

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-05/PT/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 9 April 2015  
**Original language:** English  
**Classification:** Confidential

**IN THE CASE AGAINST**

***AL JADEED [CO.] S.A.L./ NEW T.V. S.A.L. (N.T.V.)  
KARMA MOHAMED TAHSIN AL KHAYAT***

**DECISION ON *AMICUS CURIAE* PROSECUTOR'S MOTION FOR ADMISSION OF  
EVIDENCE PURSUANT TO RULE 154**

***Amicus Curiae* Prosecutor:**  
Mr Kenneth Scott

**Counsel for *Al Jadeed* [CO.] S.A.L./  
NEW T.V. S.A.L. (N.T.V.) and  
Ms Karma Khayat:**  
Mr Karim A.A. Khan  
Mr Rodney Dixon  
Ms Shyamala Alagendra



## INTRODUCTION

1. On 16 February 2015, the *Amicus Curiae* Prosecutor (“*Amicus*”) requested the admission into evidence, pursuant to Rule 154 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of most of his Rule 91 (G) (iii) exhibits.<sup>1</sup> Soon thereafter, in an addendum to the Motion, the *Amicus* sought admission of several additional exhibits under the same Rule.<sup>2</sup> The *Amicus* intends to tender such evidence from a “bar table”—without requiring a witness to testify about them. In a confidential annex to the Addendum—the “Bar Table”—the *Amicus* listed each exhibit for which he seeks admission and provided reasons.<sup>3</sup>
2. On 2 March 2015, the Defence responded to the Motion and the Addendum, opposing them in significant part.<sup>4</sup> In a confidential annex, the Defence indicated, with respect to each Bar Table exhibit, whether it objected to admission and, if so, why.<sup>5</sup>
3. The *Amicus* has sought leave to reply to the Response, which the Defence opposes.<sup>6</sup>
4. Having considered the Parties’ submissions, I reject the *Amicus*’s Request for Leave to Reply. However, I grant the Motion and the Addendum in part, as explained below and as provided in the attached annex.

## APPLICABLE LAW

5. Admitting certain material into evidence from the “bar table” is a well-established practice before international criminal courts and tribunals, including this Tribunal’s Trial

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<sup>1</sup> STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0099, Motion for Admission of Evidence Pursuant to Rule 154, 16 February 2015 (“Motion”); STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0099/A01, Motion for Admission of Evidence Pursuant to Rule 154, Annex A, Confidential, 16 February 2015. All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0099/ADD, Addendum to “Motion for Admission of Evidence Pursuant to Rule 154” Dated 16 February 2015, Confidential, 23 February 2015 (“Addendum”); F0099/ADD/A01, Addendum to “Motion for Admission of Evidence Pursuant to Rule 154” Dated 16 February 2015, Annex A, Confidential, 23 February 2015 (“Bar Table”).

<sup>3</sup> Bar Table.

<sup>4</sup> F0101, Defence Response to “Motion for Admission Evidence Pursuant to Rule 154”, 2 March 2015 (“Response”); F0101/A01, Defence Response to “Motion for Admission Evidence Pursuant to Rule 154”, Confidential Annex A, Confidential, 2 March 2015 (“Response to Bar Table”).

<sup>5</sup> Response to Bar Table.

<sup>6</sup> F0104, Request for Leave to Reply to “Defence Response to ‘Motion for Admission Evidence Pursuant to Rule 154’” Dated 2 March 2015, Confidential, 5 March 2015 (“Request for Leave to Reply”); F0105, Defence Response to “Request for Leave to Reply to ‘Defence Response to ‘Motion for Admission Evidence Pursuant to Rule 154’ ’ Dated 2 March 2015”, Confidential, 10 March 2015.

Chamber.<sup>7</sup> The practice, in the interests of judicial economy, permits the chamber or judge to receive documentary evidence without requiring witness testimony. In order to be admitted from a bar table, material must satisfy the basic requirements for admission articulated in Rules 154 and 149 (C)-(D). Such Rules apply *mutatis mutandis* in contempt proceedings.<sup>8</sup>

6. Under Rule 154, evidence may be admitted in the form of a document or other record, consistently with Rule 149 (C) and (D). Pursuant to Rule 149 (C) and (D), a Chamber may admit any relevant evidence which it deems to have probative value; but it may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

7. Material tendered from the Bar Table must therefore be relevant and of probative value, and its probative value must not be outweighed by its prejudicial effect.<sup>9</sup> To demonstrate probative value, the tendering party need only show sufficient indicia of reliability.<sup>10</sup> Probative value, in this context, is distinct from the weight ultimately attributed to a document or record by the Chamber.<sup>11</sup> The offering party must further be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case.<sup>12</sup>

## **DISCUSSION**

### **I. Request for Leave to Reply**

8. I first note that the *Amicus* attached a proposed reply to his Request for Leave to Reply.<sup>13</sup> Pursuant to Rule 8 (B), any reply shall be filed within seven days of obtaining leave of the Judge or Chamber. The Appeals Chamber has held that “it would be a circumvention of Rule 8 (B) if counsel in effect places the reply on the case-record despite not having been granted leave to do so. In the future, unless otherwise ordered, counsel should wait for the Chamber’s decision to

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<sup>7</sup> See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1802, 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, 30 December 2014 (“Trial Chamber 30 December 2014 Bar Table Decision”), para. 29; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014 (“Trial Chamber 28 January 2014 Bar Table Decision”), paras 5-7; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/TC, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 (“Trial Chamber 13 January 2014 Bar Table Decision”), paras 4-6.

