



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: 8 December 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 PROSECUTION MOTION TO ADMIT INTO EVIDENCE
GEOGRAPHIC DOCUMENTS**

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 Metten
& Mr Geoffrey Roberts

INTRODUCTION

1. On 16 October 2014, the Prosecution filed a motion under Rules 91 and 154 of the Special Tribunal's Rules of Procedure and Evidence seeking to add two items to its exhibit list and to admit into evidence six exhibits related to the general geography of Beirut and the location, in 2004 and 2005, of four public telephone boxes.¹ The geographic data is contained in two atlases—the 2005 edition of the Zawarib Greater Beirut Atlas and the 2010 edition of the Zawarib Beirut & Beyond Road Atlas—and in two sets of electronic data prepared by a Lebanese company, GeoVision.² These sets comprise Geographic Information System (GIS) data of longitude and latitude coordinates for locations in Lebanon, referred to as mapping data, and a 'business layer,' allowing the plotting of locations on a map.³

2. The evidence relating to the locations of the public telephone boxes is contained in two responses to requests for assistance sent by the Lebanese State-owned telecommunication company Ogero through the Lebanese Ministry of Telecommunications, to the United Nations International Independent Investigation Commission and the Special Tribunal's Prosecution.⁴ The Prosecution also sought to add the 2005 Zawarib Atlas and the GeoVision business layer to its exhibit list. On 22 October 2014, however, the Prosecution tendered this atlas into evidence as exhibit P298, thus rendering this submission redundant.⁵ Finally, the Prosecution requests that two confidential annexes to the motion remain confidential.⁶

3. 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 responded to the motion.⁷ On 12 November 2014, the Prosecution made a supplementary filing, disclosing some

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, F1704, Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials, 16 October 2014 (Public with Confidential Annexes A, B, and C), para. 1.

² Prosecution motion, paras 1, 14.

³ Prosecution motion, paras 1, 14.

⁴ Prosecution motion, para. 1.

⁵ Transcript of 22 October 2014, p. 12, line 24 to p. 13, line 2. The 2005 Zawarib Atlas was used with Witness PRH256, who confirmed the street names and locations. T. 13-14, 22 October 2014.

⁶ Prosecution motion, para. 27. Originally, the Prosecution requested that the three annexes, Annexes A, B, and C remain confidential but on 10 November 2014 filed a request to re-classify Annex B as public. F1745, Request to Reclassify Annex B to "Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials", 10 November 2014.

⁷ F1720, 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, 30 October 2014, para. 1; F1722, Response by the Ayyash Defence to the Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials, 30 October 2014, para. 1; F1725, 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 the Admission of the Statements of PRH009

recently-received responses to requests for assistance from the Lebanese authorities, relating to the documents it seeks to have admitted.⁸ Counsel for Mr Oneissi then filed supplementary submissions.⁹

DISCUSSION

4. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit list, but that, in doing so, it must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider general factors including: (i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.¹⁰ The Trial Chamber may admit evidence 'from the bar table', that is, without requiring a witness to attest to the document, as long as the evidence is relevant and probative, and its probative value is not outweighed by its prejudicial effect.¹¹ The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.¹²

A. Amending the exhibit list

5. The Prosecution submits that the interests of justice would permit the addition to their exhibit list of the GeoVision business layer because it is relevant, probative, and does not adversely impact the preparation of the Defence for trial. Further, its omission from the exhibit list was inadvertent, it had already been disclosed to the Defence, and it forms only a small part of the larger GeoVision

and PRH101 in Lieu of Oral Testimony", both filed on 16 October 2014, 30 October 2014, para. 1; F1727, Response of the Defence of Merhi to the "Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials", 30 October 2014, para. 1.

⁸ F1704/ADD, Supplementary Filing to "Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials" dated 16 October 2014, 12 November 2014.

