



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: 21 August 2014

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

DECISION ON TWELVE EXPERT WITNESSES

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. Dorothée 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. This decision rules on the qualifications as experts of twelve witnesses the Prosecution intends to call to testify, and the admissibility of their reports and—where applicable—witness statements. The twelve proposed as experts are: Witnesses PRH 172; 168; 165; 155; 492; 548; 433; 185; 186; 558; 188; and, 187.
2. The Prosecution filed its updated notice of expert witnesses and their statements,¹ and 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—subsequently submitted notices under Rule 161 (B) of the Special Tribunal’s Rules of Procedure and Evidence.²
3. On 26 May 2014, the Prosecution requested the Trial Chamber to declare seventeen witnesses as experts and to admit five expert reports into evidence without requiring the expert who authored them to appear for cross-examination.³ Defence counsel for four of the Accused responded to the Prosecution motion.⁴ The Trial Chamber thereafter ordered the Prosecution to provide further information regarding three aspects of its motion.⁵ The Prosecution then clarified these issues.⁶
4. On 7 and 11 July 2014, the Trial Chamber issued two decisions dealing with four expert witnesses out of the seventeen proposed.⁷ While those decisions left thirteen experts outstanding from the Prosecution motion, only twelve now remain as the evidence initially proposed for

¹ STL-11-01/T/TC, Updated Prosecution Notice of Expert Witnesses and their Statements, 4 March 2014.

² 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’).

³ STL-11-01/T/TC, Prosecution Motion regarding Upcoming Expert Witnesses, 26 May 2014 (‘Prosecution motion’).

⁴ 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.

⁵ STL-11-01/T/TC, Order to the Prosecution in Relation to Expert Witnesses, 12 June 2014 (‘Trial Chamber order’).

⁶ STL-11-01/T/TC, Prosecution Response to the Order in Relation to Expert Witnesses, 20 June 2014 (‘Prosecution clarification’). The Prosecution clarification dealt with paras 3 (i)-(ii) of the Trial Chamber order. The information requested in para. 3 (iii) of the Trial Chamber order was dealt with separately by the Prosecution (*See*, Prosecution Second Response to the Order in Relation to Expert Witnesses, 11 July 2014). This second clarification dealt exclusively with Mr. Gerhard Geyer (Witness 348) who testified before the Special Tribunal on 16-17 July 2014.

⁷ STL-11-01/T/TC, Decision on Expert Witness PRH120, Professor Fouad Hussein Ayoub, and Expert Witness PRH508, Dr. Issam Mansour, 7 July 2014 (‘First expert decision’); Decision on Witness PRH 348, Mr. Gerhard Geyer, and Expert Witness PRH 387, Mr. Bart Hoogeboom, 11 July 2014.

tendering through Professor André Megarbane (expert report R91-606429) was admitted through a co-author, Professor Fouad Hussein Ayoub.⁸ On 21 July 2014, the Prosecution provided a list of witnesses for August and September 2014, including the twelve remaining experts.⁹ The Trial Chamber then requested Defence counsel to provide any estimates regarding the length of any anticipated cross-examination of these witnesses.¹⁰

APPLICABLE LAW

5. 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 the first expert decision.¹¹ These principles are applicable to this decision.

DISCUSSION

6. Generally, the proposed experts are dealt with individually. However, three groupings emerged in the Trial Chamber's analysis of the proposed material: i) proposed Witnesses 168, 165, and 558 co-authored a joint report describing a forensic investigation carried out at the crime scene;¹² ii) similarly, Witnesses 188 and 187 were co-authors of two proposed reports which focus on the explosion of 14 February 2005; and, iii) separate reports are proposed for Witnesses 185 and 186 that provide analysis of the same physical item, a piece of an engine block.

Witness 172

Witness 172's qualifications

7. The Prosecution intends to call Witness 172 as a forensic expert, in regard to an examination of the crime scene by the witness and other forensic police team members in March 2005. His

⁸ R91-606429, ERN L0008367-L0008566, dated 23 February 2005, is titled 'DNA results of samples taken from the crime scene, indicated on the map and taken five days after the explosion'. This report was admitted into evidence as exhibit P196. *See*, Transcript of 1 July 2014, pp 22-23, which reflects the report being tendered through Professor Ayoub. *See also*, First expert decision, paras 12-14, regarding the admission of the report into evidence. Accordingly, Professor Megarbane is not anticipated to appear as a witness before the Special Tribunal.

⁹ This list was provided to the Parties and the Trial Chamber by the Prosecution via e-mail on 21 July 2014 at 17.17 ('Prosecution post-recess order of witnesses').

¹⁰ STL-11-01/T/TC, Transcript of 23 July 2014, p. 77. *See also*, Counsel for Mr. Ayyash provided their estimates via e-mail on 25 July 2014 ('Ayyash cross-examination estimates update'); Counsel for Mr. Badreddine provided their estimates via e-mail on 25 July 2014 ('Badreddine cross-examination estimates update'); Counsel for Mr. Merhi provided their estimates via e-mail on 24 July 2014 ('Merhi cross-examination estimates update'); Counsel for Mr. Oneissi provided their estimates via e-mail on 25 and 28 July 2014 ('Oneissi cross-examination estimates update'); Counsel for Mr. Sabra provided their estimates via e-mail on 24 July 2014 ('Sabra cross-examination estimates update').

¹¹ First expert decision, paras 3-6.

¹² The Prosecution intends to call all three proposed experts to testify before the Special Tribunal (*See*, Prosecution post-recess order of witnesses).

academic studies focused on organic and analytical chemistry. He is a qualified bomb technician, having undertaken extensive training in forensics with specific courses in bomb scene management and terrorist investigation. Additionally, he heads a scientific forensic department within a civilian police unit, responsible for securing and examining evidence of crimes involving explosives.¹³ One expert report was prepared with four others (i.e., Witnesses 173, 174, 175, and 176).¹⁴

8. Counsel for Mr. Ayyash, Mr. Badreddine, Mr. Oneissi, and Mr. Sabra do not challenge the witness's (or his four co-authors) qualifications.¹⁵ Counsel for Mr. Merhi challenge his qualifications.¹⁶

9. On the basis of the information contained in his *curriculum vitae*, the Trial Chamber is satisfied that Witness 172 is qualified as a forensic expert—with a specific focus on examining explosives—within the meaning of Rule 161.

*Witness 172's 'Forensic report regarding the crime scene examination performed on the Hariri crime scene after the explosion of 14 February 2005' of 14 March 2005 (R91-606399)*¹⁷

10. This report describes a forensic examination by Witness 172 and his colleagues at the scene of the explosion. It is comprehensive, with discrete sections about the forensic police team's investigation (e.g., observations from the crime scene, analysis of samples to identify explosive material, theoretical possibilities about the explosion, and conclusions).

11. Counsel for Mr. Ayyash accept the report and do not wish to cross-examine Witness 172.¹⁸ Counsel for Mr. Badreddine do not accept the report, and they and counsel for Mr. Merhi seek to

¹³ *Curriculum vitae* of Witness 172, ERN 60277065-60277069.