<sup>8</sup> Rule 60 *bis* (H) STL RPE.

<sup>9</sup> See Trial Chamber 30 December 2014 Bar Table Decision, para. 29.

<sup>10</sup> See Trial Chamber 13 January 2014 Bar Table Decision, para. 8.

<sup>11</sup> See Trial Chamber 28 January 2014 Bar Table Decision, para. 7.

<sup>12</sup> See Trial Chamber 30 December 2014 Bar Table Decision, para. 29.

<sup>13</sup> F0104/A01, Reply to “Defence Response to ‘Motion for Admission Evidence Pursuant to Rule 154’” Dated 2 March 2015, Confidential, 5 March 2015.

grant leave [...] before filing the reply”.<sup>14</sup> I remind the *Amicus* to observe this instruction going forward.<sup>15</sup> In deciding whether to grant the *Amicus* leave to reply, I am only considering the reasons presented in his Request for Leave to Reply.

9. The *Amicus* submits that, due to “special circumstances and particularities in relation to the Bar Table Motion”, “[i]t is in the interest of justice and of a fair and expeditious trial that *Amicus* be allowed to reply to some of the inappropriate contentions raised in the Defence Response”.<sup>16</sup> He asserts that the Response raised many issues specific to various exhibits which would have been “practically impossible for *Amicus* to pre-emptively address [...], especially since the Defence arguments are inappropriate”.<sup>17</sup> He specifically seeks to reply to Defence arguments concerning the supposed purpose of certain of the *Amicus*’s “media publication” exhibits as well as alleged misrepresentations by the Defence in regards to the relevance and probative value of particular exhibits.<sup>18</sup>

10. The Appeals Chamber has held that a reply “must generally be limited to circumstances where new issues arise out of the [response]”.<sup>19</sup> I find that none of the *Amicus*’s reasons satisfy this requirement. The *Amicus* has also failed to demonstrate any exceptional basis justifying a reply. The *Amicus* simply disagrees with how the Defence characterizes his submissions on the relevance and probative value of specific exhibits. I consider that the *Amicus* had sufficient opportunity in his Motion, Addendum and Bar Table to put forth reasons for admitting his exhibits. Further, I am competent to identify whether the Defence, in its Response, has misrepresented any of the *Amicus*’s submissions or made “inappropriate” arguments and, if so, to account for such in making a determination. I therefore reject the Request for Leave to Reply.

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<sup>14</sup> STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.3, F0009, Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge’s Decision on Protective Measures, 10 April 2013, para. 5; see also STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/AP/AR126.1, F0011, Decision on Urgent Request for Suspensive Effect of the Appeal, Request for Leave to Reply and Request for Appeal Hearing, 22 August 2014, para. 11.

<sup>15</sup> See STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0036, Decision on the Request for Certification to Appeal Decision on Assignment of Counsel, 17 July 2014, fn. 20.

<sup>16</sup> Request for Leave to Reply, paras 5-6.

<sup>17</sup> *Id.* at para. 6.

<sup>18</sup> *Id.* at paras 7-9.

<sup>19</sup> See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/AC/AR126.7, F0012, Order by Judge Rapporteur on Request for Leave to File a Reply, 8 May 2014, para. 4.

## II. Discussion

### *Documents/Other Records by Category*

11. The *Amicus* seeks the admission into evidence of a substantial quantity of exhibits. I deal with such exhibits by category below. The annex attached to this Decision provides my admission determination by individual Bar Table exhibit. For each category of exhibits below, the Parties make particular assertions in regards to admission, which I summarize in the relevant section. I note here, however, the Parties' general submissions.

12. The *Amicus* asserts that, due to this trial's short timeframe and in the interests of efficiency and judicial economy, there is no reason to delay the admission of non-testimonial evidence.<sup>20</sup> He claims that all of the Bar Table exhibits are sufficiently reliable to demonstrate what he considers relevant to his case and that the Defence has had the vast majority of his documentary evidence for months.<sup>21</sup> Finally, he avers that, if the Bar Table exhibits are admitted now, the Parties can use the evidence during opening and closing statements, the trial can proceed without procedural delays and the Court will be able to view the evidence overall as the trial advances.<sup>22</sup>

13. The Defence does not object in principle to the admission of documentary evidence from the Bar Table, and indeed has no objection to many of the exhibits.<sup>23</sup> Notably, the Defence takes no issue with the admission of media exhibits sourced from the Accused,<sup>24</sup> so long as such exhibits meet the relevance and probative value requirements.<sup>25</sup> However, the Defence contends that, at the international criminal courts and tribunals, media exhibits are generally treated with great caution and admissible through the bar table for only limited purposes, if at all.<sup>26</sup> The weight of international criminal jurisprudence, it asserts, is against admission of media exhibits from the bar table to prove the truth of their content because such items are insufficiently reliable.<sup>27</sup> The burden is on the party seeking admission of the media exhibits to put forth specific information and arguments as to why, for each particular item, the general principle

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<sup>20</sup> Motion, paras 11-12.

