



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Mr Daniel Fransen**

The Registrar: **Mr Daryl Mundis**

Date: **2 August 2013**

Original language: **French**

Classification: **Public**

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH,
MUSTAFA AMINE BADREDDINE,
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA**

ORDER SETTING A NEW TENTATIVE DATE FOR THE START OF TRIAL PROCEEDINGS

Prosecutor:
Mr Norman Farrell

Counsel for Mr Salim Jamil Ayyash:
Mr Eugene O'Sullivan

Legal Representative of Victims:
Mr Peter Haynes

Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkmaz

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse

Counsel for Mr Assad Hassan Sabra:
Mr David Young



I. Subject of this order

1. By way of this order, the Pre-Trial Judge sets a new tentative date of 13 January 2014 for the start of trial proceedings in the case of *Ayyash et al.*, in accordance with Rule 91 (C) of the Rules of Procedure and Evidence (the “Rules”).

II. Procedural background

2. On 28 June 2011, the Pre-Trial Judge rendered a decision relating to the indictment of 10 June 2011 issued by the Prosecutor against Messrs Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra (respectively the “Indictment of 10 June 2011” and the “Accused”). Under the terms of that decision, the Accused were indicted in the context of the attack of 14 February 2005 which resulted in the death of Mr Rafic Hariri and others and injured other persons.¹

3. On 19 July 2012, the Pre-Trial Judge set a tentative date for the start of trial proceedings of 25 March 2013 (the “Order Setting the Date of Trial”).²

4. On 25 October 2012, in accordance with Rule 91 (A) of the Rules, the Pre-Trial Judge established a working plan indicating the obligations of the Parties and the participants in the proceedings in light of the start of trial on 25 March 2013 (the “Working Plan”).³

5. On 23 January 2013, Counsel for the Defence for the Accused (the “Defence”) requested the postponement of the trial date, in accordance with Article 16 of the Statute and Rules 69 and 77 (A) of the Rules.⁴

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Decision Relating to the Examination of the Indictment of 10 June 2011 issued against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, confidential, 28 June 2011. A public redacted version dated the same day was filed on 16 August 2011. Any further reference to filings and decisions relates to that case number, unless otherwise indicated.

² Order Setting a Tentative Date for the Start of Trial Proceedings, 19 July 2012, Disposition.

³ Order on a Working Plan and on the Joint Defence Motion regarding Trial Preparation, 25 October 2012.

⁴ Joint Defence Motion to Vacate Tentative Date for Start of Trial, confidential, 23 January 2013. A public redacted version was filed on 24 January 2013.

6. On 6 February 2013, the Prosecution sought leave to amend the Indictment of 10 June 2011 (the “Indictment of 6 February 2013”).⁵

7. On 21 February 2013, at the request of the Defence, the Pre-Trial Judge ordered the postponement of the tentative date for trial after having noted that some of the obligations set forth in the Working Plan had not been met within the set deadlines (the “Decision to Postpone the Trial Date”).⁶ He also ordered the Defence and the Legal Representative of Victims (the “LRV”) to provide him with a detailed note containing a precise estimation of the time they required to prepare for trial, as well as a reasoned proposal for a tentative date for the start of trial proceedings by 8 March 2013, at the latest. This order was also addressed to the Prosecution.

8. On 5 March 2013, the Pre-Trial Judge held a working meeting with the participants in the proceedings during which the setting of the tentative date for the start of trial proceedings was discussed.⁷ The Pre-Trial Judge recalled, at that time, the importance of setting a new date and a new work schedule as soon as possible. During that meeting, the Prosecution pointed out that it was difficult to determine a new date for the proceedings in light of all the questions that were still pending⁸ while the Sabra Defence was of the opinion that setting the trial date should take place only after the case file had been transferred to the Trial Chamber.⁹

9. On 6 March 2013, the LRV filed his observations regarding his state of preparedness and the setting of a new tentative date for the start of trial (the “Observations of the LRV of 6 March 2013”).¹⁰

10. On 8 March 2013, the Prosecution¹¹ and the Defence¹² filed their observations relating to the setting of a new tentative date for the start of trial (respectively the “Prosecution Submissions of 8 March 2013” and the “Defence Note of 8 March 2013”).

⁵ Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment, 6 February 2013.

⁶ Decision relating to the Defence Motion to Vacate the Date for the Start of Trial, 21 February 2013.

