

1 Tuesday, 22 July 2025

2 [Status Conference]

3 [Open session]

4 [The accused entered the courtroom]

5 [The Accused Krasniqi appeared via videolink]

6 --- Upon commencing at 2.01 p.m.

7 PRESIDING JUDGE SMITH: Madam Court Officer, please call the  
8 case.

9 THE COURT OFFICER: Good afternoon, Your Honours. This is case  
10 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci,  
11 Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi.

12 PRESIDING JUDGE SMITH: Good afternoon, everyone. I note that  
13 Mr. Krasniqi is attending today's Status Conference via videolink.  
14 The other accused are present in court today. I also note that  
15 Ms. Alagendra and Ms. Rowan are attending via videolink.

16 We wanted to have a short Status Conference in order to outline  
17 our present intentions as to continuing this case and to get your  
18 comments and suggestions and, perhaps more importantly, to hear if  
19 there are any unresolved problems before we move to the next stage of  
20 the trial beginning with the Defence Preparation Conference scheduled  
21 for right after the end of the summer recess.

22 This conference is not a substitute for the Rule 119 hearing  
23 which we still intend to hold as scheduled. This conference is, like  
24 many other conferences which we've held during the trial, to get a  
25 reading on the progress and the planning that's going on with the

1 teams. We look forward, as always, to hear your comments.

2 A written agenda was circulated on Friday. The Panel will do  
3 our best to address the seven points on the agenda in the order set  
4 out in the agenda.

5 Before turning to the first point on the agenda, the Panel will  
6 issue an oral order concerning the classification of the Defence  
7 Rule 130 motion and related filings.

8 On June 12, 2025, the Defence filed a motion pursuant to  
9 Rule 130 with filing number F03256. On 16 July 2025, the Panel  
10 issued in public session its decision on F03256. Pursuant to  
11 Rule 82(5), noting that the F03256 was filed confidentially, and to  
12 ensure to the extent possible a public trial, the Panel orders the  
13 Defence to request the reclassification or to file a public redacted  
14 version by F03256 by no later than Friday, 22 August 2025.

15 The Panel further notes that, in filing F03314, on 7 July 2025,  
16 the SPO requested the reclassification of filing F03314 and its annex  
17 as public. Upon review of the relevant filings, the Panel grants the  
18 SPO request and orders the Registrar to reclassify F03314 and  
19 F03314/A01 as public.

20 This concludes the Panel's oral order.

21 I note that Mr. Misetic, representing the Thaci Defence,  
22 requested via e-mail to be heard at the outset of the Status  
23 Conference on the scheduling of the Defence case.

24 Mr. Misetic, you have the floor.

25 MR. MISETIC: Thank you, Mr. President. And good afternoon,

1 Your Honours.

2 I rise just to raise a few matters that will inform the answers  
3 to all of the questions you've posed to us, and so I don't repeat  
4 myself later on, we can set them out now. But with respect to how  
5 the timing has transpired in the last six weeks or so, I'd like to  
6 go -- just restate for a second our understanding of the procedural  
7 history here.

8 At a Status Conference on 22 January 2025, at transcript page  
9 24342 to 24343, the Defence was asked how long a Defence case may  
10 take and how much time the Defence preparation would need between the  
11 issuance of a Rule 130 decision and the commencement of a Defence  
12 case if such is necessary, and the joint response of all four Defence  
13 teams was a request for ten weeks from the issuance of a Rule 130  
14 decision, excluding the summer recess.

15 At the next Status Conference on 19 February 2025, at transcript  
16 page 25462, the Veseli Defence, and Mr. Dixon, asked the Trial Panel  
17 whether the guidelines we had asked for at the January Status  
18 Conference for the time for preparation of the Defence case was  
19 broadly acceptable to the Trial Panel, and the response from the  
20 Trial Panel was that they're broadly acceptable.

21 The Defence was, thus, expressly told by the Trial Panel in  
22 mid-February that the Defence's joint request for ten weeks from the  
23 Trial Panel's Rule 130 ruling, excluding the summer recess, was  
24 broadly acceptable to the Trial Panel. That is the basis upon which  
25 we have been preparing the Defence case, and the Panel gave us no

1 indication from February to June that anything had changed.

2 On 5 June 2025, the Panel issued, without hearing the Defence,  
3 and without notice to the parties, a revised Scheduling Order in  
4 F03232, in which the Panel *proprio motu* set deadlines for aspects of  
5 the Defence case, including the provision of witness and exhibit  
6 lists, on 21 July 2025, and the holding of a Defence preparation  
7 conference for the week of 21 July.

8 On the 13th, as you know, we filed a joint request for variation  
9 of the schedule, citing reasons why to vary the time limits.

10 On 23 June, the SPO responded to our request, objecting to the  
11 variation. In addition, the SPO requested the Panel issue new orders  
12 regarding timeframes for entirely new issues, including fulfilment of  
13 disclosure obligations pursuant to Rule 104(5) and providing  
14 information required pursuant to paragraph 74 of the Order on Conduct  
15 of Proceedings.

16 The Defence filed a joint reply on 27 June reiterating the good  
17 cause underlying our motion and objecting to the SPO request to  
18 impose new deadlines. One of the rationales advanced by the Defence  
19 was the Defence should have a fair opportunity to be heard on  
20 proposed deadlines that seek a significant variation of the  
21 requirements under the Rules.

22 On 2 July, the Panel issued its decision F03302, largely denying  
23 our request for variation of the deadlines except for a variation of  
24 the date for the Defence Preparation Conference. The Panel also  
25 imposed many of the additional deadlines requested by the SPO without

1 substantive submissions from the Defence and issued several  
2 additional deadlines.

3 Pursuant to that order, the Thaci Defence, as the first  
4 defendant named in the case, is ordered to be ready to start  
5 presenting its case on the week of 25 August 2025. The Trial Panel,  
6 with this decision, reduced the time available to the Defence to  
7 prepare its case from ten weeks, which would have put us roughly at  
8 mid-October to start the Defence case, October 15th to be precise,  
9 that the Defence had requested in January and February and which the  
10 Panel had said was "broadly acceptable," and reduced it to two weeks  
11 and a few days. All of this was done without notice from February to  
12 June, and all without having heard from the Defence about the  
13 difficulties the Defence would have meeting that short of a  
14 timetable.

15 Our submission is it's not adequate for the Panel to say that we  
16 did have an opportunity to be heard because you heard us in October  
17 and January and February and April because the Defence specifically  
18 was -- specifically requested the Trial Panel's view of its ten-week  
19 proposal and was told that that was broadly acceptable. If the Panel  
20 later decided that it needed to reduce this to two weeks, then the  
21 accused had a right to be heard. Moreover, the accused were entitled  
22 to rely on the Panel's broad acceptance of the ten-week request -  
23 i.e. roughly mid-October Defence start date - when it was making  
24 arrangements between February and June for the preparation of the  
25 Defence case, including in the time of -- timing of its applications

1 to Rule 107 providers.

2 On a related note, I must add that the Panel's abrupt reduction  
3 of the Defence preparation time from ten weeks to two weeks has  
4 caused significant personal hardship and disruption to the lives of  
5 the members of my staff who for weeks have been working 12 to 15-hour  
6 days, plus weekends, to try to meet these new deadlines.

7 We are unaware of the Trial Panel or the Pre-Trial Judge ever  
8 treating the SPO in this manner, imposing new disclosure deadlines  
9 and dates of commencement of the SPO case, without giving the SPO an  
10 opportunity to be heard. For the record, we formally object to not  
11 having been heard on these new dates, which have caused significant  
12 reduction in the time for preparation of the Defence case, and we  
13 request, as we discuss the rest of this timing schedule, an  
14 opportunity to explain why we are not going to be able to meet some  
15 of the deadlines at least as we -- from the information we have right  
16 now from the Rule 107 providers.

17 Thank you.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. ELLIS: Your Honour.

20 PRESIDING JUDGE SMITH: Anybody else?

21 MR. ELLIS: Your Honour, I simply want to join those submissions  
22 and say that at the hearing on 23 April, at page 26167, Your Honours  
23 expressly recognised the efforts that all parties have gone to in the  
24 case to date to keep this case moving and to comply with deadlines.

25 My team, like Mr. Misetic's team, have been working absolutely

1 at capacity in order to meet the deadlines that Your Honours have  
2 set, and I pay tribute to the work that they have done. And we join  
3 the submissions of Mr. Misetic as to why starting the Defence case on  
4 25 August, we are not going to be in a position to do that. And I'll  
5 be able to explain why as we go through the course of the agenda.

6 PRESIDING JUDGE SMITH: Thank you, Mr. Ellis.

7 Prosecution wish to respond?

8 MR. HALLING: Briefly, Your Honour. Just to say that the  
9 discussion of the ten weeks, in our view, needs to be superseded by  
10 what the Defence actually asked for when they were confronted with  
11 this schedule.