<sup>21</sup> *Id.* at para. 13.

<sup>22</sup> *Id.* at para. 14.

<sup>23</sup> Response, para. 13; Response to Bar Table.

<sup>24</sup> For the purposes of this Decision, "Accused" shall mean either or both Ms Karma Mohamed Tahsin Al Khayat or *Al Jadeed* [CO.] S.A.L./NEW T.V. S.A.L. (N.T.V.).

<sup>25</sup> Response, para. 14.

<sup>26</sup> *Id.* at para. 7.

<sup>27</sup> *Id.* at para. 11.

against admitting such item from the bar table should not apply.<sup>28</sup> In regards to the Bar Table media exhibits sourced from other parties, the Defence maintains that this “normal bar table admissibility test be applied” and specifically that, for many of the exhibits, the *Amicus* has failed to satisfy “the reliability element of the bar table admissibility test”.<sup>29</sup> It claims that the *Amicus* has not provided specific submissions as to why the information in each of these items should be considered sufficiently reliable for admission from the Bar Table.<sup>30</sup> Finally, the Defence clarifies that it does not generally accept as accurate and proper the *Amicus*'s description and characterization of the Bar Table exhibits.<sup>31</sup>

### **1. Third party media items going to acts and conduct of the Accused**

14. The *Amicus* seeks admission of a large number of written media items not created, produced and/or published by the Accused containing (1) supposed statements of the Accused, or of persons employed with or by the Accused, (2) descriptions of supposed reactions by the aforementioned persons or (3) other information on the Accused's purported behavior for proof of the Accused's *actus reus* and/or *mens rea*.<sup>32</sup> The Defence argues that the *Amicus* has not provided sufficient indicia of reliability regarding their content, that the prejudice of admitting such items substantially outweighs their respective probative values and, in regards to one of the items, that, due to its date of publication, it is insufficiently relevant and probative.<sup>33</sup>

15. In the Bar Table context, the probative value of media items reporting alleged statements attributable to, or the supposed behavior of, the Accused, tendered to prove the Accused's acts and conduct, is outweighed by their prejudicial impact on a fair trial. I am not satisfied that these media exhibits have the necessary indicia of reliability and consider that, given their intended purpose in the case, their probative value would be outweighed by their prejudicial impact without appropriate oral testimony. I therefore shall not admit them from the Bar Table.

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<sup>28</sup> Response, para. 11.

<sup>29</sup> *Id.* at para. 15.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Id.* at para. 16.

<sup>32</sup> Bar Table, P001.1, P001.2, P001.3, P007, P008, P009, P011, P024, P036, P040, P044.16, P044.17, P046.5, P046.6, P046.7, P046.8, P046.9, P046.13, P046.16.

<sup>33</sup> Response to Bar Table, P001.1, P001.2, P001.3, P007, P008, P009, P011, P024, P036, P040, P044.16, P044.17, P046.5, P046.6, P046.7, P046.8, P046.9, P046.13, P046.16.

16. Additionally, the *Amicus* seeks admission of a third party video report quoting the reaction of *Al Jadeed S.A.L.*'s counsel to the initiation of this contempt case and another.<sup>34</sup> The *Amicus* asserts that this exhibit demonstrates defiance of and intent to undermine the Tribunal. The Defence does not object to admission.<sup>35</sup>

17. Indeed, *Al Jadeed S.A.L.*'s counsel appears in the video report and reacts to these proceedings. Accordingly, I find the video relevant to the acts and conduct of the Accused and that it has the necessary indicia of reliability. Further, the *Amicus* has adequately demonstrated where and how the exhibit fits into his case and its admission will not result in unfair prejudice. I therefore admit this exhibit from the Bar Table.