⁷ *Ordre du jour de la réunion de travail du 5 mars 2013 dans l'affaire Ayyash et al.*, confidential, 4 March 2013.

⁸ Transcript, confidential, 5 March 2013, p. 58.

⁹ *Id.*, p. 59.

¹⁰ Observations of the Legal Representative of Victims Regarding the Preparedness and the Date for the Start of the Trial, 6 March 2013.

¹¹ Prosecution Submissions on a Tentative Date for the Start of Trial, 8 March 2013.

11. On 20 March 2013, the Registry filed written submissions regarding the state of preparedness of its services in light of the trial (the “Registry Submission of 20 March 2013”).¹³

12. On 12 April 2013, the Pre-Trial Judge authorised the amendment of the Indictment of 10 June 2011, which was sought on 6 February 2013.¹⁴

13. On 10 May 2013, pursuant to Rule 91 (C) of the Rules, the Pre-Trial Judge consulted with the Presiding Judge of the Trial Chamber, the President of the Tribunal and the Registrar on the subject of the tentative date for the start of trial proceedings.¹⁵

14. On 22 May 2013, the Registrar responded to the consultation procedure of 10 May 2013 (the “Registrar Memorandum of 22 May 2013”).¹⁶ The President of the Tribunal responded to that same consultation procedure on 23 May 2013.¹⁷

15. On 23 May 2013, the Pre-Trial Judge held a working meeting with the participants in the proceedings during which, *inter alia*, the setting of the tentative date for the start of trial proceedings was discussed.¹⁸ During that meeting, the Prosecution, in particular, announced that it intended filing one or more requests for leave to amend the Indictment.¹⁹

16. On 12 June 2013, the Pre-Trial Judge held a confidential and *ex parte* meeting with the Prosecution in order to request further information of the Prosecution following the working meeting of 23 May 2013.²⁰

17. On 21 June 2013, the Prosecution sought leave of the Pre-Trial Judge for further amendments to the Indictment of 6 February 2013.²¹

¹² Joint Defence Note Regarding Requirements to Prepare for Trial and Observations on Tentative Date for the Start of Trial, confidential, 8 March 2013. A public redacted version of this document was filed on 11 March 2013.

¹³ Registry Submission pursuant to Rule 48 (C) Regarding the Preparedness (sic) and the Date for the Start of the Trial, 20 March 2013.

¹⁴ Decision relating to the Prosecution Requests of 8 November 2012 and 6 February 2013 for the Filing of an Amended Indictment, 12 April 2013.

¹⁵ Internal Memorandum of the Pre-Trial Judge, *Consultation au sujet de la fixation d'une nouvelle date provisoire d'ouverture du procès dans le cadre de l'affaire Ayyash et al.*, confidential, 10 May 2013.

¹⁶ Internal Memorandum of the Registrar, Consultation Procedure Under Rule 91 (C), 22 May 2013.

¹⁷ Letter of the President of the Tribunal, Consultation Procedure Under Rule 91 (C), confidential and *ex parte*, 23 May 2013.

¹⁸ *Ordre du jour de la réunion de travail du 23 mai 2013 dans l'affaire Ayyash et al.*, confidential, 21 May 2013.

¹⁹ Transcript, confidential, 23 May 2013, pp. 29 and 30.

²⁰ Internal Memorandum, Meeting pursuant to Rule 91 of the Rules - Request for further information following the working meeting held on 23 May 2013, confidential and *ex parte*, 3 June 2013.

18. On 26 June 2013, the Pre-Trial Judge requested further information relating to the Memorandum of 10 May 2013, of the Presiding Judge of the Trial Chamber, the President of the Tribunal and the Registrar.²²

19. On 3 July 2013, the President of the Tribunal²³ and the Registrar (the “Registrar Memorandum of 3 July 2013”)²⁴ responded to the request for further information relating to the Memorandum of 10 May 2013.

