



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: **Judge Daniel Fransén**

The Registrar: **Mr. Daryl Mundis**

Date: **16 August 2013**

Original language: **English**

Classification: **Public**

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

DECISION ON PROSECUTION REQUESTS (1) FOR LEAVE TO FILE AMENDED MATERIAL SUPPORTING THE INDICTMENT CONFIRMED ON 31 JULY 2013 AND (2) FOR AN EXTENSION OF TIME IN WHICH TO FILE ITS UPDATED PRE—TRIAL BRIEF

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I. INTRODUCTION

1. In this decision, the Pre-Trial Judge rules on two discrete requests from the Prosecution.

2. In the first request, the Prosecution seeks leave to file amended or revised material supporting the indictment confirmed on 31 July 2013, together with confirmation that the prevailing regime regulating the non-dissemination of materials in this case applies *in casu* (the “First Request”).¹

3. In the second request, the Prosecution seeks an extension of time of four days in which to file its updated pre-trial brief (the “Second Request”).²

II. PROCEDURAL BACKGROUND

4. On 25 May 2012, the Pre-Trial Judge issued a decision relating to measures for the non-dissemination of material (the “Non-dissemination Decision”).³

5. On 31 July 2013, the Pre-Trial Judge issued a decision in which *inter alia* he authorised amendments to the indictment then in force, and ordered the Prosecution to file the amended version, referred to herein as the “21 June 2013 Indictment”, by 6 August 2013 (the “Decision of 31 July 2013”).⁴ Also in the Decision of 31 July 2013, the Pre-Trial Judge ordered the Prosecution to provide the clarifications sought in an annex to the Decision of 31 July 2013, and where necessary, to implement the amendments to the materials concerned (the “Supporting Materials”) by 6 August 2013.

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Response to Questions and Clarifications Raised by the Pre-Trial Judge in the Confidential Annex to the Pre-Trial Judge’s « *Décision portant sur la requête du 21 juin 2013 du Procureur en modification de l’acte d’accusation du 6 février 2013* », of 31 July 2013, and Request Seeking Leave to Add Substantive Changes to Chronology Report and to File Revised Co-location Report Number 3 with Additional Material, in Support of the Amendments to the Indictment Confirmed on 31 July 2013, Confidential with Confidential Annexes A, B, C and D, 6 August 2013. All further references to filings and decisions relate to this case number unless otherwise stated.

² Prosecution Request for Extension of Time to Comply with Order of 7 August 2013, Confidential, 13 August 2013. A public redacted version was filed the same day.

³ Decision Relating to the Prosecution Request Seeking Measures for the Non-dissemination of Material of 2 May 2012, 25 May 2012.

⁴ Amended version of Decision Relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, Confidential, 31 July 2013, Disposition. A public redacted version of this decision was filed on 2 August 2013. See Order Relating to the Pre-Trial Judge’s Decision on the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, Dated 31 July 2013, 2 August 2013.

6. On 6 August 2013, and pursuant to the Decision of 31 July 2013, the Prosecution filed the First Request.

7. By way of an order on 7 August 2013 (the “7 August 2013 Order”), the Pre-Trial Judge granted a joint request by Counsel for Messrs. Salim Jamil Ayyash and Mustafa Amine Badreddine to extend the deadline to 2 September 2013 within which the Defence are to file their respective updated pre-trial briefs. In the same 7 August 2013 Order, the Pre-Trial Judge ordered the Prosecution to file an updated pre-trial brief, as well as updated witness and exhibit lists, in compliance with Rule 91(G), by 19 August 2013, and invited the Legal Representative of Victims (the “LRV”) to file updated witness and exhibit lists by 23 August 2013.⁵

8. On 13 August 2013, the Prosecution filed the Second Request, seeking an extension of time in which to file its updated pre-trial brief.

