

1 Wednesday, 9 March 2022

2 [Defence Preparation Conference and Victims'
3 Status Conference]

4 [Open session]

5 [The accused present via videolink]

6 --- Upon commencing at 2.31 p.m.

7 PRESIDING JUDGE VELDT-FOGLIA: Good afternoon, and welcome.

8 Madam Court Officer, could you please call the case.

9 THE COURT OFFICER: Good afternoon, Your Honours. This is case
10 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 I will now call appearances.

13 Mr. Prosecutor, could you tell us who is present for the
14 Specialist Prosecutor's Office.

15 MR. MICHALCZUK: Of course. Good afternoon, Your Honours. Good
16 afternoon, everyone. The Prosecution is represented today by
17 Silvia D'Ascoli, Associate Prosecutor; Julie Mann, our case manager;
18 and myself, Cezary Michalczuk, the Prosecutor of the SPO. Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 I note that Victims' Counsel is joining us via videolink. Does
21 the connection work well, Victims' Counsel?

22 MS. PUES: [via videolink] Yes, good afternoon, Your Honour.
23 Good afternoon, everybody. Indeed, I can hear you very well. I can
24 see you very well. And so I can confirm that the participating
25 victims are this afternoon represented by myself, Anni Pues, as

1 Victims' Counsel, joining remotely.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Defence counsel, you have the floor.

4 MR. VON BONE: Good afternoon, Your Honour. Defence is
5 represented by myself, Julius von Bone; my co-counsel, Mr.
6 Betim Shala; Fatmir Pelaj, investigator and interpreter. And joining
7 remote is Mr. Mustafa. Thank you very much.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Mr. Mustafa, does the connection work fine? Can you hear me
10 well?

11 THE ACCUSED: [via videolink] [Interpretation] Yes, Your Honour.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well.

13 And now the Registry.

14 MR. NILSSON: Good afternoon, Your Honours. Good afternoon,
15 colleagues. Jonas Nilsson, Judicial Services Division, Registry.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 For the record, you are appearing before Trial Panel I.

18 Today we resume the Defence Preparation Conference and the
19 Victims' Status Conference with the Panel rendering a number of oral
20 orders related to the management of the proceedings, including under
21 Rule 119 of the Rules.

22 Before rendering these oral orders, the Panel wishes to hear the
23 parties and the Victims' Counsel on the matter raised today, by
24 e-mail sent to the parties and Victims' Counsel, through CMU, at
25 11.34 a.m. And in this e-mail, the Panel requested the Defence to

1 make submissions on the relevance of the expected Witnesses 100,
2 1800, and 2000 to charges against the accused. The Panel also
3 invited the SPO and the Victims' Counsel to make submissions in this
4 regard, should they wish to do so.

5 Defence counsel, you have the floor.

6 MR. VON BONE: Thank you very much, Your Honour. I won't be
7 very lengthy, but let me start with the gentleman indicated with
8 number 100.

9 Strictly speaking, he cannot say anything directly related to
10 the charges, let me put that first, because he was not in contact
11 with Mr. Mustafa or at the place.

12 Having said that, we believe that he is relevant because he can
13 provide very well context of the conflict and how to understand it
14 from the viewpoint of the population of Kosovo. He was a member of
15 the General Staff and he has had the overall scope of what was going
16 on at the time in these several operational zones. At the same time,
17 he participated in the meetings, and in that context, he can say
18 something about command, compliance, and orders and to who were they
19 given and in -- in what way they would have feedback.

20 As the head of the public relations and civil administration
21 department, he also was in a position that he was having very -- a
22 good contact with what was going on civilian -- in the civilian side
23 of it. Therefore, we believe that he could testify about that. BIA
24 was operating mainly in the civilian area of Prishtine, operating for
25 the civilians. And this gentleman, he was in the best position to

1 hear anything, getting feedback from the civilian population
2 regarding all kinds of things, including that if people would have
3 been detained, where they would have been detained, or whether they
4 would have made any claims regarding any people who were missing at
5 the time or at a particular period in -- especially for us, obviously
6 it's relevant for the period of between 1 and the 18th or 20th of
7 April, to be exact.