⁹ F1760, Supplementary Submissions of 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 the Admission of the Statements of PRH009 and PRH101 in Lieu of Oral Testimony," both filed 16 October 2014, 19 November 2014.

¹⁰ F1484, Decision on Prosecution Motion on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014, para. 15; F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; F1228, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

¹¹ See Rule 149 (D).

¹² Decision of 13 January 2014, paras 4-6.

data set already on the exhibit list.¹³ Counsel for the Accused do not oppose this amendment of the exhibit list.¹⁴

6. The GeoVision business layer is *prima facie* relevant and probative, and adding it to the exhibit list will not delay the proceedings or prejudice the preparations of the Defence. Considering, also, the position of Defence counsel, it is in the interests of justice to add it to the exhibit list.

B. Admissibility of the 2010 Zawarib Atlas, the GeoVision data sets, and the responses from Ogero to requests for assistance

7. The Prosecution argues that because they facilitate the identification of locations important to the Prosecution's case, the 2010 Zawarib Atlas, the two GeoVision data sets, and the responses from Ogero are both relevant and probative.¹⁵

8. Counsel for Mr Ayyash, Mr Oneissi, and Mr Sabra do not object to the admission into evidence of any of the documents to the extent that the Prosecution intends to use them to visually represent parts of its case.¹⁶ They argue, however, that to prove the exact locations of specific places, the Prosecution should be required to use independent location evidence such as GPS coordinates or eye witness testimony.¹⁷ Counsel for Mr Merhi argue that it is premature for the Trial Chamber to admit this evidence.¹⁸ They argue that the Prosecution has not yet started presenting its telecommunication evidence, and thus introducing this type of evidence now from the bar table without a proper context would be unduly burdensome to them, due to the joinder of Mr Merhi to the consolidated indictment after the commencement of the case.¹⁹

9. Counsel for Mr Oneissi submit that admitting evidence relating to the locations the Prosecution intends to use to establish the presence of an Accused should be subject to a heightened standard, namely a higher *prima facie* showing of relevance, probative value, and reliability.²⁰

10. Rule 149 (A) permits the Trial Chamber to 'admit any relevant evidence which it deems to have probative value'. However, and contrary to the submissions of counsel for Mr Oneissi, this does

¹³ Prosecution motion, para. 26.

¹⁴ Sabra Defence response, paras 1-5; Ayyash Defence response, paras 2-4; Oneissi Defence response, paras 1-2; Merhi Defence response, para. 2.

¹⁵ Prosecution motion, para. 2.

¹⁶ Sabra Defence response, paras 2 and 4; Oneissi Defence response, para. 10; Ayyash Defence response, para. 5.

¹⁷ Sabra Defence response, para. 5; Ayyash Defence response, para. 7; Oneissi Defence response, para. 10.

¹⁸ Merhi Defence response, para. 1.

¹⁹ Merhi Defence response, paras 1, 3, 5-7.

²⁰ Oneissi Defence response, para. 11; *See also* Oneissi Defence response, paras 13, 17; *See also* Oneissi Defence supplemental submissions, paras 11-15.

not require the Trial Chamber—in determining whether evidence is relevant or probative—to distinguish between evidence of the alleged acts or conduct of the Accused, and other evidence. Indeed, the general principles of international criminal law and procedure provide that even documents relating to the elements of the crimes charged in an indictment will generally be admissible when their probative value is not substantially outweighed by the need to ensure a fair trial.²¹ The Trial Chamber can find no legal authority, explicit or implicit, that requires it to adopt a heightened standard when deciding whether to admit evidence of the acts and conduct of an accused person. In the Trial Chamber’s view, the arguments of Defence counsel appear to relate more to the weight to be given to the evidence, to considerations of judicial economy, or to the timing of the presentation of evidence, rather than admissibility. At the appropriate time, the Trial Chamber will carefully scrutinise this evidence, but in the context of the totality of the evidence received—from both the Prosecution and the Defence. Moreover, admitting evidence ‘from the bar table’ is a common practice before international courts and tribunals and is not exceptional in somehow requiring the Trial Chamber to adopt a heightened admissibility test.²²