¹⁴ Witness 173 has military training in explosives, and has an educational background in chemistry. He is also a qualified bomb technician and a member of the same scientific forensic department as Witness 172. He serves as a forensic consultant regarding crimes that involve explosives (*See, curriculum vitae* of Witness 173, ERN 60277070-60277074). Witness 174 has more than 10 years of experience within the scientific forensic department of a domestic police service. His specific expertise is in microscopic and biological traces (*See, curriculum vitae* of Witness 174, ERN 60279977-60279977). Witness 175 has been working for a forensic technology institute for nearly 20 years, in the role of forensic photographer and accident investigator (*See, curriculum vitae* of Witness 175, ERN 60279993-60279993). Witness 176 has a specialisation in ballistics, weapons, and munitions. He is the head of a department dedicated to munitions testing within a federal Department of Defence (*See, curriculum vitae* of Witness 176, ERN D0316897-D0316902).

¹⁵ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 6, 11, 13; Badreddine Rule 161 (B) Notice, confidential Annex, pp 10, 17, 19-20; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 7, 11-12, 14; Sabra Rule 161 (B) Notice, confidential Annex A, pp 7, 14, 16.

¹⁶ Merhi response, para. 16.

¹⁷ R91-606399, ERN 50011349-50011370.

¹⁸ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 11.

cross-examine this expert.¹⁹ Counsel for Mr. Oneissi and Mr. Sabra do not accept the report, but do not wish to cross-examine him.²⁰

12. The Trial Chamber considers that the report is relevant as it clearly details the situation encountered at the crime scene and the methodology employed by the forensic police team during its investigation. Further, the subject matter of the report falls within the witness's expertise. Accordingly, the report is admissible under Rule 161, and the expert is required to appear before the Special Tribunal for cross-examination.

Witnesses 168, 165, and 558

Witnesses 168, 165, and 558's qualifications

13. The Prosecution intends to call Witnesses 168, 165, and 558 as forensic experts to testify as to their examination of the crime scene during August and September 2005. Their qualifications are:

- Witness 168 holds a masters degree and a PhD (Doctor of Philosophy) in chemistry. She has been a forensic scientist for more than 10 years, with an expertise in forensic explosives research.²¹
- Witness 165 began his professional career as a police officer more than 40 years ago. He received training in the field of explosives and biological traces, and, from the 1990's was appointed to a team devoted to the forensic investigation of explosives. Additionally, he served as a trainer for eight years in international bomb scene management.²²
- Witness 558 holds a bachelor of science and a PhD. He joined the explosives department of a national forensic science laboratory in the early 1970's. His first role in the laboratory was as a scientific officer, and he was eventually promoted to head the explosives department. He has testified in numerous national jurisdictions in terrorist cases, and has amassed nearly 40 years of experience in forensic explosives investigation.²³

¹⁹ Badreddine Rule 161 (B) Notice, confidential Annex, pp 10, 17; Merhi cross-examination estimates update.

²⁰ Oneissi Rule 161 (B) Notice, confidential Annex A, p. 11; Sabra Rule 161 (B) Notice, confidential Annex A, p. 14. Initially, counsel for Mr. Oneissi sought to cross-examine Witness 172, but they have since withdrawn this request (*See*, Oneissi cross-examination estimates update).

²¹ *Curriculum vitae* of Witness 168, ERN 60275312-60275313.

²² *Curriculum vitae* of Witness 165, ERN 60276052-60276054.

²³ *Curriculum Vitae* of Witness 558, ERN 60279613-60279614.

The Prosecution intends to tender one expert report for these three witnesses prepared jointly with five co-authors namely, Mr. Jo Hoffman and Witnesses 163, 164, 166, and 167.²⁴ Additionally, the Prosecution has proposed tendering a witness statement for Witnesses 165 and 558.

14. Counsel for Mr. Ayyash, Mr. Badreddine, Mr. Oneissi, and Mr. Sabra do not challenge the qualifications of Witnesses 168, 165, or 558 or their five co-authors.²⁵ Counsel for Mr. Merhi challenge the qualifications of Witnesses 168, 165, and 558.²⁶

15. The Trial Chamber is satisfied, on the basis of the information contained in their *curricula vitae*, that Witnesses 168, 165, and 558 are qualified as forensic experts—with a specific focus in the investigation of explosives—within the meaning of Rule 161.

*Witnesses 168, 165, and 558's 'Report of forensic investigation of the explosion of 14 February 2005 at the request of UNIIC' of 30 September 2005 (R91-200452)*²⁷

16. The report broadly describes the forensic investigation carried out at the crime scene by the team of co-authors. More specifically, it focuses on: the search for and collection of physical exhibits; efforts to reconstruct the improvised explosive device which caused the explosion; investigation of the 'jammers' (i.e., equipment to disrupt remote signals) used by the convoy vehicles; the limited identification of human remains; and the team's methodology.

17. Counsel for Mr. Ayyash accept the report and do not wish to cross-examine the three experts.²⁸ Counsel for Mr. Badreddine do not accept the report, and they and counsel for Mr. Merhi

²⁴ Mr. Jo Hoffman, now deceased, was a police officer specialising in crime scene investigation. He received relevant training, including detection of explosives for team leaders. As he has never appeared on the Prosecution's witness list, Defence counsel have taken no position on his qualifications (See, *curriculum vitae* of Jo Hoffman, ERN D0316910-D0316927). Witness 163 is a forensics advisor with a national police force. He is a forensic investigator and technical researcher, and has received specialised training in investigations and explosives. He has been involved in a number of large-scale investigations involving explosives (See, *curriculum vitae* of Witness 163, ERN 60276062-60276062). Witness 164 is a forensic investigator and technical researcher, with expertise in explosives and post-blast investigation. He received training in bomb response in the mid-1970's, and received additional relevant training over the next 30 years before retiring (See, *curriculum vitae* of Witness 164, ERN 60275339-60275340). Witness 166 is also a forensic investigator and technical researcher, with expertise in explosives. He was a member of a national bomb response team for more than 10 years, and became the forensic investigation coordinator of a large-scale investigation team thereafter. Today, he is a forensic advisor for a national forensic institute (See, *curriculum vitae* of Witness 166, ERN 60275344-60275347). Witness 167 is a forensic investigator and technical researcher, and has been a member of a national bomb response team for more than 10 years. He is currently a member of a forensic investigation office, the coordinator of a large-scale investigation team, and the coordinator of a team of explosive specialists (See, *curriculum vitae* of Witness 167, ERN 60275341-60275343).

²⁵ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 7, 9, 12-13; Badreddine Rule 161 (B) Notice, confidential Annex, pp 11, 14, 19-20; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 8, 10, 13-14; Sabra Rule 161 (B) Notice, confidential Annex A, pp 9-10, 15-16.

²⁶ Merhi response, para. 16.

²⁷ R91-200452, ERN 204391-204538.