## **2. Third party media items not going to acts and conduct of the Accused**

18. The *Amicus* seeks admission of written media items not created, produced and/or published by the Accused covering reactions by the Tribunal and others to the broadcasts in question, the impacts of other disclosures related to actual or purported Tribunal witnesses, the supposed purpose of disclosures and past responses of international courts to disclosures to demonstrate the effects of the Accused's acts and conduct and/or that journalistic standards in Lebanon go against publishing identifying information about alleged confidential witnesses.<sup>36</sup> The Defence objects to most of these items for lack of relevance and probative value, insufficient objectivity and expertise and/or unfair prejudice.<sup>37</sup>

19. I deem all these exhibits relevant and of probative value, and the *Amicus* has adequately demonstrated where and how they fit into his case. I have previously held that the effects of other disclosures in Lebanon are relevant to evaluating the effects, if any, of the disclosures at issue in this case.<sup>38</sup> I also determine that the information provided by certain of these exhibits, regarding the reaction of some sectors of the Lebanese media to the publishing of identifying information, can provide informative context on the effects which such disclosures may have had on public confidence in the Tribunal's ability to protect confidentiality. Further, I am satisfied that, as these

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<sup>34</sup> Bar Table, P046.10.

<sup>35</sup> Response to Bar Table, P046.10.

<sup>36</sup> Bar Table, P044.1, P044.2, P044.3, P044.4, P044.5, P044.6, P044.7, P044.9, P044.10, P046.2, P046.4, P046.15, P067, P072.

<sup>37</sup> Response to Bar Table, P044.1, P044.2, P044.3, P044.4, P044.5, P044.6, P044.7, P044.9, P044.10, P046.2, P046.4, P046.15, P067, P072.

<sup>38</sup> F0090, Decision on Two Motions for Admission of Written Statements, 28 November 2014 ("Decision on Admission of Written Statements"), paras 23-24.

exhibits do not go to the acts and conduct of the Accused, admission would not result in unfair prejudice. I therefore admit these exhibits from the Bar Table. I emphasize that deciding to admit evidence does not constitute a binding determination as to its authenticity or credibility. These are matters to be assessed at a later stage when I will consider what weight, if any, to give to such evidence.

### 3. Media items sourced from the Accused

20. The *Amicus* seeks admission of written and video media items created, produced and/or published by the Accused for proof of the Accused's acts and conduct and the impact.<sup>39</sup> The items include the broadcasts in question and coverage of related Tribunal filings, earlier alleged disclosures, confidentiality of certain Tribunal information, the Tribunal's reaction to alleged disclosures by other persons, the effects of other disclosures, Tribunal contempt investigations and the tenth anniversary of the Hariri attack.<sup>40</sup> The Defence does not object to the admission of most of these items.<sup>41</sup> However, with respect to several, the Defence opposes admission for lack of relevance or probative value in regards to content or the date of publication.<sup>42</sup>

21. I am satisfied that all of these exhibits are relevant and of probative value to the acts and conduct of the Accused and/or to their impact. I generally consider that publications of the Accused, for which there are no challenges as to authenticity, have the necessary indicia of reliability. Moreover, the *Amicus* has adequately demonstrated where and how the items fit into his case and their admission will not result in unfair prejudice.

22. In regards to the exhibits subject to Defence objections, I am persuaded that the content of these items—sourced from the Accused and related to the confidentiality of certain Tribunal material, reactions by the Tribunal and others to various alleged disclosures and Tribunal

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<sup>39</sup> Bar Table, P002, P003, P004, P005.1, P005.2, P005.3, P005.4, P005.5, P005.6, P005.7, P005.8, P005.9, P005.10, P015, P019, P023.1, P023.2, P025.1, P025.2, P026.1, P026.2, P032.1, P032.2, P033.1, P033.2, P037.1, P037.2, P044.8, P044.11, P044.12, P044.13, P044.14, P044.15, P046.1, P046.3, P046.11, P046.12, P046.14, P046.17, P046.18, P054, P055, P071.

<sup>40</sup> *Ibid.*

<sup>41</sup> Response to Bar Table, P002, P003, P004, P005.1, P005.2, P005.3, P005.4, P005.5, P005.6, P005.7, P005.8, P005.9, P005.10, P015, P019, P023.1, P023.2, P025.1, P025.2, P026.1, P026.2, P032.1, P032.2, P033.1, P033.2, P037.1, P037.2, P044.8, P044.11, P044.12, P044.13, P044.14, P044.15, P046.1, P046.3, P046.11, P046.12, P046.14, P046.17, P046.18, P054, P055, P071.

<sup>42</sup> *Id.* at P015, P044.8, P044.11, P044.12, P044.13, P044.14, P044.15, P046.12, P046.18, P055, P071. The Defence also raises a translation issue pertaining to two exhibits. Response to Bar Table, P032.1, P032.2. On 8 April 2015, I was notified that this issue has been resolved by the Parties. Email from Legal Officer, *Amicus Curiae* Team, to Legal Officers, Contempt Judge, and the Defence, 8 April 2015; Email from Legal Officer, Defence, to Legal Officers, Contempt Judge, and the *Amicus Curiae* Team, 8 April 2015.



contempt investigations—is relevant and of probative value even if published after the original broadcasts in question. Such content can assist my determination as to the Accused's state of mind. In this respect, I recall that the *Amicus's* allegations relate not only to the original broadcasts, but also to acts purportedly done over an extended period of time. There is thus no reason why material should be excluded merely because it post-dates the original broadcasts. Moreover, I am not persuaded that material published subsequent to the Accused's alleged acts and conduct is not relevant to demonstrating *mens rea* or other aspects of the charges. I therefore admit these exhibits from the Bar Table.<sup>43</sup> I reiterate the distinction between admitting material into evidence now and the weight I may give any such evidence at a later stage.

