



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: 30 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'S MOTION FOR ADMISSION INTO
EVIDENCE OF 485 DOCUMENTS, PHOTOGRAPHS AND WITNESS
STATEMENTS RELEVANT TO RAFIK HARIRI'S MOVEMENTS AND TO
POLITICAL EVENTS**

Office of the Prosecutor:

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& Mr. Alexander Milne

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& Mr. Thomas Hannis

Counsel for Mr. Mustafa Amine Badreddine:

Mr. Antoine Korkmaz, Mr. John Jones
& Mr. Iain Edwards

Counsel for Mr. Hassan Habib Merhi:

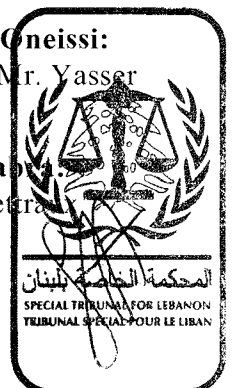
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Hassan & Mr. Philippe Larochelle

Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Mettraux
& Mr. Geoffrey Roberts



INTRODUCTION

1. The Prosecution moved the Trial Chamber to admit into evidence, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, some 485 documents. The Trial Chamber's leave is also sought to amend the Prosecution's exhibit list, filed under Rule 91, to add those of the 485 documents that are not already on the exhibit list and to add updated statements of Witnesses PRH019, PRH039, PRH074, Ms. Helena Habraken, and Mr. Joseph Jhugroo. The Prosecution also wants these statements admitted into evidence, under Rule 155, without requiring the witnesses to attend court for cross-examination. The statements, according to the Prosecution, explain the provenance of some of the 485 documents.¹

2. The proposed evidence—which includes national legislation, international treaties, Lebanese Parliamentary records, United Nations (UN) documents, media/press releases, newspaper articles, photographs, travel documents, logbooks, and telephone directories—relates both to the movements of the former Lebanese Prime Minister Mr. Rafik Hariri and to relevant political events occurring in the months before his assassination in Beirut on 14 February 2005. According to the Prosecution, this evidence is relevant to analysing the conduct of the users of mobile telephone networks, pleaded in the consolidated indictment as complicit in Mr. Hariri's assassination.²

3. Counsel for the Accused Mr. Salim Jamil Ayyash, Mr. Mustafa Amine Badreddine, Mr. Hussein Hassan Oneissi, and Mr. Assad Hassan Sabra responded to the motion,³ to which the Prosecution filed a reply.⁴ Counsel for the Accused Mr. Hassan Habib Merhi responded to the motion, but after the Prosecution's reply.⁵ The Trial Chamber then heard further oral submissions in court.⁶

¹ STL-11-01/T/TC, F1711, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, Corrected Version of the Prosecution Motion for Admission of Evidence Relevant to Movements of Rafik Hariri and Political Events, 21 October 2014, 6 November 2014.

² Prosecution motion, paras 2 and 6-7.

³ F1731, Response by the Ayyash Defence to the Prosecution Motion for Admission of Evidence Relevant to Movements of Rafik Hariri and Political Events, 4 November 2014; F1734, Badreddine Defence Response to "Prosecution Motion for Admission of Evidence Relevant to Movements of Rafik Hariri and Political Events", 4 November 2014; F1733, The Defence for Hussein Hassan Oneissi Response to "Prosecution Motion for Admission of Evidence Relevant to Movements of Rafik Hariri and Political Events", 4 November 2014; F1732, Sabra Response to Prosecution Motion for Admission of Evidence Relevant to Movements of Rafik Hariri and Political Events, 4 November 2014.

⁴ F1741, Prosecution Joint Reply to Defence Responses to "Prosecution Motion for Admission of Evidence Relevant to Movements of Rafik Hariri and Political Events", 7 November 2014.

⁵ The Trial Chamber having granted an extension of time to 10 November 2014 for the response; email from the Senior Legal Officer to the Trial Chamber dated 4 November 2014, following the Requête urgente de la Défense de Merhi aux fins de prorogation du Délai de Réponse à la Requête du Procureur du 21 octobre 2014, 29 octobre 2014. F1746, Réponse consolidée de la défense de Merhi aux requêtes des 21, 24 et 30 octobre 2014 en modification des listes de

