



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-11-01/PT/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge

Registrar: Mr. Daryl Mundis

Date: 13 January 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

DECISION ON PROSECUTION'S MOTION TO ADMIT INTO EVIDENCE PHOTOGRAPHS, VIDEOS, MAPS, AND 3-D MODELS

Office of the Prosecutor:
Mr. Norman Farrell

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Mr. Eugene O'Sullivan
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Victims' Legal Representative:
Mr. Peter Haynes

Counsel for Mr. Mustafa Amine Badreddine:
Mr. Antoine Korkmaz
Mr. John Jones

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

Counsel for Mr. Assad Hassan Sabra:
Mr. David Young
Mr. Guénaél Mettraux



INTRODUCTION

1. The Prosecution requested the admission into evidence, under Rule 154 of the Rules of Procedure and Evidence, of approximately 36 documents and records, consisting of photographs, videos, maps, and three-dimensional models.¹ The Prosecution wishes to tender these documents into evidence ‘from the bar table’, without requiring a witness to produce or identify them. Counsel for Mr. Badreddine and Mr. Oneissi opposed the motion in part; counsel for Mr. Ayyash did not oppose the motion,² and counsel for Mr. Sabra filed no response.³

PRELIMINARY APPLICATION TO AMEND EXHIBIT LIST

2. The Prosecution seeks leave to amend its exhibit list by replacing six documents that were ‘inadvertently removed’ earlier in the proceedings. These documents were previously disclosed, and are included in the 36 documents and records.⁴ No counsel for the four Accused opposes this request.

3. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list, having regard to the *prima facie* relevance and probative value of the material in question, the existence of good cause, the stage of the proceedings, and the risk of undue delay.⁵ The Trial Chamber considers that restoring the six documents to the Prosecution’s exhibit list is in the interests of justice, especially given their former status in these proceedings and their prior disclosure. This will neither delay the proceedings nor prejudice the preparation of the Defence for trial.

APPLICABLE LAW ON ADMITTING EVIDENCE ‘FROM THE BAR TABLE’

4. Admitting evidence ‘from the bar table’ is a well-established practice before international courts and tribunals; admitting documents into evidence in this fashion allows parties to tender documents or other records into evidence without requiring a witness.

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Prosecution Rule 154 Motion for the Admission of Photos, Videos, Maps and Three-Dimensional Models, 13 December 2013.

² STL-11-01/PT/TC, Badreddine Defence Response to “Prosecution Rule 154 Motion for the Admission of Photos, Videos, Maps and Three-Dimensional Models”, 20 December 2013; Defence for Hussein Hassan Oneissi Response to “Prosecution Rule 154 Motion for the Admission of Photos, Videos, Maps and Three-Dimensional Models” of 13 December 2013, 20 December 2013; Ayyash Defence Response to “Prosecution Rule 154 Motion for the Admission of Photos, Videos, Maps and Three-Dimensional Models”, 20 December 2013.

³ The Prosecution subsequently replied, correcting errors in some of the additional material it had provided: STL-11-01/PT/TC, Prosecution Reply to the Defence Response to the Rule 154 Motion for the Admission of Photos, Videos, Maps and Three-Dimensional Models, 3 January 2014. *See also* Decision on Prosecution Motion to Extend the Time to File Replies and Exceed the Word Limit, 18 December 2013.

⁴ Motion, para. 14; Annex A; Annex B.

⁵ STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

5. The Special Tribunal's Rules of Procedure and Evidence do not mandate that documents must be tendered into evidence through a witness. Rule 154, 'Admission of Documents,' provides:

Subject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149 (C) and (D).

Rule 149 (C) provides that a 'Chamber may admit any relevant evidence which it deems to have probative value' and, under Rule 149 (D), a 'Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial'.