8 So we believe that even though this gentleman is not strictly a
9 person that we can say he -- he knows about anything about this
10 specific charge, he can provide us context. And so far we believe,
11 Your Honour, that we lack, in fact, context in this side from anybody
12 in the position of the general command point of view, so I think that
13 is a very useful person to have.

14 I move on to the other gentleman, which is the number 1800.
15 This person is a person that was wounded, wounded in and near Zllash,
16 and has been treated in Zllash on the -- we believe on the location
17 which is specific to the charges. And the question is, in fact,
18 whether the context given at this moment by the Prosecution that that
19 location -- that is the key of the entire case, that location would
20 be a location run by the BIA, they would be the persons in charge for
21 it, and so on. We truly believe that the work that was done at that
22 location -- or "work" is not really a good word in this particular
23 context. Treating wounded was one thing. This person was also
24 participating in the hostilities leading up to the offensive, and I
25 think he is in a good position to talk about the offensive, when it

1 started, where it started. We have a good idea that is the location
2 where it came from, more or less, from that time on.

3 He is -- his main location is Zllash and Mramor. Those are the
4 two locations. I think these are the locations -- we locate Zllash
5 as part of Mramor, but, in fact, Mramor is - I mean village-wise - on
6 a different location than the location that we are talking about in
7 question, and I'm speaking about the compound.

8 And this person was treated at that time by two other people,
9 and that were the witnesses number 1600 and 1700. So we have two
10 people who are treating it from a professional point of view, and the
11 third one is the -- the patient, so to speak. And we do believe that
12 it's all on one and the same location that they were working, and
13 that would obviously give an entire different scope and view of what,
14 in fact, the buildings on the compounds were used for, who was
15 interest, who was present, and so on. And this is one of those
16 persons we believe who was there.

17 The last person, Your Honour, is number 2000. And number
18 2000 -- in the pre-trial brief, the SPO mentioned that it was the BIA
19 who would run - specifically written like that - run detention
20 centres within the Llap operational zone. We truly believe that is
21 absolutely not the case. What we have here with this witness is, in
22 fact, a person who was a military police officer. He was in the
23 command of the military police and, in fact, he was in charge and
24 working with the detention centre which was in Llapashtice area. So
25 in his testimony, it is clear how he documented that, and we believe

1 that he had never contact with either a BIA person or somebody who
2 would have been sent by BIA to that particular detention centre, to
3 which -- of which he was in charge.

4 And he is very clear about all the ways and means that the
5 military police handled that particular detention centre.

6 So that is, in fact, the single person that we found and we
7 believe that as we are speaking about a detention compound here, that
8 we actually want to know, okay, if that is that detention compound,
9 where was it actually? Was it in Llapashtice? Was that a single one
10 or was there any other one? That is -- this person can clearly
11 indicate the details about that.

12 Yeah, obviously as a military police member, he knew about the
13 role, the authority of the military police, and the people who would
14 have authority or would have not at all any authority to either
15 arrest, detain, or facilitate any kind of detention compound.

16 The key in this entire case for us is that, as Mr. Mustafa is
17 being charged with these crimes, mainly having people detained,
18 having them under specific conditions, and torture them, or maltreat
19 them in any manner, we do not believe, in fact, that Mr. Mustafa had
20 anything to do with that. And he is very clear in his denial. He
21 has nothing to do with it and he did not for nothing plead not guilty
22 to the charges. He is very strong in that. We truly believe that is
23 he an innocent man and that he, in fact, had nothing to do with any
24 kind of detention of any of the victims or people who might have been
25 detained at some point and who have testified in this case.

1 So basically, if there was any kind of detention, then we can
2 better look at where was that detention, how was that done, how did
3 the KLA operate that, how was that regulated, and were there any
4 people, were there any people, was there any influx in this
5 particular detention centre where there man was - how can I say
6 that? - operating and coordinating everything? Was there any influx,
7 and from who, and for what reason would those people have been
8 detained?

