

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:** 7 November 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 EXPERT AND WITNESS STATEMENTS OF WITNESSES**  
**PRH009 AND PRH101**

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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. 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 Meslin  
& Mr. Geoffrey Roberts



## **BACKGROUND**

1. The Prosecution has sought to have admitted into evidence under Rules 149 (C) and 155 of the Special Tribunal's Rules of Procedure and Evidence the statements of Witnesses PRH009 and PRH101.<sup>1</sup> The Prosecution has also requested the public non-disclosure of the annex to its motion until the Trial Chamber decides otherwise.<sup>2</sup> Counsel for Mr. Mustafa Amine Badreddine, Mr. Hassan Habib Merhi, Mr. Hussein Hassan Oneissi and Mr. Assad Hassan Sabra responded to the motion.<sup>3</sup>

## **DISCUSSION**

2. The Trial Chamber analysed—in decisions of 30 May 2013 and 20 December 2013<sup>4</sup>—the procedural safeguards that govern the admission into evidence of a statement without allowing for cross-examination. In particular, it found that a statement sought to be admitted must not contain evidence going to the proof of the acts and conduct of the accused and must meet the basic requirements for its admission into evidence. These principles are applicable to this decision.

3. Witness 009—a team leader in the Lebanese Internal Security Forces assigned to the former Lebanese Prime Minister, Mr. Rafiq Hariri's convoy—and Witness 101—the civilian team leader of the convoy—have made statements<sup>5</sup> that the Prosecution wishes to have admitted into evidence in lieu of oral testimony, pursuant to Rules 149 and 155.<sup>6</sup> These statements describe the routes taken by Mr. Hariri's convoy vehicles to various locations in Lebanon and the activities of the officers in the convoy during the relevant period. They annex maps and drawings of the routes travelled by Mr. Hariri's convoy which, according to the Prosecution, 'form an inseparable and indispensable part'<sup>7</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Prosecution Motion for Admission of the Statements of PRH009 and PRH101 in lieu of Oral Testimony, 16 October 2014. On 17 October 2014, the Prosecution filed a Corrigendum to Confidential Annex A to "Prosecution Rule 155 Motion for the Admission of the Statements of PRH009 and PRH101 in Lieu of Oral Testimony."

<sup>2</sup> Prosecution motion, para. 12.

<sup>3</sup> Badreddine Defence Response to 'Prosecution Rule 155 Motion for Admission of the Statements of PRH009 and PRH101 in lieu of Oral Testimony', 29 October 2014; Réponse de la Défense de Merhi à la 'Prosecution Rule 155 Motion for the Admission of the Statements of PRH009 and PRH101 in lieu of Oral Testimony', 30 October 2014; The Defence for Hussein Hassan Oneissi Consolidated Response to the 'Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials' and the 'Prosecution Rule 155 Motion for Admission of the Statements of PRH009 and PRH101 in lieu of Oral Testimony', filed on 16 October 2014 and 30 October 2014, respectively; Consolidated Sabra Response to Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Material and Rule 155 Motion for the Admission of the Statements of PRH009 and PRH101 in lieu of Oral Testimony, 29 October 2014.

<sup>4</sup> STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra*, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements Under Rule 155, 30 May 2013, para. 13; First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14.

<sup>5</sup> ERN 60183598-60183629 and ERN 60183630-60183666.

<sup>6</sup> Providing the general rules of evidence (Rule 149) and regulating the admission of written statements and transcripts in lieu of oral testimony (Rule 155).

<sup>7</sup> Prosecution motion, para. 11.

of the two witnesses' testimony. The maps are extracts from the 2005 edition of the Zawarib Street Atlas of Greater Beirut.

4. According to the Prosecution, the statements and their annexes are relevant to the case, have probative value, and do not go to the acts and conduct of the Accused. They are also partly cumulative to the statements of Witnesses PRH247, PRH357 and PRH149 and other documentary evidence, such as GeoVision data, which the Prosecution seeks to admit into evidence,<sup>8</sup> and the full 2005 Zawarib Atlas.<sup>9</sup> Moreover, while these witnesses will be called to testify *viva voce* on other aspects of their evidence, the interests of justice and an expeditious trial favour the admission of their statement and annexes without cross-examination.<sup>10</sup>

5. Counsel for Mr. Badreddine take no position on the admissibility of the statements and annexes, but wish to cross-examine the witnesses because 'no provision in the Rules disallows the Defense from cross-examining a witness testifying *viva voce* on the contents of any of his or her statements, provided cross-examination is conducted in accordance with Rule 150 (I) of the Rules'.<sup>11</sup> Counsel for Mr. Merhi submit that the admission of the statements is unjustified and that 'general interest' demands that this evidence be presented orally.<sup>12</sup> Counsel for Mr. Oneissi object to the admission into evidence of the 2005 Zawarib Atlas annexed to the statements arguing that its relevance, probative value and reliability has not been demonstrated.<sup>13</sup> They do not take any position as to the admission, under Rule 155, of the statements themselves.<sup>14</sup> Counsel for Mr. Sabra do not object to the admission of the statements. However, this is predicated upon the appearance of both witnesses at a later stage as *viva voce* witnesses so that they may be questioned about information contained in their statements.<sup>15</sup>

6. On 22 October 2014, the Trial Chamber admitted the 2005 Zawarib Atlas as exhibit P298 and, at the time, noted counsel for Mr. Oneissi's general objections.<sup>16</sup> It will deal with any specific legal objections as to its accuracy at the relevant time. The Trial Chamber is satisfied that the statements of

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<sup>8</sup> Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials, 16 October 2014. GeoVision data sets are commercially available sets of geographic information system (GIS) data which provide the latitude and longitude coordinates for geographic locations which can then be plotted on a map, using mapping software.

<sup>9</sup> Prosecution motion, para. 6.

<sup>10</sup> Prosecution motion, para. 2.

<sup>11</sup> Badreddine Defence response, paras 1-4. Rule 150 (I) regulates the scope of cross-examination.

<sup>12</sup> Merhi Defense response, paras 1-5.

<sup>13</sup> Oneissi Defense response, paras 3 and 12-16.

<sup>14</sup> Oneissi Defense response, para. 3.

<sup>15</sup> Sabra Defense response, paras 6-7.

<sup>16</sup> STL-11-01/T/TC, transcript of 22 October 2014, pp. 12-15.

Witnesses 009 and 101, and their annexes meet the requirements of the relevant Practice Direction.<sup>17</sup> These statements and annexes are relevant to the consolidated indictment and are therefore admissible under Rule 149 (C). They do not concern the acts and conduct of any of the five Accused, and contain sufficient indicia of reliability. Accordingly, the statements of Witnesses 009 and 101, and their annexes are admissible under Rule 155. Since the Prosecution intends to call these witnesses at a later stage Defence counsel, at the appropriate time, will have an opportunity to question them. The Trial Chamber will then decide on the permissible scope of the cross-examination.

7. The request for public non-disclosure of the annex to the motion is granted. However, the Prosecution is required to file a public redacted version of this annex.

### **DISPOSITION**

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

**RULES ADMISSIBLE** under Rule 155, the statements of Witnesses PRH009 and PRH101; and

**ORDERS** the Prosecution to file a public redacted version of the annex to its motion.

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

Leidschendam,  
The Netherlands  
7 November 2014

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy



<sup>17</sup> STL-PD-2010-02, Practice Direction on the Procedure for Taking Depositions Under Rules 123 and 157 and for Taking Witness Statements for Admission in Court Under Rule 155, 15 January 2010.