#### **4. Legal claim against the Tribunal**

23. The *Amicus* seeks admission of a purported legal claim submitted to and brought against the Tribunal by thirteen persons in October 2013 relating to the alleged disclosure by other media organizations in Lebanon of confidential witness information.<sup>44</sup> He asserts that the impact described in the claim goes to the effects in this case, as well as, in conjunction with an *Al Jadeed* TV broadcast reporting on the claim, the Accused's awareness of such effects.<sup>45</sup> The Defence argues that the claim is not relevant or probative and also that any probative value would be substantially outweighed by the prejudicial speculative purpose for which the *Amicus* seeks to use the document.<sup>46</sup>

24. I find that this exhibit is relevant and of probative value to the effects of the Accused's alleged disclosures. Together with other evidence that the *Amicus* intends to tender, it is also relevant and of probative value to the Accused's awareness of the potential effects of disclosing purportedly confidential witness-related information in general. Moreover, the *Amicus* has adequately demonstrated where and how the item fits into his case. I also reject the Defence's prejudice assertions. Consistent with my reasoning above,<sup>47</sup> I consider that no unfair prejudice

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<sup>43</sup> I have been informed by the Parties of a translation dispute concerning parts of exhibits P033.1 and P033.2. Email from Legal Officer, *Amicus Curiae* Team, to Legal Officers, Contempt Judge, and the Defence, 8 April 2015; Email from Legal Officer, Defence, to Legal Officers, Contempt Judge, and the *Amicus Curiae* Team, 8 April 2015. In this respect, the Defence has requested that LSS provide an official transcription of the relevant portion of P033.1, which is a video, and a related official translation. Accordingly, I am admitting exhibits P033.1 and P0033.2 from the Bar Table subject to the official transcription and translation of LSS.

<sup>44</sup> Bar Table, P073.

<sup>45</sup> *Ibid.*

<sup>46</sup> Response to Bar Table, P073.

<sup>47</sup> See above para. 19.

will result from admitting the legal claim for its relevance to my evaluation of the effects of the disclosure at issue here. Whether this document, in conjunction with other evidence, is proof of aspects of the charges, such as the effects of *Al Jadeed TV's* reports or the *mens rea* of the Accused, is not a matter to be decided at this stage. As I have recalled earlier, the present stage only concerns a preliminary admissibility assessment whereas the ultimate weight to be attributed to the evidence is decided after the presentation of all the evidence in the trial in view of the entirety of the record. I therefore admit this exhibit from the Bar Table.

### **5. Tribunal material**

25. The *Amicus* seeks admission of various official Tribunal filings and press releases, issued before and during the alleged commission of the charged criminal acts, related to media broadcasts of purported confidential Tribunal information, Tribunal protective measures and Tribunal confidentiality orders.<sup>48</sup> These include the Registrar's Notice of Cease and Desist of 7 August 2012 and the Pre-Trial Judge's Order of 10 August 2012 which are central to the allegations under Count 2 of the Order in Lieu of an Indictment. The *Amicus* intends to use these exhibits to show the Accused's *mens rea*.<sup>49</sup> The Defence, in objecting to most of these exhibits, argues that their mere existence is not probative of whether the Accused had knowledge of the documents and, in regards to some of the exhibits, that their content is not relevant to or probative of the Accused's *mens rea*.<sup>50</sup>

26. I consider that the content of all these filings and press releases, in light of other evidence the *Amicus* intends to tender, is relevant to the acts and conduct of the Accused and that the *Amicus* has adequately demonstrated where and how they fit into his case. Moreover, as official Tribunal documents taken from court records, they have the necessary indicia of reliability; and indeed I note that the Defence disputes the Accused's knowledge of the documents, not the truth of their content. As discussed above, the probative value ultimately attributed to these documents, in conjunction with other evidence, is not an issue to be decided at the admission stage. I am further satisfied that their probative value is not outweighed by any prejudicial impact. I therefore admit these exhibits from the Bar Table.

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<sup>48</sup> Bar Table, P006, P010, P012, P013, P014, P016, P017, P018, P021, P022, P027, P038, P047.

<sup>49</sup> *Ibid.*

<sup>50</sup> Response to Bar Table, P006, P010, P012, P013, P014, P016, P017, P018, P021, P022, P027, P038, P047.