9 So basically, those are the submissions that we have on those
10 three issues and that's my conclusion for it.

11 Thank you very much.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel.

13 I look at my right side. Any questions? No?

14 Then, Mr. Prosecutor, would you like to raise anything in this
15 regard?

16 MR. MICHALCZUK: Yes.

17 Your Honours, a few remarks on this issue. I'm not going to
18 repeat our arguments that we put in our submission dated
19 7 March 2022. It is filing number F00338. In that submission, we
20 referred to Witness 100 and Witness 1800, and we indicated that after
21 having reviewed their statements given to the Defence, we believe
22 that the value of their statements is indeed marginal to this case.

23 Some of the -- and maybe I should just move -- just discuss
24 these witnesses one by one, very briefly, as my learned colleague has
25 just done.

1 In relation to Witness 100, he talks about many matters which
2 are very interesting indeed. They give a certain historical context.
3 He talks extensively about conference in Rambouillet, his role in the
4 Kosovo Liberation Army; however, Your Honours, we believe that as we
5 have the Panel decision on the adjudicated facts, most of the things
6 dealing with the Kosovo Liberation Army, its structure, existence,
7 chain of command, and other things, we already have in that decision.
8 And I'm referring specifically to Your Honours' decision dated
9 7 September 2021, KSC-BC-2020-05, F00191.

10 So in a nutshell, we believe that we don't really need this
11 witness, and if this witness is not called by the Defence, in the
12 context of the entirety of the evidence proposed by the Defence, it
13 will not be prejudicial to the accused in any way.

14 In relation to the second witness, number 1800, we have reviewed
15 -- before today's session have reviewed again the Defence statement
16 of this witness and we believe that the value of the evidence of this
17 witness is, again, marginal to the case. First of all, he doesn't
18 mention the accused being there. And he speaks mainly about the fact
19 that he was wounded at some point, I believe it was 18 April, so at
20 the very, very end of the indictment period, and shortly after, he
21 was treated, true, in Zllash by one of the witnesses proposed by the
22 Defence. But on this issue, for instance, that witness that we don't
23 oppose, that witness could authoritatively and comprehensively speak
24 about it. That's why we think that the Defence -- if this witness is
25 not called, again, this would not cause any prejudice to the Defence

1 and to the Defence's case.

2 Speaking about the last witness we are talking about today,
3 Witness 2000, he was the military police officer in Llapashtice and
4 he mainly speaks about his experiences, his position at that
5 location. He doesn't mention Zllash, apart from one line where he
6 said that he was in Zllash only in 2018, so many years after the
7 events in question. He doesn't mention the accused in the context of
8 the conflict. He says that he met him only after the war. In view
9 of all this, we believe that also the evidence to be given by this
10 witness is of marginal importance.

11 The relevance of these witnesses could be only circumstantial
12 but it's not really relevant to the charges against the accused in
13 this case. That's why we are of the view, and I think we made it
14 rather clear in our submission before this session, that we don't
15 think that these witnesses should be called. And again, and again,
16 the fact that we will not call these witnesses will not be in any way
17 prejudicial to the Defence and the Defence case.

18 Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

20 Victims' Counsel, would you like to make any observation?

21 MS. PUES: [via videolink] Thank you, Your Honours. Only very,
22 very briefly.

23 So I endorse what the SPO has just been explaining and would
24 only want to add one additional thought with regard to the last of
25 the three discussed witnesses, Witness 2000. And to me, the most

1 striking aspect is that he stated that he only heard about the BIA
2 unit after the war. And this, to me, suggest very strongly that
3 given that the Defence doesn't raise any doubts that BIA existed as a
4 units, he is not a source which will help us find out what this unit
5 and what the accused as part of this unit may have been doing.

6 That's all. Thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

8 I would like to proceed now to, if necessary, a second round.
9 Defence counsel, would you like to have the floor?

10 MR. VON BONE: Very briefly, Your Honour.

11 We believe, first of all, that it is very useful to provide
12 context, context to the entire -- to the entire conflict, and also
13 context from the civilian point of view. We have for that a person
14 who was in the General Staff, who was at meetings, who knows how
15 things are going. I don't think that we would say that that would be
16 marginal.

