



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:** 4 April 2014

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION ON PROSECUTION MOTION ON A CONSOLIDATED  
INDICTMENT AND AMENDING WITNESS AND EXHIBIT LISTS**

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& Mr. Geoffrey Roberts



## INTRODUCTION AND PROCEDURAL HISTORY

1. On 7 March 2014, the Prosecution filed a motion in the case of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra*. The motion sought the Trial Chamber's leave to (1) file a consolidated indictment, (2) amend the indictment, (3) amend its consolidated witness list by adding a witness, and (4) amend its consolidated exhibit list, by removing 25 exhibits, and adding 76 exhibits.<sup>1</sup> Counsel for the five Accused did not respond.
2. The filing of this motion followed a hearing on 11-12 February 2014, in which the Trial Chamber and the Parties discussed the Prosecution filing a consolidated indictment, witness and exhibit lists. The Trial Chamber ordered their filing by 7 March 2014.<sup>2</sup>
3. On 28 June 2011, the Special Tribunal's Pre-Trial Judge confirmed an amended indictment in the case of *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra*.<sup>3</sup> The Trial Chamber ordered a trial *in absentia* against these four Accused on 1 February 2012.<sup>4</sup> On 31 July 2013, the Pre-Trial Judge confirmed an amended indictment, signed 21 June 2013, in that case.<sup>5</sup>
4. Following that, on 24 June 2013, the Prosecution filed an indictment, signed 5 June 2013, in the case of *Prosecutor v. Hassan Habib Merhi*.<sup>6</sup> The Pre-Trial Judge confirmed that indictment on 31 July 2013,<sup>7</sup> and made it public on 10 October 2013.<sup>8</sup> On 20 December 2013, after being seised of the issue on 25 November 2013, the Trial Chamber decided that the trial against Mr. Merhi should proceed *in absentia*.<sup>9</sup> On 11 February 2014, the Trial Chamber joined the *Merhi* case to the *Ayyash* case,<sup>10</sup> with reasons provided in a written decision on 25 February 2014.<sup>11</sup>

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<sup>1</sup> STL-11-01/T/TC, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, 7 March 2014.

<sup>2</sup> STL-11-01, transcript of 12 February 2014, pp. 25-27, 47-49, 120-121.

<sup>3</sup> 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, 28 June 2011; STL-11-01/I/PTJ, Public Redacted Version, Indictment, 10 June 2011. The initial *Ayyash* indictment and supporting material were filed with the Pre-Trial Judge on 17 January 2011.

<sup>4</sup> STL-11-01/I/TC, Decision to Hold Trial *in Absentia*, 1 February 2012.

<sup>5</sup> Decision relating to the Prosecution request of 21 June 2013 for leave to amend the Indictment of 6 February 2013, 31 July 2013.

<sup>6</sup> *Prosecutor v. Hassan Habib Merhi*, STL-13-04/I/PTJ, Prosecution's Submission of an Indictment for Confirmation and Order to Keep this Filing and its Annexes Confidential and *Ex Parte*; and Motion for an Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure (confidential and *ex parte*), 5 June 2013.

<sup>7</sup> Decision Relating to the Examination of the Merhi Indictment, paras 10-11.

<sup>8</sup> Order on Partially Lifting the Confidentiality of the Indictment against Mr. Hassan Habib Merhi, 10 October 2013.

<sup>9</sup> STL-13-04/I/TC, Decision to Hold Trial *In Absentia*, 20 December 2013.

<sup>10</sup> STL-11-01/T/TC and STL-13-04/PT/TC, Joint Hearing, transcript of 11 February 2014, pp. 91-96.

## THE INDICTMENT

### *Consolidation of the two indictments into one consolidated indictment*

5. The Pre-Trial Judge confirmed the amended indictments in the *Ayyash* case and the indictment in the *Merhi* case.<sup>12</sup> The Prosecutor's motion to file a single indictment consolidating the two existing indictments logically follows the joinder of the cases. Looking to the practice of other international courts and tribunals, at the International Criminal Tribunal for the Former Yugoslavia, for example, after the joinder of separately indicted accused persons in one case the practice has been to allow the Prosecution to file a consolidated indictment against all accused.<sup>13</sup> This is an administratively convenient course that cannot prejudice an Accused. Moreover, none of the counsel for the five Accused have contested the Prosecution's motion to file a consolidated indictment. For these reasons, the consolidated indictment dated 7 March 2014 will now be the operative indictment in the joined case of STL-11-01/T, *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra*.