²⁸ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 7, 9, 12.

seek to cross-examine Witnesses 168, 165, and 558.²⁹ Counsel for Mr. Oneissi and Mr. Sabra do not accept the report, but do not wish to cross-examine the three experts.³⁰

18. The subject matter of the report—a forensic investigation of the crime scene with a focus on the nature and source of the explosion—is relevant to the amended indictment, and it falls within the expertise of Witnesses 168, 165, and 558. The report is admissible into evidence under Rule 161, and all three experts are required to appear for cross-examination.

*Witness 165's statement of 15 December 2010 (R91-606434)*³¹

19. The statement describes Witness 165's involvement in the search of the crime scene and the collection of items, with a specific focus on vehicle parts. He refers to the cooperation between his expert team and the Lebanese Internal Security Forces.

20. Counsel for Mr. Ayyash accept the statement and do not wish to cross-examine Witness 165.³² Counsel for Mr. Badreddine do not accept the statement, and they and counsel for Mr. Merhi seek to cross-examine him.³³ Counsel for Mr. Oneissi and Mr. Sabra do not accept the statement, but do not wish to cross-examine the expert.³⁴

21. The witness statement is relevant to the amended indictment as it provides additional context to the '*Report of forensic investigation of the explosion of 14 February 2005 at the request of UNIIIC*'. However, as this statement blends expert opinion and factual observations, it is admissible under Rule 155.

*Witness 558's statement of 2 November 2005 (R91-600024)*³⁵

22. The statement describes Witness 558's involvement in the forensic examination of the crime scene. Specifically, he explains that a number of items that were swabbed and then tested for the presence of specific explosives showed characteristics of a high order explosion.

²⁹ Badreddine Rule 161 (B) Notice, confidential Annex, pp 11-12, 14, 19; Merhi cross-examination estimates update.

³⁰ Oneissi Rule 161 (B) Notice, confidential Annex A, pp 8, 10, 13; Sabra Rule 161 (B) Notice, confidential Annex A, pp 9-10, 15. Initially, counsel for Mr. Oneissi sought to cross-examine all three experts. However, they have since withdrawn this request (*See*, Oneissi cross-examination estimates update).

³¹ R91-606434, ERN 60195809-60195819.

³² Ayyash Rule 161 (B) Notice, confidential Annex A, p. 7.

³³ Badreddine Rule 161 (B) Notice, confidential Annex, p. 11; Merhi cross-examination estimates update.

³⁴ Oneissi Rule 161 (B) Notice, confidential Annex A, p. 8; Sabra Rule 161 (B) Notice, confidential Annex A, p. 9. Initially, counsel for Mr. Oneissi sought to cross-examine Witness 165. However, they have since withdrawn this request (*See*, Oneissi cross-examination estimates update).

³⁵ R91-600024, ERN 311159-311164A.

23. Counsel for Mr. Ayyash accept the statement and do not wish to cross-examine Witness 558.³⁶ Counsel for Mr. Badreddine do not accept the statement, and they and counsel for Mr. Merhi seek to cross-examine him.³⁷ Counsel for Mr. Oneissi and Mr. Sabra do not accept the statement, but do not wish to cross-examine the expert.³⁸

24. The witness statement is relevant to the amended indictment as it focuses on the nature and source of the explosion. However, it blends factual observations and expert opinion. Accordingly, it is admissible under Rule 155.

Witness 155

Witness 155's qualifications

25. Witness 155 is proposed as an expert in forensics, with regard to his team's examination of the crime scene. He is a ballistics expert, and began this specialised work for the forensic department of a national police service in 1985.³⁹ The Prosecution intends to tender one expert report for Witness 155, prepared in conjunction with eight team members namely, Witnesses 153, 154, 156, 157, 158, 159, 160, and 161.⁴⁰

³⁶ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 9.

³⁷ Badreddine Rule 161 (B) Notice, confidential Annex, p. 14; Merhi cross-examination estimates update.

³⁸ Oneissi Rule 161 (B) Notice, confidential Annex A, p. 10; Sabra Rule 161 (B) Notice, confidential Annex A, p. 10. Initially, counsel for Mr. Oneissi sought to cross-examine Witness 558. However, they have since withdrawn this request (*See*, Oneissi cross-examination estimates update).

³⁹ *Curriculum vitae* of Witness 155, ERN 60279697-60279703 at 60279698.

⁴⁰ Witness 153 has a degree in criminology, and has been a member of the forensic unit of a national police service since 1988 (*See, curriculum vitae* of Witness 153, ERN 60279693-60279694, at 60279694). Witness 154 has been a ballistics expert with a national police service since 1984. He has taken various police courses on forensics including: crime scene and reconstruction of ballistic paths; evidence gathering; investigation methodology; and, crime scene investigations and expert evaluation of crimes (*See, curriculum vitae* of Witness 154, ERN 60279695-60279696). Witness 156 has been a member of a national police service since 1978, and is a bomb disposal specialist. He is experienced with improvised explosive devices (and other types of explosive devices), having received training in several related areas (*See, curriculum vitae* of Witness 156, ERN 60279697-60279703 at 60279697). Witness 157 has qualifications almost identical to witness 156 (i.e., he has been a member of a national police service since 1986, has expertise as a bomb disposal specialist, and has received training in several related areas) (*See, curriculum vitae* of Witness 157, ERN 60279697-60279703 at 60279699). Witness 158 has been a member of a national police force for more than 10 years, while she has specialised in forensics for almost a decade (*See, curriculum vitae* of Witness 158, ERN 60279697-60279703 at 60279701). Witness 159 has two engineering degrees (chemical and industrial technical), and is a chemical engineer. She has been a member of a national police force since 2003, and has specialised in forensics for nearly ten years (*See, curriculum vitae* of Witness 159, ERN 60279697-60279703 at 60279702). Witness 160 has a degree in chemical science, and is a chemical scientist. He has been a member of a national police force practicing this specialisation since 1976, and now serves as a civilian expert in the same capacity. He has further technical training in spectrometry and chromatography (*See, curriculum vitae* of Witness 160, ERN 60279697-60279703 at 60279703). Witness 161 is a member of a national police force, and has been a forensic expert since 1988. In order to practice this specialty, he undertook a number of relevant courses including: visual inspection; photography; body identification; major disasters; and, evidence gathering (*See, curriculum vitae* of Witness 161, ERN 60279697-60279703 at 60279700).

26. Counsel for Mr. Ayyash challenge the witness's and his eight co-authors' qualifications, arguing that there is insufficient information to establish their expertise. Further, they question why Witness 155 is proposed to testify, when it seems that Witness 153 was the team's 'leader'.⁴¹ Counsel for Mr. Merhi also challenge Witness 155's qualifications.⁴² Counsel for Mr. Badreddine, Mr. Oneissi, and Mr. Sabra do not challenge the qualifications of the witness or the co-authors.⁴³

27. Despite the Trial Chamber's order to provide further biographical information,⁴⁴ the Prosecution's clarification merely referred to the fact that it only relies on the proposed report regarding the collection of items of evidentiary value.⁴⁵ The *curricula vitae* provided for Witness 155 and the eight co-authors satisfy the Trial Chamber that they may assist in understanding the Prosecution's case, while the proposed witness can provide relevant and probative evidence. However, in the absence of the requested clarification, the Trial Chamber will defer making a formal decision as to whether Witness 155 is an expert within the meaning of Rule 161 until after it has heard additional submissions before his substantive testimony.