17 As far as Witness 1800 is concerned, Your Honour, I think it
18 makes the picture of the previous two - 1600 and 1700 - complete, and
19 these are real people, people that were wounded, who know, who were
20 standing there with their feet on the ground, and who were in the
21 offensive. So I think from a perspective -- we do not have such a
22 perspective at all, only in a more global, not really -- not a
23 particular manner in which we can say, hey, here we have a soldier
24 who was actually -- what happened, how was the offensive, how did
25 that work?

1 We speak in this case, like in many war crimes cases, about
2 many, many people who died, obviously, or people who get wounded, and
3 we hear from people here in court, and sometimes the perspective from
4 people who were victim of whatever kind of maltreatment or whatever.
5 But we have here somebody who was as a KLA soldier wounded, and how
6 did that happen? How did that logistically, in fact, work? And
7 where was he treated? We think that that perspective lacks. And,
8 once again, he is closely connected to Witness 1600 and 1700. It
9 makes that picture complete. And we also think it's not really -- it
10 is -- these three are actually connected to each other. We thought
11 it would be useful, and it's not the one that we are going to put the
12 most time, obviously, but it will -- I will believe that it will make
13 it -- hmm, how can I say that? The circle will be round on the
14 topics that the previous two witnesses will have testified about.

15 And lastly, yeah, even though this person might not have been in
16 Zllash in the period of the indictment, we do get a conclusive answer
17 on the fact whether there were any detainees at all coming from
18 Zllash, where did -- the people who were detained in Llapashtice,
19 where did they come from? Who arrested them? Who had such
20 authority? And how would that person be transferred there? Or do we
21 really think that these were only people who would be in the
22 Llapashtice area being detained there? There must have been
23 something for them. We believe that that gives a component that we
24 are lacking in the case, and that's why we stand by that witness as
25 well.

1 But that's -- of course, it is your Panel that will decide.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

3 Mr. Prosecutor, would you like to react on that without
4 repeating what we have been --

5 MR. MICHALCZUK: Just very briefly maybe on the last issue of
6 Llapashtice. The existence of the detention centre in Llapashtice
7 does not -- doesn't exclude in any way the existence of detention
8 centres in other parts of Kosovo. So I don't think that by keeping
9 this last witness, 2000, we would get very far in this particular
10 case in relation to Zllash.

11 Also the existence of the Llapashtice and other centres is not a
12 contested issue, really, also in view of previous judgements and
13 cases in Kosovo run by UNMIK and EULEX.

14 So in general, we maintain our position that these three
15 witnesses are not really relevant and their evidence, if any, is
16 marginal to the case and to the charges against this accused.

17 Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.
19 Victims' Counsel, would you like to add something?

20 MS. PUES: [via videolink] No, thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Very well.

22 If everything has been said, the Panel notes -- I see you
23 nodding, Defence counsel. We have taken note of your submissions.

24 The Panel will adjourn now for deliberation. We will be back as
25 soon as possible in order to render our oral orders. CMU will inform

1 you as soon as the Panel will resume its hearing.

2 The hearing is adjourned.

3 --- Recess taken at 2.56 p.m.

4 --- On resuming at 4.10 p.m.

5 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. Very
6 well. We continue with the hearing we adjourned earlier to further
7 deliberate. I will call appearances now.

8 Yes, Mr. Prosecutor, you are --

9 MR. MICHALCZUK: We are in the same composition.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

11 And I see the Victims' Counsel via remote link.

12 And the Defence counsel is also present in the same composition.

13 And Mr. Mustafa is with us also via videolink.

14 And the Registry is also present in the same person. Thank you.

15 I will now issue a number of oral orders.

16 After hearing from the parties and the Victims' Counsel, both in
17 writing and orally, I will render the following oral orders.

18 The first order relates to the presentation of the evidence
19 requested by the Victims' Counsel.

20 The Panel notes the requests made by Victims' Counsel, in filing
21 297 and 334, to allow Victim 05 to present his views and concerns
22 before the Panel. That's the first request. And to appoint an
23 expert in order to medically assess the physical and psychological
24 damages and injuries suffered by Victims 08, 09, and 10, as a result
25 of the torture, cruel treatment, and arbitrary detention to which

1 they were allegedly subjected. That's the second request.

2 With regard to the first request, the Panel considers it
3 appropriate to the allow Victim 05 to present views and concerns
4 before the Panel on Monday, 21 March 2022, at 9.30 for one hour.

5 The Victims' Counsel will also be allowed to make submissions
6 before and/or after Victim 05 has presented his views and concerns,
7 for a total of one hour.

8 The Panel specifies that Victim 05 will appear before the Panel
9 with only the protective measures vis-à-vis the public as granted by
10 the Pre-Trial Judge in paragraph 54(e) and (f) on the Second Decision
11 on Victims' Participation, which is filing 105, and paragraph 51(f)
12 on the Second Decision on the Specialist Prosecutor's Request for
13 Protective Measures, which is filing 53.

14 The Panel also recalls that, pursuant to paragraph 37 of its
15 decision on victims' procedural rights during trial, and that's
16 filing 152, the presentation of views and concerns by the Victim 05
17 will not be subject to examination and cross-examination by the
18 parties and will not be considered as evidence by the Panel, unless
19 it considers it necessary to call Victim 05 as a witness in
20 accordance with Rule 132 of the Rules.

21 With regard to the second request of the Victims' Counsel, the
22 Panel points the Dutch Forensic Institute to assess the psychiatric
23 condition and to medically assess the physical and psychological
24 damage and injuries suffered by Victims 08, 09, and 10, as a result
25 of the alleged torture, cruel treatment, and arbitrary detention to

1 which they were subjected, and to prepare a report accordingly.

2 And to this end, the Dutch Forensic Institute may assign one or
3 more experts, as necessary, with conducting the required psychiatric,
4 physical, and psychological examinations. The report shall also
5 include information regarding the expertise of each of the assigned
6 experts. And the Registrar is requested to make the necessary
7 arrangements to liaise with the Victims' Counsel in order to
8 facilitate the access by the Dutch Forensic Institute to Victims 08,
9 09, and 10.

10 And should any difficulty arise in the implementation of the
11 present order, the Registry and Victims' Counsel, as the case may be,
12 are directed to seize directly and immediately the Panel. And the
13 report shall be submitted by Friday, 13 May 2022, and shall be made
14 available to the parties and the Victims' Counsel, with redactions if
15 necessary. However, the Panel and the Victims' Counsel shall also
16 receive an unredacted copy of the report. And upon submission of the
17 report, the procedure laid down in Rule 149(2) till (5) of the Rules
18 shall apply.

19 The decision to appoint the Dutch Forensic Institute to
20 undertake the medical assessment and prepare the report is without
21 prejudice to the final determination of the Panel as to the guilt or
22 innocence of the accused, and to any reparation order that may stem
23 therefrom.

24 This concludes the first oral order.

25 The second oral order concerns the opening of the Defence case

1 and the presentation of the evidence by the Defence.

2 Having heard the submissions of the Defence on its readiness to
3 start with the presentation of its evidence, the Panel sets Tuesday,
4 22 March, at 9.30, as the date for the opening statements, pursuant
5 to Rule 126(2) of the Rules. The Defence shall have two hours to
6 make its opening statement and shall be allowed to use visual aids
7 and other tools, including disclosed evidentiary material, provided
8 that this material, including the ERN, is communicated to the Court
9 Management Unit, the SPO, Victims' Counsel, and the Panel at the
10 earliest opportunity and, in any case, no later than Tuesday,
11 15 March 2022. Any objection to the use of such material shall be
12 raised in a filing no later than Thursday, 17 March.

13 With regard to the presentation of the evidence by the Defence,
14 pursuant to Rule 119(3) of the Rules, the Panel orders the Defence to
15 remove Witnesses 100, 1800, and 2000 from its list of witnesses. The
16 determination of the Panel in this respect is based on the statement
17 of these witnesses, the summary of their anticipated testimony
18 provided by the Defence in its list of witness, as well as the
19 submissions received in court.

20 In particular, the Panel considers that the expected evidence of
21 Witness 100 essentially relates to political developments in Kosovo
22 and falls outside the temporal framework of the charges against the
23 accused. The Panel finds that the expected contextual evidence to be
24 elicited from this witness will not assist the Panel in assessing the
25 particular facts of this case. And in addition, the Panel finds that

1 the expected evidence concerning the role and functions of this
2 witness within the KLA General Staff bears no connection to the
3 temporal, geographical, and material scope of the case before the
4 Panel as also acknowledged by the Defence.

5 With regard to Witness 1800, the Panel notes that the expected
6 evidence of this witness is repetitious of the statements of other
7 two witnesses who are proposed by the Defence, Witness 1600 and 1700.
8 In addition, the Panel notes that Witness 1800 was not present in
9 Zllash at the time of the events charged against the accused, except
10 on 18 April 1999, and does not provide any relevant information on
11 the accused.

12 With regard to Witness 2000, the expected evidence of this
13 witness relates to the structure of the military police of the Llap
14 operational zone based in Llapashtice, as well as the detention
15 centre based there, hence falling outside the geographical scope of
16 the case. And in addition, the Panel notes that the witness has met
17 the accused only after the events charged in the confirmed indictment
18 and he was not present in Zllash during the temporal framework of the
19 charges.

20 In light of the above, the Panel finds that the expected
21 evidence of Witnesses 100, 1800, and 2000 is irrelevant to the
22 charges against the accused and, therefore, not conducive to the
23 determination of the truth. Ordering the Defence to remove these
24 witnesses from its list of witnesses does not prejudice the rights of
25 the accused to present his case.

1 To the contrary, the Panel authorises the Defence to call
2 Witnesses 200 to 1700, and 1900 proposed on its list of witnesses,
3 which is Annex 1 to filing 333, on the basis that the expected
4 evidence of these witnesses is relevant to the charges against the
5 accused. However, the Panel finds that the time estimated by the
6 Defence for direct examination of these witnesses is excessive. The
7 Panel specifically recalls that the Defence does not have the burden
8 of proof in these proceedings, and notes that the expected evidence
9 of several Defence witnesses is quite focused and relates to discrete
10 topics, which do not require a large amount of time to be dealt with.

11 Accordingly, the Panel finds it appropriate to allocate to the
12 Defence a total of 36 hours for direct examination of the
13 17 witnesses authorised to testify, and the overall time may be
14 divided among the witnesses at the discretion of the Defence.
15 However, the Defence may not carry over time not used with one
16 witness to another witness. And should the Defence require more time
17 for a particular witness, then it is instructed to make a request to
18 this effect, with reasons. The Panel considers that this allocation
19 of time is proportional to the total amount of time effectively used
20 by the SPO in the direct examination of its witnesses and, therefore,
21 constitutes a fair compromise that respects the rights of the accused
22 to present his case to the Panel.

23 The Panel also sets Wednesday, 23 March, at half past 10.00, as
24 the date to begin -- half past 9.00, not half past 8.00, half past
25 9.00, as the date to begin with the testimony of the first witness by

1 the Defence, Witness 200. The testimony of Witness 200 will
2 continue, if necessary, on Thursday, 24 March, in the morning, for
3 one session from 9.30 to 11.00, and on Monday, 28 March, starting at
4 9.30.

5 The testimony of Witness 200 will be followed immediately after
6 by the testimony of Witness 300 and Witness 400, with Witness 500 on
7 standby.

8 The Panel intends to sit from Monday, 28 March, through
9 Thursday, 31 March, from 9.30 till 4.00 every day.

10 For the subsequent weeks, in principle and depending on the
11 courtroom availability and public holidays, the Panel intends to sit
12 for three days a week, from 9.30 till 4.00. And a more precise
13 schedule will be communicated to the parties and Victims' Counsel by
14 e-mail, through the Court Management Unit, by the end of this week.

15 In light of the above, the Panel orders the Defence to file by
16 Monday, 14 March 2022, an updated order of testimony of the
17 17 witnesses authorised to testify, with the proposed time estimate
18 for the direct examination of each witness recalculated on the basis
19 of the 36 hours allocated to the Defence.

20 And this concludes the second oral order.

21 The next oral order sets out some deadlines for the Defence,
22 with a view to properly organising the proceedings.

23 The Panel notes the Defence submission that, at this stage, it
24 does not intend to request the admission of evidence pursuant to
25 Rules 153 to 155 of the Rules, but that it might make a request to

1 this effect should the need arise.

2 The Panel therefore orders the Defence to submit, by Friday,
3 18 March 2022, its requests, if any, for admission of material under
4 Rules 153 to 155 of the Rules or under any other provision of the Law
5 or the Rules. Should the Defence maintain its position not to seek
6 admission of any material in writing but only to present material
7 during the examination of witnesses, no action is required.

8 The Panel also notes the Defence submission that it is in the
9 process of assessing whether it is necessary to request protective
10 measures in respect of one witness included in its list of witnesses.
11 And in this regard, the Panel orders the Defence submit by Monday,
12 28 March, its substantiated request, if any, for protective measures
13 in relation to the witness at issue. And should the witness at issue
14 be Witness 100, 1800 or 2000, who will not be heard by the Panel, no
15 action by the Defence is required.

16 And the Panel further notes the Defence submission that there
17 might be some photographic material, statements or documentary
18 evidence yet to be disclosed, but that at this stage the Defence does
19 not foresee such possibility.

20 In compliance with Rule 104(5) of the Rules, and pursuant to
21 Rule 9(5)(a) of the Rules, the Panel orders the Defence to disclose
22 any remaining material it intends to rely upon in the course of its
23 case by Friday, 18 March, and to request the amendment of its list of
24 exhibits accordingly, pursuant to Rule 119(5) of the Rules. Should
25 the Defence not wish to disclose any additional material at this

1 stage, no action is required.

2 Any subsequent late disclosure and request for amendment of the
3 list of exhibits shall be motivated.

4 And this concludes the third oral order.

5 The next oral order concerns the irregularities identified
6 yesterday by the Panel in relation to the Defence list of exhibits.

7 The Panel considers that an orderly organisation of the Defence
8 evidence enhances clarity and facilitates the accurate reading of the
9 Defence evidence by all participants. Accordingly, the Panel
10 instructs the Defence to revise its list of exhibits, as well as the
11 metadata uploaded in Legal Workflow, and to ensure that all
12 information is accurate and complete. The Defence shall thereafter
13 file a corrected version of its list of exhibits by Friday, 18 March.

14 And should the Defence require assistance in implementing the
15 Panel's order, it is instructed to liaise with CMU. And should the
16 SPO or the Victims' Counsel identify any further issues before
17 18 March 2022, they shall liaise with the Defence directly.

18 And this concludes the oral order on this matter.

19 Then the last oral order for today, that concerns Annex 1 to the
20 Victims' Counsel submission for the purpose of this
21 Status Conference. Considering that, in the view of the Panel, not
22 all the content of these submissions warrant the *ex parte*
23 classification, the Panel orders the Victims' Counsel to file by
24 Friday, 18 March, a confidential redacted version of filing 334,
25 Annex 1, or to file submissions on why the document must retain the

1 current *ex parte* classification.

2 This concludes the fifth and last oral order for today.

3 I will now turn to the parties and the Victims' Counsel in order
4 to see if they want to raise any further issue.

5 Mr. Prosecutor.

6 MR. MICHALCZUK: Your Honours, no comments on the part of the
7 Prosecution.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Victims' Counsel.

10 MS. PUES: [via videolink] No, thank you. No further remarks.
11 All is clear. Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Is there something that the
13 Registry would like to mention?

14 MR. NILSSON: Thank you, Your Honour. Nothing from us.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

16 Defence Counsel, is there something you would like to raise at
17 this moment in time?

18 MR. VON BONE: No, thank you, Your Honour.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then we will resume the
20 trial on 21 March, at half past 9.00, with the views and concerns of
21 Victim 05 and the submissions of the Victims' Counsel.

22 I thank the parties, the Registry, and the Victims' Counsel for
23 their attendance. I thank the interpreters, the stenographer, the
24 people of the audiovisual booth, and the security for their
25 assistance today.

1 The hearing is adjourned.

2 --- Whereupon the hearing adjourned at 4.31 p.m.

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