20. On 3 July 2013, during a Status Conference, the Pre-Trial Judge invited the participants in the proceedings to give their opinions on his proposal for the tentative date for the start of trial proceedings for the beginning of December 2013. The Prosecution stated that it did not have anything to say with regard to that date. At the request of the Defence, the Pre-Trial Judge granted an extension so as to enable it to submit its observations in writing by 17 July 2013.²⁵

21. On 17 July 2013, the Defence responded to the Pre-Trial Judge’s proposal to set the tentative date for trial in December 2013 (the “Defence Submissions of 17 July 2013”).²⁶

22. On 18 July 2013, the Presiding Judge of the Trial Chamber responded to the Pre-Trial Judge’s requests for consultation.²⁷

23. On 31 July 2013, the Pre-Trial Judge authorised the amendments to the Indictment of 6 February 2013, as sought by the Prosecution on 21 June 2013 (the “Decision of 31 July 2013”).²⁸

²¹ Prosecution Further Request for Leave to Amend the Indictment, confidential, 21 June 2013. A public redacted version of that request was filed on 1 July 2013.

²² Internal Memorandum of the Pre-Trial Judge, Supplement to the memorandum of 10 May 2013 relating to the consultation on setting a new provisional date for the start of trial in the *Ayyash et al.* case, confidential, 26 June 2013.

²³ Letter of the President of the Tribunal, Consultation Procedure Under Rule 91 (C), confidential and *ex parte*, 3 July 2013.

²⁴ Internal Memorandum of the Registrar, Consultation regarding a new provisional trial date in the *Ayyash et al.* case, confidential, 3 July 2013.

²⁵ Transcript, confidential, 3 July 2013, p. 56.

²⁶ Defence Submissions Regarding the Pre-Trial Judge Setting a Date for the Start of Trial pursuant to Rule 91 (C), confidential, 17 July 2013.

²⁷ Internal Memorandum of the Presiding Judge of the Trial Chamber, *Réponse à la consultation en vue de la fixation d’une nouvelle date provisoire d’ouverture du procès dans le cadre de l’affaire Ayyash et consorts*, confidential, 18 July 2013.

²⁸ Decision relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, confidential, 31 July 2013. A public redacted version of the decision was filed on 2 August 2013.

24. On 31 July 2013, the Prosecution filed a response to the Defence Submissions of 17 July 2013 (the “Prosecution Response of 31 July 2013”).²⁹

III. The arguments of the Parties

A. The Prosecution

25. On 30 January 2013, during a Status Conference, the Prosecution stated that it would be imprudent and/or premature at that stage of the proceedings to set a new date for the start of trial proceedings.³⁰

26. On 8 March 2013, the Prosecution noted that, in its opinion, the following factors are relevant to setting the date for trial: the full disclosure of materials, the finalisation of decisions taken by the Pre-Trial Judge and the Trial Chamber relating to the preparation of the trial, the preparation time required by the Trial Chamber after receiving the case file, and logistical issues as well as cooperation with the Defence.³¹

27. On the state of the disclosure of materials, the Prosecution recalled that it had disclosed more than 25,000 files to the Defence, pursuant to its disclosure obligations under Rules 91 (G) (iii), 110 (A) (i) and (ii) and 113 of the Rules, in addition to the materials relating to the expert witnesses, in accordance with Rule 161 of the Rules.³² It pointed out that it would file a notice concerning all the *curriculum vitae* of the expert witnesses by 2 April 2013, that it would disclose any other evidence by 15 April 2013³³ and that it had requested an extension of the time limit until 17 June 2013 so as to complete the disclosure of the exculpatory material under Rule 113 of the Rules.³⁴

28. The Prosecution also recalled on that occasion that the issues relating to the amendment of the Indictment, the preliminary motions, the admissibility of some of the evidence, the witness protective measures, as well as the procedures for presenting witnesses

²⁹ Prosecution Response to the Defence Submissions Regarding the Pre-Trial Judge Setting a Date for the Start of Trial Pursuant to Rule 91 (C), confidential, 31 July 2013.

³⁰ Transcript, 30 January 2013, pp. 21-22.

³¹ Prosecution Submissions of 8 March 2013, para. 2.

³² *Id.*, para. 3.

³³ *Id.*, para. 6.

