

**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**

---

**DECISION ON THE ONEISSI DEFENCE MOTION FOR DISCLOSURE OF  
REQUESTS FOR ASSISTANCE**

---

**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 M...  
& Mr. Geoffrey Roberts



## **BACKGROUND**

1. International requests for assistance are an important and well-established feature of international criminal law, and international institutions employing international criminal procedural law use them to obtain the cooperation of States with their work. The Special Tribunal for Lebanon is one such institution.
2. United Nations Security Council Resolution 1595 (2005), which established the United Nations International Independent Investigation Commission (UNIIC), decided that the Commission would ‘enjoy the full cooperation of the Lebanese authorities, including full access to all documentary, testimonial and physical information and evidence in their possession that the Commission deems relevant to the inquiry.’ It also called on all States and all parties ‘to cooperate fully with the Commission, and in particular to provide it with any relevant information’.
3. Article 15 of the Agreement between the United Nations and Lebanon on the establishment of a Special Tribunal, annexed to United Nations Security Council Resolution 1757 (2007), and Rule 16 of the Special Tribunal’s Rules of Procedure and Evidence, provide a mechanism for the Special Tribunal to direct requests for assistance to the Lebanese Republic. Between 2006 and 2010, pursuant to these legal instruments and a Memorandum of Understanding between Lebanon and the Office of the Prosecutor regarding the Modalities of Cooperation, the UNIIC and the Special Tribunal’s Prosecution sent numerous requests for assistance to the Government of Lebanon. Some of these requests were to obtain, for investigative purposes, telephone data held by Lebanese telecommunications companies.
4. On 19 August and 2 September 2014, counsel for Mr. Hussein Hassan Oneissi asked the Prosecution—pursuant to Rules 110 (B) and 113<sup>1</sup>—to provide them with 66 relevant requests for assistance sent to the Lebanese Prosecutor-General.<sup>2</sup> The Prosecution, however, declined to disclose them,<sup>3</sup> and as a result, on 25 September 2014, counsel for Mr. Oneissi moved the Trial Chamber to

---

<sup>1</sup> Regulating the inspection by the Defence of documents in the Prosecution’s possession ‘which are material to the preparation of the defence, or are intended for use by the Prosecution as evidence at trial’ (Rule 110 (B)) and regulating the disclosure of exculpatory material (Rule 113).

<sup>2</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Letter from Counsel for Mr. Oneissi to the Prosecution, ‘Request for disclosure of Prosecution Requests for Assistance Relating to CDRs’, 19 August 2014; Letter from Counsel for Mr. Oneissi to the Prosecution, ‘Request for Disclosure of Prosecution Request for Assistance COMMSRFA.2008.ALFA.147 of 15 December 2008’, 2 September 2014.

<sup>3</sup> Letter from the Prosecution to the Defence, ‘Your letter of 19 August’, 26 August 2014; Letter from the Prosecution to the Defence, ‘Your letter of 2 September’, 4 September 2014.

order the Prosecution to disclose them.<sup>4</sup> The Prosecution responded opposing the motion,<sup>5</sup> and, thereafter counsel for Mr. Oneissi filed a reply.<sup>6</sup>

### SUBMISSIONS

5. Counsel for Mr. Oneissi argue that these 66 requests for assistance are essential to the preparation of its defence under Rule 110 (B) as they reveal the methods and procedures used by the UNIIC and the Prosecution in identifying and collecting telephone data and using it to compile call sequence tables. Defence counsel point out that this data permitted the Prosecution to conclude that a ‘group of purple phones’<sup>7</sup>—which allegedly included a telephone number attributed to Mr. Oneissi—was involved in the offences which are the subject of the consolidated indictment in these proceedings.<sup>8</sup> Moreover, obtaining these requests for assistance would allow Defence counsel to verify whether the UNIIC and the Prosecution obtained mobile telephone call record data—from private telecommunications companies in Lebanon—according to the legal requirements of the Special Tribunal’s Statute and Rules, and in compliance with ‘privacy rules.’ Counsel did not elaborate on what they meant by ‘privacy rules’.<sup>9</sup>

6. The Prosecution opposed the motion, arguing that: (i) Defence counsel already have 28 of the 66 requests for assistance sought, therefore that part of the motion is moot and should be dismissed; (ii) counsel have not demonstrated that the disclosure of requests for assistance is warranted under the Rules as Rule 130 (A)<sup>10</sup> does not constitute an independent basis for disclosure, and requests for assistance are administrative documents not subject to disclosure under Rule 110 (B); (iii) the materiality of the underlying call data received in response to the requests for assistance does not demonstrate that the requests themselves are material; and (iv) verifying whether call data records have been obtained according to legal requirements does not provide an adequate legal basis for disclosure.<sup>11</sup>

7. In a reply to the Prosecution’s response, counsel for Mr. Oneissi objected to the Prosecution criticizing their alleged lack of diligence. They stated that they were unable themselves to identify that 28 requests had already been disclosed, because some requests for assistance ‘were included in

---

<sup>4</sup> Request for Disclosure of Requests for Assistance, 25 September 2014.

<sup>5</sup> Prosecution Response to Oneissi Defence Request for Disclosure of Requests for Assistance, 9 October 2004.