9. On 14 August 2013, the LRV filed a consolidated response to both the First Request and the Second Request (the “LRV Response”).⁶

10. Also on 14 August 2013, the Defence for Messrs. Ayyash, Badreddine and Oneissi (the “Respondents”) filed a joint response to the Second Request (the “Defence Response”).⁷

III. THE FIRST REQUEST: LEAVE TO FILE AMENDED OR REVISED MATERIALS AND CONFIRMATION OF NON-DISSEMINATION

A. Prosecution’s Submissions

1. Clarifications and amendments pursuant to the Decision of 31 July 2013

11. In the First Request, the Prosecution seeks leave to file amended or revised Supporting Materials.

12. In respect of the revised Supporting Materials, the Prosecution advises that corrections and clarifications have been made to two reports (the “Attribution Report” and

⁵ Order on the Defence Request for a Variance of the Deadline for Re-Filing the Defence Pre-Trial Briefs, 7 August 2013.

⁶ Consolidated Response of the Legal Representative of Victims to the Prosecution’s 6 August 2013 “Response to Questions and Clarifications” and 13 August 2013 “Request for Extension of Time”, Confidential, 14 August 2013.

⁷ The Defence for Messrs Ayyash, Badreddine and Oneissi Joint Response to Prosecution Request for Extension of Time to Comply with Order of 7 August 2013 and Request for Extension of Time, 14 August 2013.

the “Chronology Report”) pursuant to the Pre-Trial Judge’s examination thereof, and his subsequent order for clarification in the Decision of 31 July 2013.⁸

13. The Prosecution confirms that these amendments to the Attribution Report “do not change the content of the Reports, and are based on material already filed”, and adds that enhanced footnote references now facilitate the location of the evidence cited.⁹

14. As for the Chronology Report, its amendment has in part entailed corrections and clarifications authorised by the Decision of 31 July 2013, and the Prosecution adds that these amendments “do not affect the content of the Chronology Report and are based on materials already filed.”¹⁰

2. Substantive amendments

15. Furthermore, the Prosecution seeks leave to make substantive changes to the Chronology Report which are additional to the corrections and clarifications authorised by the Decision of 31 July 2013.¹¹ According to the Prosecution, those changes are three-fold:¹²

- a) The Chronology Report as amended now reflects the history of contact between the Purple phones (which commenced in 2003) more comprehensively. The Prosecution argues that the underlying evidence has already been provided in the form of the relevant Call Sequence Tables (“CSTs”), but that the “further itemization” in the Chronology Report of the contact between three individuals “better reflects the activity” of the use by one of them of specific Green and Purple telephones during this time.¹³
- b) To the extent that there were statements that “go beyond” the “chronology of the communications evidence” concerning the activities of a person using specific Green and Purple telephones, and for which it is intended, the Chronology Report has been amended to remove such statements.¹⁴

⁸ First Request, para. 2. The revised reports are submitted in annex B to the First Request. The Pre-Trial Judge notes that his questions with respect to one witness statement, concerning the status of translations, “is addressed.”

⁹ *Id.*, paras 6-7.

¹⁰ *Id.*, para. 10. The corrections and clarifications are detailed in confidential annex A to the First Request.

¹¹ *Id.*, para. 3.

¹² *Id.*, para. 12.

¹³ *Ibid.*

¹⁴ *Id.*, para. 13. These changes to the Chronology Report are detailed in annex C to the First Request.

c) Sections entitled “Other Network Activity” pervade the Chronology Report and provide an indication of the call activity of two accused, as well as “other unnamed subjects who used Yellow, Blue and/or Red Network phones during the time period of 1 September 2004 to 14 February 2005.” These sections previously referred only to subject numbers (e.g. X1); the proposed amendments now provide the short name associated with these network phone numbers (e.g. Black 123) instead of the subject number.¹⁵

16. The Prosecution also seeks leave to file a replacement, corrected version of a separate report not referred to by the Pre-Trial Judge in the Decision of 31 July 2013, but previously filed by the Prosecution on 21 June 2013.¹⁶ The report concerns the “single person use” of two specific mobile telephone numbers (the “Revised Co-location Report 3”). It has been corrected to provide a list¹⁷ of more detailed information, previously “inadvertently omitted”¹⁸, about the materials relied upon by Prosecution expert in the preparation of the report, “specifically a number of maps, two call sequence tables (CSTs) and two documents referred to in order to explain methodology.”¹⁹

17. As such, and in addition to the revisions to the Revised Co-location Report 3 itself, the Prosecution files three documents relied upon by the report’s author in its preparation.²⁰ The Prosecution notes that it has previously submitted other versions of CSTs for the two relevant mobile telephone numbers for a period that covers the time range covered by the Revised Co-location Report 3.²¹ With respect to the two other documents whose admission is sought, their professed purpose is to provide the methodology relied on by the author of Revised Co-location Report 3.²²

18. In concluding the First Request, the Prosecution advises that, should the Pre-Trial Judge decline to grant leave to add substantive changes to the Chronology Report and to file

¹⁵ *Id.*, para. 14.

