



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:** 11 July 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 WITNESS PRH 348, MR. GERHARD GEYER,  
AND EXPERT WITNESS PRH 387, MR. BART HOOGEBOOM**

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**Office of the Prosecutor:**

Mr. Norman Farrell, Mr. Graeme Cameron  
& Mr. Alexander Milne

**Victims' Legal Representatives:**

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

**Counsel for Mr. Salim Jamil Ayyash:**

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 Mettetal  
& Mr. Geoffrey Roberts



## **INTRODUCTION**

1. This decision rules on the qualifications as experts of two witnesses the Prosecution intends to call to testify in July 2014, Mr. Gerhard Geyer (witness PRH 348) and Mr. Bart Hoozeboom (witness PRH 387).<sup>1</sup> It also rules on the admissibility of their reports and witness statements.

2. The brief procedural background is that on 4 March 2014, the Prosecution filed its updated notice of expert witnesses and their statements.<sup>2</sup> Counsel for the five Accused, Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hassan Habib Merhi, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra submitted their notices under Rule 161 (B) of the Special Tribunal's Rules of Procedure and Evidence.<sup>3</sup> The Prosecution thereafter requested the Trial Chamber to declare 17 witnesses as expert witnesses and to admit five reports of expert witnesses into evidence,<sup>4</sup> and Defence counsel responded to the Prosecution's motion.<sup>5</sup>

## **APPLICABLE LAW**

3. The principles governing the qualifications of experts and the admission into evidence of their reports or statements under Rule 161 were identified by the Trial Chamber in a decision on 7 July 2014.<sup>6</sup> These are applicable to this decision.

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<sup>1</sup> STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, STL-11-01/T/TC, Prosecution Witness Schedule for the Weeks Commencing 7 & 14 July 2014, 4 July 2014.

<sup>2</sup> STL-11-01/T/TC, Updated Prosecution Notice of Expert Witnesses and their Statements, 4 March 2014.

<sup>3</sup> STL-11-01/T/TC, Notice by the Ayyash Defence Pursuant to Rule 161(B) in Response to the Prosecution filing of 4 March 2014, with Confidential Annex A, 4 April 2014 ('Ayyash Rule 161 (B) Notice'); Badreddine Defence Response to "Updated Prosecution Notice of Expert Witnesses and their Statements" dated 4 March 2014, 4 April 2014 ('Badreddine Rule 161 (B) Notice'); The Defence for Hussein Hassan Oneissi Rule 161(B) Updated Notice of Expert Witnesses and their Statements, 4 April 2014 ('Oneissi Rule 161 (B) Notice'); Updated Sabra Defence Notice Pursuant to Rule 161(B), 4 April 2014 ('Sabra Rule 161 (B) Notice'); Merhi Defence Notice Relating to Expert Witnesses PRH287, PRH386, PRH462, PRH406 and PRH135 Pursuant to Rule 161(B) of the Rules, 24 April 2014 ('Merhi Rule 161 (B) Notice').

<sup>4</sup> STL-11-01/T/TC, Prosecution Motion regarding Upcoming Expert Witnesses, 26 May 2014.

<sup>5</sup> STL-11-01/T/TC, Response by the Ayyash Defence to the "Prosecution motion regarding upcoming expert witnesses" dated 26 May 2014, 10 June 2014 ('Ayyash response'); Corrected Version of Badreddine Defence Response to the "Prosecution motion regarding upcoming expert witnesses" of 26 May 2014, 12 June 2014 ('Badreddine response'); Réponse de la défense de Merhi à la "Prosecution motion regarding upcoming expert witnesses", 10 June 2014 ('Merhi response'); The Defence for Hussein Hassan Oneissi Response to the Prosecution motion regarding upcoming expert witnesses, 10 June 2014 ('Oneissi response'). Counsel for Mr. Sabra did not respond.