## 6. Records of interview

27. The *Amicus* seeks admission of the videos and transcripts of four suspect interviews conducted by the *Amicus Curiae* Investigator with current or former employees of *Al Jadeed* S.A.L.—Mr Rami Al-Amin, Mr Ibrahim Dsouki, Mr Firas Hatoum and Mr Hassan Bazzi—as well as associated documents.<sup>51</sup> The content of the interviews allegedly goes to proof of the acts and conduct of the Accused.<sup>52</sup>

28. The Defence objects to the admission of Mr Hatoum's and Mr Bazzi's suspect interviews. It avers that the probative value of these interviews would be substantially outweighed by prejudice arising from the fact that the Defence will not have an opportunity to cross-examine the subjects, who provided information on their supposed direct involvement in the production of the broadcasts in question.<sup>53</sup> The Defence further submits that its decision at an earlier stage not to object to the admission of Mr Al-Amin's and Mr Dsouki's suspect interviews under Rule 154 does not mean that all other suspect interviews should automatically be admitted pursuant to that Rule.<sup>54</sup>

29. I find that the suspect interviews of Mr Hatoum and Mr Bazzi are relevant to the acts and conduct of the Accused, namely the production of the pertinent broadcasts, and that the *Amicus* has adequately demonstrated where and how they fit into his case. Importantly, I note that, for both interviews, the requirements of Rule 65, which articulates the rights of suspects during an investigation, and Rule 66, which sets out the conditions for recording the questioning of suspects, were met.<sup>55</sup> Based on the fulfillment of these requirements, I am satisfied that the interviews have the necessary indicia of reliability.

30. I reject the Defence argument that the probative value of admitting these interviews is outweighed by unfair prejudice. The Defence is of course correct that its earlier decision not to oppose the admission of other suspect interviews pursuant to Rule 154 is not binding here. However, the Defence is wrong in asserting that, in order to rely on Mr Hatoum's and Mr Bazzi's interviews, the *Amicus* needed to seek their admission pursuant to Rule 155 or 156.

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<sup>51</sup> Bar Table, P050.1, P050.2, P051.1, P051.2, P051.3, P052, P074.1, P074.2.

<sup>52</sup> *Ibid.*

<sup>53</sup> Response to Bar Table, P052, P074.1.

<sup>54</sup> *Ibid.*

<sup>55</sup> P052, ERN AP1405\_203\_ENG\_01886-01890, 01910; P074.1, ERN AP1405\_210\_ENG\_T\_02046-02049,02051-02055, 02057-02059, 02101,02133,02136.

These Rules provide for the admission of written witness statements *in lieu* of oral witness testimony.<sup>56</sup> Mr Hatoum and Mr Bazzi are not *Amicus* witnesses and thus Rules 155 and 156 do not apply. Consistent with international case-law<sup>57</sup> and my previous decisions,<sup>58</sup> the *Amicus* is not required to call suspects or former suspects as witnesses in order for their suspect interviews to be admitted into evidence. He is indeed entitled under the Rules to exercise his discretion and seek the admission of suspect interviews pursuant to Rule 154, as he did for the interviews of Ms Khayat, Mr Al-Amin and Mr Dsouki. I again emphasize that admitting such interviews is entirely separate from determining the weight they will be given in light of all the evidence. There is no unfair prejudice at this stage, and I will consider any possible prejudice when weighing the totality of the evidence. Further, I note that the Defence is able to call the above-mentioned former suspects, *inter alia*, as witnesses in its case if it so wishes. I therefore admit these exhibits from the Bar Table.

31. With respect to the interviews of Mr Al-Amin and Mr Dsouki, I recall that I have previously ruled that their records of interview are admissible under Rule 154. However, at the time I did not formally admit them into evidence—which is a mere technical step once I have already deemed an item admissible.<sup>59</sup> Those records encompass all the written exhibits submitted for admission in this Motion related to Mr Al-Amin's and Mr Dsouki's suspect interviews.<sup>60</sup> The Defence does not object to admission of these written documents or the associated videos.<sup>61</sup> In my previous decision, I also found admissible the legal proxies associated with Mr Bazzi's interview.<sup>62</sup> Based on the reasons provided above, I admit these exhibits from the Bar Table.

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<sup>56</sup> Rule 155 STL RPE; Rule 156 STL RPE.

<sup>57</sup> See e.g., ICTY, *In the Case Against Florence Hartmann*, IT-02-54-R77.5, Decision on Prosecution Motion for Admission of Evidence from the Bar Table Pursuant to Rule 89(C), 19 May 2009, paras 9-10; ICTY, *Prosecutor v. Orić*, IT-03-68-T, Decision on Defence Motion to Exclude Interview of the Accused Pursuant to Rules 89(D) and 95, 7 February 2006.

<sup>58</sup> Decision on Admission of Written Statements, paras 25-27; F0102, Decision on *Amicus Curiae* Prosecutor's Motion for Admission of Record of Karma Khayat's Suspect Interview and Related Documents, 4 March 2015.

<sup>59</sup> Decision on Admission of Written Statements, paras 25-27, p. 9.