¹⁶ *Id.*, para. 16.

¹⁷ *Id.*, para. 4.

¹⁸ *Id.*, para. 18.

¹⁹ *Id.*, paras 4, 16. Annex C to the First Request provides an explanation of the amendments.

²⁰ *Id.*, para. 17. Annex D to the First Request contains the proposed additional materials in support of the report in question.

²¹ *Id.*, para. 18.

²² *Id.*, para. 19.

Revised Co-Location Report 3 with additional materials, “it will file the corrected versions of the Attribution Report and the Chronology Report only.”²³

3. Relief sought

19. In sum, the Prosecution seeks leave to file:

- a) the amended Chronology Report with substantive changes, and
- b) the Revised Co-location Report 3, together with additional material relied upon by its author, in support of the amendments to the confirmed indictment.²⁴

20. In addition to the foregoing, the Prosecution also seeks confirmation from the Pre-Trial Judge that the Non-dissemination Decision applies to both the supporting material filed in its original Request of 21 June 2013 (the “Request of 21 June 2013”)²⁵ and to the additional supporting material filed with the First Request.²⁶

B. Legal Representative of Victims’ Submissions

21. The LRV takes no position in relation to the relief requested by the Prosecution in the First Request.²⁷

C. Discussion

22. In considering the First Request, the Pre-Trial Judge notes that the Defence have not made written submissions — and the LRV takes no position — in respect of the First Request.

1. Non-substantive amendments

23. In respect of the Prosecution’s clarifications and amendments pursuant to the Decision of 31 July 2013, the Pre-Trial Judge notes that these amendments are being proposed pursuant to his own review of the materials concerned, and the decision that resulted from it.

²³ *Id.*, para. 21.

²⁴ *Id.*, para. 22(a).

²⁵ Prosecution Further Request for Leave to Amend the Indictment, Confidential with Confidential Annexes A, B, C, and D, 21 June 2013. A public redacted version was filed on 1 July 2013.

²⁶ First Request, para. 22(b).

²⁷ LRV Response, p. 1.

24. The Pre-Trial Judge also notes the Prosecution's submissions that the amendments proposed to the Attribution Report do not change the content thereof, are based on material already filed, and furthermore that the non-substantive amendments proposed to the Chronology Report do not affect its content and are based on material already filed. The Prosecution is therefore granted leave to file the relevant materials subject to these amendments.

2. Proposed substantive amendments to the Chronology Report

25. In respect of the substantive amendments proposed to the Chronology Report, the Pre-Trial Judge addresses each of the three categories.

26. First, regarding the substantive amendment to the Chronology Report in order to more comprehensively reflect the history of contact between specific phones, the Pre-Trial Judge notes the utility of this amendment for the Parties and the LRV to better understand the case. The Pre-Trial Judge furthermore notes that the underlying evidence has already been provided to the Defence.

27. Second, in respect of the proposed amendments to the Chronology Report that serve to remove from the Chronology Report statements that "go beyond" the chronology of the communications evidence for which it has been prepared, the Pre-Trial Judge considers that this amendment would reduce the scope of the Chronology Report and the material underlying it. Such an amendment would ease its analysis by the Defence and the LRV while simultaneously seeming to occasion no prejudice to the Defence *prima facie*.

28. Third, concerning the proposed amendments to the Chronology Report that serve to identify so-called "other unnamed subjects who used Yellow, Blue and/or Red Network phones", the Pre-Trial Judge considers that referring to a user's short name associated with a specific network phone numbers (e.g. Black 123) instead of the subject number (e.g. X1) renders the Chronology Report more readable and comprehensible. Furthermore, such an amendment would *prima facie* occasion no prejudice to the Defence.