6. It is thus permissible to allow documents to be received into evidence 'from the bar table'. Material tendered in this manner—like any other evidentiary material—must meet the basic requirements for the admission of evidence in being relevant and probative; its probative value must not be outweighed by its prejudicial effect.⁶ The offering party must also be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case.⁷

DISCUSSION

7. The Prosecution seeks to admit into evidence 13 photographic compilations (comprising 1,542 images), 17 videos, two maps, and two three-dimensional models⁸ of the immediate area in Beirut in which the former Lebanese Prime Minister, Mr. Hariri, died on 14 February 2005.⁹ The Prosecution submits that the material is relevant and probative because it shows the effect of the explosion, the collection of evidence, and the activities of Mr. Hariri shortly before his death, and provides a useful overview of Beirut and the relevant local area. Admitting the material will streamline the presentation of evidence and facilitate the early stages of the trial.¹⁰

8. Counsel for Mr. Badreddine argue that Rule 149 (C) requires the Trial Chamber to be satisfied that evidence is 'actually relevant and does have probative value', in the sense that more is

⁶ STL-11-01/PT/TC, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13.

⁷ E.g. ICTY, *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-T, Decision on Prosecution's Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para. 10; *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, Decision on the Prosecution's First Bar Table Motion, 13 April 2010, para. 6; *Prosecutor v. Milan Milutinović*, IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 18.

⁸ The Prosecution submitted four photographs of the models and, on 7 January 2014, the Trial Chamber inspected the 3-D models. The Prosecution intends to present the models as artefacts. See Motion, Annex A, items 33-36 (referring to 'the model[s]' as probative).

⁹ Motion, Annex A, items 1-13 (photographs), 14-30 (videos), 31-32 (maps), 33-36 (models).

¹⁰ Motion, paras 10-12.

required than simply showing ‘*prima facie* relevance and probative value’.¹¹ Although counsel for Mr. Badreddine correctly states that showing ‘*prima facie* relevance and probative value’ is necessary to amend a witness or exhibit list,¹² they fail to address the international case-law that establishes that a party need not show ‘definite proof of reliability’ or probative value when seeking the admission of evidence.¹³ Sufficient indicia of reliability are all that is required. The probative value of a document, in this sense, is distinct from the question of the weight that the Trial Chamber may ultimately give it.¹⁴

9. The two 3-D models depict the immediate area before and after the explosion in Beirut. On one model vehicles can be moved to show their position. Using these models in court will allow witnesses to demonstrate where they were, what they saw, and to move vehicles around to indicate their position. These ‘demonstrative’ exhibits should assist the Trial Chamber in evaluating the evidence. Counsel for Mr. Badreddine and Mr. Oneissi, however, specifically object to admitting the 3-D models into evidence,¹⁵ challenging their accuracy and reliability, and expressing concern as to the involvement of Prosecution staff in their creation.¹⁶

10. The mere fact that a party created a document or record does not make it inadmissible or inherently unreliable. The Trial Chamber is satisfied that suitably qualified personnel, using a range of data from relevant sources, created the 3-D models.¹⁷ The Trial Chamber also well appreciates the advantages and limitations of demonstrative exhibits like these models and—at the relevant time—

¹¹ See Badreddine Response, paras 3-5, and fn. 4 (further asserting that probative value must be ‘demonstrate[d]’ to the extent that ‘doubts’ are eliminated).

¹² E.g. STL-11-01/PT/TC, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 6; STL-11-01/PT/PTJ, Decision on the Prosecution Submission Pursuant to Rule 91(G)(II) and (III), 18 September 2013, para. 11. However, some cases use the term ‘*prima facie*’ in describing the test to admit evidence: e.g. *Prosecutor v. Augustin Ngirabatware*, ICTR-99-54-T, Decision on Prosecution Motion for Admission of Documentary Evidence, 4 July 2012, paras 31-33, 35.

¹³ See ICTY, *Prosecutor v. Vujadin Popović*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22 (‘A piece of evidence may be so lacking in terms of the indicia of reliability that it is not probative and therefore inadmissible. This principle should not be interpreted to mean that definite proof of reliability must necessarily be shown for evidence to be admissible. *Prima facie* proof of reliability on the basis of sufficient indicia is enough at the admissibility stage. [...] Such a determination has to be made on a case-by-case basis.’); *Pauline Nyiramasuhuko v. The Prosecutor*, ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence, 4 October 2004, para. 7 (‘[A]t the stage of admissibility, only the beginning of proof that evidence is reliable, namely, that sufficient indicia of reliability have been established, is required for evidence to be admissible. [...] [A]dmission into evidence does not in any way constitute a binding determination as to the authenticity or trustworthiness of the documents sought to be admitted’).