*Witness 155's 'Final forensic report re crime scene' of 14 May 2006 (R91-602843)*⁴⁶

28. This report details the forensic investigation performed by Witness 155 and other team members at the crime scene in mid-2006. It outlines studies that were performed, describes physical exhibits that were collected, comments on the explosive device allegedly used to cause the explosion, and then draws conclusions. The report is voluminous, amounting to approximately 350 pages.

29. The Prosecution does not rely on sections E and F of the report (except for the graphic at page 270), and it does not assert that any of the non-biological items recovered at the crime scene (as described in section D1) should be relied upon. It seeks admission of the portions of the report relied upon without requiring Witness 155 to appear for cross-examination.⁴⁷

30. Counsel for Mr. Ayyash and Mr. Oneissi challenge the relevance of the report, but do not wish to cross-examine Witness 155.⁴⁸ Further, counsel for Mr. Ayyash argue that it is unclear which

⁴¹ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 4, 6, 8, 11; Ayyash response, paras 6-8.

⁴² Merhi response, para. 16.

⁴³ Badreddine Rule 161 (B) Notice, confidential Annex, pp 6-7, 9, 12, 17-18; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 5-7, 9, 11-12; Sabra Rule 161 (B) Notice, confidential Annex A, pp 5-7, 9, 14.

⁴⁴ Trial Chamber order, para. 3 (i).

⁴⁵ Prosecution clarification, para. 3

⁴⁶ R91-602843, ERN 60036751-60037100.

⁴⁷ Prosecution motion, paras 22-30.

⁴⁸ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 6; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 6; Oneissi response, para. 12. Initially, counsel for Mr. Oneissi sought to cross-examine Witness 155. However, they have since withdrawn this request (See, Oneissi cross-examination estimates update).

portions of the report are actually relied upon by the Prosecution.⁴⁹ Counsel for Mr. Badreddine do not object to the admission of the parts that the Prosecution intends to rely upon, but they want to cross-examine the witness.⁵⁰ Counsel for Mr. Merhi challenge the report of Witness 155 and want to cross-examine him.⁵¹ Counsel for Mr. Sabra do not accept the report, but do not wish to cross-examine the witness.⁵²

31. In response to the Trial Chamber's order to provide additional clarity as to what portions of the report are relied upon,⁵³ the Prosecution submitted that it: relies upon pages 1-265, the graphic on page 270, pages 288-292, and the appendix of 56 pages; and, *does not rely upon* pages 266-288 (except for the graphic on page 270).⁵⁴ While the Trial Chamber appreciates this clarification, and considers that the report is relevant to the amended indictment—in regard to a forensic examination of the crime scene—a decision on its admissibility under Rule 161 must be deferred until a formal decision has been taken as to whether Witness 155 is qualified as an expert.

Witness 492

Witness 492's qualifications

32. The Prosecution intends to call Witness 492 as a forensic anthropological expert. He has a masters degree and is a qualified medical doctor with a specialisation in forensic anthropology. His *curriculum vitae* demonstrates that he is a lecturer in forensic anthropology and a forensic anthropologist, and has published extensively in his field.⁵⁵ Two expert reports are proposed for Witness 492; the first has three co-authors (Witnesses 412, 462, and 406),⁵⁶ while the second has one co-author (Witness 461).⁵⁷

⁴⁹ Ayyash response, paras 18-19.

⁵⁰ Badreddine Rule 161 (B) Notice, confidential Annex, pp 6, 9; Badreddine response, para. 11. Initially, counsel for Mr. Badreddine did not seek to cross-examine Witness 155, but they changed this position.

⁵¹ Merhi response, paras 24-27.

⁵² Sabra Rule 161 (B) Notice, confidential Annex A, p. 6.

⁵³ Trial Chamber order, para. 3 (ii).

⁵⁴ Prosecution clarification, para. 2.

⁵⁵ *Curriculum vitae* of Witness 492, ERN 60275314-60275321.

⁵⁶ Witness 412 has degrees in chemistry and propaedeutics law as well as various relevant certifications, and is registered as a DNA expert in his domestic jurisdiction. Since the mid-1970's, he has been a chemistry and physics teacher, a forensic scientist, and has testified as an expert witness in criminal cases in several European countries. He has published numerous articles on forensic DNA testing (*See, curriculum vitae* of Witness 412, ERN 60279537-60279539). Witness 462 holds a degree in biochemistry and a PhD. For more than 20 years, he has acted as a senior forensic scientist, and he now teaches forensic science. He is registered as a DNA expert in his domestic jurisdiction, and is also a qualified expert witness in forensic biology and DNA-analysis, and has published numerous articles on forensic science and DNA testing (*See, curriculum vitae* of Witness 462, ERN 60275306-60275311). Witness 406 has a degree in biology and a PhD in phylogenetics and phylogeography. He is registered as a DNA expert in his domestic jurisdiction, and is further certified as an expert in human biological traces and DNA analysis. He is currently a scientist in a department focused on human

33. Counsel for the five Accused have not challenged Witness 492's qualifications or any of the co-authors.⁵⁸ The Trial Chamber is satisfied, on the basis of the information contained in his *curriculum vitae*, that Witness 492 is qualified as an expert forensic anthropologist within the meaning of Rule 161.

*Witness 492's 'Anthropological and DNA investigation related to the death of Rafic HARIRI and 22 others in Beirut on February 14th, 2005' of 4 October 2012 (R91-606974)*⁵⁹

34. This report provides the results of an anthropological examination to: identify and select human (bone) tissue found at the scene of the explosion; profile the DNA of the selected bone tissue; and, analyse and compare the DNA profiles. The report outlines the methodology used, and focuses on six samples from unknown individuals.

35. Counsel for Mr. Oneissi object to this report on the basis of its relevance, but do not want to cross-examine Witness 492.⁶⁰ Counsel for Mr. Ayyash and Mr. Sabra accept this report, and do not wish to cross-examine him.⁶¹ Counsel for Mr. Badreddine accept the report, and want to cross-examine the witness.⁶² Counsel for Mr. Merhi do not challenge this report, but wish to cross-examine him.⁶³ The Prosecution asserts that the report is relevant and probative, that the objection of counsel for Mr. Oneissi is unsubstantiated, and that the report should be admitted without requiring the witness to appear for cross-examination.⁶⁴

36. By virtue of its subject matter—DNA analysis of items recovered from the crime scene—the report is relevant to the amended indictment, and its subject matter falls within the expertise of Witness 492. Accordingly, the report is admissible into evidence under Rule 161. As two Defence teams want to cross-examine the witness, he is required to appear before the Special Tribunal.

biological traces, has undertaken various forensic training courses, and has published widely in his field (*See, curriculum vitae* of Witness 406, ERN 60279540-60279542).

⁵⁷ Witness 461 has numerous degrees in medicine, and is currently Chief of Surgery in a trauma unit at a medical centre. His specialisation is trauma surgery, and he has researched and published widely in this field (*See, curriculum vitae* of Witness 461, ERN 60279567-60279568).