12 In the 13 June 2025 request, what the Defence said is the  
13 Defence anticipates being able to call its first witness in the week  
14 starting Monday, 15 September 2025. That is within 30 days of a  
15 Defence Preparation Conference held in the week of 18 August 2025.

16 That's a lot less than the ten weeks. That's what they asked  
17 for. And as indicated in our e-mail yesterday, that time is  
18 necessary for us as well in order to prepare, and we think that that  
19 would be sufficient flexibility in these circumstances.

20 PRESIDING JUDGE SMITH: Thank you.

21 Mr. Laws, do you have any comment?

22 MR. LAWS: No, nothing to add. Thank you, Your Honour.

23 PRESIDING JUDGE SMITH: Anything from the Panel? Any questions  
24 or comments?

25 JUDGE METTRAUX: Well, maybe so that the chronology you gave,

1 Mr. Misetic, is complete. On 1 October 2024, you were asked how long  
2 you thought you would need to prepare your case, and your answer was,  
3 and I quote:

4 "About six weeks, four to six weeks to make sure we can line up  
5 our witnesses."

6 So that was on 1 October 2024.

7 And the other matter I would wish to raise with you,  
8 Mr. Misetic, is -- was the time that was required for the Rule 130  
9 application. The Rules provide for ten days, and pursuant to your  
10 application, we granted the extension that was requested, and you  
11 ended up having six times the timeframe required by the Rule.

12 May I take it that at least some of the preparation for the  
13 Defence case were done during that period?

14 MR. MISETIC: So in answer to each point, October is obviously  
15 way before all of the subsequent Status Conferences where additional  
16 time was posed, and, as I said, the Panel indicated that it was  
17 broadly acceptable, the ten-week frame.

18 The second issue is, yes, of course, we've been working with all  
19 the time available to us. However, that still doesn't change the  
20 fact that we're operating under the regime that we thought had been  
21 agreed with the Panel in February, which was ten weeks. And I also  
22 wish to clarify I have not asked now for an extension to mid-October.  
23 I'm just saying, so that you have the context here, we've been  
24 operating under the assumption that we would have until mid-October  
25 to start the Defence case. We thought maybe the Panel would shorten



1 that time a few weeks but not eight weeks and putting us at the end  
2 of August.

3 JUDGE METTRAUX: Again, for context, Mr. Misetic, these  
4 discussions at the time were in the context of that period of time  
5 that included the 130 motion. If my calculation is correct, between  
6 the time when the Prosecution closed and the time when you would be  
7 expected to commence your case, you would have four months - four  
8 months - of preparation time, of course, in full understanding that  
9 you have spent some of that time dealing with the 130 motion.

10 And I've done a little exercise of comparison with other cases  
11 of similar sizes. Quite frankly, I could not find any or many that  
12 would be as generous, including some cases in which you, Mr. Misetic,  
13 had been involved.

14 So my question, perhaps, to you, putting it that way, is how  
15 long do you expect or did you expect you would get from the time when  
16 the Prosecution closed to be ready to start your case?

17 MR. MISETIC: So, as I've said, first of all, I don't know what  
18 other cases you're referring to, but I don't think we had this many  
19 Rule 107 providers that we needed clearance for. That's the first  
20 issue.

21 The second issue is I would have a question back to you, which  
22 is: If that was your thinking, I'd like to know why we weren't told  
23 that in March or April or May, but were told that for the first time  
24 on June 7th that you thought we had too much time.

25 JUDGE METTRAUX: Well, I don't think I need to answer your

1 question, but my assumption, right or wrong, was that you would spend  
2 the time that you did not need for the 130 motion to prepare your  
3 case, which I heard from you is precisely what you did. And the case  
4 I had in mind was, for example, in the Gotovina case where you called  
5 25 witnesses. You got two weeks, not six or eight, for the 98 bis  
6 130 application; ten weeks between prosecution case and start of  
7 defence case, not 16 weeks; and exactly the same amount of weeks -  
8 seven weeks - between the no-case-to-answer decision and the  
9 commencement of the case for, as I understand, half the number of  
10 witnesses. That's one of the cases I had in mind.

11 MR. MISETIC: Okay. And my question again to you is how many of  
12 those witnesses in those cases were Rule 107 providers or the  
13 equivalent thereof under the ICTY?

14 The point is we have -- of the witnesses we have disclosed to  
15 you under Rule -- that don't require Rule 107, we could start the  
16 Defence case, but we're talking about two witnesses. And I shouldn't  
17 say that because we could start it by the date you proposed --

18 JUDGE METTRAUX: Three.

19 MR. MISETIC: No, one is a 153 witness. So we have two  
20 witnesses. Whether it's feasible to bring them by August 25th is an  
21 entirely separate issue which we can get into when we start this. It  
22 depends on WPSO.

23 PRESIDING JUDGE SMITH: It sounds as though the primary problem  
24 with your preparation is the 107 witnesses.

25 MR. MISETIC: Exactly.

1           PRESIDING JUDGE SMITH: And I have to remind you that two and a  
2   half years ago, Mr. Kehoe stood about where you are telling us that  
3   he would like to bring those witnesses in right away, out of  
4   sequence, prior to the Prosecution's case. Did he just make that up  
5   or did he have permission to use their names in the Court and say  
6   that he wanted to call them?

7           MR. MISETIC: We have received correspondence from the Rule 107  
8   providers to say they wanted to further clear, and so now we're in  
9   the process of --

10          PRESIDING JUDGE SMITH: [Microphone not activated].

11          If he wanted to do it right away, when was it that he was going  
12   to clear?

13          MR. MISETIC: Frankly, I wasn't there at the time so --

14          PRESIDING JUDGE SMITH: No.

15          MR. MISETIC: -- but the reality of it is we --

16          PRESIDING JUDGE SMITH: But that's your team's statement that  
17   happened at that time. I think it was the first day we were in court  
18   that he brought that matter up.

19          MR. MISETIC: Okay. But, again, we have --

20          PRESIDING JUDGE SMITH: [Microphone not activated].

21          It's a little confusing to us that two and a half years later  
22   you're telling us that you still haven't got a clearance.

23          JUDGE METTRAUX: And just --

24          PRESIDING JUDGE SMITH: Apparently that could have started two  
25   and a half years ago, the process.

1 JUDGE METTRAUX: And for the record, Mr. Misetic, the difficulty  
2 is that the process in relation to at least half of the proposed  
3 witnesses started in October 2022, half of them. So if we're being  
4 told now, three years down the road, that there are still pending  
5 Rule 107 issues that are holding up the case, it's a bit hard to  
6 comprehend.

7 And I will come to the legal aspects of 107 in a second, but  
8 that's a complete chronology of things. This started in October  
9 2022. And then in January 2023, again the same list was put for us.  
10 Two-thirds of them at the time are the same individuals as we are  
11 dealing with now.

12 MR. MISETIC: Well, again, there are reasons for that, some of  
13 which are there's a difference between clearance for interviewing  
14 witnesses and a clearance for use at trial. Second of all, some of  
15 these witnesses have follow-up that we do with them because, of  
16 course, we listen to the Prosecution case.

17 JUDGE METTRAUX: But they were being offered as witnesses,  
18 Mr. Misetic. I went back to the filings. They were being offered  
19 not for -- their clearance was not being discussed for the purpose of  
20 interview. We understand the difference. They were being offered as  
21 witnesses back in the days.

22 MR. MISETIC: Judge, if you can get them here over the  
23 objections of the Rule 107 provider, that's fine with me. But let me  
24 just again -- I'm sorry, I have to reiterate this. If this was your  
25 thinking, and you were going to shorten the time, all I can say is we

1     relied on what we were told in February, and why we were not told  
2     that you're not going to get that amount of time between February and  
3     June is still unexplained to me.

4           JUDGE GAYNOR: Mr. Misetic, just so the record is clear, I just  
5     want to read a little bit from the filing of 28 October 2022. And it  
6     suggests at paragraph 33:

7           "All of the potential witnesses that the Defence has been in  
8     contact with are available in February 2023 apart from one who is  
9     available in April 2023."

10          So my question is simply this: When did the process of seeking  
11     Rule 107 clearance from the relevant providers commence?

12          MR. MISETIC: So there are various stages of seeking Rule 107  
13     clearance. There were stages earlier in this case where clearance  
14     was sought but only obtained to interview the witnesses. Sometime in  
15     the spring of this year, I don't have the exact dates, when we knew  
16     that we wanted to call some of these witnesses at trial, we submitted  
17     formal requests to these providers to clear them for the additional  
18     portion of it, which is to testify.

19          JUDGE GAYNOR: But from the filing of 28 October 2022, it  
20     appears that on that date your team did want to call those witnesses  
21     to testify.

22          MR. MISETIC: My team did want to call them. All I can tell you  
23     is, as an officer of the Court, they have not been cleared yet to  
24     give testimony in court.