³⁴ *Id.*, para. 7.

and evidence before the Trial Chamber should be determined sufficiently in advance of the trial so that it may be conducted efficiently.³⁵

29. The Prosecution referred to technical issues, including the fact that a large volume of material still had to be translated by the Languages Services Section of the Tribunal (the “LSS”),³⁶ that the Evidence Handling Module was still under development,³⁷ that the attendance of witnesses was posing specific logistical problems³⁸ and that, with regard to all these issues, the Pre-Trial Judge should consult the Registry.³⁹

30. Consequently, the Prosecution was of the opinion that the tentative date for the start of trial could be set within the last quarter of 2013.⁴⁰

B. The Defence

31. On 8 March 2013, the Defence shared the observations expressed by the Prosecution on 30 January 2013 that it would be imprudent and/or premature to set a new date for the start of trial.⁴¹ Among the factors that, according to the Defence’s estimation, affected the setting of a trial date were the following:

- i. the requests for leave to amend the Indictment, the finalisation of the pre-trial brief and the witness and exhibit lists;⁴²
- ii. the finalisation by the Prosecution of the disclosure of materials under Rules 91, 110 (B) and 113 of the Rules;⁴³
- iii. the technical and translation issues relating to the disclosed materials;⁴⁴
- iv. the disclosure of the entirety of the Lebanese investigative case file;⁴⁵

³⁵ *Id.*, paras 9-18.

³⁶ *Id.*, para. 19.

³⁷ *Id.*, para. 20.

³⁸ *Id.*, para. 21.

³⁹ *Id.*, para. 22.

⁴⁰ *Id.*, para. 23.

⁴¹ Defence Note of 8 March 2013, para. 7.

⁴² *Id.*, para. 8.

⁴³ *Id.*, para. 9.

⁴⁴ *Id.*, para. 13.

⁴⁵ *Id.*, para. 14.

- v. the requests regarding the admissibility of the written statements of witnesses;⁴⁶
- vi. the admissibility of evidence relating to other attacks;⁴⁷
- vii. the arrangements regarding the employment of Mr Nashabe, the Defence expert consultant;⁴⁸
- viii. the technical difficulties linked to the Inspection Room, the Z Drive and to the Call Data Records;⁴⁹ and
- ix. the lack of cooperation of the Lebanese authorities with the Defence.⁵⁰

32. The Defence was of the opinion that, while all these issues remained unresolved, the trial date could not be set.⁵¹ Furthermore, according to the Defence, the Pre-Trial Judge must take into consideration the time the Trial Chamber requires to familiarise itself with the case file it will receive pursuant to Rule 95 of the Rules.⁵²

33. On 17 July 2013, the Defence raised several new reasons justifying the fact that it was still premature to set the tentative date for the start of trial in December 2013, including:⁵³

- i. the fact that the interlocutory appeals lodged against the Trial Chamber's decision on preliminary motions have not been determined;⁵⁴
- ii. the scope of the requests for leave to amend the Indictment of 6 February 2013 made on 26 June 2013,⁵⁵ in particular those relating to the role of Mr Badreddine;⁵⁶
- iii. the impact, in terms of time and the necessary resources, of any possible further amendments to the Indictment by way of adding other cases or other accused;⁵⁷

⁴⁶ *Id.*, para. 16.

⁴⁷ *Id.*, para. 17.

⁴⁸ *Id.*, para. 18.

⁴⁹ *Id.*, paras 19-23.

⁵⁰ *Id.*, paras 24-25.

⁵¹ *Id.*, para. 30.

⁵² *Id.*, para. 26.

⁵³ Defence Submissions of 17 July 2013, para. 10.

⁵⁴ *Id.*, para. 11.

⁵⁵ *Id.*, paras 12 and 13.

⁵⁶ The Badreddine Defence estimates that it will need approximately six months to carry out further analyses. See Defence Submissions of 17 July 2013, para. 17.

⁵⁷ *Id.*, paras 14-17.

- iv. the fact that the Prosecution must finalise, by 30 August 2013, notifications enabling a link to be created between the exhibit list and the witnesses it will present during the trial;⁵⁸ and
 - v. the resolution of other requests relating to motions for witness protective measures and the disclosure of evidence.⁵⁹
34. Among those factors that it had previously raised, the Defence states that:
- i. the Trial Chamber still has to rule on motions submitted by the Defence in January 2013 relating to the exclusion of certain sections of the pre-trial brief;⁶⁰
 - ii. the process of the disclosure of evidence is still ongoing and is extremely voluminous;⁶¹ of the total, 84% of the documents from the Lebanese investigative case file are exclusively in Arabic;⁶²
 - iii. the issue of access to the Call Data Records has still not been resolved despite the Pre-Trial Judge's decision of 18 June 2013;⁶³ and
 - iv. certain technical difficulties linked to the Inspection Room will only be resolved as of 17 August 2013.⁶⁴