<sup>60</sup> *Id.* at paras 25-27; F0065, Motion for Admission of Written Statements Under Rule 154, or, Alternatively, Under Rule 156 of the Rules of Procedure and Evidence, Confidential Annex B, 13 October 2014 ("Admission of Written Statements Motion, Confidential Annex B").

<sup>61</sup> Response to Bar Table, P050.1, P050.2, P051.1, P051.2, P051.3.

<sup>62</sup> Decision on Admission of Written Statements, paras 25-27; Admission of Written Statements Motion, Confidential Annex B.

## 7. Reports of service

32. The *Amicus* seeks admission of Reports of Service of the Pre-Trial Judge's Order of 10 August 2012, signed by two chief warrant officers of the Judicial Police, purportedly proving service on Ms Mariam al-Bassam and consequently the Accused's knowledge of the Order.<sup>63</sup> The Defence contends that, given the importance of and dispute as to service in this case, it is imperative that the context of the service, including the declarations made in the Reports, be explained by a person who can speak to the exhibits' content. To admit the exhibits from the Bar Table would be prejudicial.<sup>64</sup>

33. These Reports are plainly relevant and I am satisfied that they bear sufficient indicia of reliability. In so finding, I note that the Defence does not challenge their authenticity. I further consider that the *Amicus* has adequately demonstrated where and how they fit into his case. As for the fact that the declarations made in the Reports are in dispute, I am mindful that the relevant officers mentioned above are scheduled to appear as oral witnesses and will be able to speak to the context and content of the Reports.<sup>65</sup> Accordingly, the probative value of the exhibits' admission will not be outweighed by their possible prejudicial impact. I therefore shall admit these exhibits from the Bar Table. Of course, the weight ultimately given to these Reports will depend, in part, on the officers' testimony.

## 8. E-mail with authenticity concerns

34. The *Amicus* seeks admission of an e-mail purportedly sent by the Head of the Tribunal's Beirut Office to Ms Khayat on 11 August 2012, attaching the Pre-Trial Judge's Order of 10 August 2012.<sup>66</sup> The *Amicus* obtained this exhibit from the Tribunal's Registry. He submits that this exhibit shows the Accused's knowledge of the Order.<sup>67</sup> The Defence challenges the exhibit's authenticity and further contends that, in light of its importance and the fact that the Head of the Tribunal's Beirut Office is scheduled to appear as a witness, its probative value would be substantially outweighed by the prejudice arising from admission from the Bar Table.<sup>68</sup>

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<sup>63</sup> Bar Table, P041, P060.2, P060.3, P061.2, P061.3.

<sup>64</sup> Response to Bar Table, P041, P060.2, P060.3, P061.2, P061.3.

<sup>65</sup> F0110, Updated Prosecution Witness List, Confidential, 19 March 2015 ("*Amicus* Witness List"); Bar Table, P041, P060.2.

<sup>66</sup> Bar Table, P039.

<sup>67</sup> *Ibid.*

<sup>68</sup> Response to Bar Table, P039.

35. I find that the e-mail is relevant to the Accused's *mens rea*. However, as its authenticity is challenged by the Defence and considering the central purpose for which its admission is sought, admitting the e-mail, other than through a witness who can attest to its authenticity, would be unfairly prejudicial. In this regard, I note that the e-mail's purported author is scheduled to appear as an oral witness and can thus testify to its authenticity and context.<sup>69</sup> I therefore shall not admit this exhibit from the Bar Table.

### **9. YouTube items**

36. The *Amicus* seeks admission of three exhibits dated May 2014—a YouTube Terms of Service for an account in Lebanon, a YouTube “When do I get paid” page and a Google AdSense Online Terms of Service—which, he generically asserts, “[c]oncern[] the information published on *Al Jadeed*'s website and Youtube channel and maintained available thereafter”.<sup>70</sup> The YouTube “When do I get paid” page supposedly explains how an “AdSense account's holder on a Youtube account gets paid”.<sup>71</sup> The Defence argues that the *Amicus* has not established that any of these exhibits has relevance or probative value to the terms of service document that would have been applicable to the time period it considers relevant to the case, namely 2012 into 2013.<sup>72</sup>

37. The *Amicus* has presented nothing beyond a bare assertion that these exhibits concern the information allegedly published and maintained on *Al Jadeed* S.A.L.'s website and YouTube channel. He has not shown any actual connection to the Accused. Nor is it self-evident from a review of the exhibits, which are general business documents with no explicit link to the Accused or their alleged conduct, how they are relevant and of probative value in this case. I therefore shall not admit these exhibits from the Bar Table.

### **10. Al Jadeed screenshots**

38. The *Amicus* seeks admission of computer screenshots of *Al Jadeed* TV's website and Facebook page purportedly showing that a link to the broadcasts in question was available on the company's Facebook page on 23 August 2012, and that the company's YouTube channel had

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<sup>69</sup> *Amicus* Witness List; Bar Table, P039.

<sup>70</sup> Bar Table, P056.1, P056.2, P056.3.

<sup>71</sup> *Id.* at P056.2.