25          JUDGE GAYNOR: Thank you.

1           PRESIDING JUDGE SMITH: The application process was a bit  
2           dilatory. It should have happened quicker. There is no question  
3           about that.

4           MR. MISETIC: Again, if we're -- we can call it dilatory, but I  
5           can only represent that on the schedule that we thought we had in  
6           February, we hoped that we are going to have these people cleared by  
7           15 September.

8           PRESIDING JUDGE SMITH: [Microphone not activated].  
9           You don't even know that even today.

10          MR. MISETIC: Well, of course, because it's up to the Rule 107  
11          providers.

12          PRESIDING JUDGE SMITH: So what are you going to do on 15  
13          September if you haven't got them cleared?

14          MR. MISETIC: I'm going to come back to you and say we don't  
15          have clearance, or, in the meantime, and we've tried this once before  
16          on an *ex parte* basis, shortly we're going to go to the Panel and ask  
17          for your intervention.

18          PRESIDING JUDGE SMITH: Mr. Ellis, anything you want to add to  
19          this?

20          MR. ELLIS: Your Honour, can I simply add for the record that  
21          it -- and I think this was a point made in our filing F3258, it's  
22          obviously not simply the case that we've been working on the Rule 130  
23          motion and then working on Defence case.

24          There were, at the time we filed that motion, some 44 other  
25          filings from the Defence, an equivalent number of filings to consider

1 before drafting those responses. It really isn't the case that the  
2 Defence have been sitting waiting. There has been an awful a lot of  
3 work going on behind the scenes here.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 We've been doing some of that ourselves.

6 MR. ELLIS: Of course.

7 PRESIDING JUDGE SMITH: Ms. Alagendra, do you have something you  
8 want to say? Okay.

9 Anything else from up here?

10 JUDGE METTRAUX: Since we are on the Rule 107 issue,  
11 Mr. Misetic, I have some concerns about your interpretation of  
12 Rule 107, and I want to ask you about it to be certain that I  
13 understand exactly what you are saying.

14 I understand you to be suggesting, and I refer to your filing of  
15 yesterday that came to us this morning, F03357, that's your  
16 submission of yesterday, 21 July, I understand you to suggest that  
17 either you are not authorised or not required to provide the names of  
18 prospective witnesses that are subject to 107 clearance. Do I  
19 understand that correctly?

20 MR. MISETIC: It would be not authorised. I would not say not  
21 required.

22 JUDGE METTRAUX: And do you have any authorities for that  
23 suggestion? I've seen in your submissions, I think it's in footnote  
24 8, that you are relying on the position that the Prosecution had  
25 taken in respect of one witness, and I wanted to know whether you had

1 any authorities for the proposition that you are not authorised to  
2 disclose this individual?

3 MR. MISETIC: Frankly, I didn't know I was going to have to  
4 research authorities, so I would have to go back and research it.  
5 The issue is not really whether it's a legal issue. The issue is  
6 whether -- from our perspective, we weren't invoking a legal, in  
7 other words, an international criminal law precedent but rather our  
8 understanding of the Rule 107 provider's positions.

9 JUDGE METTRAUX: But am I right that in October 2022, and again  
10 in January 2023, you actually disclosed half of these names to the  
11 SPO, the Pre-Trial Judge, and the Panel?

12 MR. MISETIC: Judge Mettraux, the issue is, whatever happened in  
13 the past, if it was done incorrectly, doesn't mean that I can  
14 continue to do it incorrectly, and the providers have indicated as  
15 such to me as the current Specialist Counsel.

16 JUDGE METTRAUX: But whether it's incorrect or not, I think it's  
17 our determination to make, Mr. Misetic. The problem is you are now  
18 trying to argue, as I understand you, that there's a prohibition to  
19 disclose that information when the information has already been  
20 disclosed to the opposite side.

21 So --

22 MR. MISETIC: I'm not trying to argue anything. I'm trying to  
23 work as cooperatively as possible with Rule 107 providers to get  
24 these witnesses here. If you wish to issue an order ordering me to  
25 disclose it, obviously I will comply with the order. But to the



1 extent that causes any additional difficulties with Rule 107  
2 providers to get these witnesses here, then that's an issue that the  
3 Trial Panel will have to bear some responsibility for.

4 JUDGE METTRAUX: That's why I'm offering you an opportunity to  
5 tell us what the legal basis or the authorities would be. If you  
6 want to answer that, there's also a submission that you make in your  
7 submission, paragraph 4 of your submissions of yesterday, that  
8 summaries of the proposed witnesses are, in your view, premature.

9 Now, again, I will have the same question for you: You already  
10 have disclosed some of these summaries of at least half of the  
11 proposed witnesses. What's premature about the disclosure of that  
12 information? And, I mean, two and a half years ago.

13 MR. MISETIC: I will have to repeat myself. If something was  
14 done incorrectly two and a half years ago, it does not mean I can  
15 continue to do it incorrectly.

16 PRESIDING JUDGE SMITH: When was the last time you had some  
17 communication with the 107 providers?

18 MR. MISETIC: We have them almost on a weekly basis. And as of  
19 yesterday, to be prepared for this, I tried to urge them all, what's  
20 their position, and the response I got was: We're working on it. We  
21 have nothing new for you.

22 PRESIDING JUDGE SMITH: And they don't give you any kind of a  
23 timeline?

24 MR. MISETIC: No. But I can assure you that we have conveyed  
25 the 18 August deadlines and urged them. The response we typically

1 get is it's in -- in some institutions an interagency issue, and the  
2 bureaucracy and then getting it to move, et cetera.

3 One of the things I'm going to raise here is that now to ask  
4 them to move over the summer recesses, I worry that it's going to be  
5 even harder to get these interagency people in the bureaucracy to  
6 coordinate in an efficient manner. But, again, I don't have any  
7 inside information as to how those processes are working.

8 PRESIDING JUDGE SMITH: I hesitate to even ask this, but,  
9 Mr. Ellis, would your team be in a position to lead off the  
10 questioning of witnesses first so that Mr. Misetic's team can wait  
11 further information from the 107 providers?

12 MR. ELLIS: No.

13 PRESIDING JUDGE SMITH: Pardon?

14 MR. ELLIS: No.

15 PRESIDING JUDGE SMITH: Okay.

16 MR. ELLIS: We would not. I can go into further details, but  
17 that's -- but that's -- I can go into further details if you require,  
18 but that's my straightforward answer.

19 PRESIDING JUDGE SMITH: No, I think your answer is sufficient.

20 The Panel will now turn to address the first point on the  
21 agenda, which is on July 16th, 2025, the Defence for Mr. Thaci and  
22 Mr. Krasniqi, respectively, informed the Panel, pursuant to  
23 Rule 119(1), that they each intend to present a Defence case.

24 Further, the Panel notes that yesterday, on Monday, 21 July  
25 2025, the Defence for Mr. Thaci and Mr. Krasniqi filed their witness

1 and exhibit list pursuant to Rule 119(2), which is filings F03357 and  
2 F03358.

3 The Panel would therefore like to confirm with the Thaci and  
4 Krasniqi Defence that the documents filed yesterday constitute the  
5 entirety of the documents the two Defence teams would like to file  
6 pursuant to Rule 119(2).

7 Mr. Misetic, you can lead off on that first.

8 MR. MISETIC: Yes. We have filed a list of witnesses and a list  
9 of exhibits which satisfy the requirements set in Rule 119(2) but  
10 only to the extent that the items or individuals did not require  
11 clearance pursuant to Rule 107 of the Rules.

12 PRESIDING JUDGE SMITH: Yes, we understand that.

13 MR. MISETIC: Yeah.

14 PRESIDING JUDGE SMITH: And I'll ask you a follow-up. And do  
15 you intend to tender all of those exhibits, or are they merely some  
16 tendered and some on hand as needed?

17 MR. MISETIC: It's the latter.

18 PRESIDING JUDGE SMITH: Any idea how many at this time you  
19 intend to offer with witnesses?

20 MR. MISETIC: I'll be perfectly candid, Mr. President. We got  
21 your order on Thursday, and with the volume of work involved, we have  
22 not had a chance to go through now those kinds of specifics.

23 PRESIDING JUDGE SMITH: And do you anticipate using a bar table  
24 for some of your exhibits?

25 MR. MISETIC: Yes, we do.

1           PRESIDING JUDGE SMITH: Any idea on a number on that?

2           MR. MISETIC: No idea. Part of it's going to depend on what we  
3 get in through our witnesses and what's left over.

4           PRESIDING JUDGE SMITH: Okay.

5           Mr. Ellis, do you want to answer the same questions?

6           MR. ELLIS: Yes. I think it's a broadly similar pattern. We  
7 have filed our list of witnesses and list of exhibits. We don't, at  
8 the moment, envisage needing to file anything further.

9           Looking at the list of exhibits, a relatively small number would  
10 be tendered through witnesses. The rest would either be bar table or  
11 are there or may not ultimately be used. We would anticipate filing  
12 the bar table -- we haven't yet decided whether it be one large bar  
13 table or whether we would split it into smaller ones. But given that  
14 at least one bar table would be a residual category, it would come  
15 towards the end of the Defence case.