35. Consequently, the Defence reiterates its position expressed during the Status Conference of 3 July 2013, according to which, while all these issues remain outstanding, it is unable to provide an estimate of how much preparation time it needs.⁶⁵

C. The Legal Representative of Victims

36. On 6 March 2013, the LRV also agreed with the position expressed by the Prosecution on 30 January 2013, according to which, it would be imprudent and/or premature at this stage of the proceedings to set a new date for the start of trial proceedings. However, the LRV stated that, if a date had to be set, it should be within the last quarter of 2013.⁶⁶

⁵⁸ *Id.*, para. 24.

⁵⁹ *Id.*, paras 29-31.

⁶⁰ *Id.*, para. 18.

⁶¹ *Id.*, paras 33-37.

⁶² *Id.*, paras 38, 39.

⁶³ *Id.*, paras 40-42.

⁶⁴ *Id.*, para. 43.

⁶⁵ *Id.*, para. 47.

⁶⁶ Observations of the LRV of 6 March 2013, para. 9.

According to the LRV, the factors that need to be taken into account in order to determine a date include, amongst others: the process of the disclosure of evidence; the readiness of the Parties; and the capacity of the Tribunal to hold a trial.⁶⁷ Among those factors, the LRV also raised the resolution by the Appeals Chamber of an appeal relating to the status of certain victims participating in the proceedings. In point of fact, once the Appeals Chamber has ruled on that matter, he considers that a time frame of three months will be necessary in order to finalise the procedure of requesting protective measures.⁶⁸ He also raised certain logistical matters that, in his opinion, were outside the competence of the Parties or of the participants in the proceedings, but were matters for the Registry.⁶⁹

37. During the Status Conference of 3 July 2013, the LRV stated that the setting of a tentative date for the trial was premature in light of the uncertainties surrounding whether or not a fifth individual was going to be indicted.⁷⁰

D. The Registrar

38. On 20 March 2013, by virtue of the powers conferred on him by Rule 48 of the Rules, the Registrar informed the Pre-Trial Judge of his position on the following points: the technical issues which the Prosecution submits have impeded the review of the disclosed materials, the status of translations, the Evidence Handling Module and matters that relate to victims and witnesses.⁷¹ With regard to the technical issues, the Registrar pointed out that the Information Technology Services Section was working with the Prosecution in order to facilitate disclosure of certain materials to the Defence.⁷² On the subject of translations, the Registrar estimated that the volume of material whose translation has been requested by the Prosecution represented 1,673 working days for the LSS, and that the volume of materials needing translation which had yet to be filed represented 3,759 working days.⁷³ The finalisation of all the translations was estimated in months for translations into English and in years for translations into Arabic.⁷⁴ The Registrar noted that, on 18 March 2013, the Prosecution had still not filed, for translation, all the evidence, witness statements and

⁶⁷ *Id.*, para. 6.

⁶⁸ *Id.*, para. 7.

⁶⁹ *Id.*, para. 8.

⁷⁰ Transcript, confidential, 3 July 2013, pp. 51-54.

⁷¹ Registry Submission, para. 2.

⁷² *Id.*, paras 6-9.

⁷³ *Id.*, para. 16.

⁷⁴ *Id.*, para. 17.

exculpatory materials.⁷⁵ With regard to the Evidence Handling Module, the Registrar estimated that the project should be completed by July 2013, with a test phase expected during the months of August and September of the same year.⁷⁶ Lastly, the Registrar noted that the Victims and Witnesses Unit (the “VWU”) was shortly going to provide him with a document concerning information that the Parties and the participants in the proceedings should supply to the Unit in order for it to effectively implement its duties.⁷⁷

39. On 22 May and 3 July 2013, following consultations with the Pre-Trial Judge, the Registrar confirmed that the services of the Registry were ready for proceedings to be held as of 2 December 2013. He added certain information, essentially relating to translation difficulties with regard to all the materials filed by the Prosecution, which might have an impact on the state of readiness of its services, while pointing out that he had put in place measures to remedy the matter.⁷⁸