29. Based on this analysis, the Pre-Trial Judge decides to grant the Prosecution leave to file the Chronology Report inclusive of these proposed substantive amendments.

3. Proposed substantive changes to the Revised Co-location Report 3

30. Turning now to the leave sought by the Prosecution to file a corrected version of Revised Co-location Report 3, the Pre-Trial Judge is conscious that this is a separate report not referred to in the Decision of 31 July 2013. While it was previously filed by the Prosecution on 21 June 2013,²⁸ certain relevant information was inadvertently omitted²⁹ from it which the Prosecution now seeks to add. That information includes: (a) a number of maps regarding cell coverage; (b) two CSTs; and (c) two documents that elaborate the report's methodology.³⁰

31. First, regarding the maps, the Prosecution explains that they are referred to on the first page of the report. The justification for their addition is that they were provided to the author of the report for his use in its preparation.³¹

32. Second, in respect of the CSTs, the Pre-Trial Judge observes that other versions of CSTs for the two relevant mobile telephone numbers concerned — and for a period that covers the time range covered by the Revised Co-location Report 3 — have previously been submitted.

33. Third, concerning the two other documents whose admission is sought, the Pre-Trial Judge notes that the reason for seeking the inclusion of these documents is to provide the methodology relied on by the author of Revised Co-location Report 3.

34. Taken together, these materials do not *prima facie* occasion prejudice the Defence. Furthermore, the Pre-Trial Judge notes in particular that the information previously omitted but now proposed for inclusion in the Revised Co-location Report 3 would assist the Defence inasmuch as the report's methodology is provided in further detail, and the supplementary maps and CSTs — which have been provided to the Defence in the past — would serve to facilitate its understanding and analysis.

35. In light of the foregoing, the Prosecution is therefore granted leave to file the revised Co-location Report 3 inclusive of these proposed substantive amendments.

²⁸ First Request, para. 16.

²⁹ *Id.*, para. 18.

³⁰ *Id.*, paras 17, 19.

³¹ First Request, Annex D, p. 1. The maps themselves — numbering seven in total — are also provided in Annex D as ERN D0327447-D0327453.

IV. THE SECOND REQUEST: EXTENSION OF TIME TO FILE AN UPDATED PRE-TRIAL BRIEF

A. Prosecution's Submissions

36. The Prosecution seeks an extension of time, pursuant to Article 18(2) of the Statute and Rule 77(A) of the Rules of Procedure and Evidence (the "Rules"),³² of four days in which to file its updated pre-trial brief, from Monday 19 August 2013 to Friday 23 August 2013. It motivates this request by pleading that updating its Rule 91 Witness and Exhibit Lists by 19 August 2013 as required by the 7 August 2013 Order, and thereafter updating its pre-trial brief to reflect the amendments authorised in this decision, "is a significantly more onerous task for which the Prosecution requires more time than the seven working days allocated by the Pre-Trial Judge in his Order."³³

37. In particular, the Prosecution avers that it is "unable to carry out all necessary steps involved in updating the Pre-Trial Brief by the 19 August 2013",³⁴ noting that it had originally requested six weeks to update all of its submissions as required by Rule 91 in light of the detailed task it plans to execute.³⁵ Even the "modest extension" sought will not allow the replacement by the Prosecution of references to reports with references to underlying evidence instead.³⁶

38. The Prosecution implicitly alleges that the Second Request shows the requisite "good cause".³⁷ While referring to "other major contemporaneous deadlines" and diverse ongoing interlocutory proceedings that occupy its resources,³⁸ the Prosecution concedes that "other pending matters" are not "determinative" of a request for extension of time but considers them relevant nevertheless to the Pre-Trial Judge's decision on the Second Request.³⁹

39. The Prosecution also submits that the extension of time requested will not cause any delay to the start of the trial and does not impact on the Defence's preparation.⁴⁰ On the

³² Second Request, para. 5.

³³ *Id.*, para. 2.

³⁴ *Id.*, para. 8.

³⁵ *Id.*, para. 9.