16          PRESIDING JUDGE SMITH: I didn't ask you that, Mr. Misetic, too.  
17 Is that likely to be the pattern for your tenders as well?

18          MR. MISETIC: I'm sorry, let me just read the transcript.

19          PRESIDING JUDGE SMITH: Are you going to save a good number of  
20 them at the end and offer them at the time?

21          MR. MISETIC: Yes, the last day of the Defence case.

22          PRESIDING JUDGE SMITH: [Microphone not activated].

23          Yes.

24          MR. HALLING: Thank you, Your Honour. We'd like to make a few  
25 submissions on this agenda item if that's all right.

1           PRESIDING JUDGE SMITH: [Microphone not activated].

2           MR. HALLING: So first in relation to the witness list. I think  
3 this is clear already. The Thaci witness list is not a meaningful  
4 preparation document for us.

5           There is only three witnesses whose names that we can see.  
6 Everything else is redacted. The first person on the list, when read  
7 against paragraph 5 of F03357, it's clear the Thaci Defence has not  
8 even contacted this person yet. And, incidentally, a witness that we  
9 are no longer intending to rely on, we would say the contact protocol  
10 doesn't even apply. They are responsible for the logistical  
11 arrangements.

12          MR. MISETIC: May I ask for a redaction of that from the  
13 transcript, please. We asked in the filing for certain information  
14 to be confidential.

15          PRESIDING JUDGE SMITH: You want the entire statement redacted?

16          MR. MISETIC: The --

17          JUDGE METTRAUX: The filing is confidential, Mr. Misetic.

18          PRESIDING JUDGE SMITH: [Microphone not activated].

19          MR. HALLING: I've tried not to reveal any confidential  
20 information in my submission.

21          MR. MISETIC: Yes, but just the portion that says:

22          "... witnesses we are no longer intending to rely on ..."

23          PRESIDING JUDGE SMITH: We'll take that under advisement.  
24 Go ahead.

25          MR. HALLING: To finish on the list of witnesses, we can't

1     meaningfully prepare for the Defence cases as matters currently stand  
2     here.

3             On the exhibit list, we had two points that we wanted to flag  
4     that I think are common to both of the exhibit lists that we received  
5     today. The first is that we would argue that it is not best practice  
6     to have cross-references within a list of exhibits. Both of the  
7     Defence teams cross-referenced to the entire SPO list of exhibits in  
8     addition to their own.

9             Rule 119(2)(b) requires a list of proposed evidence the Defence  
10    intends to present, and it would be more helpful, just as a working  
11    document, if the list of exhibits was actually a complete list of the  
12    universe of items that the Defence may tender during their case.

13            They actually have no real authority for the proposal that they  
14    have. The Thaci Defence cites to one case in their motion. It's an  
15    ICC case talking about exhibit lists for the pre-trial confirmation  
16    of charges hearing in the Gicheru case, which has no resemblance to  
17    either the features of this case or the current part of the  
18    proceedings, and it's not procedurally comparable to a big case like  
19    this one.

20            The last point that we wanted to mention in relation to the list  
21    of exhibits is, with the limited time that we have had, it's quite  
22    clear that not everything on the list of these exhibits is translated  
23    into English. In particular, although Rule 102(3) and Rule 103  
24    items, when the SPO discloses them, we are not obliged to make an  
25    English version, in order for these lists of exhibits to be

1 meaningful, there has to be an English-language version if they are  
2 intending to tender it into evidence. And this would need to be  
3 remedied as soon as possible, both of these listed exhibit issues, in  
4 order for this document to be a meaningful preparation document.

5 PRESIDING JUDGE SMITH: Judge Mettraux has a question.

6 JUDGE METTRAUX: Thank you. And I'll start with you,  
7 Mr. Halling, if I may. I'll ask the same question as I've asked  
8 Mr. Misetic in relation to Rule 107.

9 Is there any bar, in your view, legal or otherwise, to the  
10 Defence disclosing to you the name and summary of proposed evidence  
11 of a witness subject to Rule 107 clearance?

12 MR. HALLING: Our position would be that this is a  
13 provider-by-provider issue. The reason why we didn't provide the  
14 name of our Rule 107 witness in the example in the footnote was that  
15 was clearly expressed by the provider. But it can't be implied by  
16 the provider. It has to be a meaningful restriction.

17 And it's, frankly, not clear from the Thaci Defence's  
18 argumentation if this is, in fact, what the providers really want.  
19 If you look at paragraph 4 of the filing F03357, there's a comment  
20 that:

21 "Should statements not be cleared, the Defence may instead be  
22 required to call witnesses live, which would necessarily increase the  
23 time required for direct examination."

24 Well, if non-clearance of the statement means that the people  
25 are coming live, that suggests that the names can be given to us.

1 And we need every name that we can as soon as possible in order to  
2 meaningfully discharge our obligation to prepare for these witnesses.

3 JUDGE METTRAUX: Thank you.

4 And I have a question or a couple of questions for the Defence -  
5 thank you, Mr. Halling - which pertains to the exhibit list. The  
6 first is that there is common language to both the Thaci and Krasniqi  
7 submissions of yesterday that refers to Rule 119 and indicates that  
8 these are the exhibits that you may - may - use or present at trial.  
9 The language of the rule is not "may," it's that you intend to  
10 present.

11 Now, assuming what you said, Mr. Misetic, to be correct, that  
12 there's an element of buffering, if I may use that expression, in  
13 your list, and it's only fair enough, the concern that I have at  
14 least is whether the mind of counsel has been put to whether or not  
15 you intend to use the bulk of that material, and that it's not just a  
16 dumping exercise of 4.916 documents in one case and above 1.000 in  
17 the other, and that I can be reassured that some consideration has  
18 been given that you intend to use at least the bulk of that material.

19 The second thing I would like to get some clarification from you  
20 is about these SPO documents. I wasn't entirely clear about what  
21 your submissions are in that respect, so I would like to be a bit  
22 clearer.

23 Is it that you haven't included in your proposed exhibit list  
24 the documents that already appear in the SPO exhibit list? And,  
25 again, if so, what's the authority for you to claim to be permitted



1 to do that under the Rules? Because the Rules appear relatively  
2 clear to me. It says that you have to provide the list of the  
3 proposed exhibits that the Defence intends to present.

4 MR. MISETIC: Again, we adopted an approach that -- again, the  
5 "intends to use" is a rather broad category. They are documents that  
6 we would intend to use in the right circumstances. They are not  
7 going to be all affirmatively dumped into the record.

8 I would note that the SPO exhibit list has 21.000 items of which  
9 8.600 were tendered, so roughly two-thirds were never tendered. So  
10 I'm not sure what the -- you know, the SPO being in a position to  
11 claim prejudice, but the Defence was put on the position of tens of  
12 thousands of documents that ultimately were never used in the case.  
13 We are, I don't think, doing anything that isn't -- hasn't been the  
14 practice of the SPO, and in many respects we've tried to use the SPO  
15 as a guide to how we should put together our Defence case.

16 There is one issue that I wanted to address with you  
17 concerning --

18 JUDGE METTRAUX: You haven't reassured me, Mr. Misetic. I don't  
19 think you can have it both ways. I don't think you can criticise the  
20 Prosecution on the one hand - and you may have good grounds to  
21 criticise them - to have a list that's way too long compared to  
22 what's eventually tendered, and then justify your own conduct by  
23 that.

24 The reassurance I'm seeking from you is that careful thought has  
25 been given to the list you've placed before us last night, and that,

1 with all the qualifications and all the buffering that we understand  
2 might be necessary at this stage, careful consideration has been  
3 given to the fact that this is, indeed, what you hope or intend as,  
4 to use the expression of the Rules, to tender.

5 MR. MISETIC: I would say in response to that, "careful  
6 consideration" is a term that may have worked under the time that we  
7 thought we had. But under the compressed schedule that the Panel  
8 surprised us with in June, every hour available to every person on  
9 this Defence team has been working, as I said to you, 12 to 18-hour  
10 days plus weekends. That's all I can say to you.

11 If you'd like us to go and trim the exhibit list, we can go back  
12 and do that, but I am telling you that there's only a certain amount  
13 of hours in a day, and particularly if you're going to crunch us on  
14 time, when the Prosecution had ten years to prepare its case, and now  
15 suddenly four weeks has become a serious issue for this Panel.

16 JUDGE METTRAUX: And the second issue, Mr. Misetiç, the SPO  
17 documents. I wanted clarification, if you want me to repeat the  
18 question, I wasn't entirely clear, and in particular, I have to say,  
19 about the submissions of Mr. Krasniqi. If we are to understand that  
20 you've given, in effect, yourself the possibility of using or you're  
21 asking to be permitted to use any document that was on the  
22 Prosecution exhibit list without having to list it on your own  
23 exhibit list? Is that how we have to understand your submissions?