IV. Statement of reasons

40. As a preliminary matter, the Pre-Trial Judge declares the Prosecution Response of 31 July 2013 inadmissible. In point of fact, the Defence Submissions of 17 July 2013 are not a request in the formal meaning of the term conferring on the Prosecution a right to reply.⁷⁹ The Defence Submissions of 17 July 2013 fall within the consultation procedure initiated by the Pre-Trial Judge, pursuant to Rule 91 (C) of the Rules, during the Status Conference of 3 July 2013. On that occasion, the participants in the proceedings were invited to submit their observations regarding the setting of a tentative date for the start of trial, either orally, during the Status Conference of 3 July 2013, or in written form by 17 July 2013. Unlike the Defence, the Prosecution expressed its opinion orally during the Status Conference of 3 July 2013 to specify that it was referring to the terms of its Submissions of 8 March 2013, according to which, the date for trial could be set within the last quarter of 2013, and it was adhering to that position.⁸⁰ Furthermore, it did not submit written submissions within the set time limit.

⁷⁵ *Id.*, para. 19.

⁷⁶ *Id.*, para. 21.

⁷⁷ *Id.*, para. 35.

⁷⁸ Registrar Memorandum of 22 May 2013; Registrar Memorandum of 3 July 2013.

⁷⁹ Rule 8 (A) of the Rules.

⁸⁰ Transcript, confidential, 3 July 2013, p. 51.

41. With regard to the subject of this order, it should be pointed out that, as set forth by Rule 91 (C) of the Rules, the trial date set by the Pre-Trial Judge is tentative. The setting of that tentative date is intended, within the spirit of Articles 18 (2) and 21 of the Statute, to inform the Parties, the Trial Chamber and all those involved in the proceedings of the fact that, according to the assessment made at a given moment by the Pre-Trial Judge, taking into consideration the progress of the proceedings and the rights of the Parties and the participants in the proceedings, there is reason to believe that the trial might start on the date set. Those involved in the proceedings may thus prepare themselves for trial with the full knowledge of the facts. Likewise, any indiscriminate event that might have an effect on the ongoing proceedings and, thereby, on the tentative date set, cannot be taken into account.

42. The factors to be taken into consideration in order to set the tentative date for the start of trial proceedings are numerous. In particular, Article 16 (4) (b) of the Statute sets forth that the accused must “have adequate time and facilities for the preparation of [their] defence [...]”.⁸¹ Furthermore, in accordance with international case law, it should be noted that “the minimum time granted to Counsel for the Defence in order to prepare their case and conduct their investigations cannot be assessed in the abstract.”⁸² That time depends on the specific circumstances of the case in point and, in particular, on the following: “(i) the size and complexity of the case in question; (ii) the number and nature of the counts imputed; (iii) the seriousness of the crimes concerned; (iv) the amount and substance of the materials disclosed by the Prosecutor; and (v) the resources available to the Defence.”⁸³

⁸¹ Order Setting the Date of Trial, para. 12.

⁸² Order Setting the Date of Trial, para. 13 citing ICTY, *The Prosecutor v. Krajišnik*, Case No. ICTY-00-39-A, Appeal Chamber Judgement, 17 March 2009, para. 80; SCSL, *The Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, Decision on Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009, 23 June 2009, para. 19.

⁸³ *Id.*, citing ICTR, *The Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware’s Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 28; See also ICTY, *The Prosecutor v. S. Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defense Case, 20 January 2004, paras 8-19; See also, ECHR, Case of *Twalib v. Greece* (42/1997/826/1032), Judgment of 9 June 1998, para. 40.

43. On 19 July 2012, the Pre-Trial Judge, in the interest of justice, set the tentative date for the start of trial proceedings in the case of *Ayyash et al.* of 25 March 2013 so that the Parties and the other participants in the proceedings might anticipate future deadlines and better prepare their case.⁸⁴ That decision was also in response to the obligation of the Pre-Trial Judge to ensure that the proceedings are not unjustifiably delayed in any way, in particular by imposing any measures necessary for the case to be ready for a fair and expeditious trial.⁸⁵

44. On 21 February 2013, at the request of the Defence, the Pre-Trial Judge postponed the trial date after having noted that some of the obligations provided for in the context of the Working Plan had not been met within the deadlines set. Among those were, firstly, the disclosure by the Prosecution of all the case materials to the Defence as provided by Rules 91 (G) (iii) and 110 (A) (ii) of the Rules and the volume of those materials, and secondly, the requests for cooperation to the Lebanese authorities which were still pending. The Pre-Trial Judge noted that “those factors do not allow the Defence to make efficient use of the time and facilities required to prepare, thus jeopardising the fairness of the proceedings and the compliance with the fundamental guarantees recognised by the general principles of law.”⁸⁶

45. Following that postponement, the Pre-Trial Judge consulted the Parties, the participants in the proceedings, the President of the Tribunal, the Presiding Judge of the Trial Chamber and the Registrar, as provided by Rule 91 (C) of the Rules, regarding the setting of a new tentative date for trial.