³⁶ *Id.*, para. 10.

³⁷ *Id.*, paras 5, 6. The Prosecution correctly identifies "good cause" as a requirement for extensions of time, and includes that term in the title to Section B, but nevertheless does not allege that it has shown it.

³⁸ *Id.*, paras 11-13.

³⁹ *Id.*, para. 14.

⁴⁰ *Id.*, para. 15.

contrary, the Prosecution posits that an updated pre-trial brief “which reflects both the amendments to the Indictment and to the Rule 91 Witness and Exhibit Lists would be in the interest of all parties and in the interests of justice.”⁴¹

40. The Prosecution therefore requests the Pre-Trial Judge to grant the Prosecution an extension of four working days within which to file its updated pre-trial brief to 23 August 2013.⁴²

B. Defence Response

41. The Respondents do not oppose the Prosecution request for an extension of time but submit that any such an extension “should not result in the shortening of the period of time available to the Defence to analyse the Prosecution’s Pre-Trial Brief”.⁴³ As such, the Respondents request that if the Second Request is granted, the Defence’s deadline likewise be extended by four working days from 2 September 2013 to 6 September 2013.⁴⁴

C. Legal Representative of Victims’ Response

42. The LRV does not oppose the four-day extension sought by the Prosecution in the Second Request for filing its updated pre trial brief.⁴⁵

D. Discussion

43. The Pre-Trial Judge recalls that it is in the interest of justice for the Parties’ pre-trial briefs to be “current, relevant, and drafted in a manner that is useful to the Pre-Trial Judge in putting together a complete [Rule 95] file” and that “the particular procedural setting of this Tribunal accentuates the importance of having comprehensive and updated pre-trial briefs”.⁴⁶ Furthermore, the extension requested by the Prosecution is based on sound reasons, is modest, and is unopposed by the Defence and the LRV. By granting the extension, the Prosecution and Defence pre-trial briefs will still be filed within the same respective calendar weeks.

⁴¹ *Id.*, para. 17.

⁴² *Id.*, para. 4.

⁴³ Defence Response, para. 2.

⁴⁴ *Id.*, para. 3.

⁴⁵ LRV Response, p. 1.

⁴⁶ 7 August 2013 Order, para. 9.

44. As a result, the Pre-Trial Judge grants the Second Request. He furthermore considers it appropriate to grant the same extension of time to both the LRV and the Defence.

V. NON-DISSEMINATION OF MATERIALS AND CONFIDENTIALITY

45. With regard to the Prosecution's plea in the First Request for confirmation that the Non-dissemination Decision applies to the materials concerned in this matter, the Pre-Trial Judge recalls that, when seeking the relief accorded in the Non-dissemination Decision, the Prosecution's intention was to prevent the dissemination of the material filed in support of the indictment in the context of the *Ayyash et al.* case in order to protect the contents thereof.⁴⁷ Since the same logic applies within the context of the *Ayyash et al.* case as an ongoing matter, the Pre-Trial Judge confirms that the Non-dissemination Decision applies to the materials concerned hereby.

46. Save for the Defence Response, all filings in this matter are classified as confidential. This decision has however been prepared in order to avoid reference to any materials justifying that classification and is, accordingly, filed as public.

⁴⁷ Non-dissemination Decision, para. 1.

VI. DISPOSITION**FOR THESE REASONS,****THE PRE-TRIAL JUDGE,****PURSUANT TO** Rules 77(A), 89(B) and 91 of the Rules;**GRANTS** the Prosecution's First Request and Second Request;**ORDERS** the Prosecution to file its pre-trial brief by 16:00 on Friday 23 August 2013 at the latest;**INVITES** the Legal Representative of Victims to file updated witness and exhibit lists by 16:00 on Thursday 29 August 2013 at the latest; and**ORDERS** the Defence to file their pre-trial briefs by 16:00 on Friday 6 September 2013 at the latest;**CONFIRMS** that the Non-dissemination Decision applies to both the supporting material filed in the Prosecution's Request of 21 June 2013 and to the additional supporting material filed with the First Request.

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

Leidschendam, 16 August 2013.

Daniel Fransen
Pre-Trial Judge