CATEGORIES OF DOCUMENTS AND SUBMISSIONS

I. Documents by category

4. The documents that the Prosecution seeks to add to its exhibit list and to have admitted into evidence, and any Defence objections, are thematically dealt with below. However, since the filing of the motion, the Trial Chamber has admitted some of these documents into evidence. These are: several of the documents listed under (a), UN Security Council Resolution 1559 and UN media or press reviews; all except one document listed under (b), various domestic and international legislative instruments and treaties; some of (c), Lebanese Parliamentary records; some of (d), media or press releases and newspaper articles; and all of (g), Mr. Hariri's agenda and his residential visitors' logbook. No decision is thus required in relation to those documents, but, for the trial record this decision notes the arguments of the Parties in respect of all categories of documents, including those already received into evidence.

a) Security Council Resolution 1559 and UN media or press reviews

5. On 19 November 2014, the Trial Chamber took judicial notice, under Rule 161, of UN Security Council Resolution 1559 and of three of the UN documents that are the subject of this motion.⁷ They are now exhibits P310.1, P310.2, P310.3 and P310.4.⁸ On 8 December 2014, the Trial Chamber admitted into evidence as exhibit P322 a UN press release dated 14 December 2004.⁹ No further decision is thus required in relation to these five documents. The remaining documents within this category relate to Resolution 1559,¹⁰ and include 262 media or press reviews emanating from the UN Information Centre in Beirut (UNIC).¹¹

pièces et de témoins et en admission d'éléments de preuve relatifs aux déplacements de Rafic Hariri et au contexte politique, 10 November 2014.

⁶ Transcripts of 13 and 14 November 2014.

⁷ The three documents are: (1) a letter dated 30 August 2004, submitted by the Permanent Representative of Lebanon to the United Nations, addressing the Lebanese government's position on the draft version of Resolution 1559; (2) a letter dated 1 September 2004 from the Permanent Representative of Syria to the UN, regarding its position on the draft version of Resolution 1559; and (3) a UN Press Release dated 2 September 2004 regarding the Security Council's support for Resolution 1559.

⁸ Transcript of 19 November 2014, pp. 45-47.

⁹ Transcript of 8 December 2014, p. 56.

¹⁰ The documents are: (1) the Report of the UN Secretary-General pursuant to Resolution 1559, dated 1 October 2004; (2) the statement of the President of the UN Security Council of 19 October 2004 regarding the implementation of Resolution 1559; (3) the 14 December 2004 announcement of the appointment of the UN Special Envoy for the implementation of Resolution 1559; and (4) the UN Secretary-General's Report of 20 January 2005 on the UN Interim Force in Lebanon.

¹¹ The Prosecution referred to 261 press reviews from UNIC at Prosecution motion para.10; however, Annex A 1.2 of the Prosecution motion lists 262 UNIC press reviews.

6. According to the Prosecution, the documents (including those already admitted into evidence) relate to the historical background relevant to the implementation of Resolution 1559 and to Syrian-Lebanese relations, in the months before Mr. Hariri's assassination.¹² Counsel for Mr. Ayyash had objected to the admission of these documents arguing that they lacked relevance and probative value, while submitting that the UNIC press reviews contained no indicia of reliability.¹³ Counsel for Mr. Badreddine, Mr. Oneissi, and Mr. Sabra had objected to the admission of these documents for lack of relevance.¹⁴ Counsel for Mr. Merhi had objected¹⁴ to these documents, arguing that they lacked relevance and probative value.¹⁵

b) International and domestic legal instruments

7. The Prosecution also moved the Trial Chamber to admit into evidence some Lebanese, American and international legal instruments, arguing that they provided relevant background information and gave context to other Prosecution evidence.¹⁶

8. On 17 November 2014, the Trial Chamber took judicial notice of the 1989 National Reconciliation Charter of Lebanon (the 'Taif Accord', or Agreement), the 1926 Lebanese Constitution, and the 1991 Treaty of Brotherhood, Cooperation and Coordination between the Syrian Arab Republic and the Lebanese Republic. These documents are now exhibits P304, P305 and P306.¹⁷ The Trial Chamber also took judicial notice, as exhibit P307,¹⁸ of a statute of the Congress of the United States of America, the 2003 Syrian Accountability and Lebanese Sovereignty Restoration Act. However, noting the objections by counsel for Mr. Ayyash and Mr. Badreddine, it was admitted for only a limited evidentiary purpose.¹⁹ The only document within this category remaining for decision is a letter dated 17 July 1990 from the Lebanese Government to the UN Secretary-General related to the implementation of the Taif Accord.²⁰

¹² Prosecution motion, paras 9-10.

¹³ Ayyash Defence response, paras 26-27.

¹⁴ Badreddine Defence response, paras 4-8; Oneissi Defence response, paras 4-5 and 10-13; Sabra Defence Response, paras 18-21.