<sup>72</sup> Response to Bar Table, P056.1, P056.2, P056.3.

been terminated.<sup>73</sup> He avers that these documents go to proof that the broadcasts were publicly available on the internet during a relevant period.<sup>74</sup> The Defence argues that the prejudice of admission substantially outweighs their probative value. It contends that, on account of the importance of the issue of the broadcasts' availability, an explanation as to how this information was collected and of the context by a person who can speak to the documents' content is imperative.<sup>75</sup>

39. I find that these documents are relevant to the acts and conduct of the Accused and that the *Amicus* has adequately demonstrated where and how they fit into his case. However, considering the consequence of the question of the broadcasts' availability and Defence objections, I conclude that further explanation at trial by a person who can speak to the documents' content is appropriate to inform my decision on their reliability and avoid potential unfair prejudice. I note in this regard that a person involved in the exhibit's collection is scheduled to appear as an oral witness and can speak to the documents' content and the context.<sup>76</sup> I therefore shall not admit this exhibit from the Bar Table.

### **11. Expert report**

40. The *Amicus* seeks admission of the expert report and *curriculum vitae* of Dr Ann-Marie de Brouwer, who is scheduled to appear as an expert witness.<sup>77</sup> Subsequent to the Parties' filings, I declared, in a separate decision providing reasons, that Dr de Brouwer is indeed qualified as an expert under Rule 161 and admitted her expert report and *curriculum vitae* pursuant to Rule 154.<sup>78</sup> No further decision is thus required in relation to these documents.

### **12. Mariam al-Bassam book**

41. The *Amicus* seeks admission of a book prepared by Ms Mariam al-Bassam titled "Hakika (Truth) Leaks with their voices they convicted", which putatively disclosed confidential Tribunal information, for the acts and conduct of the Accused.<sup>79</sup> I previously rejected the

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<sup>73</sup> Bar Table, P043.

<sup>74</sup> *Ibid.*

<sup>75</sup> Response to Bar Table, P043.

<sup>76</sup> *Amicus* Witness List; Bar Table, P043.

<sup>77</sup> Bar Table, P066.1, P066.2.

<sup>78</sup> F0114, Decision on Expert Witness Anne-Marie de Brouwer, 27 March 2015.

<sup>79</sup> Bar Table, P005.11.

addition of this exhibit to the *Amicus's* Rule 91 (G) (iii) exhibit list<sup>80</sup> and therefore I cannot admit it from the Bar Table now.

### **13. Other material not subject to objection**

42. With respect to the Bar Table exhibits not addressed above, for which there are no objections to admission,<sup>81</sup> I am satisfied they are relevant and of probative value, and that the *Amicus* has adequately demonstrated where and how they fit into his case. Moreover, their probative value is not outweighed by prejudicial impact. I therefore admit these exhibits from the Bar Table.

### **III. Confidentiality**

43. Certain submissions in this matter were filed confidentially. Though there is indeed information in the filings that should remain confidential, several, with appropriate redactions, should be made public. I therefore order the Parties to file, as appropriate, public redacted versions of their submissions. I encourage the Parties to verify their redactions with one another before filing their redacted submissions. A public redacted version of this Decision will also be issued.

## **DISPOSITION**

### **FOR THESE REASONS;**

**PURSUANT** to Rules 60 *bis* (H), 65, 66, 149 (C)-(D) and 154 of the Rules;

### **I**

**GRANT** the Motion and the Addendum in part;

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<sup>80</sup> F107, Public Redacted Decision on Motion to Amend the Prosecution Exhibit List and Witness List, 11 March 2015, para. 26.

<sup>81</sup> Bar Table, P020, P028, P029, P030.1, P030.2, P030.3, P030.4, P030.5, P030.6, P031, P034, P035, P042, P045, P048.1, P048.2, P048.3, P048.4, P048.5, P053.1, P057.2; Response to Bar Table, P020, P028, P029, P030.1, P030.2, P030.3, P030.4, P030.5, P030.6, P031, P034, P035, P042, P045, P048.1, P048.2, P048.3, P048.4, P048.5, P053.1, P053.2, P057.2. I note that exhibit P020, a compilation of e-mails from Ms Khayat to STL personnel, contains the e-mail separately tendered as exhibit P039. P020, ERN AP1405\_192\_ENG\_01540-01541. Because I have decided not to admit exhibit P039 from the Bar Table, I also will not admit the same content as part of exhibit P020. Accordingly, my decision to admit exhibit P020 from the Bar Table excludes the e-mail from the Head of the Tribunal's Beirut Office contained therein.



**ADMIT** into the trial record certain of the *Amicus's* Bar Table exhibits, as set out above and in the annex attached to this Decision;

**REQUEST** the Registry to assign exhibit numbers to the admitted exhibits;

**ORDER** the Parties to file public redacted versions of the submissions related to this Decision;  
and

**DISMISS** the Motion and the Addendum in all other respects.

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

Dated 9 April 2015

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