46. The Pre-Trial Judge notes that, since 21 February 2013, the preparation of the case for trial has been actively pursued and most of the pending issues that might affect the setting of the date for the start of trial proceedings have been, or are being, resolved. As such, the disclosure of materials under Rules 91 (G) (iii) and 110 (A) (ii) of the Rules has, in principle, been finalised. The disclosure of materials under Rule 113 of the Rules was completed on 17 June 2013.⁸⁷ Furthermore, the Appeals Chamber has ruled on the appeal of the LRV regarding protective measures for certain victims. The Indictment of 10 June 2011 has been amended twice. The pre-trial brief and the exhibit and witness lists have been amended by the

⁸⁴ Order Setting the Date of Trial, para. 19.

⁸⁵ Article 18 (2) of the Statute.

⁸⁶ Decision to Postpone the Trial Date, para. 20.

⁸⁷ Prosecution’s Notice Pursuant to the Working Plan Regarding Disclosure Under Rule 113, 21 June 2013.

Prosecution.⁸⁸ The Lebanese investigative file has been disclosed to the Defence. The technical difficulties linked to the Defence's use of the Inspection Room, the Z Drive and the Call Data Records have, for the most part, been resolved or soon will be. Lastly, the issue regarding the employment arrangement of Mr Nashabe has been settled.

47. Furthermore, the Pre-Trial Judge considers that, in light of the factors which have been brought to his attention, none of the logistical issues linked to the appearance of witnesses or to the Evidence Handling Module raised during the consultation procedure would seem to prevent a new tentative date from being set.

48. The Pre-Trial Judge notes, however, that certain issues raised by the Parties and the participants in the proceedings still have to be definitively determined. This is the case with issues regarding the admissibility of evidence relating to other attacks, the admissibility of the written statements of certain Prosecution witnesses, the appeals relating to the Trial Chamber's decisions on preliminary motions, the translation of the Lebanese legal file and the requests for cooperation to the Lebanese authorities. He considers, however, that the fact that those issues remain unanswered does not prevent a new tentative date for the start of trial from being set, it being understood that it will still take several months before the actual start of the trial.

49. Nevertheless, the need to resolve some of those issues precludes the Pre-Trial Judge from currently closing the case file, including the detailed report, as prescribed by Rule 95 (A) of the Rules, and submitting it to the Trial Chamber. Therefore, at this stage of the proceedings, the Trial Chamber cannot be seized of the case, in accordance with Rule 95 (B) of the Rules. For instance, the updated pre-trial briefs of Counsel for the Defence – documents that are essential for the procedure notably in order to draw up the aforementioned report – will only be filed on 15 August 2013, and will then have to be examined.⁸⁹ Furthermore, the Defence has not yet given its views on the authenticity of the exhibits disclosed by the Prosecution, in accordance with Rule 91 (G) (iii) of the Rules. Lastly, the exhibit list the Prosecution intends to present and the list of witnesses it intends to call at trial have recently been revised downwards and still have to be examined by the Pre-Trial Judge,

⁸⁸ Decision on Prosecution Request of 21 December 2012 to Amend the Witness and Exhibits Lists and for Authorisation for Further Disclosure, 27 February 2013, Disposition; Decision on Prosecution Notice of Disclosure and Request to File an Updated Exhibit List Dated 1 March 2013, 19 March 2013, para. 15.