⁵⁸ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 5-7; Badreddine Rule 161 (B) Notice, confidential Annex, pp 7, 10-11; Merhi response, para. 17; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 5, 7-8; Sabra Rule 161 (B) Notice, confidential Annex A, pp 6-8.

⁵⁹ R91-606974, ERN 60275388-60275430.

⁶⁰ Oneissi Rule 161 (B) Notice, confidential Annex A, p. 5; Oneissi response, para. 11; Oneissi cross-examination estimates update.

⁶¹ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 5; Ayyash response, para. 22; Sabra Rule 161 (B) Notice, confidential Annex A, p. 6.

⁶² Badreddine Rule 161 (B) Notice, confidential Annex, p. 7; Badreddine response, para. 14; Badreddine cross-examination estimates update.

⁶³ Merhi response, para. 28; Merhi cross-examination estimates update.

⁶⁴ Prosecution motion, paras 36-40.

*Witness 492's 'Forensic anthropological investigation related to the death of R.HARIRI and 22 other persons in Beirut on February 14th, 2005' of 4 March 2013 (R91-606978)*⁶⁵

37. This report compares the medical records of an individual injured at the crime scene with photographs of a recovered bone fragment. The methodology used is thoroughly described.

38. Counsel for Mr. Oneissi do not accept this report, but do not wish to cross-examine Witness 492.⁶⁶ Counsel for Mr. Ayyash and Mr. Sabra accept this report, and do not wish to cross-examine the witness.⁶⁷ Counsel for Mr. Badreddine accept the report, and want to cross-examine him.⁶⁸ Counsel for Mr. Merhi did not challenge this report, but do wish to cross-examine the witness.⁶⁹ The Prosecution submits that the report should be admitted without requiring Witness 492 to appear before the Special Tribunal because it is relevant and probative, while counsel for Mr. Oneissi's objection is without foundation.⁷⁰

39. The subject matter of this report namely, the analysis of a bone fragment recovered from the crime scene, falls within the expertise of the witness, and it is relevant to the amended indictment. Accordingly, the report is admissible into evidence under Rule 161, while Witness 492 must attend for cross-examination.

Mr. Iskander Sursock (Witness 548)

Mr. Sursock's qualifications

40. The Prosecution intends to call Mr. Sursock as an expert in geophysics. Mr. Sursock is a geophysicist with a degree in physics (astronomy), and specialist degrees in astrophysics and geophysics. He has extensive professional experience in geophysics and seismology, and is the Director of the National Centre for Geophysical Research of the Lebanese National Council for Scientific Research.⁷¹ His proposed expert report was co-authored with Witness 323.⁷² Counsel for

⁶⁵ R91-606978, ERN 60279494-60279501 and 60279502-60279515.

⁶⁶ Oneissi Rule 161 (B) Notice, confidential Annex A, p. 5.

⁶⁷ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 5; Ayyash response, para. 22; Sabra Rule 161 (B) Notice, confidential Annex A, p. 6.

⁶⁸ Badreddine Rule 161 (B) Notice, confidential Annex, p. 7; Badreddine response, para. 14; Badreddine cross-examination estimates update.

⁶⁹ Merhi response, para. 28; Merhi cross-examination estimates update.

⁷⁰ Prosecution motion, paras 36-40.

⁷¹ *Curriculum vitae* of Mr. Iskander Sursock, ERN 60279689-60279689.

⁷² Witness 323 is a qualified geophysicist. He has held a number of positions in the area of geophysics and seismology, and is currently the head of the national network for seismological monitoring (*See, curriculum vitae* of Witness 323, ERN 60279688-60279688).

Mr. Ayyash, Mr. Badreddine, Mr. Oneissi, and Mr. Sabra do not challenge the qualifications of Mr. Sursock or Witness 323.⁷³ Counsel for Mr. Merhi challenge his qualifications.⁷⁴

41. On the basis of the information contained in his *curriculum vitae*, the Trial Chamber is satisfied that Mr. Sursock is qualified as an expert geophysicist within the meaning of Rule 161.

*Mr. Sursock's 'Official report given by the National Council of Scientific Geophysics concerning the report related to earthquake signals' of 5 May 2005 (R91-600019)*⁷⁵

42. The report provides an analysis of the signals registered in two seismological stations after the explosion on 14 February 2005, and four subsequent explosions in Beirut. Parts of the report deal with: i) the methodology used and the scope of the report; ii) analysis of the seismic signals recorded following the four subsequent explosions; and, iii) analysis of the seismic signals on 14 February 2005, the source and time of these signals, and the energy emitted.

43. Counsel for Mr. Ayyash, Mr. Merhi, and Mr. Oneissi challenge the report.⁷⁶ Counsel for Mr. Badreddine and Mr. Sabra accept the report.⁷⁷ None of the counsel for the five Accused wish to cross-examine Mr. Sursock.⁷⁸

44. The Prosecution submits that the report provides the precise time of the explosion on 14 February 2005 based on recorded seismic activity, while the parts of the report regarding other explosions demonstrate that seismic activity related to explosions can be recorded using monitoring devices. Additionally, unsubstantiated challenges to the report should be dismissed, and it should be admitted without requiring Mr. Sursock to appear before the Special Tribunal.⁷⁹

45. The Trial Chamber considers that the report is relevant to the amended indictment—with respect to seismic readings caused by the explosion on 14 February 2005 that are probative as to the

⁷³ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 7, 12; Badreddine Rule 161 (B) Notice, confidential Annex, pp 11, 18; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 8, 12; Sabra Rule 161(B) Notice, confidential Annex A, pp 8, 15.

⁷⁴ Merhi response, para. 16.

⁷⁵ R91-600019, ERN 50002768-50002793.

⁷⁶ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 12; Merhi response, paras 24-27; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 12.

⁷⁷ While counsel for Mr. Badreddine initially objected to parts of the report (*See*, Badreddine Rule 161 (B) Notice, confidential Annex, pp 11, 18), it later withdrew this objection (*See*, Badreddine response, para. 12). Sabra Rule 161(B) Notice, confidential Annex A, p. 15.

⁷⁸ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 12; Badreddine Rule 161 (B) Notice, confidential Annex, p. 18; Sabra Rule 161(B) Notice, confidential Annex A, p. 15. Initially, counsel for Mr. Merhi and Mr. Oneissi indicated that they would require Mr. Sursock to appear for cross-examination (*See*, Merhi response, para. 27 and Oneissi Rule 161 (B) Notice, confidential Annex A, p. 12). However, they have since changed their position (*See*, Merhi cross-examination estimates update and Oneissi cross-examination estimates update).

⁷⁹ Prosecution motion, paras 41-46.

time of the explosion, and others⁸⁰—and falls within Mr. Sursock’s expertise. For these reasons, and considering that no Defence counsel wish to cross-examine Mr. Sursock, his report is admissible into evidence under Rule 161 without requiring him to appear before the Special Tribunal.