i. The 2010 Zawarib Atlas

11. The Prosecution submits that the 2010 Zawarib Atlas is relevant and probative because it allows identification of various locations, including the crime scene, and where the crime was allegedly planned.²³ It intends to use the atlas with witnesses and in its electronic presentation of evidence.²⁴ As for the indicia of reliability, the Prosecution submits that the atlas is commonly and commercially available, that it identifies its sources and provides scales for the maps, and that a Prosecution analyst compared the 2005 and 2010 versions against each other to identify any discrepancies.²⁵

12. Counsel for Mr Oneissi submit that, because the Prosecution did not precisely link the atlas and the charges against the Accused in the consolidated indictment, it has not met its burden of

²¹ See, for instance, ICTR, *Prosecutor v. Ntagerura et al.*, Decision on Motion for Admission of Additional Evidence, 10 December 2004, para. 22 (relating to the admissibility of witness statements relating to alleged acts of the accused as listed in the indictment), expressing the same principles as, for instance, ICTY, *Prosecutor v. Karadžić*, Decision on Prosecution’s Bar Table Motion for the Admission of Documents Related to the Sarajevo Component, 11 May 2012. On the standard in general, see for example: ICTR, *Rutaganda v. The Prosecutor*, Appeal Judgement, 26 May 2003, para. 33 and ICTY, *Prosecutor v. Prlić et al.*, Decision on Jadranko Prlić’s Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration on the Decision on the Admission of Documentary Evidence, 3 November 2009, para. 33 (‘definitive proof of reliability is not required at the admissibility stage’).

²² Decision of 13 January 2014, paras 4-6.

²³ Prosecution motion, para. 8.

²⁴ Prosecution motion, paras 7, 9-10.

²⁵ Prosecution motion, paras 7, 12.

showing relevance.²⁶ The Prosecution's intended reliance on the atlas for its electronic presentation of evidence increases neither its reliability nor its probative value.²⁷ Further, comparing editions does not suffice to indicate reliability, and commercially produced maps are not likely to possess 'forensic precision.'²⁸ Moreover, the atlas—having been created from different sources gathered at different times—should not be used to determine precise geographical locations.²⁹ Counsel for Mr Merhi also submit that the Prosecution has not shown relevance or sufficient indicia of reliability.³⁰

13. The Trial Chamber is satisfied that the 2010 Zawarib Atlas is relevant to assist in identifying relevant locations and that, under Rule 149, its probative value is not outweighed by prejudice to any Accused. As a standard commercial directory of streets and other localities in Beirut, it has sufficient reliability to be admitted into evidence for the general purpose of assisting in identifying relevant locations. The Trial Chamber does not agree—as suggested by counsel for Mr Oneissi—that street directories need a defined level of precision to be admissible evidence. Rule 149 and the general principles of international criminal law and procedure mandate no such requirement.

14. The Trial Chamber finds that the atlas is generally reliable for these general identification purposes, but emphasises that this is of course without prejudice to Defence counsel making any specific challenge to its accuracy in relation to any evidence or Prosecution submissions at trial. With this *caveat*, the atlas may be admitted into evidence.

ii. The GeoVision data sets

15. The Prosecution submits that the GeoVision data sets are relevant and probative because they allow for locations to be identified on a map, thus assisting in identifying where important events occurred, for example the alleged movements of Mr Rafiq Hariri and the Accused.³¹ The data sets are also important for the electronic presentation of evidence on geographic locations and Mr Hariri's movements.³² As for their indicia of reliability, the Prosecution submits that the data sets were commercially available from GeoVision in 2005-2006 and that it obtained them from the Lebanese authorities pursuant to a request for assistance. It also provided the Trial Chamber and the

²⁶ Oneissi Defence response, para. 13.