<sup>6</sup> STL-11-01/T/TC, Decision on Expert Witness PRH120, Professor Fouad Hussein Ayoub, and Expert Witness PRH508, Dr. Issam Mansour, 7 July 2014, paras 3-6.

## DISCUSSION

### **Mr. Gerhard Geyer**

4. The Prosecution intends to call Mr. Gerhard Geyer as a *viva voce* expert witness (that is, to testify live). He is the co-author, with Mr. Johannes Hoffman,<sup>7</sup> of a report entitled ‘Technical report and its annex to identify Mitsubishi parts from the crime scene in Beirut’. The report purports to identify Mitsubishi parts from items recovered from the crime scene near the St Georges Hotel in Beirut, and lists those allegedly coming from a Mitsubishi Canter van.<sup>8</sup> Mr. Geyer also provided a statement to the Office of the Prosecutor, giving further information on the report.<sup>9</sup>

#### *Mr. Geyer’s qualifications*

5. Mr. Geyer’s *curriculum vitae* states that he is a qualified mechanic specialising in agricultural engines.<sup>10</sup> Counsel for Mr. Ayyash challenge his qualifications,<sup>11</sup> stating that the *curriculum vitae* does not refer to ‘any specialized training, education, or experience’ to ‘support the witness providing “expert opinions”’.<sup>12</sup> Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Oneissi wish to cross-examine the witness.<sup>13</sup>

6. According to Mr. Hoffman’s *curriculum vitae*, he was a Dutch police officer specialising in crime scene investigation.<sup>14</sup> Mr. Hoffman is deceased, has never appeared on the Prosecution’s witness list, and Defence counsel have taken no position on his qualifications. While Mr. Geyer’s and Mr. Hoffman’s *curricula vitae* provide only limited information, the Trial Chamber is satisfied that both have acquired specialised knowledge that may assist the Trial Chamber in understanding the Prosecution’s evidence and that Mr. Geyer can provide relevant and probative evidence. The Trial Chamber, however, will defer making a formal decision as to whether Mr. Geyer is an expert within the meaning of Rule 161 until after hearing further evidence on this during his testimony.

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<sup>7</sup> Jo Hoffman, PRH162.

<sup>8</sup> R91-606437, report ‘Technical report and its annex to identify Mitsubishi parts from the crime scene in Beirut’, ERN 60220294-60220299.

<sup>9</sup> Witness Statement of Mr. Geyer, R91-607722, dated 22 October 2013, ERN 6028924-60289430.

<sup>10</sup> *Curriculum Vitae* of GEYER, Gerhard, ERN 60275378. Mr. Geyer qualified as a mechanic for agricultural engines in 1977. He worked as an engineer in Mitsubishi Motors from 1990 to 1999, and is presently employed as a Manager, Service Engineering and Customer Service at Mitsubishi Motors Germany.

<sup>11</sup> Ayyash Rule 161(B) Notice, Confidential Annex, p. 5; Ayyash response, paras 9-10.

<sup>12</sup> Ayyash response, para. 9.

<sup>13</sup> Ayyash Rule 161 (B) Notice, Confidential Annex A, p. 5; Badreddine Rule 161 (B) Notice, Confidential Annex A, p. 7; Oneissi Rule 161 (B) Notice, Confidential Annex A, p. 5.

<sup>14</sup> *Curriculum vitae* of HOFFMAN, Johannes Leonardus Franciscus Maria, ERN D0316910-D0316927. He received numerous certificates relating to specialised Dutch police training such as assistant officer of justice; crisis and disaster management; detection of explosives for team leaders, etc.