¹⁵ Merhi Defence response, paras 12-13 and 18-21.

¹⁶ Prosecution motion, paras 8 and 12-14.

¹⁷ Transcript of 17 November 2014, pp. 21, 32-34.

¹⁸ Transcript of 17 November 2014, p. 56.

¹⁹ As set out by the Prosecution, firstly this evidence shows the position taken by the United States towards Syria and, secondly, it adds context to the allegations made that Mr. Hariri had aligned himself with the United States in 2003, which may provide some background evidence (transcript of 17 November 2014, p. 57).

²⁰ Prosecution motion, para. 12.

9. The Trial Chamber notes that counsel for Mr. Ayyash had objected to the admission into evidence of these documents as lacking relevance and probative value.²¹ Counsel for Mr. Badreddine, Mr. Merhi, Mr. Oneissi and Mr. Sabra had objected on the basis that the documents were irrelevant; counsel for Mr. Oneissi had not objected to the admission of the Lebanese Constitution.²² Counsel for Mr. Badreddine objected to the Syrian Accountability and Lebanese Sovereignty Restoration Act as lacking any probative value.²³ Counsel for Mr. Ayyash and Mr. Badreddine expanded on their objections in oral argument on 17 November 2014.²⁴

c) Lebanese Parliamentary records

10. The Prosecution also seeks to introduce into evidence decrees issued by the Lebanese Council of Ministers (the Lebanese cabinet), and minutes of the Lebanese Parliamentary Joint Committee's Session. These contain official records of Mr. Hariri's attendance at the Lebanese Parliament and his participation in the Parliamentary Joint Committee's Sessions in 2004 and 2005. The purpose is to show Mr. Hariri's movements and to provide background evidence of various events preceding his assassination.²⁵ Counsel for Mr. Ayyash did not object to the minutes of the Parliamentary Joint Committee's Session to prove Mr. Hariri's movements, but objected to a decree of Mr. Hariri's resignation, arguing that it lacks relevance.²⁶ Counsel for Mr. Merhi objected to these documents as lacking relevance.²⁷

d) Media or press releases and newspaper articles

11. The Prosecution also seeks to tender into evidence: 171 media or press releases;²⁸ an extract from a schedule issued by the Press Office of the Lebanese President of the Council of Ministers listing the information that it circulated to the media in 2004 and 2005; and three sets of newspaper articles recording Mr. Hariri's participation in events and political affairs in the months before his assassination.²⁹ Some of these documents, as described below, have already been admitted into evidence, meaning that no further decision is required.

²¹ Ayyash Defence response, paras 24 and 29.

²² Badreddine Defence response, para. 8; Sabra Defence response, para. 21; Oneissi Defence response, paras 4-5 and 10-13; Merhi Defence response, paras 12-13.

²³ Badreddine Defence response, paras 9-11.

²⁴ Transcript of 17 November 2014, pp. 35-36.

²⁵ Prosecution motion, paras 15-16.

²⁶ Ayyash Defence response, para. 31.

²⁷ Merhi Defence response, paras 12-13.

²⁸ Incorrectly written as 170 press releases at para. 17 of the Prosecution motion; See Prosecution motion, Annex A 1.5, rows 2-172.

²⁹ Prosecution motion, para. 17.

12. Counsel for Mr. Ayyash and Mr. Sabra did not object to the press releases and the Press Office's schedule to prove Mr. Hariri's movements; they did however object to their admission in relation to the political events.³⁰ Counsel for Mr. Ayyash argue that three sets of newspaper articles related to witnesses, Mr. Marwan Hamade and Mr. Fouad Siniora, should be tendered through these witnesses. They also objected, on the basis of lack of relevance and the general admissibility of open source materials, to the admission of these articles from the 'bar table'.³¹

13. Counsel for Mr. Badreddine objected to 60 of the press releases as lacking relevance, but did not object to their admission into evidence to establish Mr. Hariri's movements from 20 October 2004.³² Further, they objected to the three sets of newspaper articles on the basis of lack of relevance, and of one of the three newspaper articles for also lacking probative value.³³ Counsel for Mr. Oneissi objected to the 171 press releases as lacking relevance.³⁴ Counsel for Mr. Merhi objected to the parts of the 171 press releases relevant to Mr. Hariri's movements and political events in Lebanon before 20 October 2004, arguing that they lacked relevance and probative value, but did not object to some of the press releases³⁵ to the extent they establish Mr. Hariri's movements between 20 October 2004 and 14 February 2005.³⁶ They objected to the newspaper articles, as lacking probative value.³⁷

14. On 13 November 2014, during the testimony of Mr. Maarouf Ahmad El-Daouq—the former Head of the Lebanese Press Office for the Office of the President of the Council of Ministers—the Trial Chamber marked for identification, as 'exhibit MFI P303', 171 press releases that were annexed to his statement.³⁸ Some of these documents were subsequently admitted into evidence, and thus require no further decision.

