



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, Registrar

Date: 13 February 2015

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THE PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION TO ADD FOUR ITEMS TO THE
EXHIBIT LIST**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

**Legal Representatives of
Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Salim Jamil Ayyash:

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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:

Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Khalil Jad

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Mr Philippe Laroche

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. On 21 August 2014, the Trial Chamber declared that Professor Bibiana Luccioni (Witness PRH187) and Professor Daniel Ambrosini (Witness PRH188) are qualified as experts (in explosives), under Rule 161 of the Special Tribunal's Rules of Procedure and Evidence, and ruled admissible under Rule 161 their joint 'Final forensic report—quantity of explosives' of September 2010. The Trial Chamber deferred a decision on the admissibility of a second joint report 'Final report of experts regarding the attack on 14 February 2005 against Rafic Hariri', dated 15 December 2012 until the testimony of one (or both) of the witnesses.¹

2. On 29 January 2015, the Prosecution filed a motion to add to its exhibit list, filed under Rule 91, four documents it intends to use during the testimonies of Professor Luccioni and Professor Ambrosini, and Witness PRH230.² Professor Luccioni and Professor Ambrosini are scheduled to testify from 23 February 2015. Counsel for the Accused, Mr Salim Jamil Ayyash subsequently responded to the motion, to which the Prosecution filed a reply.³ The Trial Chamber heard further oral submissions by counsel for Mr Ayyash.⁴ Counsel for the other four Accused did not respond to the motion.

SUBMISSIONS

3. The Prosecution seeks to add the following four documents to its exhibit list:

- a) A slide presentation prepared by Professor Luccioni and Professor Ambrosini—based on the 'Final report of experts regarding the attack on 14 February 2005 against Rafic Hariri'—

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1646, Decision on Twelve Expert Witnesses, 21 August 2014, paras 62-70. The two reports provide the joint opinion of Witnesses 187 and 188 on the explosion of 14 February 2005, including on the location of the explosion and the convoy vehicles; the type, quantity, positioning, and carrier of the explosives used; the possibilities regarding the triggering mechanism; the complexity of the attack and the perpetrators' role in it; numerical analysis of the crater; damage to the surrounding buildings (Decision of 21 August 2014, paras 65-70).

² F1833, Prosecution Motion to Add Four Items to the Rule 91 Exhibit List, 29 January 2015.

³ F1849, Response by the Ayyash Defence to the Prosecution Motion to Add Four Items to its Exhibit List, 10 February 2015; Email of 10 February 2015 from the Trial Chamber's Legal Officer to the Prosecution requesting the Prosecution file a reply by 11 February 2015; F1850, Prosecution Reply to the Response by the Ayyash Defence to the Prosecution Motion to Add Four Items to its Exhibit List, 11 February 2015.

⁴ T. 117, 12 February 2015, pp 73-74.

explaining the analysis of damage to the Saint George and Byblos buildings in Beirut caused by the explosion of 14 February 2005.⁵

- b) A slide presentation prepared by Professor Luccioni and Professor Ambrosini—similarly based on the ‘Final report of experts regarding the attack on 14 February 2005 against Rafic Hariri’—explaining their analysis of the amount of explosives used in the explosion blast.⁶
- c) A slide presentation prepared by Professor Luccioni and Professor Ambrosini—based on the ‘Final forensic report – quantity of explosives’—explaining their analysis of the crater caused by the explosion.⁷
- d) A letter from a Lebanese telecommunication company—that the Lebanese authorities sent to the Prosecutor of the Special Tribunal in response to his request for assistance—clarifying the server coverage of a specific cell sector in a relevant area; the letter is relevant to Mr Ayyash’s movements and telephone activity.⁸

4. The Prosecution submitted that the three presentations comprising diagrams, graphs, and photographs, should assist the Trial Chamber in evaluating the two reports and benefit the Parties in understanding these reports during the testimony of the two experts. As the experts will be referring to them, the Prosecution will seek to admit the compilations into evidence. The letter from the Lebanese telecommunication company is closely linked to the evidence of Witness 230, and the Prosecution will seek to admit it into evidence during his testimony.⁹

5. Counsel for Mr Ayyash objected to the addition of the third slide presentation¹⁰—which relates, among other things, to explosion experiment ‘FP33’¹¹—on the basis of a lack of relevance. According to counsel, the Prosecution previously withdrew evidence related to this experiment and

⁵ Prosecution motion, para. 6. The slide presentation is entitled ‘Numerical simulation of building damage’ (ERN D0359315-D0359373).

⁶ Prosecution motion, para. 6. The slide presentation is entitled ‘Hariri’s case, Determination of the amount of explosives’ (ERN D0359374-D0359475).

⁷ Prosecution motion, para. 7. The slide presentation is entitled ‘Numerical analysis of the crater FP33 and new simulations’ (ERN D0359301-D0359314).

⁸ Prosecution motion, para. 8. ERNs 60295004-60295016 and D0370181-D0370183.

⁹ Prosecution motion, paras 4 and 10-12.

¹⁰ ‘Numerical analysis of the crater FP33 and new simulations’ (ERN D0359301-D0359314).

