



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE TRIAL CHAMBER**

**Case No:** STL-11-01/T/TC

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

**Registrar:** Mr Daryl Mundis

**Date:** 31 January 2014

**Original language:** English

**Classification:** Public

**PROSECUTOR**

v.

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

**DECISION ON SECOND AND FIFTH MOTIONS BY COUNSEL FOR ASSAD  
HASSAN SABRA AND TWO ORDERS TO LEBANON TO COOPERATE  
WITH THE TRIBUNAL**

**Office of the Prosecutor:**

Mr Norman Farrell  
Mr Graeme Cameron  
Mr Alexander Milne

**Counsel for Mr Salim Jamil Ayyash:**

Mr Eugene O'Sullivan  
Mr Emile Aoun  
Mr Thomas Hannis

**Defence Office:**

Mr François Roux

**Counsel for Mr Mustafa Amine Badreddine:**

Mr Antoine Korkmaz  
Mr John Jones  
Mr Iain Edwards

**Victims' Legal Representatives:**

Mr Peter Haynes  
Mr Mohammad F. Mattar  
Ms Nada Abdelsater-Abusamra

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse  
Mr Yasser Hassan  
Mr Philippe Laroche

**The Government of the Lebanese Republic****Counsel for Mr Assad Hassan Sabra:**

Mr David Young  
Mr Guénaël Mettraux  
Mr Geoffrey Roberts



## BACKGROUND

1. The Trial Chamber has several motions by counsel for the Accused, Mr. Assad Hassan Sabra, seeking orders to Lebanon to ‘search, identify and provide material’ considered relevant to their trial preparations under Rule 20 of the Special Tribunal’s Rules of Procedure and Evidence in respect of 119 requests for assistance. This decision addresses the outstanding requests for assistance to Lebanon contained in two of the remaining motions.<sup>1</sup>

2. In November 2013, following a long history of communications between the Pre-Trial Judge and the Lebanese authorities, the Trial Chamber attempted to ascertain exactly what information Defence counsel were seeking. On 20 November 2013, the Trial Chamber ordered counsel for Mr. Sabra to clarify what material sought from Lebanon was outstanding.<sup>2</sup> Further filings did not clarify this,<sup>3</sup> so, on 29 November 2013, the Trial Chamber issued an order seeking further specificity.<sup>4</sup>

3. In a decision on 16 December 2013,<sup>5</sup> the Trial Chamber examined a new 246 page table provided by counsel for Mr. Sabra<sup>6</sup> and found that 75 requests for assistance *could* be included in an order to Lebanon to cooperate with the Special Tribunal. The Trial Chamber identified from the second and fifth motions filed by counsel for Mr. Sabra that the following requests for assistance could be the subject of orders to Lebanon;

- Requests for assistance 1 to 14, 16 to 20, 24 to 36, 38 to 54, 56 to 59, 65 to 66, 68 to 72, 82, 85 to 88 and 90 (second motion), and
- Requests for assistance from 107, 108, 109 and 110 (fifth motion).

4. The Trial Chamber also ordered the Prosecution to disclose to the Defence any material in its possession connected with these requests for assistance. Counsel for Mr. Sabra

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<sup>1</sup> STL-11-01/PT/PTJ, Second Motion Seeking the Cooperation of Lebanon – Telecommunication Information, made confidential by the Pre-Trial Judge’s Decision of 15 March 2013, 4 February 2013 (‘second motion’); Fifth Motion Seeking the Cooperation of Lebanon, 28 August 2013 (‘fifth motion’).

<sup>2</sup> STL-11-01/PT/TC, Order requesting further clarifications, 20 November 2013.

<sup>3</sup> STL-11-01/PT/TC, Further Clarification Regarding Sabra Defence Motion for Stay of Proceedings, 26 November 2013, with confidential and ex parte Annexes A and B; Prosecution Response to Sabra Defence Further Clarification Regarding Sabra Defence Motion for Stay of Proceedings and its Annex B, 28 November 2013.

<sup>4</sup> STL-11-01/PT/TC, Further Order to Counsel for Assad Hassan Sabra in Relation to Request for State Cooperation, 29 November 2013.

<sup>5</sup> STL-11-01/PT/TC, Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation, 16 December 2013. A corrigendum and corrected version were filed on 24 December 2013.