Witness 433

Witness 433’s qualifications

46. The Prosecution intends to call Witness 433 as a forensic expert, with a focus on the DNA analysis of human remains. He has a Masters in Forensic Science and Criminology and a PhD in forensic science, and has completed other relevant course work. For more than ten years, he has been a professor of forensic science, with a focus on identification methods and DNA and biometric systems. Witness 433 has published extensively in his field.⁸¹ The Prosecution proposes one expert report for this witness, prepared in conjunction with two co-authors, Witnesses 574 and 640.⁸²

47. Counsel for Mr. Ayyash, Mr. Badreddine, Mr. Oneissi, and Mr. Sabra do not challenge the qualifications of Witness 433 or Witness 574.⁸³ Counsel for Mr. Merhi took no position in regard to Witness 433.⁸⁴ Despite being a co-author to the report, Witness 640 is not on the Prosecution’s witness list of 7 March 2014⁸⁵ and is not referred to in the Prosecution motion. No Defence counsel took a position in regard to her qualifications.

48. The Trial Chamber is satisfied, on the basis of his *curriculum vitae*, that Witness 433 can offer a relevant and probative forensic opinion about the analysis of human remains. He is qualified as an expert within the meaning of Rule 161.

⁸⁰ The general reference in the report to the four subsequent explosions which occurred after 14 February 2005 provide relevant context and assist in understanding the totality of the report.

⁸¹ *Curriculum vitae* of Witness 433, ERN 60275259-60275276.

⁸² Witness 574 has an MSc (in law) in forensic science and a PhD in forensic science. Having taught since 2000, he is a professor of forensic statistics at a law school. He has published extensively in this field (*See, curriculum vitae* of Witness 574, ERN 60275277-60275289). Witness 640 has a Masters in Forensic Science and Criminology and a PhD in forensic science. Since 2006, she has been a forensic researcher, while she has published in this field and served as a reviewer for forensic journals for three years (*See, curriculum vitae* of Witness 640, ERN 60279807-60279811).

⁸³ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 3, 12; Badreddine Rule 161 (B) Notice, confidential Annex, pp 4, 18; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 3, 13; Sabra Rule 161 (B) Notice, confidential Annex A, pp 3, 15.

⁸⁴ Merhi response, para. 17.

⁸⁵ STL-11-01/T/TC, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, confidential Annex C, 7 March 2014.

*Witness 433's 'Comparisons and computation of statistical value between profiles obtained in the course of the UNIIC investigation' of 31 January 2013 (R91-606976)*⁸⁶

49. This report compares DNA profiles and computes statistical probabilities regarding human remains recovered from the crime scene. The report attempts to determine issues, including: the likelihood that samples come from the same origin; the likelihood that samples originate from one of the victims; the probability of a familial relationship between samples; the probability of a familial relationship between a specific sample and samples taken from the family of Mr. Ahmed Abu Adass; and, the probability that any of the samples originated with Mr. Ahmed Abu Adass.

50. Counsel for Mr. Ayyash and Mr. Sabra accept the report, and do not want to cross-examine Witness 433.⁸⁷ Counsel for Mr. Badreddine and Mr. Oneissi do not accept the report, but do not wish to cross-examine the witness.⁸⁸ Counsel for Mr. Merhi have taken no position on the report, but do want to cross-examine Witness 433.⁸⁹

51. The Trial Chamber considers that the report falls within the witness's expertise, and is relevant to the amended indictment as it attempts to identify human remains found at the scene of the explosion through DNA analysis. Accordingly, the report is admissible under Rule 161. Further, the witness is required to appear for cross-examination. However, the Trial Chamber highlights that counsel for Mr. Merhi are the only counsel intending to cross-examine Witness 433. They must inform the Prosecution—in a timely manner to avoid the unnecessary use of resources in the costs incurred with bringing a witness to the seat of the Special Tribunal without cause—if they decide that they no longer wish to cross-examine the witness.

Witnesses 185 and 186

52. While their respective backgrounds are different, Witnesses 185 and 186 will both be called to testify about exhibit P214, a piece of an engine block bearing the identification number '4D33-J01926'.

⁸⁶ R91-606976, ERN 60278532-60278557. Additionally, R91-606976 has an appendix (*See*, ERN D0259273-D0259275), eight related excel spreadsheets of data (*See*, ERN D0260982-D0260983, ERN D0260984-D0261090, ERN D0261091-D0261204, ERN D0261205-D0261216, ERN D0261217-D0261217, ERN D0261218-D0261229, ERN D0261230-D0261230, and ERN D0261231-D0261231), and one brief corrigendum (ERN 60281213-60281215).

⁸⁷ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 3; Sabra Rule 161 (B) Notice, confidential Annex A, p. 3.

⁸⁸ Badreddine Rule 161 (B) Notice, confidential Annex, p. 4; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 3. Initially, counsel for Mr. Badreddine and Mr. Oneissi indicated that they would require Witness 433 to appear for cross-examination. However, they have since changed their position (*See*, Badreddine cross-examination estimates update and Oneissi cross-examination estimates update).

⁸⁹ Merhi cross-examination estimates update.

Witnesses 185 and 186's qualifications

53. The Prosecution intends to call Witness 185 as an expert in tool marks, analysis, and fractography to examine and make conclusions about exhibit P214. For the same purpose, Witness 186 is to be called as an expert in vehicles and trucks. Their qualifications are:

- Witness 185 works in a national criminal research institute, and has a university degree in physical measurements. He has further training in microanalysis, rupture mechanics, and fractography. He is recognised as an expert domestically and has more than 12 years of experience in his field.⁹⁰
- Witness 186, now retired, served in his nation's armed forces. After obtaining a secondary school certificate in mechanical engineering, he received a vocational studies certificate as a mechanic fitter. For more than 20 years, he provided expertise to a criminal research institute regarding the identification of vehicles. He was previously registered as an expert in a national court of appeal, and has provided assistance in regard to more than 120 cases.⁹¹

The Prosecution proposes one expert report for each witness.

54. Counsel for Mr. Ayyash challenge the qualifications of Witness 186, arguing that his *curriculum vitae* does not establish that he is an expert.⁹² Counsel for the other four Accused do not challenge his qualifications.⁹³ None of the counsel for the five Accused challenge the qualifications of Witness 185.⁹⁴

55. On the basis of the information contained in their *curricula vitae*, the Trial Chamber is satisfied that Witnesses 185 and 186 are qualified within the meaning of Rule 161 to offer an expert opinion as to the identification of a piece of an engine block.

⁹⁰ *Curriculum vitae* of Witness 185, ERN 60279896.

⁹¹ *Curriculum vitae* of Witness 186, ERN 60279895.

⁹² Ayyash Rule 161 (B) Notice, confidential Annex A, p. 3; Ayyash response, para. 11.

⁹³ Badreddine Rule 161 (B) Notice, confidential Annex, p. 4; Merhi response, para. 17; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 2; Sabra Rule 161 (B) Notice, confidential Annex A, p. 2.

⁹⁴ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 3; Badreddine Rule 161 (B) Notice, confidential Annex, p. 5; Merhi response, para. 17; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 3; Sabra Rule 161 (B) Notice, confidential Annex A, p. 4.