¹⁴ See ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Prosecutor’s Bar Table Motions, 17 December 2010, para. 13. See also *Popović* Decision, para. 22; *Nyiramasuhuko* Decision, para. 7; *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision on the Admission into Evidence of Items Deferred in the Chamber’s “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute”, 27 June 2013, para. 9.

¹⁵ Badreddine Response, paras 4-5; Oneissi Response, para. 22. See Motion, Annex A, items 33-36.

¹⁶ Badreddine Response, para. 4.

¹⁷ See Reply, Annex (Corrected Version of Motion, Annex C), item 9.

will carefully assess their weight as evidence.¹⁸ The Trial Chamber will also exercise appropriate caution with regard to objects whose position is not fixed, such as cars and debris.¹⁹ The Trial Chamber is thus satisfied that the 3-D models have the necessary indicia of reliability to admit them into evidence.

11. Counsel for Mr. Oneissi also object to the admission of items numbered 4 to 6—three photographic compilations comprising 665 images showing the aftermath of the explosion and its effects, taken between 14 February 2005 and early 2006—and argue that they must be tendered under a different Rule.²⁰ Counsel, however, have failed to demonstrate that a witness is necessary to give these materials the requisite probative value to admit them into evidence. These objections more concern the weight that the Trial Chamber may ultimately give to the images in its deliberations rather than its assessment of their probative value for the purpose of determining admissibility. This submission is more appropriately made at the conclusion of the trial.

12. With regard to item 4—photographs collected by witness PRH-009 shortly after the explosion—counsel for Mr. Oneissi fail to establish that the Prosecution ‘should’ tender this material as part of any future Rule 155 application concerning PRH-009, rather than from the bar table now.²¹ PRH-009’s statement is but one indicator of the reliability of the photographs;²² the photographs have their own probative value without the statement. It is therefore unnecessary for the photographs to be tendered under Rule 155. Concerning items 5-6—photographs associated with a forensic report compiled by the United Nations International Independent Investigation Commission (UNIIC)—counsel for Mr. Oneissi likewise fail to establish that the images ‘can only be understood’ in the context of the report and the testimony of witness PRH-468.²³

13. The images in items 4 to 6 may be given greater weight if their context is further explained during the trial by oral testimony or other evidence.²⁴ The Trial Chamber, however, is satisfied that their content and context sufficiently establishes their relevance and the necessary indicia of reliability to admit them into evidence now.

¹⁸ See ICTY, *Prosecutor v. Vujadin Popović*, IT-05-88-AR73.3, Decision on Appeals against Decision on Impeachment of a Party’s Own Witness, 1 February 2008, para. 32; *Popović* Decision, para. 31; *Prosecutor v. Jadranko Prlić*, IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić’s Questioning into Evidence, 23 November 2007, para. 57. See also Badreddine Response, para. 2.

¹⁹ See Badreddine Response, para. 4.

²⁰ Oneissi Response, paras 20-21. See Motion, Annex A, items 4-6.

²¹ Oneissi Response, para. 20.

²² See Reply, Annex (Corrected Version of Motion, Annex C), item 3.

²³ Oneissi Response, para. 21.

²⁴ Without further context, images may be of limited assistance in showing ‘how evidence was collected’: see Motion, Annex A, items 5-6. *But see* Motion, para. 12 (indicating that the images are tendered primarily as ‘background and contextual evidence’).

14. The Trial Chamber is satisfied that the remaining items, unopposed by any of the counsel for the Accused, are relevant and probative and bear sufficient indicia of reliability for them to be admitted into evidence.²⁵

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS the motion;

GRANTS the Prosecution leave to amend its exhibit list by adding the six documents listed in Annex B of its motion; and

DECIDES that it will, at a suitable stage in the proceedings, admit into evidence the material marked as items 1-36 in Annex A of the motion.

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

Dated 13 January 2014
Leidschendam
The Netherlands

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



²⁵ Motion, Annex A, items 1-3, 7-32.