<sup>6</sup> STL-11-01/PT/TC, Reply to ‘Prosecution Response to Sabra Defence ‘Further Clarifications Regarding Sabra Defence Motion for Stay of Proceedings’’, 3 December 2013, Annex D (confidential and *ex parte*).

were asked to file any proposed orders in draft form. On 19 December 2013, the Prosecution responded by providing additional information relating to requests for assistance 38, 43-46, 51, 56, 57-59, 72, and 88.<sup>7</sup>

5. On 13 January 2014, counsel for Mr. Sabra filed proposed draft orders for cooperation with respect to the requests for assistance listed in their second and fifth motions (but now re-numbered as 1-44).<sup>8</sup> The Prosecution responded, pointing out that the standard for issuing an orders includes (i) an assessment of whether the documents sought are both relevant and required for the investigation, (ii) the need for specificity, and (iii) a requirement of not being ‘unduly onerous on Lebanon.’ Moreover, the Prosecution suggested that the Lebanese authorities should be heard before issuing any order.<sup>9</sup> The Trial Chamber considers, however, that the Government of Lebanon has had sufficient time and opportunity until now to make any submissions on these matters – although the Trial Chamber will of course receive and consider any further submissions received.

6. Comparing the two lists – that of the original 246 page table and the re-numbered requests for assistance – counsel for Mr. Sabra are seeking orders in respect of requests for assistance (as originally numbered in their filing of 3 December 2013): 1-14, 16-20, 24-27, 29-31, 33, 39-41, 47-50, 52-54, 68, 82, 84-87, 90, and 108-110.

7. It appears that counsel for Mr. Sabra is no longer requesting orders in respect of requests for assistance 28, 32, 34-36, 38, 43-46, 51, 56, 57-59, 65-66, 72, and 88. And, as per the decision of 16 December 2013, request 84 is outside of the 75 requests for assistance that could be included in an order to Lebanon; it will not be considered further in this decision.

8. The principles and law relating to orders under Rule 20 are in the Trial Chamber’s decisions of 16 December 2013,<sup>10</sup> and 13 January 2014.<sup>11</sup> The Trial Chamber has carefully examined the requests for assistance and orders to Lebanon in the light of these legal principles and is satisfied that orders may be made now in relation to requests for assistance 41, 52, 53, 68, 84, 85, 86 and 90 (second motion, seeking information related to

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<sup>7</sup> STL-11-01/PT/TC, Prosecution Notice Pursuant to the Trial Chamber’s 16 December 2013 ‘Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation’, 19 December 2013.

<sup>8</sup> STL-11-01/PT/TC, Sabra Defence Proposed Draft Orders for Cooperation, 13 January 2014.

<sup>9</sup> STL-11-01/T/TC Prosecution Observations on Sabra Defence Proposed Draft orders for Cooperation, 16 January 2014.

<sup>10</sup> STL-11-01/PT/TC, Order Relating to Five Defence Motions for Orders to Lebanon on State Cooperation, 16 December 2013, paras 6-17.

<sup>11</sup> STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014, paras 10-15.

telecommunications) and 108, 109 and 110 (fifth motion, seeking information related to a specific telephone number). The Trial Chamber is satisfied that;

- (i) The applications were made under Rule 16 (C), through the Head of the Defence Office, in circumstances where Defence counsel considered it necessary to undertake investigative measures amounting to 'defence investigations' within the definition in Article 1 of the Memorandum of Understanding between the Government of the Lebanese Republic and the Defence Office on the modalities of their cooperation;
- (ii) The Head of the Defence Office, in sending the requests for assistance to the Lebanese Government, implicitly determined that the requests for assistance were not frivolous or vexatious;
- (iii) The requests for assistance relate to documents and information which appear to be relevant for Defence investigations;
- (iv) The requests for assistance appear to be required for Defence investigations;
- (v) The Lebanese Government has thus far not complied with the requests for assistance, despite the communications sent to the Lebanese authorities by the Head of the Defence Office and the Pre-Trial Judge;
- (vi) The information sought is identified with sufficient specificity;
- (vii) The Defence, through the Defence Office, and by making the relevant inquiries of the Prosecution to ascertain whether the Prosecution has the information sought, has made reasonable efforts to explore alternative methods of obtaining the information;
- (viii) Reasonable efforts have been made to persuade Lebanon to voluntarily provide the information sought, as is shown by the following requests for assistance numbered and communicated to the Lebanese authorities:
  - S06/12-087, 13 August 2012 followed by S09/12-099, 18 September 2012, and S09/12-101, 27 September 2012 (second motion),
  - S11/12-129, 16 November 2012, followed by S12/12-122, 6 December 2012 (second motion), and
  - S04/13-199, 10 April 2013 (fifth motion);
- (ix) The requests appear not to be unduly onerous on the Government of Lebanon; and
- (x) The requested information is or should be held by the relevant Lebanese authorities and does not appear to require substantial work to obtain and provide to the Defence.