*Witness 185's 'Official expert report: damage' of 3 June 2010 (R91-606737)*⁹⁵

56. This report details a forensic examination of a part of an engine block (exhibit P214) to: i) describe the exhibit; ii) explain whether it was separated from the rest of the engine block by a rupture; and, iii) determine whether it has been modified.

57. Counsel for Mr. Ayyash and Mr. Sabra accept the report, and do not wish to cross-examine the witness.⁹⁶ Counsel for Mr. Badreddine and Mr. Oneissi do not accept the report, but do not seek to cross-examine Witness 185.⁹⁷ Counsel for Mr. Merhi have taken no position on the report, but do not want to cross-examine this witness.⁹⁸

58. The Trial Chamber considers that the report is relevant to the amended indictment with respect to conclusions about the engine block, and falls within Witness 185's expertise. For these reasons, the report is admissible into evidence under Rule 161. Further, and considering that no Defence counsel seek to cross-examine him, the witness is not required to appear before the Special Tribunal.

*Witness 186's 'Official expert report: examination of part of an engine' of 28 June 2010 (R91-606745)*⁹⁹

59. This report also details a forensic examination of exhibit P214 to: i) describe the exhibit; ii) explain whether it is in fact part of an engine block; iii) determine whether the identification number on the exhibit is a serial number of an engine; iv) determine the method used to inscribe the identification number on the exhibit; and, v) conclude whether this number has been altered.

60. Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Oneissi do not accept the report, but do not seek to cross-examine Witness 186.¹⁰⁰ Counsel for Mr. Sabra accept the report and do not wish to

⁹⁵ R91-606737, ERN 60144858-60144876.

⁹⁶ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 3; Sabra Rule 161 (B) Notice, confidential Annex A, p. 4.

⁹⁷ Badreddine Rule 161 (B) Notice, confidential Annex, p. 5; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 3. Initially, counsel for Mr. Badreddine and Mr. Oneissi indicated that they would require Witness 185 to appear for cross-examination. However, they have since changed their position (*See*, Badreddine cross-examination estimates update and Oneissi cross-examination estimates update).

⁹⁸ Merhi cross-examination estimates update.

⁹⁹ R91-606745, ERN 60171775-60171787.

¹⁰⁰ Ayyash Rule 161 (B) Notice, confidential Annex A, p. 3; Badreddine Rule 161 (B) Notice, confidential Annex, p. 4; Oneissi Rule 161 (B) Notice, confidential Annex A, p. 2. Initially, counsel for Mr. Badreddine and Mr. Oneissi stated that they would require Witness 186 to appear for cross-examination. However, they have since changed their position (*See*, Badreddine cross-examination estimates update and Oneissi cross-examination estimates update).

cross-examine the witness.¹⁰¹ Counsel for Mr. Merhi take no position on the report, and do not intend to cross-examine Witness 186.¹⁰²

61. The Trial Chamber considers that the report falls within Witness 186's expertise and is relevant to the amended indictment. Accordingly, the report is admissible into evidence under Rule 161, and as no Defence counsel want to cross-examine him the witness will not be required to appear for cross-examination.

Witnesses 187 and 188

Witnesses 187 and 188's qualifications

62. The Prosecution intends to call Witness 188 (and possibly Witness 187) as an expert in engineering to analyse the explosion of 14 February 2005. Their qualifications are:

- Witness 188 has several degrees in the field of engineering (i.e., a university degree in civil engineering, a Masters in Structural Engineering, and a PhD in engineering). He is a professor of engineering, having taught the subject for more than 20 years. He has published widely in his field, and a number of his publications have focused on the effects of explosions. He currently teaches two courses devoted to the strength of metals and structural dynamics.¹⁰³
- Witness 187 also has a university degree in civil engineering, a Masters in Structural Engineering, and a PhD in engineering. She is also a professor of engineering, with more than 20 years of experience. Along with her colleague, she has published widely in the field, with many publications focused on the effects of explosions.¹⁰⁴

Two expert reports are relevant to these two witnesses: the first report has three additional co-authors (Witnesses 200, 201, and 202);¹⁰⁵ the second was prepared by Witnesses 188 and 187.

¹⁰¹ Sabra Rule 161 (B) Notice, confidential Annex A, p. 2.

¹⁰² Merhi cross-examination estimates update.

¹⁰³ *Curriculum vitae* of Witness 188, ERN 60277078-60277100.

¹⁰⁴ *Curriculum vitae* of Witness 187, ERN 60275353-60275375.

¹⁰⁵ Witness 200 provides advice and expertise to police and investigative services responding to the threat of explosives. He specialises in caches of explosives belonging to a specific terrorist organisation, and is the former head of a mine-clearance department. He is the Chief of a Bomb Disposal domestic unit. Witnesses 201 and 202 have been bomb disposal experts for more than 30 years (in both military and civilian settings), and have taken part in numerous missions involving the clearance, disposal, destruction, and neutralisation of various munitions and improvised explosive devices (See, *curricula vitae* of Witnesses 200, 201, and 202, ERN D0254556-D0254557).

63. Counsel for Mr. Ayyash, Mr. Badreddine, Mr. Oneissi, and Mr. Sabra have not challenged the qualifications of Witnesses 188 and 187 or any of the three co-authors to the first report.¹⁰⁶ Counsel for Mr. Merhi challenge the qualifications of both witnesses.¹⁰⁷

64. The Trial Chamber is satisfied, on the basis of the information contained in their *curricula vitae*, that Witnesses 188 and 187 are qualified as experts in engineering within the meaning of Rule 161 to analyse the effects of an explosion.

*Witnesses 188 and 187's 'Final report of experts regarding the attack on 14 February 2005 against Rafic Hariri' of 15 December 2012 (R91-100473)*¹⁰⁸

65. This report provides the authors' joint opinion regarding the explosion of 14 February 2005, including: i) the location of the explosion and the convoy vehicles; ii) the type, quantity, positioning, and carrier of the explosives used; iii) the possibilities regarding the triggering mechanism; and, iv) the complexity of the attack and the perpetrators' role in it.

66. Counsel for Mr. Ayyash challenge only sections 3.5 and 4 of the report, arguing that they exceed the scope of the expertise of the experts, but do not seek to cross-examine the witnesses.¹⁰⁹ Counsel for Mr. Badreddine do not accept the report, and seek to cross-examine both witnesses.¹¹⁰ Counsel for Mr. Merhi have taken no explicit position on the report, but they challenge the qualifications of the witnesses and seek to cross-examine them.¹¹¹ Counsel for Mr. Oneissi and Mr. Sabra do not accept the report, but do not wish to cross-examine Witness 188 or Witness 187.¹¹² The Prosecution submits that it does not intend to rely upon sections 3.5 and 4 of the report, save for section 3.5.3, which it argues is within the expertise of these witnesses.¹¹³

67. The Trial Chamber finds that the report is relevant to the amended indictment, and generally falls within the expertise of Witnesses 188 and 187. While the Trial Chamber considers that the overwhelming majority of the report is admissible, it will defer a decision until the testimony of one (or both) of the witnesses—specifically regarding the contested section 3.5.3, which the Prosecution

¹⁰⁶ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 1, 3, 5, 8, 11; Badreddine Rule 161 (B) Notice, confidential Annex, pp 1, 5, 7, 12, 17; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 1, 3, 5, 9, 12; Sabra Rule 161 (B) Notice, confidential Annex A, pp 1, 3, 5, 9, 14.