<sup>6</sup> Reply to the ‘Prosecution Response to Oneissi Defence Request for Disclosure of Requests for Assistance’, 15 October 2014.

<sup>7</sup> As referred to in the consolidated indictment in these proceedings, 7 March 2014, para. 15 (e).

<sup>8</sup> Oneissi Defence motion, paras 5-17.

<sup>9</sup> Oneissi Defence motion, paras 18-20.

<sup>10</sup> Relating to the Trial Chamber’s authority to give directions on the conduct of a hearing, including on disclosure.

<sup>11</sup> Prosecution response, paras 7-33.

responses which are themselves voluminous, without having any information as to their content and without being able to rely on their titles, dates or references'.<sup>12</sup>

### **DISCUSSION**

8. In its decision of 14 October 2014, the Trial Chamber held—as a general principle—that requests for assistance must be disclosed under Rule 110 (B) only if the Defence is able to demonstrate that they are material to its preparations for trial.<sup>13</sup> As 28 of the 66 requests for assistance sought have already been provided to the Defence, the motion in relation to these requests for assistance is moot.

9. With regard to the remaining 38 requests for assistance, and to ascertain whether any of these requests for assistance are material to Defence preparations for trial, the Trial Chamber ordered the Prosecution to provide them to the Trial Chamber.<sup>14</sup> The Trial Chamber has carefully reviewed each request and has found that they are all similarly phrased and generally seek the same categories of information. As a representative example, a request for assistance sent by the UNIIC on 12 February 2008, states:<sup>15</sup>

‘With reference to the WARRANT issued by the United Nations International Independent Investigation Commission (UNIIC) to [mobile telephone company] on [date], the Commission hereby requests the following information:

The Commission requests to be provided with the call records, SMSs (including content if available), IMEI, and call locations for all calls made and received on the [mobile telephone company] network in Lebanon over the period [date].’

10. Save for one request for assistance, dated 26 August 2010,<sup>16</sup> the other requests sent by the UNIIC and the Prosecution merely ask the Lebanese authorities to provide specified records or information relating to cell towers, call locations, telephone numbers, and short message service (SMS).

---

<sup>12</sup> Oneissi Defence Reply, para. 4.

<sup>13</sup> Decision on the Oneissi Defence Motion for Disclosure of Documents Referred to in the Report Related to the Hard Drive of Mr. Ahmed Abu Adass, 14 October 2014, para. 7. Re materiality under Rule 110 (B), see STL-11-01/PT/AC/AR126.4, *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra*, Decision on Appeal by Counsel for Mr Oneissi Against Pre-Trial Judge’s “Decision on Issues Related to the Inspection Room and Call Data Records”, 19 September 2013, paras 21-23.

<sup>14</sup> Email from the Trial Chamber’s legal officer to the Prosecution and the Parties, 15 October 2014, and Prosecution’s response providing the documents, 16 October 2014.

<sup>15</sup> Request for assistance #133, 12 February 2008 (ERN 60066512).

<sup>16</sup> Request for assistance from the Prosecutor of the Special Tribunal for Lebanon to the Government of Lebanon, 26 August 2010, 2010/RFA0553/LEB/JoB (ERN 60277050-60277051).

11. The records and information that the Lebanese Government provided to the Prosecution pursuant to these requests for assistance may be subject to disclosure, and indeed has been disclosed to the Defence. The requests for assistance themselves, however, do not contain anything material to Defence preparations for trial. As the Trial Chamber has ascertained, and as the example above shows, they are generic in nature and do no more than request the information that was eventually provided and that Defence counsel have.

12. The request for assistance dated 23 August 2010 additionally sought assistance in scheduling interviews for obtaining witness statements in relation to specified data. To ascertain whether its disclosure would be material to Defence preparations for trial, the Trial Chamber ordered the Prosecution to provide it with any witness statements which resulted from that particular request.<sup>17</sup> The Trial Chamber has carefully examined the two witness statements that resulted and has determined, first, that they have already been disclosed to counsel for Mr. Oneissi, and, second that the information in the request for assistance is reflected in the witness statements. Nothing in this request for assistance is material to Defence preparations for trial. It is therefore not subject to disclosure.

13. In their reply, counsel for Mr. Oneissi objected to the Prosecution disclosing 28 of the requests for assistance in what they described as a disorganized manner. The Trial Chamber emphasizes that efficient and expeditious proceedings require the diligent and prompt disclosure of documents. Any difficulties arising between the Parties should, as far as possible, be resolved through dialogue between them.

### **DISPOSITION**

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

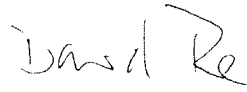
**DISMISSES** the motion.

---

<sup>17</sup> Email from the Trial Chamber's legal officer to the Prosecution and Parties, 29 October 2014, and the Prosecution's response, providing the documents, 29 October 2014.

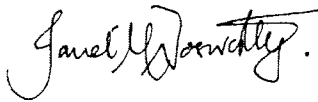
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands  
7 November 2014



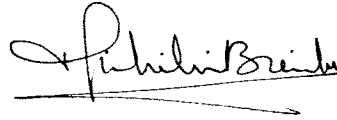
---

Judge David Re, Presiding



---

Judge Janet Nosworthy



---

Judge Micheline Braidy