24 MR. MISETIC: The problem is, again, you put us under a time  
25 crunch, and so we've put, to the extent possible, SPO documents from

1     their exhibit list on our list. But the exercise of moving those  
2     documents then into a Defence exhibit list and into Legal Workflow,  
3     et cetera, is a huge -- and I just have to say it, a huge consumption  
4     of time that we don't have. So this is a way for us to ensure that  
5     we can use the documents and get additional time to sift through  
6     whatever else is going to be included. But, again, the whole  
7     exercise of putting stuff into Legal Workflow, as we explained in the  
8     filing, is time that is not available to the Defence.

9           JUDGE METTRAUX: And, Mr. Ellis, the same position on SPO  
10    exhibits or are you -- maybe I'll ask the question differently. Is  
11    every SPO exhibit or every document that was on the exhibit list that  
12    you intend to use on your list?

13          MR. ELLIS: No, it's the position as set out in the filing, that  
14    we are seeking to keep the possibility of using documents that are on  
15    the SPO's exhibit list but have not been included on our list of  
16    exhibits.

17          This was an attempt to be helpful rather than an attempt to be  
18    unhelpful. In the light of the large number of documents on the  
19    SPO's list, which all the parties are on notice of and have been  
20    throughout these proceedings, to re-give notice of documents that the  
21    parties were all already aware of and prepared for, we thought time  
22    was better directed towards providing a list of documents that were  
23    parties were not already on notice of. So we've tried to be helpful  
24    rather than unhelpful and to get a list together in the time that was  
25    available to us.

1 Can I say also that, in answer to your first question, yes, in  
2 the time that we have had, we have carefully considered the items on  
3 the list, and that -- I know when I say that, that we may not end up  
4 tendering all of these items through a bar table motion. But I can  
5 say, as an officer of the Court, yes, we have carefully considered  
6 and done our best at this point in time.

7 MR. MISETIC: If I could just add on the legal precedent, it has  
8 been the Panel's precedent that all the parties are on notice of all  
9 documents that have been disclosed or the Defence has been on notice  
10 of all documents that have been disclosed to it such that the Panel  
11 can use them without notice in judicial questions.

12 And so it seems little difference then that if we then notice  
13 the same documents and if we were expected to be ready to go without  
14 any notice, including without an exhibit list before a witness, then  
15 I fail to see what the prejudice is to anyone else.

16 JUDGE METTRAUX: There's no suggestion of prejudice,  
17 Mr. Misetic. I'm trying to find out whether these are the documents  
18 you intend to use. That's all. I'm just trying to understand what  
19 those are.

20 MR. MISETIC: Yes. And I forgot to address one point that  
21 Mr. Halling raised, which is I have made the specific inquiry about  
22 whether we can disclose the names of the witnesses to a Rule 107  
23 provider, and I haven't even got an answer to that. So in the  
24 absence of an answer to that question is why we're being cautious.

25 Again, I emphasise, I don't want to do anything that will upset

1 a Rule 107 provider, and that's the reason we're being cautious.

2 JUDGE GAYNOR: I have a question for Mr. Halling. This concerns  
3 the issue of potential prejudice to the Prosecution.

4 Now, as you know, the Defence is bound by the Order on the  
5 Conduct of Proceedings, so for any material the Defence wants to use  
6 with a viva voce witness, they must give you advance notice. For any  
7 material they want to tender as associated exhibits, they must give  
8 you advance notice. And, obviously, if they file a bar table motion  
9 seeking admission of certain exhibits, you'll know exactly what the  
10 exhibits are.

11 So given that there is this secondary level of notice, very  
12 specific notice, of the exhibits that the Defence genuinely wants to  
13 tender during trial, my question is this: Does it make any real  
14 difference, the fact that the Defence has sort of tried to  
15 incorporate the entire Prosecution's exhibit list in this way? Are  
16 you really going to be handicapped in any way in responding to and  
17 objecting to specific exhibits that the Defence wants to use?

18 MR. HALLING: Thank you, Your Honour. The proposal that we made  
19 is really more based on just efficient trial management grounds.  
20 We're familiar with the items in our list of exhibits, even the ones  
21 we decided not to tender, but it's just for the orderly conduct of  
22 the proceedings to have one master document of all of the items that  
23 could potentially become exhibits in this phase of the case. That's  
24 our understanding of the value of having a list of exhibits rather  
25 than just every item disclosed in the case being potentially fair

1 game. It has a specific trial purpose. And it's -- unlike a  
2 situation with a presentation queue, where the interest might be a  
3 little different in terms of whether we need to have duplicated all  
4 of the things on one presentation queue into others, there is an  
5 interest in having a kind of global single document where all of this  
6 stuff is contained, and that's all that we are asking for. It's just  
7 a matter of re-filing this list of exhibits with whatever additional  
8 documents they seem to already have in mind from our list of exhibits  
9 duly included.

10 JUDGE GAYNOR: Thank you.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MR. MISETIC: Sorry, but I just -- I should probably be wiser  
13 than this, but I just have to repeat: Where was that argument when  
14 we were complaining about the Judges using anything that's been  
15 disclosed? There was no master list of judicial documents that might  
16 be used. So there was no prejudice to anyone, and particularly no --  
17 a finding that there's no prejudice to the Defence, so I'm not sure  
18 what a master list now -- how there's any prejudice from that, or  
19 lack of.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 Oh, Mr. Ellis. I'm sorry.

22 MR. ELLIS: Your Honour, if I may, there was one other point  
23 Mr. Halling raised which I didn't address, which was the issue of  
24 translations.

25 PRESIDING JUDGE SMITH: Say that again?

1 MR. ELLIS: It was the issue of translations that Mr. Halling  
2 raised that I hadn't addressed, although Your Honours will have seen  
3 it's foreshadowed in our cover filing, in fact.

4 There were three documents on our list of exhibits that do not  
5 currently have a translation. We're on it and we will disclose  
6 translations as soon as we can.

7 MR. HALLING: Yes. And to be clear, Your Honour, I wasn't  
8 referring to those three. I am referring to what seemed to be many  
9 others beyond those three where there's no equivalent explanation.

10 MR. MISETIC: And our position is the Rules provide specifically  
11 for a Prosecution obligation to disclose a translation under  
12 Rule 102(1). There is no reciprocal obligation for the Defence to  
13 disclose a translation in the Rules.

14 PRESIDING JUDGE SMITH: All right. The next issue the Panel  
15 would like to address is that of witness-related filings for the  
16 upcoming Defence case.

17 Following yesterday's submissions, the Panel would like to  
18 confirm with the Thaci and Krasniqi Defence, first of all, how many  
19 live or Rule 154 witnesses they expect to call during their case;  
20 and, two, the evidence of how many witnesses will be tendered under  
21 Rules 153 or 155.

22 Mr. Misetic, you can go first on this.

23 MR. MISETIC: Yes, thank you, Mr. President. At this stage, we  
24 intend to call 12 witnesses, 11 of whom are anticipated to testify in  
25 court. However, we can currently only confirm the three witnesses.

1 One witness is anticipated to testify fully *viva voce*. The next step  
2 will be provision of information required by paragraph --

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 MR. MISETIC: No, that's a --

5 PRESIDING JUDGE SMITH: So who is the --

6 MR. MISETIC: -- witness --

7 PRESIDING JUDGE SMITH: -- *viva voce*?

8 MR. MISETIC: -- who's been disclosed.

9 PRESIDING JUDGE SMITH: Okay.

10 MR. MISETIC: As of right now, the one witness -- the one other  
11 witness that has been disclosed is a 154 witness, and then the third  
12 witness that's been disclosed is a Rule 153 witness. I would say,  
13 for most, if not all, of the remaining witnesses, we expect to file a  
14 Rule 154 application. But, again, all of that is subject to  
15 clearances and things of that sort.

16 PRESIDING JUDGE SMITH: Thank you. That's very helpful.

17 Mr. Ellis.

18 MR. ELLIS: As set out in our filing, Your Honours, it is five  
19 in total, two for whom we anticipate filing Rule 154 applications,  
20 two Rule 153, and one Rule 155.

21 PRESIDING JUDGE SMITH: Thank you.

22 MR. HALLING: Yes. And, Your Honour, if we could be heard on  
23 this one briefly.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. HALLING: If we could just be heard briefly on this agenda



1 item?

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. HALLING: Yes. So just one thing that we wanted to confirm  
4 at this point, just because it's arisen in other trials, is just to  
5 confirm that on the Defence presentation, that none of the accused  
6 are intending to testify. So they're not on the list and that's what  
7 that means. We wanted to get that confirmation on the record.

8 We also did want to ask, from the way the dust has currently  
9 settled, there are only three Rule 154 witnesses, and I know that the  
10 Panel indicated that they would like it on a rolling basis and at  
11 least three weeks before the first one came. But given how small the  
12 number is at the moment, whether there could be some set filing date  
13 for the Rule 154 witnesses that are currently known.

14 PRESIDING JUDGE SMITH: I'm about to get to that.

15 At the Defence Preparation Conference, the Panel might set  
16 deadlines for any filings under Rules 153, 155, in accordance with  
17 Rule 119(3) and (4). It might be helpful if the teams suggest a  
18 deadline for these filings so that we can be sure it's feasible for  
19 you, and we can then adopt it if possible.

20 MR. MISETIC: You mean suggest them at the Defence Preparation  
21 Conference or now?

22 PRESIDING JUDGE SMITH: No, at the Defence Preparation  
23 Conference.

24 MR. MISETIC: That's fine.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 I'm giving you an advance notice so you can think about that a  
2 little bit. If you know at this time, it will be fine but --

3 MR. MISETIC: I don't, but we will be ready.

4 PRESIDING JUDGE SMITH: Yeah. So is that an acceptable -- we  
5 will get that date that -- possible dates for the filings and then  
6 everyone can comply.

7 MR. HALLING: Yes. And sorry, Your Honour, just to be clear, my  
8 submission was only about the Rule 154 witnesses.

9 PRESIDING JUDGE SMITH: Yes.

10 MR. HALLING: So the Rule 153 and 155, that can wait. But  
11 especially if the Court is going to keep hearing witnesses the week  
12 of August 25th, we would submit that the Rule 153 application should  
13 be different.

14 PRESIDING JUDGE SMITH: So what about the 154 application, when  
15 would you suggest you can be ready to file those, bearing in mind the  
16 other -- that it would be good to have it on file before the Defence  
17 Preparation Conference.

18 MR. MISETIC: Well, our position was going to be, or is, a  
19 Rule 154 application for the one witness of the three that have been  
20 disclosed will be filed as soon as possible but no later than the  
21 Defence Preparation Conference, along with the provision of  
22 information required pursuant to paragraph 74 of the Order on the  
23 Conduct of Proceedings.

24 PRESIDING JUDGE SMITH: Is that sufficient?

25 MR. HALLING: No. If the hearings are still starting on

1 25 August, our response deadline would still be running when that  
2 Rule 154 witness appears. The Panel said at least three weeks before  
3 in --

4 PRESIDING JUDGE SMITH: Taking into consideration what you have  
5 stated, Mr. Misetic, we'll set a deadline but it will be dependent  
6 upon our decision on the starting date of testimony. All right?

7 MR. MISETIC: Yes. Obviously, if we get what the parties have  
8 jointly requested, including the SPO, an extension to at least  
9 15 September, then three weeks from before that is fine with us, or  
10 even by 18 August for this one witness is a deadline we will meet.

11 PRESIDING JUDGE SMITH: And, Mr. Ellis, do you have any 154  
12 witness?

13 MR. ELLIS: Your Honours, I don't think I'm in a position to  
14 name a date as I stand here. There are --

15 PRESIDING JUDGE SMITH: We will endeavour to make a date getting  
16 some advance notice to the date of the start, and we will name that  
17 date at the preparation conference to come.

18 MR. ELLIS: Thank you, Your Honour.

19 PRESIDING JUDGE SMITH: Anything else from the SPO?

20 MR. HALLING: Just from non-reaction, it can be implied that no  
21 accused are testifying in the case.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. MISETIC: Yes, that is correct.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. ELLIS: Yes.

1           PRESIDING JUDGE SMITH: [Microphone not activated].

2           MR. DIXON: Your Honour, we had set it out in our notice saying  
3 there would be no Defence case and Mr. Veseli would not be  
4 testifying.

5           PRESIDING JUDGE SMITH: [Microphone not activated].

6           MR. ROBERTS: I can confirm the same. Yes, Your Honour.

7           PRESIDING JUDGE SMITH: In the next point on the agenda, the  
8 Panel would like to inquire about potential applications for  
9 protective measures to be in a position to adequately plan ahead and  
10 to ensure the expeditiousness of its decisions.

11           First, do any of the two Defence teams presenting a case intend  
12 to file applications for protective measures for any of the witnesses  
13 they are calling; and if that is the case, are the teams in a  
14 position to give us the number of witnesses and a timeline on when we  
15 can expect to receive those applications?

16           MR. MISETIC: As noted in our filing, there is one witness for  
17 whom protective measures have been previously ordered, which will  
18 continue. I don't know if I should read the -- cite you to that  
19 order, but I'm sure you're familiar with it. We may request  
20 modification of some of these protective measures, including -- well,  
21 can we go into private session for just a minute?

22           PRESIDING JUDGE SMITH: Into private session, please,  
23 Madam Court Officer.

24   [Private session]

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22 [Open session]

23 THE COURT OFFICER: Your Honours, we are now in public session.

24 MR. MISETIC: Thank you.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. MISETIC: Thank you, Mr. President.

2 It is currently anticipated that all of our remaining witnesses  
3 will not require protective measures, but this is subject to  
4 conditions being imposed by Rule 107 providers. So there may be  
5 Rule 107 provisions requested by providers. We add the caveat that's  
6 in our filing that to protect the privacy and security of the  
7 potential witnesses, we propose to maintain the confidentiality of  
8 witness identities until the point of their in-court testimony should  
9 for some reason they wish to make a last-minute request for  
10 protective measures.

11 Thank you.

12 MR. ELLIS: And for ours, we don't currently anticipate making  
13 any applications. If the witnesses subsequently make any request of  
14 us, we'll bring it to Your Honours' attention as soon as we can.

15 PRESIDING JUDGE SMITH: Thank you, Mr. Ellis.

16 Anything from the SPO on this?

17 MR. HALLING: We have no objection to the proposals on the  
18 protective measures and confidentiality of witnesses.

19 There was something on the previous agenda item, and apologies  
20 if I didn't mention it before, just on the order of witnesses that we  
21 wanted to put on the record. I can do it now.

22 Obviously, our preparations, the order of the witnesses is very  
23 important. At the moment, there is only four potential people coming  
24 to the courtroom that we know. There is also one witness that's  
25 called by the Krasniqi Defence alone, and we understand from the



1 sequencing that person is last. So we're really just talking about  
2 the order of three people, and we were wondering if that order could  
3 be confirmed now.

4 MR. MISETIC: The answer is no because the Order on the Conduct  
5 of Proceedings does not require us to disclose the order until three  
6 weeks before the next session, right? Or is it two weeks? Three  
7 weeks, three weeks. Right. So whenever you set the date for the  
8 start of the Thaci Defence, we will have minus three weeks from there  
9 to give you the order of the witnesses.

10 MR. HALLING: Again, given how few people are involved, we don't  
11 understand why that's necessary. The key point for us is that if  
12 Rule 107 witnesses are cleared, they can't be injected into a point  
13 in the order where we don't have a meaningful opportunity to prepare  
14 for them.

15 MR. MISETIC: Mr. President, obviously if that comes up, I am  
16 sure the Panel will ensure that they have a sufficient amount of time  
17 to prepare. The issue is we don't know, A, the travel schedules of  
18 some of these witnesses; and, B, more importantly, there's at least  
19 one witness who we've discussed in private session who it's not up to  
20 me, it's up to WPSO now to make the arrangements. So until I know  
21 what is feasible, I can't tell you what the order of witnesses is  
22 going to be.

23 PRESIDING JUDGE SMITH: We will follow the Order on the Conduct  
24 of Proceedings and try to implement it exactly as it's said. I  
25 understand your request. It was reasonable. But if they don't want

1 to comply, I don't think we can make them do it under the Rule as we  
2 adopted it.

3 The next item on the bullets dealt with bar table motions and  
4 judicial notice of adjudicated facts, and I think, unless somebody  
5 wants to talk about it more, we've covered bar table to the extent  
6 necessary. But I would like to know, as to the second issue, if  
7 there are any potential motions for judicial notice of adjudicated  
8 facts, and the Panel would like to know whether the two Defence teams  
9 intend to file any further motion for judicial notice of adjudicated  
10 facts, and, if so, by whom and when.

11 MR. MISETIC: I'm not sure what you mean by "by whom."

12 PRESIDING JUDGE SMITH: Well, which team is -- by team, how  
13 many -- when you're going to file them.

14 MR. MISETIC: Yes, we do anticipate filing a request for notice  
15 of adjudicated facts. We are not able to provide further information  
16 at this stage beyond those that were filed on 21 July. We will not  
17 be able to turn our attention to written motions until after the  
18 further deadline on 18 August, so I don't anticipate it's going to be  
19 a lengthy motion, but at this stage we haven't had sufficient time to  
20 give you a precise answer.

21 PRESIDING JUDGE SMITH: Will you be able to answer that at  
22 the --

23 MR. MISETIC: Yes.

24 PRESIDING JUDGE SMITH: -- Defence Preparation Conference?

25 MR. MISETIC: Yes, Mr. President.

1           PRESIDING JUDGE SMITH: All right. We will expect that.

2           Mr. Ellis, go ahead.

3           MR. ELLIS: Similarly, we will be able to confirm final position  
4 at the Defence conference.

5           PRESIDING JUDGE SMITH: The next point on the agenda we've  
6 discussed also somewhat but not totally. The Panel would like to  
7 inquire if the Thaci and Krasniqi Defences can respectively clarify  
8 as to how many documents and proposed witnesses are still subject to  
9 clearance under 107, and what is the expected timeline for the  
10 process to be completed. And I realise the timeline is going to be  
11 difficult at this point.

12           Let's start with documents. How many documents are subject to  
13 clearance under Rule 107?

14           MR. MISETIC: We are waiting for approximately 30 documents for  
15 clearance.

16           PRESIDING JUDGE SMITH: [Microphone not activated].

17           MR. MISETIC: They have not, and I inquired yesterday and got a  
18 response that was rather vague.

19           PRESIDING JUDGE SMITH: And we've talked about your proposed  
20 witnesses.

21           Mr. Ellis, do you have any 107 witnesses?

22           MR. ELLIS: No 107 witnesses. Five 107 documents.

23           PRESIDING JUDGE SMITH: Five?

24           MR. ELLIS: Five documents.

25           PRESIDING JUDGE SMITH: And have you received a clearance on

1 those?

2 MR. ELLIS: No.

3 PRESIDING JUDGE SMITH: Any timeline given to you?

4 MR. ELLIS: No.

5 PRESIDING JUDGE SMITH: All right.

6 Comments by the SPO?

7 MR. HALLING: Yes. Some of it we've said already. But in  
8 F03302, whenever the clearance issue in relation to documents is  
9 resolved, the Defence are required to disclose on a rolling basis.  
10 That's not squarely said the same way for the identities of witnesses  
11 once cleared, but especially given the discussion in the hearing, we  
12 would ask for that as well.

13 PRESIDING JUDGE SMITH: Thank you.

14 MR. MISETIC: Mr. President, that's understood on our end.

15 PRESIDING JUDGE SMITH: There is no objection by you? No.

16 MR. MISETIC: No, that's fine.

17 PRESIDING JUDGE SMITH: As to the last point on our agenda  
18 today, and to ensure that there will be no preventible delays in  
19 August, the Panel would like to know from the two Defence teams that  
20 intend to present witnesses whether they are in a position to comply  
21 with any remaining disclosure obligations or if there are any  
22 remaining disclosure obligations pursuant to Rule 104(5), and can  
23 that be complied with by Monday, 18 August 2025, as set out in  
24 paragraph 27(d) of the decision F03302?

25 Mr. Misetic, you can go first again.

1 MR. MISETIC: I apologise for being repetitive, but we have  
2 complied to the extent we can comply and will comply with all of our  
3 obligations by 18 August to the extent we can control that. However,  
4 our ability to comply with the deadlines set by the Panel is  
5 dependent on factors outside of our control, namely, receiving  
6 clearances from Rule 107 providers.

7 We undertake to complete all outstanding obligations for  
8 witnesses and documents that are cleared by the Rule 107 providers by  
9 the deadline.

10 MR. HALLING: Yes. And if they can't do that, we expect that to  
11 be justified with a fully reasoned request explaining their diligence  
12 as to how it got to this point.

13 But a couple of other points in relation to disclosure and  
14 specifically with avoiding preventable delays, as Your Honour put it.  
15 The first, and this is really more of a question than an objection,  
16 but there are no statements that we can see taken by the Defence  
17 teams on these lists other than formal statements. And as has been  
18 discussed repeatedly in this trial, statements are a record in  
19 whatever form of anything that a witness said in respect of facts and  
20 circumstances relevant to the case taken in the context of a criminal  
21 investigation.

22 We appreciate that there are Rule 107 restrictions on some of  
23 the statements and that's why we don't have them, but just to confirm  
24 from the Defence teams that there are no contact notes, other kinds  
25 of information that are not on these lists that we are entitled to.

1 The second point that we wanted to make --

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. HALLING: Certainly.

4 PRESIDING JUDGE SMITH: We'll cover the first one first. Is  
5 there any response to that?

6 MR. MISETIC: Yes. I'm not sure what he's referring to, but our  
7 disclosure obligation under Rule 104(5) is to provide the  
8 Specialist Prosecutor the statements, if any, of all witnesses the  
9 Defence intends to call at trial and all statements taken which the  
10 Defence intends to present at trial. All statements we intend to  
11 present at trial have been turned over.

12 PRESIDING JUDGE SMITH: That's already been done.

13 MR. MISETIC: [Microphone not activated]. Other than the  
14 Rule 107 witnesses.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. MISETIC: Yes, yes.

17 MR. HALLING: Yes. So if all statements that are intended to be  
18 called at trial is already provided, then that would satisfy.

19 PRESIDING JUDGE SMITH: With the exception of the 107.

20 MR. HALLING: Correct.

21 The second point is Mr. Misetic said something a little bit  
22 earlier in the Status Conference which is a preventible delay and in  
23 the disclosure context. At page 31 of the realtime transcript he  
24 said:

25 "Our position is that the Rules provide specifically for a

1 Prosecution obligation to disclose under Rule 102(1). There is no  
2 [specific] obligation for the Defence to disclose a translation in  
3 the Rules."

4 That position is asking for chaos, because if the Defence don't  
5 have an obligation to provide English versions of the things on their  
6 own list of exhibits, then it is going to become a routine problem  
7 during the Defence case that items are tendered for admission that no  
8 one can understand in the working language of the proceedings. And  
9 this is not a situation where the Defence is merely providing  
10 something that is not intended for use at trial. This is intended  
11 for use at trial if it's on the Defence exhibit list, and we don't  
12 agree with their position that they don't have an obligation to  
13 translate this stuff.

14 PRESIDING JUDGE SMITH: Go ahead.

15 MR. MISETIC: Mr. President, you know, the Rules say what they  
16 say, first of all. As Mr. Halling is fond of saying, you are the  
17 drafters of the Rules, and you didn't impose the same obligation on  
18 the Defence. That's the first point.

19 The second point is I think you know me well enough that I am  
20 not going to tender documents that are not in English and that you  
21 can't therefore understand the document. So if we're going to put a  
22 document on our queue, it will have an English translation and it  
23 will be disclosed in sufficient time for everyone to be prepared to  
24 go to trial.

25 But I understood Mr. Halling at the beginning to say he'd like

1 us now to spend the rest of July and August translating every  
2 document that doesn't have a translation that's currently on the  
3 exhibit list.

4 PRESIDING JUDGE SMITH: I don't think we need to have a  
5 translation of 4.700 documents if they're all in another language.  
6 But if they will offer -- if they're going to offer a document, it  
7 should be translated. I have no argument with that.

8 MR. HALLING: That's true. But our understanding was today --  
9 yesterday was the deadline to provide their list of exhibits, and  
10 right now there are exhibits we've -- it's been admitted that there  
11 are exhibits on this exhibit list that cannot currently be tendered  
12 because they are not currently in a form in which they can be  
13 tendered. And we would say that needs to be addressed now in some  
14 form in order for the Defence case to proceed smoothly.

15 PRESIDING JUDGE SMITH: Well, if they are ordered to not tender  
16 any document that is not translated, that should handle the problem.  
17 You wouldn't have to have them done tomorrow.

18 MR. HALLING: Understood. It then just creates the  
19 corresponding. We do need enough time to meaningfully read the  
20 document to be able to respond --

21 PRESIDING JUDGE SMITH: Understood.

22 MR. HALLING: -- and this would need to be incorporated.

23 MR. MISETIC: I'm also advised now that when the SPO produced  
24 its exhibit list, there were hundreds of documents that didn't have  
25 an English translation. That was in 2022, I believe, 2021, and it



1 was -- even in 2025 they are disclosing translations of documents on  
2 their exhibit list, four years later.

3 PRESIDING JUDGE SMITH: Could you mention to us a date by which  
4 the translations could be completed?

5 MR. MISETIC: If we're talking about, what, every document on  
6 the exhibit list?

7 PRESIDING JUDGE SMITH: No, the documents that you intend to  
8 tender.

9 MR. MISETIC: So, again, it depends on -- whenever we have to  
10 disclose the documents in our queue, we will certainly do it before  
11 then. And I would think --

12 PRESIDING JUDGE SMITH: Would it --

13 [Specialist Counsel confer]

14 PRESIDING JUDGE SMITH: It's a common-sense problem and it needs  
15 to have a common-sense solution.

16 MR. MISETIC: That's kind of what I was suggesting with my last  
17 answer to this, which is --

18 PRESIDING JUDGE SMITH: Well, that might be ten minutes before  
19 you put the witness on the stand.

20 MR. MISETIC: No, no, no, that isn't common sense, because I  
21 want you to be able to see the documents, most importantly, before we  
22 get a witness in the box. I don't see foresee this to be a problem,  
23 but if it --

24 PRESIDING JUDGE SMITH: How about five days prior to the calling  
25 of that witness?

1 MR. MISETIC: That's fine. That's fine.

2 PRESIDING JUDGE SMITH: Is that satisfactory, Mr. Halling?

3 MR. HALLING: In a typical case, we can work with this.

4 PRESIDING JUDGE SMITH: Okay. Thank you.

5 JUDGE METTRAUX: Mr. Misetic, I'll try once again to square the  
6 Rule 107 circle with you because I'm not there yet.

7 The first thing I want to ask you is this: By my count, there's  
8 nine Rule 107 witnesses currently on your list?

9 MR. MISETIC: [Microphone not activated].

10 JUDGE METTRAUX: Have each and all of the providers relevant to  
11 these witnesses asked or requested that you not disclose the identity  
12 of these individuals to the SPO?