¹⁰⁷ Merhi response, para. 16.

¹⁰⁸ R91-100473, ERN D0254550-D0254650.

¹⁰⁹ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 1, 8; Ayyash response, paras 12-13.

¹¹⁰ Badreddine Rule 161 (B) Notice, confidential Annex, pp 1, 12.

¹¹¹ Merhi response, para. 16; Merhi cross-examination estimates update.

¹¹² Sabra Rule 161(B) Notice, confidential Annex A, pp 1, 9; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 1, 9. Initially, counsel for Mr. Oneissi indicated that they would require Witnesses 188 and 187 to appear for cross-examination. However, they have since changed their position (*See*, Oneissi cross-examination estimates update).

¹¹³ Prosecution motion, para. 8.

intends to rely on despite the objection of counsel for Mr. Ayyash. Counsel for Mr. Badreddine and Mr. Merhi seek to cross-examine both witnesses, but—at this point in time—requiring both witnesses to appear would be an unnecessary use of the Special Tribunal’s resources. Both participated in preparing this report and have comparable expertise. Accordingly, only Witness 188 will be required to appear for cross-examination. If, after cross-examining this witness, Defence counsel maintain that the appearance of Witness 187 is necessary, they can make an application before the Trial Chamber, showing good cause, to require the witness to appear for cross-examination.

*Witnesses 188 and 187’s ‘Final forensic report – quantity of explosives’ of September 2010 (R91-606433)*¹¹⁴

68. This report provides an opinion on the quantity and location of the explosives used in the explosion of 14 February 2005, using a ‘computational study’. Its sections include: i) the fundamentals of numerical models; ii) validation of numerical models used; iii) numerical analysis of the crater; iv) damage to the surrounding buildings; and, v) conclusions.

69. Counsel for Mr. Ayyash accept this report, and do not seek to cross-examine the witnesses.¹¹⁵ Counsel for Mr. Badreddine do not accept the report, and seek to cross-examine Witness 188 and Witness 187.¹¹⁶ Counsel for Mr. Merhi take no position on this report, but challenge the qualifications of the witnesses and want to cross-examine them.¹¹⁷ Counsel for Mr. Oneissi and Mr. Sabra do not accept the report, but do not wish to cross-examine the witnesses.¹¹⁸

70. The report falls within the expertise of the two witnesses, and is relevant to the charges against the five Accused—namely, the size and location of the explosion on 14 February 2005. Accordingly, the report is admissible into evidence under Rule 161. As with the previous report, only Witness 188 will—at this stage—be required to appear for cross-examination.

¹¹⁴ R91-606433, ERN 60190396-60190472.

¹¹⁵ Ayyash Rule 161 (B) Notice, confidential Annex A, pp 1, 8.

¹¹⁶ Badreddine Rule 161 (B) Notice, confidential Annex, pp 1, 12.

¹¹⁷ Merhi response, para. 16; Merhi cross-examination estimates update.

¹¹⁸ Sabra Rule 161(B) Notice, confidential Annex A, pp 1, 9; Oneissi Rule 161 (B) Notice, confidential Annex A, pp 1, 9. Initially, counsel for Mr. Oneissi indicated that they would require Witness 188 and Witness 187 to appear for cross-examination. However, they have since changed their position (*See*, Oneissi cross-examination estimates update).

CONCLUSION

71. Of the twelve proposed witnesses, the Trial Chamber has qualified eleven as experts within the meaning of Rule 161. The reports of these eleven experts are admissible as expert reports under Rule 161, save for one contested report co-authored by Witnesses 188 and 187. A decision on the admissibility of this contested report as an expert report has been deferred until after the testimony of one (or both) of the witnesses. Additionally, a decision on the expert status of Witness 155 has been deferred pending further submissions before his substantive testimony on his qualifications. Consequently, a decision on the admissibility of Witness 155's report under Rule 161 has also been deferred. Witnesses 548, 185, and 186 are not required to personally appear before the Special Tribunal as their reports have been found admissible under Rule 161, and no Defence counsel seek to cross-examine them.

72. The statements of two witnesses, Witness 165 and Witness 558, have been ruled admissible under Rule 155.

73. Finally, the Trial Chamber emphasises that these findings regarding the experts' qualifications and the admissibility of their reports are limited. These rulings do not affect whether the Trial Chamber ultimately accepts the conclusions of any admitted expert reports, and the weight that such conclusions may be given in a trial judgement.¹¹⁹

¹¹⁹ See, Transcript of 16 July 2014, p. 39.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES that the following eleven persons are qualified as experts under Rule 161 and that their respective reports fall within their expertise: Witnesses PRH 172; 168; 165; 558; 492; 548; 433; 185; 186; 188; and, 187;

RULES ADMISSIBLE as expert reports under Rule 161:

- Witness 172's 'Forensic report regarding the crime scene examination performed on the Hariri crime scene after the explosion of 14 February 2005' of 14 March 2005 (R91-606399);
- Witnesses 168, 165, and 558's 'Report of forensic investigation of the explosion of 14 February 2005 at the request of UNIIC' of 30 September 2005 (R91-200452);
- Witness 492's 'Anthropological and DNA investigation related to the death of Rafic HARIRI and 22 others in Beirut on February 14th, 2005' of 4 October 2012 (R91-606974);
- Witness 492's 'Forensic anthropological investigation related to the death of R.HARIRI and 22 other persons in Beirut on February 14th, 2005' of 4 March 2013 (R91-606978);
- Witness 548's (Mr. Iskander Sursock's) 'Official report given by the National Council of Scientific Geophysics concerning the report related to earthquake signals' of 5 May 2005 (R91-600019);
- Witness 433's 'Comparisons and computation of statistical value between profiles obtained in the course of the UNIIC investigation' of 31 January 2013 (R91-606976);
- Witness 185's 'Official expert report: Damage' of 3 June 2010 (R91-606737);
- Witness 186's 'Official Expert Report: Examination of part of an engine' of 28 June 2010 (R91-606745); and
- Witnesses 188 and 187's 'Final Forensic Report – Quantity of Explosives' of September 2010 (R91-606433);

RULES ADMISSIBLE under Rule 155:

- Witness 165's statement of 15 December 2010 (R91-606434); and

- Witness 558's statement of 2 November 2005 (R91-600024);

DEFERS a decision, until before his substantive testimony, on whether Witness 155 is qualified as an expert under Rule 161; and

DEFERS a decision on the admissibility, under Rule 161, of:

- Witness 155's 'Final forensic report re crime scene' of 14 May 2006 (R91-602843); and
- Witnesses 188 and 187's 'Final Report of Experts regarding the attack on 14 February 2005 against Rafic Hariri' of 15 December 2012 (R91-100473).

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

Leidschendam,
The Netherlands
21 August 2014

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