9. The Trial Chamber is therefore satisfied that it should immediately issue eleven of the orders requested under Rule 20 (A) to the Government of the Lebanese Republic.

10. To preserve the confidentiality of defence investigations Defence counsel have requested that any order for cooperation be confidential and *ex parte* the legal representative of the victims.<sup>12</sup> On this basis the Trial Chamber will make the orders; the orders must, however, be made public at an appropriate later stage in the proceedings.

### **Language of the orders to the Government of Lebanon**

11. Counsel for Mr. Sabra have suggested that ‘the Lebanese authorities requested that all Defence requests for cooperation be submitted in Arabic, whilst they can evidently understand them in English’ is part of the Lebanese authorities’ attempt to ‘evad[e] their obligations.’<sup>13</sup> The Trial Chamber rejects this counter-productive suggestion and reminds counsel for Mr. Sabra that the Lebanese Constitution specifies that Arabic is Lebanon’s official language. The orders will be transmitted to Lebanon by the Registrar only after their translation into Arabic.

### **The remaining requests for assistance**

12. Counsel for Mr. Sabra have also requested orders under Rule 20 (A) in respect of 33 other requests for assistance, and on 13 January 2014, they filed proposed draft orders asking the Trial Chamber to issue further orders directed to Lebanon. These requests for assistance relate to complex information, data, and analyses that are potentially in possession of Lebanese telecommunication companies. The Trial Chamber, however, is not yet convinced that making an order under Rule 20 (A), directed to the Government of Lebanon, would necessarily be the most effective way of obtaining the information sought and thus ensuring the right of Mr. Sabra to have his defence case properly investigated and prepared for trial.

13. Despite having recently received some additional clarity from counsel for Mr. Sabra, these requests for assistance seek very technical information, some of which would appear to require the expert analysis of raw telecommunications data. The Trial Chamber is not yet satisfied – contrary to what Defence counsel argue – that this information ‘was either produced by the Lebanese authorities themselves or should be easily recoverable from the specific companies involved’.<sup>14</sup> Some of the requests for assistance – and the orders sought –

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<sup>12</sup> See, most recently, STL-11-01/T/TC, Further Motion for Order for Cooperation Addressed to the Lebanese Authorities, 30 January 2014, para. 28.

<sup>13</sup> Second motion, para. 46.

<sup>14</sup> Second motion, para. 38.

is for analytical information; hence it appears that the telecommunications companies, rather than the Government of Lebanon, have the requisite analytical expertise.

14. It appears therefore that ordering the Lebanese Government to provide technical analysis of information, data and systems that it may not itself possess may not actually achieve the desired result, namely, that of the Defence receiving the identified material, including the technical analysis. Conversely, making such an order may actually achieve the opposite result and create confusion in the understanding, editing, and delivery of this type of technical information.

15. So, with a view to obtaining this information as expeditiously as possible, and in a useful format, the Trial Chamber would welcome further submissions by counsel for Mr. Sabra and the Head of the Defence Office as to the most effective way to request and obtain this material. One possibility could be to have Defence experts work with the relevant Lebanese authorities or telecommunication companies. The Trial Chamber is open to facilitating this.

16. In this respect, the Trial Chamber invites the Head of the Defence Office to update the Trial Chamber in relation to any steps undertaken to address the apparent shortcomings of the current Memorandum of Understanding between the Lebanese Government and the Defence Office.<sup>15</sup>

### **DISPOSITION**

**FOR THESE REASONS**, and pursuant to Article 15 (1) of the Annex to United Nations Security Council Resolution 1757 (2007), and Rule 20 (A) of the Special Tribunal's Rules of Procedure and Evidence, the Trial Chamber:

**ORDERS** (a) the Government of the Lebanese Republic to cooperate with the Special Tribunal for Lebanon, within the deadline and in the manner specified in the annexed orders and their schedules, by providing the information sought to counsel for Mr. Assad Hassan Sabra, through the Head of the Defence Office, and (b) that the orders remain confidential and *ex parte* the legal representative for victims until otherwise ordered;

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<sup>15</sup> See STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014, paras 19-22.

**INSTRUCTS** the Registrar to immediately notify the Government of the Lebanese Republic of this decision;

**DEFERS** a decision on any orders in respect of the remaining requests for assistance; and

**INVITES** counsel for Assad Hassan Sabra and the Head of the Defence Office to make submissions on the most effective way to ensure cooperation with the Lebanese authorities and other entities.

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

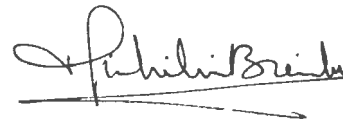
Leidschendam,  
The Netherlands  
31 January 2014



\_\_\_\_\_  
Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