²⁷ Oneissi Defence response, para. 14; *See also* Oneissi Defence supplemental submissions, para.16 (citing ERN 60301165-60301176 at 60301173 and ERN 60301357-60301402 at 60301398).

²⁸ Oneissi Defence response, para. 16; Oneissi Defence supplemental submissions, para. 23.

²⁹ Oneissi Defence response, paras 10, 24.

³⁰ Merhi Defence response, paras 9-11.

³¹ Prosecution motion, para. 15.

³² Prosecution motion, para. 15.

parties with four documents supporting the reliability of these items and submits that Witness PRH263 will testify to cross-referencing locations in the data sets against the 2010 Zawarib Atlas.³³

16. While not objecting to the admission of the business layer, counsel for Mr Ayyash point out that the business layer is incomplete and missing parts of southern Beirut and is therefore not a reliable representation of all of the businesses operating in Beirut in 2005.³⁴ Counsel for Mr Oneissi submit that the Prosecution has not met its burden of showing relevance or reliability, but has simply stated how it intends to use it.³⁵ Counsel for Mr Merhi argue that the admission of the data sets is premature, noting that the Prosecution will be calling a witness to testify to their accuracy.³⁶ Counsel for Mr Oneissi describe how the atlases and data sets fit into the Prosecution case and the prejudicial effect of admitting what they consider unreliable pieces of evidence.³⁷

17. The Trial Chamber, however, is satisfied that the GeoVision data sets are relevant and probative and may be admitted into evidence.³⁸ On the basis of the submissions and its own review of the data sets, the Trial Chamber considers that these items are sufficiently *generally* reliable representations of locations to be admissible. Contrary to the submissions of counsel for Mr Merhi, it is not premature to rule on their admissibility now; this has to be done before relevant witnesses testify.

18. The Trial Chamber has carefully considered the detailed submissions of counsel for Mr Oneissi objecting to the accuracy and provenance of some aspects of the data sets. It emphasises that admitting the data sets into evidence does not prevent Defence counsel from challenging, at the appropriate time, the accuracy of any specific detail in the data sets.³⁹ The data sets are therefore admissible into evidence but with the same *caveat* specified above for the 2010 Zawarib Atlas.

³³ Prosecution motion, para. 16.

³⁴ Ayyash Defence response, para. 6.

³⁵ Oneissi Defence response, paras 17, 19-20.

³⁶ Merhi Defence response, paras 12-13.

³⁷ Oneissi Defence response, paras 21-32. *See also* Oneissi Defence supplemental submissions, paras 20-21 (citing ERN 60300799-60300799 at 60301360, 60301363).

³⁸ To better assess the type of items the Prosecution seeks to have admitted, the Trial Chamber requested from the Prosecution a demonstration of the Data Sets. The demonstration took place on 14 November 2014 with Defence counsel and the legal representatives of the victims in attendance.

³⁹ *See* Decision of 13 January 2014, para. 8; ICTR, *Pauline Nyiramasuhuko v. The Prosecutor*, ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence, 4 October 2004, para. 7 ('[A]dmission into evidence does not in any way constitute a binding determination as to the authenticity or trustworthiness of the documents sought to be admitted').

iii. The responses from Ogero to requests for assistance

19. The consolidated indictment alleges that Mr Merhi, Mr Oneissi, and Mr Sabra made four calls to Reuters and Al-Jazeera falsely claiming responsibility for the attack on Mr Hariri.⁴⁰ On 28 August 2007, the UNIIC sent a request for assistance to the Lebanese Ministry of Telecommunications asking for information about payphones allegedly used in making these false claims of responsibility.⁴¹ The response includes information sheets containing the locations of the four public telephone boxes and some handwritten notes.⁴² On 6 May 2010, the Prosecution sent a request for assistance to the Lebanese Ministry of Telecommunications asking for the locations of these telephone boxes and the telephone card used to make the calls.⁴³ The response contains the card history of the Telecarte used to make the alleged false claims of responsibility, showing that it was used at the four telephone boxes.⁴⁴