### *Amending the consolidated indictment*

6. In addition to consolidation, the Prosecution seeks to further amend what will be the consolidated indictment under Rule 71 (A) (iii) of the Rules of Procedure and Evidence. That Rule permits the Prosecutor to amend an indictment with the leave of the Trial Chamber, after the Trial Chamber has heard the Parties. Counsel for the five Accused have had the opportunity to be heard but did not respond to the Prosecution motion. Rule 71 (B) provides that leave to amend an indictment pursuant to this Rule shall not be granted unless the Trial Chamber is satisfied that there is *prima facie* evidence to support the proposed amendment. Further, leave may only be granted if the amendment would not result in improper prejudice to the accused.

7. The Prosecution submits that the amendments do not contain any new charges or counts.<sup>14</sup> The amendments fall into three categories, the first of which is responses to clarifications sought by

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<sup>11</sup> STL-11-01/T/TC, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014.

<sup>12</sup> 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, 28 June 2011; STL-11-01/I/PTJ, Public Redacted Version, Indictment, 10 June 2011; STL-13/04/I/PJ, Decision Relating to the Examination of the Merhi Indictment, paras 10-11.

<sup>13</sup> *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Gvero, Pandurević, and Trbić*, IT-05-88-PT, Order on the Consolidated Amended Indictment, 31 October 2005; *Prosecutor v. Ademi, Norac*, IT-01-46-PT, IT-04-76-I, Decision on Motion for Joinder of Accused, 30 July 2004; *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarović, Dorđević and Lukić*, IT-99-38-PT, IT-30-70-PT, Decision on Prosecution Motion for Joinder, 8 July 2005.

<sup>14</sup> Prosecution motion, para. 10.

counsel for Mr. Merhi in their motion alleging defects in the indictment against Mr. Merhi.<sup>15</sup> These proposed amendments include:

- amending paragraphs 3 (c) and 3 (d), to clarify that it is alleged that Mr. Merhi coordinated all the activities of Mr. Oneissi and Mr. Sabra; and
- adding explanatory sentences at paragraph 19 (a), describing the allegation regarding the ‘Green Network’ of mobile telephones, and paragraph 19 (c) clarifying the allegation that Mr. Ayyash and Mr. Merhi were in contact in relation to preparations for the attack which is the subject of the proceedings.<sup>16</sup>

8. The second category is removing material described as ‘extraneous and unnecessary evidence’,<sup>17</sup> and removing inaccuracies. Examples are:

- descriptive information about Mr. Badreddine and Mr. Ayyash (paragraphs 2 (a) and 2 (b));
- references to two other names associated with Mr. Badreddine’s identity;
- evidence concerning the Hajj passport number of Mr. Ayyash (paragraph 2 (b));<sup>18</sup> and
- information relating to the death of a victim has been removed as it does not accurately reflect the evidence in relation to his death (paragraph 60 (m) (13)).<sup>19</sup>

9. The third category is described as amendments ‘intended to provide a measure of precision and clarity’,<sup>20</sup> including:

- an explanation of the table listing the mobile telephones allegedly used by the five Accused and unidentified others (paragraph 18);
- an explanation of the diagram of interconnected telephone groups (paragraph 19);
- amendment of the diagram titled ‘Interconnected Phone Groups’; and
- a more precise description of the quantity of explosives allegedly used in the attack (paragraphs 42, 56, 58 (e) ii, 60 (h), 61 (g)).<sup>21</sup>

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<sup>15</sup> Prosecution motion, para. 12.

<sup>16</sup> Prosecution motion, paras 12-14.

<sup>17</sup> Prosecution motion, para. 15.

<sup>18</sup> Prosecution motion, para. 15.

<sup>19</sup> Prosecution motion, para. 16.

<sup>20</sup> Prosecution motion, paras 13 and 16.

10. Notwithstanding that these proposed amendments are largely administrative or for clarification, the Trial Chamber is formally satisfied, as it must be under Rule 71 (B), ‘that there is *prima facie* evidence to support the proposed amendment(s)’. The Trial Chamber is also satisfied that allowing the amendments would not result in improper prejudice to the five Accused. Indeed, some of the amendments sought are in direct response to claims of defects made by counsel for Mr. Merhi. The Trial Chamber will accordingly allow the Prosecutor to incorporate these amendments into the consolidated indictment.

### **CONSOLIDATED WITNESS AND EXHIBIT LISTS**

#### *The witness list*

11. The Prosecution has filed a consolidated witness list for which it seeks to add one witness, PRH 678.<sup>22</sup> The Prosecution submits that the witness’ proposed additional evidence is relevant and probative, and that it has been disclosed to the Defence. The Prosecution states that Witness 678’s statement was inadvertently removed from the previous exhibit list and therefore omitted from the witness list. The witness’ anticipated evidence relates to the attribution of a mobile telephone number to a person who was allegedly in contact with Mr. Ayyash.

#### *The exhibit list*

12. The Prosecution also seeks to remove 25 exhibits, and add 76 other exhibits, to the consolidated exhibit list it has filed,<sup>23</sup> submitting that the proposed additional evidence is relevant and probative, and that it has been disclosed to the Defence.

