



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: 28 February 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

SECOND DECISION ON SABRA MOTION TO LIFT REDACTIONS AND DISCLOSE UNITED NATIONS FACT-FINDING MISSION DOCUMENTS

Office of the Prosecutor:

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& Mr. Alexander Milne

Victims' Legal Representatives:

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

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Mr. Eugene O'Sullivan, Mr. Emile Aoun
& Mr. Thomas Hannis

Counsel for Mr. Mustafa Amine Badreddine:

Mr. Antoine Korkmaz, Mr. John Jones
& Mr. Iain Edwards

Counsel for Mr. Hassan Habib Merhi:

Mr. Mohamed Aouini, Ms. Dorothee Le Fraper
du Hellen & Mr. Jad Khalil

Counsel for Mr. Hussein Hassan Oneissi:

Mr. Vincent Courcelle-Labrousse, Mr. Yasser
Hassan & Mr. Philippe Larochelle

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Mettraux
& Mr. Geoffrey Roberts



INTRODUCTION

1. On 9 December 2013, the Trial Chamber issued its ‘Decision on Sabra Motion to Lift Redactions and Disclosure of United Nations Fact-Finding Mission Documents’.¹ The primary issue for resolution was whether the Trial Chamber should review material ordinarily not subject to disclosure because it falls under Rule 111 of the Special Tribunal’s Rules of Procedure and Evidence. Rule 111 of the Rules, titled ‘Disclosure of Reports, Memoranda or Other Internal Documents’ states:

Reports, memoranda, or other internal documents prepared by a Party, its assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under the Rules. For purposes of the Prosecutor, this includes reports, memoranda, or other internal documents prepared by the UNIIC or its assistants or representatives in connection with its investigative work.

2. In considering the request of counsel for Mr. Assad Hassan Sabra,² the Trial Chamber was guided by the decision of the Special Tribunal’s Appeals Chamber in *El Sayed*: while the Prosecutor bears the primary responsibility for properly categorising documents, ensuring compliance with the Rules – including categorising and disclosing documents – is a judicial function.³ The Trial Chamber concluded that it *could* review, *ex parte* and in camera, the content of documents categorised as Rule 111 internal work product.⁴

3. The Trial Chamber ordered the Prosecution to provide three (un-redacted) documents to the Trial Chamber so that it could determine whether material purportedly not subject to disclosure had been properly categorised as internal work product under Rule 111. The Prosecution provided the three documents to the Trial Chamber – in confidential and *ex-parte* Annexes – on 12 December 2013.⁵ In reviewing whether the material is appropriately categorised as internal work product, the Trial Chamber has considered ‘[t]he content of the documents in question, their function and purpose, as well as their source of author’.⁶

¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/TC, Decision on Sabra Motion to Lift Redactions and Disclosure of United Nations Fact-Finding Mission Documents, 9 December 2013.

² STL-11-01/PT/TC, Request to Lift Redactions and for Disclosure of Fact-Finding Mission Materials, Confidential, 11 October 2013. A public redacted version was filed on 12 December 2013.

³ *In the Matter of El Sayed*, STL-CH/AC/2011/01, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge’s Decision of 12 May 2011, 19 July 2011, paras 71-72.

⁴ Trial Chamber decision of 9 December 2013, para. 16.

⁵ STL-11-01/PT/TC, Prosecution Notice Pursuant to the Trial Chamber’s Decision of 9 December 2013, 12 December 2013.

⁶ *El Sayed* decision, paras 71-72.

4. This decision determines whether the Prosecution properly categorised the non-disclosed material as internal work product.

DISCUSSION

First Document – a witness statement referring to a meeting between Prosecution and Lebanese officials

5. The first document provided in un-redacted format is a ‘witness statement’ in memorandum form which reflects the conclusion of a meeting between Prosecution and Lebanese officials. The Trial Chamber is satisfied that the redactions on pages 1-3 and 9-10 of the document are properly categorised as internal work product under Rule 111. Additionally, the function, purpose, and author of this document reasonably lead to the conclusion that it was intended – at least originally – to be internal work product. Accordingly, the disclosure to the Defence of those parts of the document that are not internal work product evidences a good faith effort on the part of the Prosecution to fulfil its obligation, despite the document generally being categorised as Rule 111 material. Moreover, redactions on pages 1 and 6-8 relate to material which is not subject to disclosure under the Rules.

Second Document – a witness statement describing the compilation of photo-boards

6. The second document provided in un-redacted format is a witness statement which describes the compilation of photo-boards by a Prosecution staff member. The Trial Chamber has carefully reviewed the material redacted in this witness statement, and is satisfied that redactions on pages 2-8 are properly categorised as Rule 111 internal work product. They include three internal Prosecution e-mails that are irrelevant to the statement and should not have been annexed to it. However, this second document is distinguishable from the first as the function, purpose, and author clearly indicate that the second document was prepared as a witness statement intended for disclosure to the Defence. Accordingly, and despite the proper categorisation of Rule 111 material, the Trial Chamber reiterates its guidance that work product should generally not appear in documents which are subject to disclosure, especially witness statements.⁷ The remaining redactions on pages 10-11 were authorised by the Trial Chamber under Rule 116 (i.e., to protect the privacy and safety of third parties) in its decision of 19 November 2013.⁸

⁷ Trial Chamber decision of 9 December 2013, para. 26.

⁸ STL-11-01/PT/TC, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013.

Third Document - Non-Disclosed United Nations Fact-Finding Mission Document

7. The third document – undisclosed material that the Prosecution received from the United Nations Secretary-General’s Fact-Finding Mission to Lebanon⁹ – has been carefully reviewed by the Trial Chamber. The function, purpose, and author of the document are not entirely clear because the document is an out of context fragment of something else that is obviously internal UN work product, but nonetheless the Trial Chamber considers that it has been properly categorised as internal work product under Rule 111.

CONCLUSION

8. The Trial Chamber finds that the Prosecution has properly categorised the undisclosed content of the three documents and dismisses the motion.

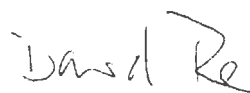
DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DISMISSES the motion.

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

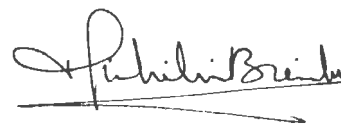
Leidschendam,
The Netherlands
28 February 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy



⁹ See, S/2005/203, Letter dated 24 March 2005 from the Secretary-General to the President of the Security Council, 25 March 2005, which includes the ‘Report of the Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri’. Its report preceded the UN International Independent Investigation Commission, established in April 2005.