15. On 19 November 2014, the Trial Chamber granted leave to the Prosecution to add to its exhibit list an article from An-Nahar newspaper, dated 28 August 2004, and admitted it as exhibit P309.³⁹ On 20 November 2014, the Trial Chamber admitted into evidence, as exhibit P312, an An-Nahar

³⁰ Ayyash Defence response, para. 32; Sabra Defence response, para. 21.

³¹ Ayyash Defence response, para. 33.

³² Badreddine Defence response, paras 4-8 (incorrectly written as 20 October 2005 at para. 6).

³³ Badreddine Defence response, paras 8 and 12-13. Counsel for Mr. Badreddine also submitted that one of the articles (ERN 60298546-60298563) should not to be admitted into evidence because it is in Arabic and is yet to be translated into English. However, the assigned counsel and co-counsel have access to language assistants. This is not a valid objection.

³⁴ Oneissi Defence response, paras 4-5 and 10-13.

³⁵ These press releases are listed in footnote 18 of the Merhi Defence response.

³⁶ Merhi Defence response, paras 11, 12 and 18.

³⁷ Merhi Defence response, para. 18.

³⁸ Transcript of 13 November 2014, p. 31.

³⁹ Transcript of 19 November 2014, pp. 31-33.

newspaper article of 7 September 2004.⁴⁰ On 8 December 2014, the Trial Chamber received into evidence, as exhibits P323, P324, and P325, media or press releases issued on 17 December 2004 and 1 February 2005, and an extract from media or press releases issued from the press office of Quraitem Palace, Mr. Hariri's Beirut office and residence.⁴¹ On 9 December 2014, the Trial Chamber admitted into evidence, as exhibits P327 and P328, press releases issued by Al Mustaqbal newspaper on 10 and 14 September 2004.⁴² These documents will remain part of exhibit MFI P303 while retaining their separate exhibit numbers.

e) Photographs

16. The Prosecution also seeks to admit into evidence photographs taken by two photographers, Witnesses 019 and 074. These provide evidence of Mr. Hariri's movements and of events occurring between 17 December 2004 and 13 February 2005. They include a photograph taken on 26 August 2004 showing Mr. Hariri and the President of Syria, Mr. Bashar al-Assad, and a photograph taken in April 2005 of Mr. Hasan Nasrallah, Mr. Rustom Ghazaleh, Mr. Hussein Khalil, and Major General Fayeze Al-Haffar.⁴³ According to the Prosecution, these photographs assist in establishing Mr. Hariri's movements in the period before his assassination, and are relevant to proving that, in planning the attack, the Accused conducted observation and surveillance on Mr. Hariri.⁴⁴ The Prosecution also seeks to tender the statements of Witnesses 019 and 074 to establish the provenance of the photographs.⁴⁵

17. Counsel for Mr. Ayyash did not object to admitting the photographs for the limited purpose of showing Mr. Hariri's movements during the relevant period.⁴⁶ Counsel for Mr. Ayyash and Mr. Sabra objected to the admission of one photograph,⁴⁷ arguing that it was irrelevant.⁴⁸ Counsel for Mr. Badreddine and Mr. Merhi objected to the admission of two photographs,⁴⁹ also arguing

⁴⁰ Transcript of 20 November 2014, pp. 4-5.

⁴¹ Transcript of 8 December 2014, pp. 57-58, 70-71 and 79-80.

⁴² Transcript of 9 December 2014, pp. 14-15. In court in tendering the documents into evidence, Prosecution counsel erroneously described these dates as 9 and 13 September 2004.

⁴³ Prosecution motion, paras 18-19. The Trial Chamber has heard evidence that Mr. Nasrallah is the Secretary-General of Hezbollah, Mr. Ghazaleh was the then Syrian Chief of Intelligence in Lebanon and Mr. Khalil was Mr. Nasrallah's political adviser.

⁴⁴ For allegations concerning surveillance, see, e.g., consolidated indictment, paras 15 and 19-22.

⁴⁵ Prosecution motion, paras 18-19.