13. The proposed additional evidence includes an expert report, dated 21 February 2014, related to the mobile telephones attributed to Mr. Merhi by Witness 230; 47 exhibits related to the attribution of mobile telephones to Mr. Merhi; a chronology report, dated 20 February 2014, by Witness 147; 13 exhibits related to that chronology; three exhibits relating to the purchase of the Mitsubishi Canter van and the false claim of responsibility; five witness statements under Rule 155 and six witness statements providing chain of custody evidence.<sup>24</sup> The Prosecution submits that the

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<sup>21</sup> Prosecution motion, para. 16.

<sup>22</sup> Prosecution motion, para. 21. Prosecution sent an e-mail to the Trial Chamber’s Legal Officer on 17 March 2014 to inform that there was a typographical error in paragraph 21, namely that the witness’s pseudonym should read PRH 678 and not PRH 687, as written in paragraph 21.

<sup>23</sup> Prosecution motion, paras 23-35.

<sup>24</sup> Prosecution motion, paras 20-35.

additional evidence generally results from the consolidation of the two indictments and the updating of the telephone attribution report related to Mr. Merhi.

### *Discussion*

14. The Prosecution submits that adding these witnesses and exhibits to the Rule 91 lists would serve the interests of justice.<sup>25</sup> Counsel for the five Accused did not respond to the application.

15. The Trial Chamber, in considering whether to allow the Prosecution to amend its witness and exhibit lists must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. General factors for consideration include: (1) whether the proposed evidence is *prima facie* relevant and probative; (2) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (3) the stage of the proceedings; and, (4) whether granting the amendment would result in undue delay.<sup>26</sup>

16. The Trial Chamber, having reviewed the witness statement and the proposed evidence, is satisfied that the proposed evidence is *prima facie* relevant and probative. The amendments sought by the Prosecution result from consolidating the witness and exhibit lists in the *Ayyash* and *Merhi* cases, following joinder. The Trial Chamber is satisfied that the Prosecution had good cause for not seeking the amendments at an earlier stage, and particularly that some of new material was received or compiled in February 2014 after the hearing of the evidence in the case was adjourned.

17. On 24 January 2014, the Trial Chamber requested the Prosecution to notify Defence counsel of any new or updated expert evidence in advance of the application to amend its consolidated witness and exhibit lists.<sup>27</sup> This occurred.<sup>28</sup> The proposed evidence relates to the second and third sections of the Prosecution case. Adding it now will allow the Defence sufficient time to prepare. Further, the motion also decreases the burden on the Defence to an extent by removing 25 exhibits from the list. The request is unopposed by any Defence counsel. The Trial Chamber, noting all of this, and the early stage of the adjourned trial, does not consider that the requested amendments are burdensome or that they will cause any undue delay.

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<sup>25</sup> Prosecution motion, paras 20, 28, 31.

<sup>26</sup> STL-11-01/PT/TC, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; 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.

<sup>27</sup> STL-11-01/T/TC, Decision authorizing the Prosecution to amend its witness and exhibit lists, 24 January 2014, para. 14, Disposition.

<sup>28</sup> Prosecution motion, para. 25.

18. The Prosecution estimates that the evidence of proposed Witness 678 will take thirty minutes of court time. Adding the proposed evidence to the Prosecution's consolidated exhibit and witness lists will thus neither prejudice the preparation of the Defence for trial nor delay the proceedings.

19. The Trial Chamber, having balanced the right of the Prosecution to present evidence to support its case with the rights of counsel for the five Accused to adequately prepare for trial, is satisfied that it is in the interests of justice to allow the amendment of the consolidated exhibit and witness lists. Moreover, on 12 February 2014, the Trial Chamber ordered an adjournment of the hearing of evidence which allows counsel for the five Accused additional time to deal with the matter. Considering the stage of preparation detailed in their submission of 17 February 2014,<sup>29</sup> updating the exhibit and witness lists in this manner causes no procedural prejudice to counsel for Mr. Merhi.

### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**GRANTS** the Prosecution leave to incorporate the amendments in Annex A of the motion of 7 March 2014 into a consolidated indictment;

**DECLARES** the consolidated indictment dated 7 March 2014 to be the operative indictment in the proceedings;

**GRANTS** the Prosecution leave to amend its witness list by adding the witness listed in Annex B; and

**GRANTS** the Prosecution leave to amend its exhibit list by removing the 25 exhibits listed in Annex D, and adding the 76 exhibits listed in Annex E.

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<sup>29</sup> STL-11-01/PT/TC, Observations additionnelles concernant le temps nécessaire à la préparation de la défense des intérêts de M. Merhi, 17 February 2014, in particular para. 26.

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

Leidschendam,  
The Netherlands  
4 April 2014

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