*Mr. Geyer's witness statement, 22 October 2013, R91-607722*

7. The Prosecution took a witness statement from Mr. Geyer on 22 October 2013. It details his personal information, professional background, and occupation as a manager at Mitsubishi Motors Deutschland GmbH.<sup>15</sup> Mitsubishi Motors sent him to Beirut from 18 to 22 September 2005 to examine a number of boxes of recovered items and Mr. Geyer prepared a report of his findings. This statement: describes the exhibits and photographs shown to him by a Prosecution investigator; explains whether each item originates from a Mitsubishi; explains the entries in the report and the percentage probabilities; and lists those parts he asserted 'with confidence' originated from a Mitsubishi Canter van.<sup>16</sup>

8. Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Oneissi do not accept the witness statement, challenge its relevance and wish to cross-examine Mr. Geyer.<sup>17</sup> Counsel for Mr. Sabra do not accept the statement but fail to say why, and do not wish to cross-examine the witness.<sup>18</sup> Counsel for Mr. Merhi have taken no position.<sup>19</sup>

9. The Trial Chamber is satisfied that Mr. Geyer's statement clearly sets out his mandate at the crime scene in identifying Mitsubishi parts from the items recovered. The statement remedies a number of flaws in Mr. Geyer's technical report, such as clarifying which parts he recognised as originating from a Mitsubishi, and how the percentage probabilities were assigned to the vehicle parts. This statement is relevant to the indictment and blends expert opinion and factual observations. It is thus admissible under Rule 155; Mr. Geyer will be available for cross-examination.

*Mr. Geyer's 'Technical report and its annex to identify Mitsubishi parts from the crime scene in Beirut', 22 September 2005, R91-606437*

10. The first two pages of this report are e-mails between Mr. Geyer and the Prosecution discussing the mandate of the witness's work in Beirut from 18 to 22 September 2005.<sup>20</sup> The remainder is a list of recovered motor vehicle parts with an assigned percentage probability as to whether they originate from a Mitsubishi Canter van. The report results from Mr. Geyer's 'product

<sup>15</sup> R91-607722, ERN 60289424-60289430, at 60289424 - 60289425.

<sup>16</sup> R91-607722, ERN 60220294-60220299.

<sup>17</sup> Ayyash Rule 161 (B) Notice, Confidential Annex A, p. 5; Badreddine Rule 161 (B) Notice, Confidential Annex A, p. 7 (Counsel appear to reject the report in its entirety, and challenge it on the basis of relevance.); Oneissi Rule 161 (B) Notice, Confidential Annex A, p. 6 (Counsel reject the witness statement on the basis of lack of relevance without providing more detail.).

<sup>18</sup> Sabra Rule 161 (B) Notice, Confidential Annex A, p. 6.

<sup>19</sup> Merhi response, para. 17. However, counsel for Mr. Merhi reserve the right to challenge the qualifications of an expert and the relevance of documents 'at a later stage in the proceedings': Merhi Rule 161 (B) Notice para. 11.

<sup>20</sup> R91-606437, ERN 60220294-60220295.

knowledge' and photographs sent by his colleagues at Mitsubishi. It also includes a record sheet of the investigation and a table listing the fragments analysed, their physical description, and whether they originated from a Mitsubishi Canter van.<sup>21</sup>

11. Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Oneissi do not accept the report and challenge its relevance.<sup>22</sup> Counsel for Mr. Sabra accept the report and counsel for Mr. Merhi have not taken a position.<sup>23</sup>

12. The Trial Chamber is satisfied that the report clearly sets out Mr. Geyer's mandate at the crime scene in identifying Mitsubishi parts from the items recovered. However, as the Trial Chamber has deferred a formal decision on Mr. Geyer's expertise, it is unable to determine whether the report should be admitted into evidence under Rule 161. A decision will be taken on this during the witness's testimony.

### **Mr. Bart Hoogeboom**

13. The Prosecution intends to call Mr. Bart Hoogeboom as a qualified forensic engineer and image analysis expert. He is the author of a report entitled 'Determination of crater measurements from images taken within the first hour post-blast'.<sup>24</sup> The report seeks to estimate the size of the crater caused by the explosion on 14 February 2005.