⁴⁶ Ayyash Defence response, paras 34-35.

⁴⁷ Photograph R91-201130 taken in April 2005 showing Mr. Nasrallah, Mr. Ghazaleh, Mr. Khalil and Major General Fayeze Al-Haffar 'attending an event in Beirut in April 2005'.

⁴⁸ Ayyash Defence response, para. 35; Sabra Defence response, para. 21.

⁴⁹ Photograph R91-201129 of Mr. Hariri visiting President of Syria, Mr. Bashar al-Assad at his residence in Damascus, Syria on 26 August 2004, and photograph R91-201130 of Mr. Nasrallah, Mr. Ghazaleh, Mr. Khalil and Major General Fayeze Al-Haffar 'attending an event in Beirut in April 2005'.

irrelevance.⁵⁰ Counsel for Mr. Merhi did not object to the photographs to the extent that they show Mr. Hariri's movements and cover the period of surveillance alleged in the consolidated indictment, namely between 20 October 2004 and 14 February 2005.⁵¹

f) Travel documents

18. Fifteen documents—including copies Mr. Hariri's passports, immigration records, and his travel itinerary records—are tendered by the Prosecution to establish Mr. Hariri's international travel before his assassination.⁵² According to the Prosecution, these documents are relevant to establish the surveillance undertaken in planning the assassination—particularly in showing changes in activity, when Mr. Hariri was not in Lebanon, of the telephone networks allegedly used in this surveillance. This evidence will be supplemented by testimony from Witness 017 who is expected to testify about Mr. Hariri's international trips.⁵³ Counsel for Mr. Ayyash did not object to the documents to the extent that they demonstrate Mr. Hariri's movements and locations.⁵⁴ Counsel for Mr. Merhi did not object to the documents to the extent that they show Mr. Hariri's movements and cover the period of surveillance alleged in the consolidated indictment.⁵⁵

g) Agenda and visitors' logbook

19. The Prosecution also sought to admit into evidence Mr. Hariri's 2005 agenda, which details his scheduled appointments and meetings from 1 January 2005 to 14 February 2005, and the paper and electronic versions of Quraitem Palace's visitors' logbook between October 2004 and February 2005. The Prosecution argued that the documents are relevant and probative to prove when visitors were registered to meet Mr. Hariri at Quraitem Palace.⁵⁶ Counsel for Mr. Ayyash did not object to the documents to the extent that they demonstrated Mr. Hariri's movements.⁵⁷ Counsel for Mr. Merhi did not object to these documents to the extent that they showed his movements between 20 October 2004 and 14 February 2005.⁵⁸ On 11 November 2014, the Trial Chamber received the 2005 agenda

⁵⁰ Badreddine Defence response, paras 4-8; Merhi Defence response, paras 11-12.

⁵¹ Merhi Defence response, paras 11-12.

⁵² Prosecution motion, para. 20.

⁵³ Prosecution motion, paras 20-22.

⁵⁴ Ayyash Defence response, para. 36.

⁵⁵ Merhi Defence response, para. 11.

⁵⁶ Prosecution motion, paras 23-26.

⁵⁷ Ayyash Defence response, para. 37.

⁵⁸ Merhi Defence response, para. 11.

as exhibit P299, and two versions of the visitors' logbook as exhibits P300 and P301.⁵⁹ No further decision is therefore required.

h) Telephone directories

20. To establish Mr. Hariri's movements, the Prosecution also seeks to tender into evidence two telephone directories. These were created by Quraitem Palace's control room and contain the telephone numbers of the late Mr. Yahya Al-Arab, Mr. Hariri's Chief of Security, who accompanied Mr. Hariri on his travel inside and outside of Lebanon, and who died in the explosion on 14 February 2005. The directories also provide the telephone numbers for Quraitem Palace and Mr. Hariri's other residences, and are relevant to establishing telephone calls made and received at the residences.⁶⁰ Counsel for Mr. Ayyash did not object to these documents to the extent that they demonstrate Mr. Hariri's movements.⁶¹ Counsel for Mr. Merhi did not object to the admission of these documents to show Mr. Hariri's movements between 20 October 2004 and 14 February 2005.⁶²

II. Defence's further submissions regarding amending the exhibit list

21. Counsel for Mr. Ayyash, Mr. Badreddine, Mr. Merhi and Mr. Sabra also argue that the Prosecution has not explained why it had not sought, at an earlier stage, to add to its exhibit list the documents which are not extracts of documents already on the exhibit list.⁶³ Counsel for Mr. Ayyash, Mr. Badreddine, and Mr. Merhi submit that adding these documents to the exhibit list now will result in undue delay.⁶⁴ Counsel for Mr. Ayyash and counsel for Mr. Merhi argue that the proposed material should be tendered through live witnesses.⁶⁵ Counsel for all five Accused submitted that the proposed material goes beyond the scope of the consolidated indictment, particularly with regard to alleging a general, non-private motive for the commission of the offences with which the Accused are charged, therefore violating the Prosecution's requirement to provide proper notice. This affects the fairness of the trial.⁶⁶

⁵⁹ Transcript of 11 November 2014, pp. 24-25 and 46-48.