13 And the subsequent question, if you want to address both at  
14 once, is really the 18th August. Now, that's the deadline we've  
15 given you, with, of course, the caveat that Mr. Halling mentioned of  
16 the rolling basis, if and when you get a clearance before that. But  
17 what's the current plan if you are not getting clearance for some or  
18 all of these witnesses on the 18th? The concern being, of course,  
19 that we're going to find ourselves then in the situation we are now,  
20 that you're going to tell us that you need more time and you haven't  
21 received clearance. So do you have already a plan B that you would  
22 like us to consider when we make our orders?

23 MR. MISETIC: So as I indicated to you earlier, it's a question  
24 of interpretation of the language that we were given in these  
25 Rule 107 letters from us. I followed up earlier this month

1 requesting clarification of what is the position and have not  
2 received a response.

3 So in the exercise of caution, until I get that response, we  
4 have not disclosed the names, because in the ambiguity, I don't want  
5 to err on the side of over-disclosure.

6 The second thing is, with respect to the 18 August deadline, as  
7 I said to you earlier, my intention is, very shortly, if we don't  
8 hear from them, you will get an application requesting the Panel's  
9 assistance. And that will be before 18 August.

10 JUDGE METTRAUX: Thank you.

11 JUDGE GAYNOR: Mr. Misetic, just on that point. I take it you  
12 are in correspondence with and have a cooperative relationship with  
13 each of these particular Rule 107 providers that you're referring to  
14 right now.

15 MR. MISETIC: We are in correspondence with all of them. With  
16 some of them we are in actual oral communication as well.

17 JUDGE GAYNOR: So we're not talking about a situation of  
18 uncooperative providers, are we?

19 MR. MISETIC: There may be one. There may be one. But I don't  
20 want -- I'm just -- say that more out of concern at the pace rather  
21 than any expression of opposition or --

22 JUDGE GAYNOR: Let me put it this way: Are you fairly confident  
23 that you have agreement in principle that these individuals will be  
24 able to testify?

25 MR. MISETIC: I am. And so that's why my concern here is that

1 no one has indicated to us any suggestion that they won't be cleared.  
2 It's just a question of how fast are they going to get them cleared.

3 JUDGE GAYNOR: Thank you.

4 MR. MISETIC: And, hence, it's related to Judge Mettraux's  
5 question. Obviously, if, circumstances outside of our control, we  
6 get to 18 August, and you will get an application from us, because  
7 we're not going to just give up on it, and we're going to ask -- let  
8 me stop for a second.

9 The Panel is aware on an *ex parte* basis that there is one  
10 provider in particular who is giving us a problem, right, and we've  
11 asked for your assistance. We're going to go back to you again for  
12 assistance with that one provider. But with respect to the rest of  
13 them, they have been cooperative, they do want to produce their  
14 witnesses, they just say that they need the internal processes to  
15 finish.

16 JUDGE GAYNOR: Right. And, as appropriate, I assume you're in  
17 contact with the Registry?

18 MR. MISETIC: Yes, absolutely.

19 JUDGE GAYNOR: Thank you.

20 PRESIDING JUDGE SMITH: Yes.

21 MR. HALLING: Your Honour, given the submissions, we appreciate  
22 that there's a limit to how much we can know about these Rule 107  
23 issues. But the Panel can know. And given the submissions being  
24 made, we would strongly suggest that the Panel get an *ex parte*  
25 submission from the Defence explaining exactly what their full

1 efforts are in this regard and what the specific restrictions the  
2 providers have imposed.

3 MR. MISETIC: So far all morning I've heard the SPO ask to  
4 impose conditions on the Defence that, of course, they never in their  
5 wildest dreams would have thought for you to regulate how they were  
6 contacting Rule 107 providers. And so I fail to see what the issue  
7 is here.

8 You've set an August 18th deadline. If there's an application  
9 from us at that point, then we can litigate the issue of whether  
10 we've exercised due diligence. But in the meantime, I assure you  
11 these are witnesses we want to call, they need to come because they  
12 have relevant evidence, and we're going to seek the Panel's  
13 assistance as part of our exercise of due diligence to get you to  
14 help us get these people here.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. HALLING: Just before leaving this agenda item, it was  
17 brought to my attention there may be a possible ambiguity in a  
18 previous answer. We just wanted to confirm once and for all.

19 Rule 104(5), talking about disclosure of prior statements, talks  
20 about both the disclosure of statements that the Defence intends to  
21 present during their case and also any statements they have of  
22 witnesses that are on their list.

23 Mr. Misetic mentioned both strands of it in his answer, but then  
24 his last part was "all statements we intend to present at trial have  
25 been turned over," and I see him shaking his head. So I want to

1 clarify if the statements of witnesses that they want to call but  
2 they do not intend to present at trial have been disclosed.

3 MR. MISETIC: The answer is that the Rule is quite clear. That  
4 the only statements that we have to disclose are those that we intend  
5 to present at trial. The wording of the Rule is "the statements, if  
6 any, of all witnesses the Defence intends to call at trial, and all  
7 statements taken, which the Defence intends to present at trial."  
8 Meaning we have to produce the statements of all witnesses who are  
9 coming into the courtroom as well as the statements, like through 153  
10 or 155, that we intend to present at trial, not that we have to  
11 present the statements of -- every statement of every witness we  
12 intend to call.

13 And if we're going to get into that, then we have all sorts of  
14 other issues, including the right against self-incrimination and what  
15 the obligations are of an accused. We raised this in the pre-trial  
16 as well.

17 PRESIDING JUDGE SMITH: That is all that's on our list.

18 Before we conclude today, the Panel would like to know whether  
19 there's any other issue that hasn't been discussed that you would  
20 like to bring up, any party?

21 MR. DIXON: Yes. Your Honours, can I ask, in light of the  
22 recess coming up, and the fact that there are going to be the need  
23 for filings, for certain of those filings to be delayed until after  
24 the recess. None of these concern the Defence cases, which we can  
25 fully understand have to continue given the deadlines that are there,

1 but it concerns three victim submissions.

2 And we have just e-mailed Mr. Laws on this to see if he has any  
3 objection to that, but he can be asked now.

4 The first one is in relation to the response to F03349 - that's  
5 the request for reconsideration - whether our response could be  
6 extended until Monday, 25 August. That's a week after the end of the  
7 recess. And then there are two others as well which are still to be  
8 filed this week. It's the request for adjudicated facts from  
9 Victims' Counsel that's due on 24 July, and then the 153, 155  
10 applications, which I understand Victims' Counsel are now going to  
11 submit on 25 July. So if those could also be extended until  
12 25 August to respond to, and then, of course, replies thereafter, so  
13 that they don't interfere with the recess period. I understand  
14 that's been the practice previously. And this concerns just the  
15 Victims's case, not the Defence cases.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. DIXON: Thank you, Your Honours.

18 MR. LAWS: I don't object to that at all, Your Honour. Thank  
19 you.

20 PRESIDING JUDGE SMITH: We'll take that up and make a decision.

21 Thank you for your attendance today. We will be happy to see  
22 you in August.

23 Did you have something else? Oh, okay. We're adjourned.

24 MR. ELLIS: Your Honours --

25 PRESIDING JUDGE SMITH: Oh, Mr. Ellis.

1 MR. ELLIS: Just in the light of the submissions that have been  
2 made, it would be extremely helpful if we could have an indication of  
3 Your Honours' position on what was a joint proposal for moving the  
4 start of the Defence case to 15 September.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. ELLIS: Oh, I apologise. I've got out of the habit of  
7 leaning in towards the microphone. My fault.

8 I was just asking in light of the submissions that have been  
9 made, it would be helpful to have an indication of the Panel's  
10 position on what was a joint proposal for starting the Defence case  
11 on 15 September.

12 PRESIDING JUDGE SMITH: That's something we have to decide, and  
13 we will decide, and you will get a written order on it.

14 MR. ELLIS: Very well.

15 PRESIDING JUDGE SMITH: We're adjourned.

16 --- Whereupon the hearing adjourned at 3.29 p.m.

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