#### *Mr. Hoogeboom's qualifications*

14. According to Mr. Hoogeboom's *curriculum vitae*,<sup>25</sup> he has been employed since 2000 as a 'forensic engineer' in the area of image analysis. He holds a masters degree in science, and studied applied physics. He states that he registered as a forensic expert in The Hague in March 2005, and has since testified many times in court.<sup>26</sup> The courses he has attended, the formal presentations he

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<sup>21</sup> R91-606437, ERN 60220296-60220299.

<sup>22</sup> Ayyash Rule 161 (B) Notice, Confidential Annex A, p. 5; Ayyash response, paras 9-10 (Counsel for Mr. Ayyash state that in the absence of further information, they are unable to ascertain whether the witness is an expert within the meaning of Rule 161, and are therefore unable to ascertain whether the witness's report falls under his expertise); Badreddine Rule 161 (B) Notice, Confidential Annex A, p. 7; Oneissi Rule 161 (B) Notice, Confidential Annex A, p. 5.

<sup>23</sup> Sabra Rule 161 (B) Notice, Confidential Annex A, p. 6; Merhi response, para. 17. However, counsel for Mr. Merhi reserve the right to challenge the qualifications of an expert and the relevance of documents 'at a later stage in the proceedings': Merhi Rule 161 (B) Notice para. 11.

<sup>24</sup> R91-600063, ERN 60182169-60182203 ('Determination of crater measurements from images taken within the first hour post-blast').

<sup>25</sup> *Curriculum vitae* of HOOGEBOOM, Bart, ERN 60275322-60275325.

<sup>26</sup> *Curriculum vitae* of HOOGEBOOM, Bart, ERN 60275322-60275325 at 60275322. Mr. Hoogeboom refers to, amongst others, a number of Supreme Court appearances in the Netherlands (in Leeuwarden, Den Haag, Den Bosch and Amsterdam); also in the Netherlands, appearances before the Judge of Investigation in Breda and Den Bosch; as well as a court appearance in Nicosia in Cyprus.

has made and his publications confirm his expertise in this area. Counsel for Mr. Ayyash, Mr. Sabra, Mr. Oneissi, and Mr. Baddredine do not challenge Mr. Hoogetboom's qualifications and counsel for Mr. Merhi take no position.<sup>27</sup> On the basis of his *curriculum vitae*, the Trial Chamber is satisfied that Mr. Hoogetboom is qualified as a forensic image analyst within the meaning of Rule 161.

*Mr. Hoogetboom's report, 'Determination of crater measurements from images taken within the first hour post-blast', 30 September 2010, R91-600063*

15. This report concerns the crater caused by the explosion on 14 February 2005. Counsel for Mr. Oneissi object to the admission of the report on the basis of relevance, and, without giving further reasons, wish to cross-examine Mr. Hoogetboom.<sup>28</sup> Counsel for Mr. Badreddine do not accept the report and wish to cross-examine the witness, but fail to state why.<sup>29</sup> Counsel for Mr. Ayyash and Mr. Sabra accept the report and do not seek to cross-examine Mr. Hoogetboom,<sup>30</sup> while counsel for Mr. Merhi take no position in this regard.<sup>31</sup>

16. Mr. Hoogetboom's report focuses on analysis of photographs taken at the crime scene, to estimate measurements of the crater resulting from the blast.<sup>32</sup> The Trial Chamber considers that Mr. Hoogetboom's report is generally relevant to the indictment.

17. The report details the photographs of the crater which were provided by the Prosecution for analysis. It describes the four steps of the forensic analysis, namely: the division of the photographs from the crime scene into sets; the extraction of 3D information from the sets; the combination of 3D information from the different sets of photographs; and, the measurements taken to estimate distances. Mr. Hoogetboom explains that the first set of photographs taken shortly after the explosion was not suitable for constructing a model for the entire crater. He did not have access to photographs taken around the entire crater at approximately the same moment, and the limited inclusion of surrounding buildings in the photographs caused some difficulties in setting the scale for the model. He thus also used two sets of photographs taken four days after the explosion.<sup>33</sup>

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<sup>27</sup> Ayyash Rule 161 (B) Notice, Confidential Annex, p. 6; Sabra Rule 161 (B) Notice, Confidential Annex A, p. 7; Oneissi Rule 161 (B) Notice, Confidential Annex A, p. 7; Baddredine Rule 161 (B) Notice, Confidential Annex A, p. 10; Merhi response, para. 17.