⁶⁰ Prosecution motion, paras 27-28.

⁶¹ Ayyash Defence response, para. 38.

⁶² Merhi Defence response, para. 11.

⁶³ Ayyash Defence response, paras 15-21; Badreddine Defence response, para. 14; Sabra Defence response, paras 16-17; Merhi Defence response, paras 6-7.

⁶⁴ Ayyash Defence response, paras 19-20; Badreddine Defence response, para. 15; Merhi Defence response, paras 7-8 and 16.

⁶⁵ Ayyash Defence response, paras 9-10; Merhi Defence response, para. 10.

⁶⁶ Sabra Defence response, paras 2-9, 20 and 23; Oneissi Defence response, paras 12 and 14-19; Ayyash Defence response, para. 8; Badreddine Defence response, para. 7; Merhi Defence response, para. 17.

22. The Prosecution, in its reply, argued that it does not seek to admit any of the evidence to demonstrate the motive of any Accused person to commit the crimes charged in the consolidated indictment, nor to identify any co-conspirators. The evidence of political background does not relate to the acts of the Accused as charged and thus does not constitute a material fact (that the Prosecution was required to plead in the consolidated indictment). Rather, this evidence will provide context to assist the Trial Chamber in understanding the material facts alleged in the consolidated indictment. This evidence is therefore relevant and admissible.⁶⁷

DISCUSSION

A. Amending the exhibit list

23. The Trial Chamber may, in the interests of justice, allow a Party to amend its exhibit list. In doing so here 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, among other factors, 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.⁶⁸

24. The Prosecution's motion seeks the Trial Chamber's leave to amend its exhibit list, filed under Rule 91, by adding those of the 485 documents that are not already on the exhibit list. These include 171 press releases; 278 UN documents; the Lebanese Constitution; international agreements and related documents; the three sets of newspaper articles; and the statements of Witnesses 019, 039, 074, Ms. Helena Habraken, and Mr. Joseph Jhugroo. These documents were all disclosed to the Defence in advance of the motion.⁶⁹

25. No further decision is required in relation to those documents that the Trial Chamber has already admitted into evidence.⁷⁰ In relation to the remaining documents, the Prosecution submits, generally,

⁶⁷ Prosecution joint reply, paras 5-8.

⁶⁸ F1780, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists, 8 December 2014, para. 15; F1484, Decision on Prosecution Request 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 Request 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.

⁶⁹ Prosecution motion, paras 35-36.

⁷⁰ Resolution 1559 and of three relevant UN documents (exhibits P310.1, P310.2, P310.3, and P310.4); the Taif Accord, the Lebanese Constitution, and the Brotherhood Treaty (exhibits P304, P305, and P306); the Lebanese Sovereignty Restoration Act (exhibit P307); an article from An-Nahar newspaper dated 28 August 2004 (exhibit P309); an An-Nahar

that they are *prima facie* relevant and probative and that good cause exists to amend the exhibit list.⁷¹ More specifically, the Prosecution submits that adding these documents to the exhibit list should not impact Defence preparation or cause undue delay. This is because many of them are extracts of material already on the Prosecution's exhibit list, while the others are all publically available.⁷² With respect to the five witness statements, the Prosecution submits that they replace and incorporate statements, which are already on the Prosecution's exhibit list, to make them comply with the Practice Direction.⁷³

26. The Trial Chamber is mindful of the stage of the proceedings and has carefully considered the submissions of counsel for Mr. Ayyash, Mr. Badreddine, Mr. Merhi and Mr. Sabra as to an absence of good cause for the late addition to the exhibit list of the proposed documents, including the 171 press releases and 262 press reviews. However, these press releases and reviews were issued by the Press Office of the Lebanese President of the Council of Ministers and the UN Information Centre in Beirut. They are all public documents. Further, the proposed five witness statements merely replace and incorporate witness statements that are already on the Prosecution's exhibit list to render them compliant with the requirements of the applicable Practice Direction.⁷⁴

27. The Trial Chamber, having carefully reviewed the documents that the Prosecution seeks to add to the exhibit list, does not consider the requested amendments burdensome to the Defence. The documents are all *prima facie* relevant and probative and the Trial Chamber is satisfied that some good cause exists for the late application. Moreover, adding the proposed evidence to the Prosecution's exhibit list now will neither prejudice the Defence's trial preparation nor delay the proceedings.

28. The Trial Chamber has carefully balanced the right of the Prosecution to present evidence supporting its case with the rights of counsel for the five Accused to adequately prepare for trial. The Trial Chamber is satisfied that it is in the interests of justice to allow the Prosecution to amend its

newspaper article of 7 September 2004 (exhibit P312); a UN press release of 14 December 2004 (exhibit P322); press releases of 17 December 2004 and 1 February 2005, and an extract from press releases from the Quraitem Palace press office (exhibits P323, P324, and P325); press releases issued by Al Mustaqbal newspaper (exhibits P327 and P328); and Mr. Hariri's 2005 agenda as exhibit P299, and two versions of the visitor logbook (exhibits P300 and P301).

⁷¹ Prosecution motion, para. 38.

⁷² Prosecution motion, paras 35-36.

⁷³ Prosecution motion, para. 37; STL, 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.

⁷⁴ Prosecution motion, para. 37; F937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements Under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14.

exhibit list in relation to the documents for which leave has not already been granted for its amendment.

B. Admission into evidence of documents under Rule 154

29. The Trial Chamber has previously admitted documents into evidence, under Rule 154, from the ‘bar table’.⁷⁵ This practice allows the Trial Chamber, in the interests of judicial economy, to receive documents without requiring a witness to testify about them. Material tendered in this manner must meet the basic requirements for admission of evidence of being relevant and probative, and its probative value must not be outweighed by its prejudicial effect. The offering party must also be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case.⁷⁶

30. The Trial Chamber has carefully reviewed each of the documents and has considered the submissions of the Prosecution and Defence. The Trial Chamber has already held that it will hear evidence relevant to the political situation in Lebanon preceding Mr. Hariri’s assassination. Evidence falling within this category can provide relevant background and give context to much of the other evidence adduced by the Prosecution, and even by the Defence. It could also help to explain the wider circumstances leading to Mr. Hariri’s assassination, and, in general, could explain any non-private motives for the commission of an offence that the Trial Chamber could find proven.⁷⁷ The Trial Chamber may therefore receive further relevant evidence of this nature.

31. The documents from this motion remaining for decision—namely, those that have not already been received as exhibits—are relevant to and probative of the actions and movements of Mr. Hariri, and the alleged surveillance of him, before his assassination in February 2005. The Trial Chamber

⁷⁵ F1781, Corrected version of “Decision on Prosecution Motion to Admit Into Evidence Geographic Documents” of 8 December 2014, 10 December 2014; F1308, Decision on Prosecution’s Motion to Admit Into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014.

⁷⁶ F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 6 (referring to, ICTY, *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-T, Decision on Prosecution’s Motion for Admission of 28 Intercepts from the Bar Table, 20 January 2012, para. 10; *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, Decision on the Prosecution’s First Bar Table Motion, 13 April 2010, para. 6; *Prosecutor v. Milan Milutinović*, IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 18).

⁷⁷ F1785, Decision on the Prosecution Motion for Admission Under Rule 155 of Written Statements In Lieu of Oral Testimony Relating to Rafik Hariri’s Movements and Political Events, 11 December 2014, para.13; Oral ruling on the scope of Mr Marwan Hamade’s evidence, transcript of 17 November 2014, pp. 2-15, in particular pp. 10-11; Oral ruling on adding Mr Walid Jumblatt and Mr Ali Mohammad Hamade to the Prosecution’s witness list, transcript of 9 December 2014, pp. 7-13.

accordingly finds that the documents are admissible under Rule 149 (C)⁷⁸ and Rule 154. Moreover, there is no reason to exclude any document under Rule 149 (D).⁷⁹

32. These documents may therefore be received into evidence. However, the Trial Chamber emphasises the distinction between its finding the documents admissible *now* (and then receiving them evidence) and the weight that it may give to any document in its assessment of the evidence at a later stage in the proceedings.

C. Admission into evidence of five witness statements under Rule 155

33. The Prosecution also seeks the admission into evidence, under Rule 155, of five statements of Witness 019, Witness 039, Witness 074, Ms. Helena Habraken and Mr. Joseph Jhugroo. Rule 155 (A) allows the Trial Chamber to receive witness evidence in lieu of oral testimony and without cross-examination. The factors in favour of admitting such evidence include whether it is cumulative, or is background material, or concerns the impact of crimes upon victims, or relates to the character of the accused. According to the Prosecution, these five statements merely replace and incorporate existing witness statements—to render them compliant with the relevant Practice Direction—and will assist the Trial Chamber in assessing the evidence tendered under Rule 154.⁸⁰

34. Witnesses 019 and 074 took photographs of Mr. Hariri at meetings and public events he attended in 2004 and 2005. Ms. Habraken describes discrepancies between the real time of certain photographs and the coded time appearing in their metadata.⁸¹ Mr. Jhugroo addresses some discrepancies between the original and the electronic versions of the Quraitem Palace visitors' logbook.⁸² Witness 039, a member of Mr. Hariri's staff, provides details of Mr. Hariri's travel logbook and travel itinerary records.⁸³

35. According to the Prosecution, the statements do not contain evidence of the acts and conduct of any of the five Accused. Each statement contains the necessary indicia of reliability and fulfils the requirements of the relevant Practice Direction. Admitting the proposed evidence under Rule 155 will increase the expeditiousness and efficiency of the trial. Counsel for Mr. Ayyash and Mr. Merhi

⁷⁸ Rule 149 (C), 'A Chamber may admit any relevant evidence which it deems to have probative value'.

⁷⁹ Rule 149 (D), 'A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules'.

⁸⁰ Prosecution motion, paras 30-34 and 37.

⁸¹ Prosecution motion, para. 31.

⁸² Prosecution motion, para. 32.

⁸³ Prosecution motion, para. 33.

take no position on the admission of the witness statements.⁸⁴ Counsel for Mr. Sabra did not object to the relevance of the five statements, but take no position on their probative value.⁸⁵

36. The Trial Chamber is satisfied that these witness statements are relevant to the allegations pleaded in the consolidated indictment and are probative of the material facts pleaded. The statements provide evidence of the creation or assessment of photographs and business records made during the period pleaded in the consolidated indictment. Accordingly, they are admissible under Rule 149 (C) and no reason exists to exclude them under Rule 149 (D). The evidence does not relate to the acts and conduct of any of the Accused. As sworn statements, they have sufficient indicia of reliability under both Rule 155 and the Practice Direction and are therefore admissible into evidence without requiring the witnesses to attend court for cross-examination. All associated documents listed in Annex D of the Prosecution's motion related to these five witnesses are also admissible under Rule 154 as an indispensable part of the statements.

D. Confidentiality

37. Because they contain confidential witness information, the Prosecution seeks to keep the annexes to its motion confidential.⁸⁶ The Trial Chamber reiterates the public nature of the proceedings and orders the Prosecution either to file a redacted version of the annexes or to have them reclassified as public. This may await the formal admission into evidence of the statements of the witnesses listed in Annex D to this motion. Counsel for Mr. Merhi must file a public redacted version of their response to the Prosecution motion.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list filed under Rule 91 by adding the documents and witness statements listed in Annex B to the motion that have not already received exhibit numbers;

RULES ADMISSIBLE under Rule 154 the documents listed in Annex A;

RULES ADMISSIBLE under Rule 155, without requiring the witnesses to attend court for cross-examination, the statements listed in Annex D—of Witness PRH019, Witness PRH039, Witness

⁸⁴ Ayyash Defence response, para. 39; Merhi defence response, para. 22.

⁸⁵ Sabra Defence response, para. 22.

⁸⁶ Prosecution motion, para. 39.


PRH074, Ms. Helena Habraken and Mr. Joseph Jhugroo; and rules admissible under Rule 154 any associated documents listed in Annex D;

ORDERS the Prosecution, after the admission into evidence of the statements of Witness PRH019, Witness PRH039, Witness PRH074, Ms. Helena Habraken and Mr. Joseph Jhugroo, either to file a public redacted version of the annexes or have them reclassified as public; and

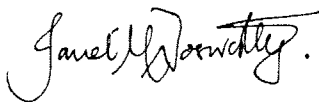
ORDERS counsel for Mr. Hassan Habib Merhi to file a public redacted version of their response to the Prosecution's motion.

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

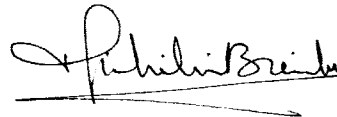
30 December 2014



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