20. The Prosecution submits that the response to their 2010 request for assistance is reliable because it was created by Ogero.⁴⁵ It adds that the response to its 2007 request for assistance is reliable because it includes printouts of relevant records, and handwritten portions signed by a company representative.⁴⁶ Moreover, the responses corroborate each other on telephone box locations and respective telephone numbers.⁴⁷

21. Counsel for Mr Merhi argue that the introduction of this evidence is premature, noting that the Prosecution has not begun to present its telecommunication evidence.⁴⁸ They expressly object to the admission of evidence relating to a phone card history in a motion relating to ‘geographic and locations related materials.’⁴⁹ The Trial Chamber, however, does not accept that it is premature to rule on the *admissibility* of this evidence: the Prosecution intends to tender evidence on telecommunications and is therefore requesting a ruling on the admissibility of these documents, which are in its view essential for the case to proceed to that stage.

22. The Trial Chamber is satisfied that the requests for assistance are relevant and probative to the alleged false claims of responsibility. The official nature of these responses to requests for

⁴⁰ Consolidated indictment, para. 44.

⁴¹ Prosecution motion, Redacted Version of Annex A, item 5; *See* Prosecution motion, para. 18.

⁴² Prosecution motion, para. 19 (concerning The Response to RFA COMMSRFA/2007/MOT/063, ERN 60143653).

⁴³ Prosecution motion, Redacted Version of Annex A, item 6; *See* Prosecution motion, para. 18.

⁴⁴ Prosecution motion, para. 18 (concerning The Response to RFA 0036/2010/BFO-OTP, ERN 60143649).

⁴⁵ Prosecution motion, para. 23.

⁴⁶ Prosecution motion, para. 24.

⁴⁷ Prosecution motion, para. 24.

⁴⁸ Merhi Defence response, paras 1, 14.

⁴⁹ Merhi Defence response, para. 15.

assistance indicates some level of reliability, although of course the weight to be attributed to the information contained in them remains to be decided at a later stage in the proceedings. The mere fact that one response contains handwritten information does not of itself reduce its reliability. These documents may therefore be admitted into evidence.

C. Confidential Annexes

23. The Prosecution submits that the two confidential annexes to its motion contain confidential witness information and should remain confidential until either it requests to have them reclassified as public or it may be heard on the matter.⁵⁰ No Defence counsel responded to this. The Prosecution subsequently filed public redacted versions of Annexes A and C and a request to reclassify Annex B from confidential to public.⁵¹ The Trial Chamber reiterates the public nature of the proceedings, as specified in the Special Tribunal's Statute and Rules.⁵² As the Prosecution has already filed publicly redacted versions of Annexes A and C, and has moved to reclassify Annex B as public, the Trial Chamber will allow this request.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list by adding the GeoVision business layer;

DECIDES that it will admit into evidence the exhibits listed in Annex A to the motion; and

GRANTS the Prosecution's request to reclassify Annex B as public.

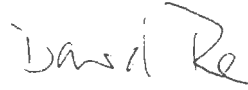
⁵⁰ Prosecution motion, para. 27.

⁵¹ Redacted Version of Annex A of "Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials", dated 16 October 2014, 10 November 2014; Redacted Version of Annex C of "Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials", dated 16 October 2014, 10 November 2014; Request to Reclassify Annex B of "Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials", dated 16 October 2014, 10 November 2014.

⁵² See e.g., Rule 136 of the Rules of Procedure and Evidence; Article 16 (2) of the Statute of the Special Tribunal for Lebanon.

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

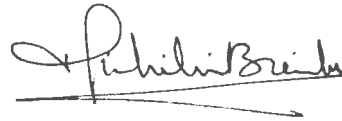
Leidschendam,
The Netherlands
8 December 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