<sup>28</sup> Oneissi Rule 161 (B) Notice, Confidential Annex A, p. 7.

<sup>29</sup> Baddredine Rule 161 (B) Notice, Confidential Annex A, p. 10.

<sup>30</sup> Ayyash Rule 161 (B) Notice, Confidential Annex, p. 6; Sabra Rule 161 (B) Notice, Confidential Annex A, p. 7.

<sup>31</sup> Merhi response, para. 17. However, counsel for Mr. Merhi reserve the right to challenge the qualifications of an expert and the relevance of documents 'at a later stage in the proceedings': Merhi Rule 161 (B) Notice para. 11.

<sup>32</sup> R91-600063, ERN 60182169-60182203.

<sup>33</sup> R91-600063, at ERN 60182174.

18. Mr. Hoogeboom also explains: how the photographs were processed using RolleiMetric software and 3D information extracted from the three sets of photographs; the process of importing data from that software; how distances were measured; that the shape of the crater is approximated by selecting the shape of a part of a cone; that the dimensions of the cone allow an estimation of the crater dimensions; and that due to the irregular shape of the crater, this is an approximation as ‘only a rough estimation of the crater could be determined’.<sup>34</sup> Finally the report suggests ‘a measurement error with a maximum of one per cent between points of the datasets’.<sup>35</sup> This could be validated on points between the two buildings, but could not be verified for measurements at the crater.

19. Counsel for Mr. Oneissi and Mr. Badreddine have objected to the statement, in the first instance on the basis of relevance<sup>36</sup>, in the second for no given reason.<sup>37</sup> Being unreasoned, these objections are dismissed.<sup>38</sup> Mr. Hoogeboom, however, will be available for Defence cross-examination.

20. The Trial Chamber is satisfied that Mr. Hoogeboom’s report of 30 September 2010 (R91-600063) clearly sets out its methodology, and, as it provides evidence regarding the impact of the explosion, is relevant. The report falls within Mr. Hoogeboom’s expertise and meets the minimum standard of reliability for admission into evidence. The Trial Chamber will therefore admit the report into evidence under Rule 161.

### **DISPOSITION**

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

**DEFERS** a decision, until his testimony, on whether Mr. Gerhard Geyer is qualified as an expert under Rule 161;

**RULES ADMISSIBLE** under Rule 155 Mr. Gerhard Geyer’s witness statement, 22 October 2013, R91-607722;

**DEFERS** a decision on the admissibility, under Rule 161, of Mr. Gerhard Geyer’s ‘Technical report and its annex to identify Mitsubishi parts from the crime scene in Beirut’, 22 September 2005, R91-606437;

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<sup>34</sup> R91-600063, at ERN 60182185.

<sup>35</sup> R91-600063, at ERN 60182185.

<sup>36</sup> Oneissi Rule 161 (B) Notice, Confidential Annex A, p. 7.

<sup>37</sup> Badreddine Rule 161 (B) Notice, Confidential Annex A, p. 10.

<sup>38</sup> STL-11-01/PT/TC, Order on Rule 161 Notices Re Expert Witnesses, 19 March 2013, para. 4.

**DECLARES** that Mr. Bart Hoogeboom is qualified as an expert under Rule 161 and that his report falls within his expertise; and

**RULES ADMISSIBLE** under Rule 161 Mr. Bart Hoogeboom's report, 'Determination of crater measurements from images taken within the first hour post-blast', 30 September 2010, R91-6000063.

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

Leidschendam,  
The Netherlands  
11 July 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