¹¹ Explosion experiment ‘FP33’, also known as ‘Forensic Project 33’, is an experiment carried out under the auspices of the Office of the Prosecutor of the Special Tribunal on 19 October 2010. The results of this experiment were used to explain and support the analysis carried out by Professor Luccioni and Professor Ambrosini in their joint reports.

stated that experiment ‘FP33’ is not relevant to this case.¹² Counsel for Mr Ayyash took no position on adding the remaining three documents to the exhibit list.¹³

6. In its reply, the Prosecution argued that counsel for Mr Ayyash did not challenge the reports—specifically the annexes to the ‘Final report of experts regarding the attack on 14 February 2005 against Rafic Hariri’ which contained several references to experiment ‘FP33’—and did not want to cross-examine the two witnesses.¹⁴ Neither the two reports nor the contested presentation slide were among the items which it had previously withdrawn.¹⁵ The Prosecution’s two reports rely on multiple experiments, including experiment ‘FP33’, each of which contributed calibration data which was used to define and refine the parameters of their computer models.¹⁶

7. The Prosecution and counsel for Mr Ayyash, at the Trial Chamber’s suggestion, agreed that the Trial Chamber would add the slide presentation to the exhibit list, but that any specific objections to mention of experiment ‘FP33’ would be dealt with during the witnesses testimony.¹⁷

DISCUSSION

8. The Trial Chamber may, in the interests of justice, allow a party to amend its witness and exhibit lists. 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, 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.¹⁸

¹² Ayyash Defence response, para. 2, with reference to STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0987, Prosecution’s Notice of Intention in relation to Exhibits and Witnesses and Notice of Reclassification, 10 July 2013, para. 8.

¹³ Ayyash Defence response, para. 3.

¹⁴ Prosecution reply, para. 3.

¹⁵ Prosecution reply, para. 4.

¹⁶ Prosecution reply, paras 4-5. Experiment ‘FP33’ is first referenced in the title of the third slide presentation. The larger part of the slide presentation reflects computer generated results from the analysis undertaken by the two experts. Experiment ‘FP33’ is then referenced at pages D0359305; D0359312 and D0359313. The references comprise a comparison of a numerical result, that is the theoretical size of a crater from a computer simulation, with the ‘FP33’ crater size (D0359305); a comparison of the latter with the reported size of the Beirut crater (D0359312) and remarks about the numerical analysis if an equivalent explosive load to ‘FP33’ were numerically modeled (D0359313).

¹⁷ T. 117, 12 February 2015, pp 73-74.

¹⁸ 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

9. The Trial Chamber believes that three slide presentations can assist in explaining and illustrating the experts' analysis and conclusions. The compilations contain useful visual aids to illustrate and summarize some of the key points of their technical evidence. During their testimony, the Prosecution intends to ask the experts to discuss their evidence with the aid of the slide presentations.

10. As the three slide presentations are based on the two expert reports, they are probative and relevant. Since they were disclosed to the Defence in March 2014,¹⁹ the requested amendments are not burdensome to the Defence. Adding the proposed evidence to the Prosecution's exhibit list will neither prejudice the preparation of the Defence for trial nor delay the proceedings. The Trial Chamber is satisfied that the interests of justice allow the requested amendments to the Prosecution's exhibit list.

11. Witness 230, formerly a communications analyst working for the Prosecution, will testify as to how call sequence tables²⁰ were produced from call data records²¹ and other materials provided by Lebanese telecommunication service providers. The witness also prepared telephone attribution reports²² for the five Accused.²³ The letter explains the server coverage of a specific cell sector in a relevant area of Lebanon, is relevant to Mr Ayyash's movements and telephone activity, and is intrinsically linked to his testimony. The document is relevant and probative. Defence counsel has had it since 13 June 2014.²⁴ Adding it to the exhibit list now will not delay the trial or prejudice Defence preparations for trial. The letter may be added to the exhibit list.

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.

¹⁹ Prosecution motion, paras 2-3.

²⁰ A call sequence table is a table comprised of extracts from call data records and cell site information. When such a table is created, the data is copied and formatted for accessibility, however, it is not otherwise altered. The call sequence table represents a chronological sequence of calls relating to a particular phone number (the 'target' number) over a specified period of time, and details each call.

²¹ A call data record is produced by a telephone exchange or other telecommunications equipment that documents the details of a telephone call that passes through the facility or the device.

²² A telephone attribution report examines evidence regarding the attribution of one or more mobile telephone numbers to one or more of the five Accused or his contacts, family, etc. The use of the mobile telephone numbers was investigated using a range of sources and techniques, including witness testimony, documentary evidence, text message contents, profiling of contacts, geographical footprint, and potential co-location with other mobile telephones.

²³ *Curriculum vitae* of Witness PRH230, ERN 60279516-60279516.

²⁴ Prosecution motion, para. 3.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

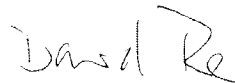
ALLOWS the Prosecution's motion for leave to amend its exhibit list by adding the four documents listed in Annex A of its motion; and

WILL HEAR further oral submissions during the testimony of Professor Luccioni and Professor Ambrosini from counsel for Mr Ayyash on their points of contention with the references to experiment 'FP33' in one of the slide presentations, the subject of the Prosecution motion.

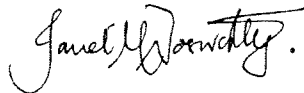
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,
The Netherlands

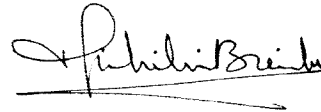
13 February 2015



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