⁸⁹ Decision on the Prosecution Motion entitled "Prosecution Motion Regarding the Defence Pre-Trial Briefs", 5 July 2013, Disposition, p. 12.

pursuant to Rule 95 (A) of the Rules. It follows from this that the case file can only be submitted, and the Trial Chamber seized, at the beginning of October 2013, at the earliest. If, despite the efforts of the Pre-Trial Judge, some issues have not been resolved by that date, they will likewise be submitted to the Trial Chamber, with the exception of those matters which fall under his exclusive jurisdiction by virtue of the Rules. However, in order to enable that Chamber to actively prepare, the Pre-Trial Judge shall start, henceforth, to submit to it part of the exhibits of the file referred to in Rule 95 of the Rules. That transfer should also enable the Trial Chamber, where appropriate, to deal with any issue of which it might be seized, in accordance with Rule 89 (E) of the Rules.

50. Although the Defence and the LRV are of the opinion that this course of action is premature, the Pre-Trial Judge considers that the tentative date for the start of trial should be set as of now. Indeed, he currently has sufficient information in order to do so. Failure to set a date would result in creating uncertainty as to the progress of the proceedings and, over time, be detrimental to all the participants and to the quality of their interventions.

51. At this stage of the proceedings and in light of, on the one hand, the volume of the exhibits that have been disclosed by the Prosecution, the fact that the disclosure of exhibits under Rule 113 of the Rules has recently been completed and the other remaining issues to be resolved and, on the other, the Decision of 31 July 2013 authorising certain substantial amendments to the Indictment of 6 February 2013 for which the Defence will need further time to prepare,⁹⁰ the Pre-Trial Judge finds that an extension to the time limit with respect to that initially envisaged should be granted. Indeed, it is imperative in order to guarantee a fair trial that the Defence have adequate time to prepare, while ensuring the expeditiousness of the proceedings. In this respect, the Pre-Trial Judge notes that the Defence declined to put forward a tentative date for the start of trial despite the appeals made to it in this regard.⁹¹

⁹⁰ Decision of 31 July 2013, para. 31.

⁹¹ In the Defence Submissions of 17 July 2013, the Badreddine Defence estimates that the analysis by the experts of the call data records relating to the current indictment should take approximately six months (para. 17).

52. Bearing in mind these requirements, the Pre-Trial Judge considers that there is reason to grant an extension of six weeks⁹² with respect to the date initially envisaged of 2 December 2013. This is equivalent to an extension of more than nine-and-a-half months with respect to the first tentative date for the start of trial proceedings and an extension of practically seven months from the time of the finalisation of the disclosure of exculpatory material under Rule 113 of the Rules. This extension is such as to allow the Defence to have the time it requires to complete its preparation and conduct its investigations, with the knowledge, likewise, that the disclosure of the first materials to the Defence took place in February 2012, shortly after counsel had been appointed.

53. The Pre-Trial Judge therefore sets the tentative new date for the start of trial for 13 January 2014.

54. That date is set on a tentative basis taking account of the case as it currently stands. The Pre-Trial Judge is aware of the fact that further events, such as possible amendments to the Indictment, indeed the filing of other Indictments and decisions relating thereto, as well as other new circumstances, can occur at any time. As he has indicated on several occasions, he considers that these events are not to be currently taken into consideration with regard to setting the tentative date for the start of trial, otherwise the start will have to be delayed repeatedly, to the detriment of the rights of the accused and the victims to have their case heard within a reasonable time limit⁹³ and, more generally, of the interest of justice. The same applies to the impact that the other cases and the acts taken in connection therewith might have on the ongoing procedures. Where appropriate, if those events were to have a possible impact on the date for the start of trial, they should be taken into consideration at the required time. In this respect, it is for the Trial Chamber to set the definitive trial date, as well as how the trial will take place, if necessary by taking account of the new factors mentioned above and the consequences they will have with regard to holding a fair and expeditious trial.

⁹² This is a 33 % increase on the initially envisaged time frame.

⁹³ Article 16 (4) (c) of the Statute. Cf also, Article 6 (1) of the European Convention on Human Rights and Article 14 (3) (c) of the International Covenant on Civil and Political Rights.

V. The Disposition**FOR THESE REASONS,**

Pursuant to Rules 77 (A) and 91 (C) of the Rules,

THE PRE-TRIAL JUDGE,**SETS** the tentative date for the start of trial proceedings of 13 January 2014;**STATES** that he will submit the file as prescribed by Rule 95 of the Rules, in order for the Trial Chamber to be seized, for the beginning of October 2013, at the latest; and**DECLARES** the Prosecution Response of 31 July 2013 inadmissible.

Done in English, Arabic and French, the French text being authoritative.

Leidschendam, 2 August 2013

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge