 448, 471, 495.

²⁰⁶ *See, for example*, Fifth Decision on Bar Table Motion, paras 62-69.

87. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 86 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. The fact that one item is signed by Mr Thaçi does not alter this finding.

88. The Panel emphasises, however, that if a document bears the signature of a witness to be called to testify by the calling party, and the content or authorship of the document is in dispute, it should, in principle, be shown to the witness for his or her comment. A failure on the part of the calling party to do so could affect the weight that the Panel might be prepared to give to that document.

89. In light of the foregoing, the Panel admits into evidence U017-3162-U017-3162, U001-1387-U001-1387, U001-1383-U001-1383, U000-7803-U000-7803, U000-7734-U000-7734, U000-5385-U000-5385, U000-4400-U000-4400, U000-0529-U000-0529, SITF40001762-40001763, SITF00242605-00242605, SITF00242603-00242603, SITF00242583-00242583, IT-05-87_1 P00441, SITF00069017-SITF00069017, and IT-05-87 P02461.

(b) KLA Regulations, Programme and Training Documents

90. The SPO seeks admission of seven documents consisting of KLA regulations, programmes and training documents.²⁰⁷ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²⁰⁸

²⁰⁷ U017-3364-U017-3364, U001-7342-U001-7342, U001-7059-U001-7061, U001-4904-U001-4913, U000-6413-U000-6413, U000-0410-U000-0444, SITF00009608-SITF00009610; *see* Annex 6 to the Bar Table Motion, items 1, 70, 72, 80, 162, 193, 476.

²⁰⁸ Bar Table Motion, para. 3.

91. 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.²⁰⁹ 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.²¹⁰ 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 who would be unable to challenge the admissibility of this material through a witness. The Defence argues that this prejudice is amplified by the fact that the SPO intends to call witnesses who held leadership positions within the KLA.²¹¹

92. In respect of the Defence's submissions that these documents are too important to be admitted from the bar table, the Panel recalls its previous finding in the Second Decision on Bar Table Motion that while 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.²¹² The Panel notes, furthermore, that the same conditions and requirements for admission, as set out in Rule 138(1), apply to all categories of proposed exhibits, regardless of their (perceived) importance to a Party's case.

²⁰⁹ Response, para. 102.

²¹⁰ Response, para. 103; *See also* Annex 6.1 to the Response, pp. 13-14; Annex 6.2.5 to the Response, pp. 1-2; Annex 6.5 to the Response, pp. 2-6, 10-11, 16.

²¹¹ Response, para. 105.

²¹² Second Decision on Bar Table Motion, para. 80.

93. The Panel further considers that these documents encompass: (i) a clarification by the KLA Military Police Directorate of the duties of the operational zone commanders under the Military Police Regulations;²¹³ (ii) a document titled “The Military Police and its Duties – General Regulations”;²¹⁴ (iii) Kosovo Liberation Army “Regulations of the Military Intelligence Service at the District Level”;²¹⁵ (iv) KLA “Rules Governing the Life of the Kosovo Liberation Army in the Dukagjini Area”;²¹⁶ (v) a clarification signed by W04752 between the KLA II and III Company and the KLA General Staff;²¹⁷ (vi) “Disciplinary Regulations for the Kosovo Liberation Army”;²¹⁸ and (vii) KLA Judicial Services “Manual on Procedure Implementation Towards the Detainees”.²¹⁹

94. The Panel finds these documents relevant to, *inter alia*: (i) the authority of the KLA General Staff and the KLA Military Police to adopt regulations, and associated issues of powers and responsibilities of the KLA General Staff, the KLA Military Police and its members; (ii) the level of coordination and organisation of the KLA and functioning of the chain of command; (iii) the hierarchy within the KLA, the KLA Military Police and the KLA General Staff’s authority, in particular in regards to disciplinary matters; (iv) the existence and elements of an armed conflict at the relevant time; and (v) the treatment of detainees.²²⁰

95. Turning to authenticity, the Panel considers that U017-3364-U017-3364, U001-7342-U001-7342, U001-7059-U001-7061, U001-4904-U001-4913, U000-6413-U000-6413, U000-0410-U000-0444, and SITF00009608-SITF00009610 are *prima facie* authentic.²²¹ All of these documents, on their face, contain indicators suggesting

²¹³ U017-3364-U017-3364; *see* Annex 6 to the Bar Table Motion, item 1.

²¹⁴ U001-7342-U001-7342; *see* Annex 6 to the Bar Table Motion, item 70.

²¹⁵ U001-7059-U001-7061; *see* Annex 6 to the Bar Table Motion, item 72.

²¹⁶ U001-4904-U001-4913; *see* Annex 6 to the Bar Table Motion, item 80.

²¹⁷ U000-6413-U000-6413; *see* Annex 6 to the Bar Table Motion, item 162.

²¹⁸ U000-0410-U000-0444; *see* Annex 6 to the Bar Table Motion, item 193.

²¹⁹ SITF00009608-SITF00009610; *see* Annex 6 to the Bar Table Motion, item 476.

²²⁰ Amended Indictment, paras 15, 18-19, 37, 39.

²²¹ Annex 6 to the Bar Table Motion, items 1, 70, 72, 80, 162, 193, 476.

that they came from the KLA. Five are dated, all have a typewritten KLA heading, two are numbered, two items have the KLA seal and are signed by W04752 and W04264 respectively. The Panel notes that the document “The Military Police and its Duties – General Regulations” (U001-7342-U001-7342) is not dated, but considers that its authenticity is verified by the clarification to this regulation issued by the Chief Executive of the KLA Military Police Directorate on 17 December 1998 (U017-3364-U017-3364). The Panel also notes that the document “Regulations of the Military Intelligence Service at the District Level” (U001-7059-U001-7061) is not dated. The Panel considers, however, that the *prima facie* authenticity of this item is supported by that it has the KLA header, and that its format, font and structure is similar to other such documents allegedly issued by the KLA.²²²

96. The Panel is satisfied that U017-3364-U017-3364, U001-7342-U001-7342, U001-4904-U001-4913, U001-7059-U001-7061, U000-6413-U000-6413, U000-0410-U000-0444, and SITF00009608-SITF00009610 have *prima facie* probative value.²²³ There are sufficient indicia of reliability for the reasons set out in paragraph 95 and they are relevant facts and circumstances in dispute, in particular, in respect of issues concerning the powers and competencies of the KLA in disciplinary matters.²²⁴ In addition, the Panel notes that a partial copy of the regulation in U000-0410-U000-0444 was seized from Mr Krasniqi’s residence.²²⁵ The Panel need not determine the identity of the person who, on behalf of the KLA, wrote these documents for the purposes 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 the relevant evidence before it.

²²² See for example, U001-7342-U001-7342, U001-4904-U001-4913; Annex 6 to the Bar Table Motion, items 70, 80.

²²³ Annex 6 to the Bar Table Motion, items 1, 70, 72, 80, 162, 193, 476.

²²⁴ See above, para. 94.

²²⁵ See P00640; See also Fifth Decision on Bar Table Motion, paras 70-78; Annex 6 to the Bar Table Motion, item 225.

97. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 96 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 and/or to produce relevant evidence in relation to issues of concern in those items.

98. In light of the foregoing, the Panel admits into evidence U017-3364-U017-3364, U001-7342-U001-7342, U001-4904-U001-4913, U001-7059-U001-7061, U000-6413-U000-6413, U000-0410-U000-0444, and SITF00009608-SITF00009610.

(c) Handwritten Documents

99. The SPO seeks admission of nine handwritten documents.²²⁶ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²²⁷

100. The Defence responds that these documents should only be tendered through their respective authors,²²⁸ 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 Amended Indictment, and that their probative value is substantially outweighed by their prejudicial effect.²²⁹

101. The Panel considers that the documents encompass the following handwritten items: (i) notes describing the daily routine on the Llapushnik/Lapušnik and Glogoc/Glogovac Observation Point 1 from 1 to

²²⁶ U002-3460-U002-3492, U002-0163-U002-0208, U001-1918-U001-1918, U001-1916-U001-1916, U001-1912-U001-1912, U001-1531-U001-1531, U001-1381-U001-1381, U000-6954-U000-6978, SITF00244612-00244656; *see* Annex 6 to the Bar Table Motion, items 52, 62, 84, 86, 88, 90, 96, 160, 436; Notification, para. 2.

²²⁷ Bar Table Motion, para. 3.

²²⁸ Response, paras 52-55.

²²⁹ 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.

22 July 1998;²³⁰ (ii) a diary of Lahi Brahimaj with notes on daily activities in Tirane – Jabllanicë/Jablanica between 11 November 1998 and 1 February 1999;²³¹ (iii) disciplinary decisions against various soldiers and one order, all addressed to Ahmet Kaçiku and signed by Commander Graniti of the KLA Nerodime operational zone;²³² (iv) a notebook titled “Special Unit of the KLA General Staff”;²³³ and (v) notes (45-pages) covering, *inter alia*, lists of KLA members, lists of equipment and supplies, and an order by Kadri Kastrati.²³⁴

102. The Panel finds these items relevant to, *inter alia*, the following issues: (i) the functioning and organisation of the KLA, in particular, surveillance activities and chain of command; (ii) the interaction and coordination between KLA General Staff members; (iii) the KLA’s authority to implement disciplinary measures; (iv) the existence and activities of a Special Unit of the KLA General Staff; and (v) the KLA’s alleged policy towards collaborators and implementation thereof.²³⁵

103. Turning to authenticity, the Panel is satisfied that U002-0163-U002-0208, U001-1918-U001-1918, U001-1916-U001-1916, U001-1912-U001-1912, U001-1531-U001-1531, and U001-1381-U001-1381 are *prima facie* authentic.²³⁶ They are all dated and signed. In addition, U001-1918-U001-1918, U001-1916-U001-1916, U001-1912-U001-1912, U001-1531-U001-1531, and U001-1381-U001-1381 are numbered, consistent in form with the typed versions of similar orders addressed above at paragraphs 81-87 and three of the disciplinary decisions were issued pursuant to the KLA Disciplinary Rules (P00162). Lastly, the Panel is also satisfied of the *prima facie* authenticity of: (i) U002-3460-U002-3492, a notebook recording all visits at the check-point where all arrivals are logged by observing personnel, which are

²³⁰ U002-3460-U002-3492; *see* Annex 6 to the Bar Table Motion, item 52.

²³¹ U002-0163-U002-0208; *see* Annex 6 to the Bar Table Motion, item 62.

²³² U001-1918-U001-1918, U001-1916-U001-1916, U001-1912-U001-1912, U001-1531-U001-1531, U001-1381-U001-1381; *see* Annex 6 to the Bar Table Motion, items 84, 86, 88, 90, 96.

²³³ U000-6954-U000-6978; *see* Annex 6 to the Bar Table Motion, item 160.

²³⁴ SITF00244612-00244656; *see* Annex 6 to the Bar Table Motion, item 436.

²³⁵ Amended Indictment, paras 15, 19, 36, 39.

²³⁶ Annex 6 to the Bar Table Motion, items 62, 84, 86, 88, 90, 96.

named, and entries therein are dated; (ii) U002-0163-U002-0208, a diary attributed to Lahi Brahimaj with detailed entries signed and dated by “Lahi”; (iii) U000-6954-U000-6978, while handwritten, is marked up as a KLA document (first and last pages), several entries therein mention alleged KLA members, and are signed and dated; in addition, the document contains notifications and requests, which are consistent in form with similar typed notifications and requests;²³⁷ and (iv) SITF00244612-00244656 as it has a KLA stamp, lists details of alleged KLA members, and as many entries therein are both signed and dated.

104. The Panel is satisfied that U001-1918-U001-1918, U001-1916-U001-1916, U001-1912-U001-1912, U001-1531-U001-1531, and U001-1381-U001-1381 have *prima facie* probative value. There are sufficient indicia of reliability for the reasons set out in paragraph 103. They relate, *inter alia*, to Commander Graniti’s role and responsibilities as the Commander of the Nerodime operational zone. The Panel is similarly satisfied with the *prima facie* probative value of U002-3460-U002-3492, U002-0163-U002-0208, U000-6954-U000-6978, and SITF00244612-00244656. There are sufficient indicia of reliability for the reasons set out in paragraph 103. The items are relevant, *inter alia*, to KLA’s logistical capability, operational functioning of relevant units, means of communication within the KLA and the KLA’s control over areas under its supervision.

105. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 104 is not outweighed by any prejudice to the Accused. These items do not pertain directly to actions attributed to the Accused. In addition, the Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

106. In light of the foregoing, the Panel admits into evidence U002-3460-U002-3492, U002-0163-U002-0208, U001-1918-U001-1918, U001-1916-U001-1916, U001-

²³⁷ See above, paras 81-89; See also Fifth Decision on Bar Table Motion, paras 62-69.

1912-U001-1912, U001-1531-U001-1531, U001-1381-U001-1381, U000-6954-U000-6978, and SITF00244612-00244656.

(d) Statements and Reports from Operational Zone Commanders

107. The SPO seeks the admission of five reports from operational zone commanders.²³⁸ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²³⁹

108. The Defence responds that: (i) these documents should only be tendered through their respective authors; (ii) the original source of the documents is unknown; (iii) they are inauthentic; (iv) they are not sufficiently connected to the offenses or modes of liability in the Amended Indictment; and (v) their probative value is substantially outweighed by their prejudicial effect. In addition, the Defence objects to some items because, *inter alia*, they are not signed, not stamped, have no indication of authorship, originate from international organisations without indication of the original source(s), and are not sufficiently connected to offence(s) and mode(s) of liability pleaded in the Amended Indictment.²⁴⁰

109. The Panel considers that the documents encompass: (i) a report from the KLA Command of the Dukagjini operational zone regarding the arrest of Skender Hajdar Hoxhaj;²⁴¹ (ii) a collection of documents from the Dukagjini operational zone, including a programme on intensifying propaganda, a list of members of the KLA 132nd Brigade, reports sent by the intelligence service to Maliq Ndrecaj, the

²³⁸ U009-1995-U009-1995, U009-1663-U009-1676, U001-5808-U001-5808, U001-5245-U001-5245, U001-1094-U001-1094; *see* Annex 6 to the Bar Table Motion, items 21, 23, 74, 76, 98.

²³⁹ Bar Table Motion, para. 3.

²⁴⁰ Annex 6.1 to the Response, pp. 90-91; Annex 6.2.3 to the Response, pp. 2-8, 10-11; Annex 6.2.5 to the Response, p. 9

²⁴¹ U009-1995-U009-1995; *see* Annex 6 to the Bar Table Motion, item 21.

Commander of the Dukagjini operational zone, and his replies to the intelligence service;²⁴² (iii) a report written by the intelligence sector following the questioning of Pashk Luli;²⁴³ (iv) a statement by Isa R. Nikqi, inspector of the 136th Brigade, requesting to withdraw from the investigations/examinations of collaborators of the Serbian regime;²⁴⁴ and (v) a daily report from the Battalion Commander of the 161st Brigade of the Nerodime operational zone to the Brigade Commander dated 2 January 1999;²⁴⁵

110. The Panel finds these items relevant to, *inter alia*: (i) the KLA's alleged policy towards suspected "collaborators"; (ii) the organisation, authority and command structure of the KLA; and (iii) the functioning of the operational zones.²⁴⁶

111. Turning to authenticity, the Panel is satisfied that U009-1995-U009-1995, U009-1663-U009-1676, U001-5808-U001-5808, U001-5245-U001-5245, and U001-1094-U001-1094 are *prima facie* authentic. All are dated and have a KLA header. One item is also numbered;²⁴⁷ one item is signed;²⁴⁸ one item contains the signature box of "Isa Rexhep NIKQI";²⁴⁹ two items are undersigned by the "Intelligence Sector";²⁵⁰ and seven of the items contained in U009-1663-U009-1676 are either undersigned by the "Intelligence Sector", or by Mr. Maliq Ndrecaj.²⁵¹ All reports identify who the report is addressed to and from where it was sent. In this respect, the Panel notes that not every document in U009-1663-U009-1676 has an addressee and a sender, but most documents therein do.²⁵²

²⁴² U009-1663-U009-1676; *see* Annex 6 to the Bar Table Motion, item 23.

²⁴³ U001-5808-U001-5808; *see* Annex 6 to the Bar Table Motion, item 74.

²⁴⁴ U001-5245-U001-5245; Annex 6 to the Bar Table Motion, item 76.

²⁴⁵ U001-1094-U001-1094; Annex 6 to the Bar Table Motion, item 98.

²⁴⁶ Amended Indictment, paras 15, 19, 36.

²⁴⁷ Annex 6 to the Bar Table Motion, item 74.

²⁴⁸ Annex 6 to the Bar Table Motion, item 98.

²⁴⁹ Annex 6 to the Bar Table Motion, item 76.

²⁵⁰ Annex 6 to the Bar Table Motion, items 21, 74.

²⁵¹ Annex 6 to the Bar Table Motion, item 23.

²⁵² Annex 6 to the Bar Table Motion, item 23.

112. The Panel is satisfied that U009-1995-U009-1995, U009-1663-U009-1676, U001-5808-U001-5808, U001-5245-U001-5245, and U001-1094-U001-1094 have *prima facie* probative value. There are sufficient indicia of reliability for the reasons set out in paragraph 111. They relate to issues in dispute such as the roles and responsibilities of operational zone commanders, or military police, and their reporting to, and communication with, various fractions, such as the intelligence sector. In addition, the form of many of these reports are consistent, which further adds to their *prima facie* probative value.

113. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 112 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.

114. In light of the foregoing, the Panel admits into evidence U009-1995-U009-1995, U009-1663-U009-1676, U001-5808-U001-5808, U001-5245-U001-5245, and U001-1094-U001-1094.

(e) Other KLA Documents

115. The SPO seeks admission of further two items which it avers originate from the KLA.²⁵³ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²⁵⁴

116. The Defence responds that: (i) the original source of these documents is unknown; (ii) they are inauthentic as they are not signed and as they originate from organisations without indication of the original source; (iii) they are not

²⁵³ U009-9397-U009-9403, SITF00333313-00333313; *see* Annex 6 to the Bar Table Motion, items 17, 430.

²⁵⁴ Bar Table Motion, para. 3.

sufficiently connected to the offenses or modes of liability in the Amended Indictment; and (iv) their probative value is substantially outweighed by their prejudicial effect.²⁵⁵

117. The Panel considers that the documents encompass: (i) a collection of documents, including a KLA Dukagjini Plain Operational Staff Regulation of the Military Police, a KLA General Staff authorisation for Pjeter Shala (“Mr Shala”) to take command over the Pashtrik 128 Assault Brigade signed by Azem Sylja, the reassignment of Mr Shala, a request to Dukagjini Plain Operational Staff and temporary military regulations;²⁵⁶ and (ii) a military notice/appeal to join the KLA dated in June 1999 signed by W04752.²⁵⁷

118. The Panel finds that U009-9397-U009-9403 and SITF00333313-00333313 are relevant to the following issues: (i) the organisation, structure and chain of command of the KLA (and associated elements of the definition of an armed conflict); (ii) the KLA’s authority to implement disciplinary measures; and (iii) efforts to recruit forces for the Provisional Government of Kosovo, and implementation of KLA General Staff policy in this matter²⁵⁸

119. Turning to authenticity, the Panel is satisfied of the *prima facie* authenticity of U009-9397-U009-9403 and SITF00333313-00333313.²⁵⁹ The items contained in U009-9397-U009-9403 are dated, numbered, bear the KLA logo, or KLA seal, and are signed. SITF00333313-00333313 is dated “06.1999”, contains the KLA logo and signature of its maker.

120. The Panel is satisfied that U009-9397-U009-9403 and SITF00333313-00333313 have *prima facie* probative value. There are sufficient indicia of reliability for the reasons set out in the preceding paragraph and the items are relevant to matters

²⁵⁵ Annex 6.2.3 to the Response, pp. 1-2; Annex 6.1. to the Response, pp. 86-87

²⁵⁶ U009-9397-U009-9403; *see* Annex 6 to the Bar Table Motion, item 17.

²⁵⁷ SITF00333313-00333313; *see* Annex 6 to the Bar Table Motion, item 430.

²⁵⁸ Amended Indictment, paras 15, 18-19.

²⁵⁹ Annex 6 to the Bar Table Motion, items 17, 430.

in dispute such as the appointment of commanders and the powers and competencies of the KLA regarding disciplinary matters. In addition, documents contained in U009-9397-U009-9403 are mutually supportive, which further adds to the *prima facie* probative value of this item.

121. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 120 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.

122. In light of the foregoing, the Panel admits into evidence U009-9397-U009-9403 and SITF00333313-00333313.

6. Category 6: Documents from Domestic and International Legal Proceedings

123. The SPO seeks the admission of five items constituting witness statements, case files and reports from domestic and international legal proceedings.²⁶⁰ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²⁶¹

124. The Defence objects to the admission of these items arguing that the SPO has failed to specify the relevance of some items, the items should be introduced through relevant SPO witnesses, and they originate from Serbia.²⁶² In addition, the Defence specifically objects to the admission of: (i) IT-03-66 P208 as none of the individuals listed therein appear in the Amended Indictment;²⁶³ (ii) U003-6888-

²⁶⁰ U003-6888-U003-6903, SPOE00125979-00126002, IT-03-66 P208, IT-03-66 P110, 0188-3494-0188-3591 RED; Annex 6 to the Bar Table Motion, items 44, 366, 517, 522, 647.

²⁶¹ Bar Table Motion, para. 3.

²⁶² Annex 6.7 to the Response, p. 2-3; Annex 6.9 to the Response, p. 4. Annex 6.11 to the Response, pp. 11-12.

²⁶³ Annex 6.9 to the Response, p. 4.

U003-6903 and SPOE00125979-00126002 due to the testimonial nature of these items, they should be subject to Rules 153-155.²⁶⁴

125. The Panel considers that the documents encompass: (i) two versions of an ICTY witness statement of Judy Thomas dated 28-30 August 2003 regarding the exhumation of alleged victims of an execution on the Berisha Mountains;²⁶⁵ (ii) minutes from the testimony of Jose Pablo Baraybar in *Selim Krasniqi et al.* before the District Court of Prizren authenticating his forensic report on the recovery, examination and identification of the remains of victim named in the Amended Indictment;²⁶⁶ (iii) a criminal report by the Serbian authorities regarding the kidnapping by the KLA of Serbian individuals in Crnoljevo, near Stimlje, on 29 June 1998;²⁶⁷ and (iv) a criminal case file with case file number "A/V-004" relating to crimes committed in Likoc/Likovac, which contains a collection of documents, including statements by witnesses.²⁶⁸

126. The Panel notes that U003-6888-U003-6903, IT-03-66 P110, SPOE00125979-00126002, and 0188-3494-0188-3591 RED constitute, or contain, statements or records of interviews prepared for the purposes of legal proceedings, offered for the truth of their content and, as such, they are subject to Rules 153-155.²⁶⁹ If the SPO wishes to tender them, it will have to do so in accordance with Rules 153-155. The Panel will therefore not admit these items from the bar table.

²⁶⁴ Annex 6.7 to the Response, pp. 2-3.

²⁶⁵ U003-6888-U003-6903, IT-03-66 P110; Annex 6 to the Bar Table Motion, items 44, 522. The Panel notes that U003-6888-U003-6903 is non-redacted without exhibits and that IT-03-66 P110 is redacted but with exhibits.

²⁶⁶ SPOE00125979-00126002; Annex 6 to the Bar Table Motion, item 366.

²⁶⁷ IT-03-66 P208; Annex 6 to the Bar Table Motion, item 517.

²⁶⁸ 0188-3494-0188-3591 RED; Annex 6 to the Bar Table Motion, item 647.

²⁶⁹ F01631, Panel, *Decision on Veseli Defence Request for Admission of Evidence Associated with W04748's Testimony*, 30 June 2023, confidential (a public redacted version was filed on the same day, F01631/RED); ICTY, *Prosecutor v. Milošević*, IT-02-54-AR73.2, Appeals Chamber, [Decision on Admissibility of Prosecution Investigator's Evidence](#), 30 September 2002, para. 18; *Prosecutor v. Galić*, IT-98-29-AR73.2, Appeals Chamber, [Decision on Interlocutory Appeal concerning Rule 92bis\(C\)](#), 7 June 2002, para. 31; *Prosecutor v. Milošević*, IT-02-54-T, Trial Chamber, [Decision on Prosecution Motion for the Admission of Evidence-in-Chief of Its Witnesses in Writing](#), 16 April 2003, p. 2.

127. The Panel finds that IT-03-66 P208, a report from the Serbian authorities regarding the kidnapping by the KLA of Serbian individuals in Crnoljevo, near Stimlje, on 29 June 1998, is relevant as it provides evidence regarding the kidnapping of four Serbs. As noted above, this incident is not independently charged in the Amended Indictment. This incident could, however, provide evidence of an alleged widespread or systematic attack against a civilian population and pattern of conduct relevant to drawing of inferences sought from the Panel. The Panel is also satisfied of the *prima facie* authenticity and probative value of this item in relation to the issues just mentioned. The Panel notes the origin of the document is clearly apparent; it is dated, numbered and signed. The Panel is further satisfied that the *prima facie* probative value of this document is not outweighed by any prejudice to the Accused.

128. In light of the foregoing, the Panel admits IT-03-66 P208 and denies, without prejudice, the admission of U003-6888-U003-6903, IT-03-66 P110, SPOE00125979-00126002, and 0188-3494-0188-3591 RED from the bar table.

C. ASSESSMENT OF WEIGHT OF ADMITTED DOCUMENTS

129. 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 admitted before it at trial. The presence of corroboration and/or the contextualisation by a witness of admitted exhibits will constitute a factor of some importance in the Panel's assessment of the weight and probative value to attach to the admitted evidence.

VI. DISPOSITION

130. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** in part the Bar Table Motion with regard to Annex 6.
- b) **ADMITS** into evidence IT-03-66 P34, 106389-01 from 00:00 to 01:12 and from 01:27 to 02:00, 077571-01, 061427-30, 061427-17, 061427-16, 061427-11, 061427-05, 061427-04, 055928-01, 054010-03 from 00:05:08 to 35:54, 011795-06 from 00:00:01 to 00:04:54 and from 00:05:08 to 00:15:00, 076891-076903, SPOE40000795-40000795, SPOE40010567-40010569, SITF00243000-00243003, 020396-020396, 021049-021056, 034159-034159, 034162-034162A, 043853-043854, 043863-043863, IT-03-66 P46, IT-03-66 P111, IT-03-66 P112, IT-03-66 P209, SITF00143980-00143983, SITF00189121-00189140 RED2, SPOE00073399-00073428, SPOE00068624-00068634, SPOE00060777-00060785, SPOE00060952-00060954, SPOE00233700-00233701, SPOE00233999-00234000, SPOE00061164-00061168, SPOE00060777-00060785, U007-9551-U007-9600, U007-9607-U007-9661 pp. U007-9607 to U007-9617 and U007-9621 to U007-9661, U008-6010-U008-6033, U008-9781-U008-9974, 034163-034165, 102870-102875, U017-3162-U017-3162, U001-1387-U001-1387, U001-1383-U001-1383, U000-7803-U000-7803, U000-7734-U000-7734, U000-5385-U000-5385, U000-4400-U000-4400, U000-0529-U000-0529, SITF40001762-40001763, SITF00242605-00242605, SITF00242603-00242603, SITF00242583-00242583, IT-05-87_1 P00441, SITF00069017-SITF00069017,

IT-05-87 P02461, U017-3364-U017-3364, U001-7342-U001-7342, U001-4904-U001-4913, U001-7059-U001-7061, U000-6413-U000-6413, U000-0410-U000-0444, SITF00009608-SITF00009610, U002-3460-U002-3492, U002-0163-U002-0208, U001-1918-U001-1918, U001-1916-U001-1916, U001-1912-U001-1912, U001-1531-U001-1531, U001-1381-U001-1381, U000-6954-U000-6978, SITF00244612-00244656, U009-1995-U009-1995, U009-1663-U009-1676, U001-5808-U001-5808, U001-5245-U001-5245, U001-1094-U001-1094, U009-9397-U009-9403, SITF00333313-00333313, and IT-03-66 P208;

- c) **DENIES**, without prejudice, admission of U003-2456-U003-2458, U002-4992-U002-4995, SITF00245017-00245111, SPOE00113615-00113639, SPOE00072818-SPOE00072818, SPOE00072817-SPOE00072817, SPOE00072816-SPOE00072816, SPOE00072810-SPOE00072810, IT-03-66 P1.9, 058755-058755, SPOE00128614-SPOE00128614, SPOE00128617-SPOE00128631, SPOE00128632-SPOE00128637, SPOE00128640-SPOE00128647, SPOE00128649-SPOE00128660, SPOE00128665-SPOE00128669, SPOE00128670-SPOE00128677, SPOE00128684-SPOE00128693, SPOE00128699-SPOE00128700, SPOE00128702-SPOE00128703, SPOE00128740-SPOE00128743, SPOE00128746-SPOE00128751, SPOE00128754-SPOE00128755, SPOE00128758-SPOE00128767, SPOE00128770-SPOE00128776, SPOE00128778-SPOE00128785, SPOE00128785-SPOE00128850, SPOE00128903-SPOE00128914, SPOE00128927-SPOE00128929, pp. SPOE00209321-SPOE00209328 and SPOE00209333-SPOE00209428 of SPOE00209321-00209428, 036622-036837, 043900-044239, 099794-099797, 099786-099788, IT-03-66 P47, U016-3286-U016-3287, SPOE00059723-00059725, SPOE00060865-00060865, SPOE00109507-00109518, U003-6888-U003-6903, IT-03-66 P110, SPOE00125979-00126002, and 0188-3494-0188-3591

RED;

- d) **DIRECTS** the Registrar to assign exhibit numbers to the admitted items, and to any translations of these items; and
- e) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material no later than **12 December 2023, 4:00 p.m.** Any response thereto shall be filed no later than **19 December 2023, 4:00 p.m.** No reply will be entertained.



Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 5 December 2023

At The Hague, the Netherlands.