

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: 13 April 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 AMEND ITS EXHIBIT LIST
AND ONEISSI DEFENCE REQUEST TO STAY THE PROCEEDINGS**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

Victims' Legal Representatives:

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

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun
& Mr Thomas Hannis

Counsel for Mr Mustafa Amine Badreddine:

Mr Antoine Korkmaz, Mr John Jones
& Mr Iain Edwards

Counsel for Mr Hassan Habib Merhi:

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

Counsel for Mr Hussein Hassan Oneissi:

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

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux
& Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution seeks leave to amend its exhibit list filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence by adding 133 exhibits.¹
2. Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi and Mr Hussein Hassan Oneissi, responded to the motion.² Counsel for Mr Oneissi, in addition to objecting to the Prosecution's motion, requested an order to the Prosecution to complete disclosure, to re-file its witness and exhibit lists, and to re-submit its pre-trial brief. They also request a stay of proceedings until the Prosecution has complied.³ The Prosecution subsequently replied to these submissions.⁴

MOTION TO AMEND THE EXHIBIT LIST

3. The Prosecution has divided the proposed additional evidence into six categories; a) communications-related data, b) call sequence tables, c) subscriber notes, d) witness statements related to locations, e) exhibits provided by Witness PRH052, and f) information from the Special Syrian Judicial Commission.⁵
4. The Prosecution submits that all of the proposed amendments are *prima facie* relevant and probative and that their addition is in the interests of justice.⁶ It also submits that the vast majority of the proposed additional evidence comprises extracts of material already on its exhibit list; that it has good cause in seeking the amendment; that the amendment will not result in undue delay; and that all

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1791, Redacted Version of the Prosecution Request to Amend its Exhibit List dated 15 December 2014, 16 December 2014, para. 1.

² F1799, Response by the Ayyash Defence to the Prosecution Request of 15 December 2014 to Amend its Exhibit List, 19 December 2014; F1801, Merhi Defence Response to the Prosecution Request of 15 December 2014 to Amend its Exhibit List, 29 December 2014; F1803, The Defence for Hussein Hassan Oneissi Response to "Prosecution Request to Amend its Exhibit List" Filed 15 December 2014 and Request for Stay of Proceedings Until Completion of Prosecution Disclosure, Filing of Final Rule 91 Lists and Re-submission of Pre-Trial Brief, 30 December 2014. Counsel for Mr Oneissi also filed a corrigendum and corrected version of their filing. F1803, Corrigendum to the Defence for Hussein Hassan Oneissi Response to "Prosecution Request to Amend its Exhibit List" Filed 15 December 2014 and Request for Stay of Proceedings Until Completion of Prosecution Disclosure, Filing of Final Rule 91 Lists and Re-submission of Pre-Trial Brief, 6 January 2015; Corrected Version of "The Defence for Hussein Hassan Oneissi Response to "Prosecution Request to Amend its Exhibit List" Filed 15 December 2014 and Request for Stay of Proceedings Until Completion of Prosecution Disclosure, Filing of Final Rule 91 Lists and Re-submission of Pre-Trial Brief", 6 January 2015.

³ F1803, Corrected Version of "The Defence for Hussein Hassan Oneissi Response to "Prosecution Request to Amend its Exhibit List" Filed 15 December 2014 and Request for Stay of Proceedings Until Completion of Prosecution Disclosure, Filing of Final Rule 91 Lists and Re-submission of Pre-Trial Brief", 6 January 2015, para. 3.

⁴ F1816, Prosecution Response to Oneissi Defence Request for Stay of Proceedings, 16 January 2015.

⁵ Prosecution motion, paras 7-21.

⁶ Prosecution motion, paras 5-6.

materials that are the subject of the motion have been disclosed to the Defence as of the date of filing.⁷

a) Communications-related data

Prosecution submissions

5. The Prosecution's case against the Accused relies heavily on telecommunications data and records. This includes call data records, which, as defined in another Prosecution motion, are collections of metadata from telephone calls.⁸ These are electronic business records maintained in the usual course of business by Lebanese communication service providers, containing information for systems management and billing purposes.⁹ The Prosecution also relies on cell site data, which is information about the cell tower to which a mobile telephone was connected during a call.¹⁰ The Prosecution collected these sources of raw data from Lebanese communication service providers and formatted them into what it terms 'call sequence tables' to present the telephone calls made or received by a specific number over a defined period.¹¹ Call sequence tables, according to the Prosecution, are collections of relevant portions of call data business records generated and maintained by three Lebanese communication service providers.¹²

6. The Prosecution seeks leave to add to its exhibit list four communications-related data records it obtained from Lebanese communication service providers in 2014. Three of these records are end cell call data records. These detail the location of a telephone at the termination of a call. These records complement the start cell data records that are already on the exhibit list, thereby providing a more complete record of the movement of relevant telephones.¹³

7. The fourth communication-related data record is a list of non-Lebanese mobile telephone providers, in particular, the short codes and countries where those providers operate. A short code is a four or five character abbreviation for a telecommunications carrier in a particular country, e.g.

⁷ Prosecution motion, paras 2, 4 and 22.

⁸ F1831, Prosecution Motion For the Admission of Red Network-Related Call Sequence Tables and Related Statement ('red network motion'), 28 January 2015, para. 2.

⁹ Red network motion, para. 2.

¹⁰ Red network motion, paras 5 and 31.

¹¹ Red network motion, para. 2.

¹² Red network motion, para. 2.

¹³ Prosecution motion, para. 8.

GBRVF corresponds to Vodafone in the United Kingdom.¹⁴ The Prosecution submits that this will assist in interpreting roaming data already contained on its exhibit list and in forming the call sequence tables which it will use to demonstrate the movement of persons of interest outside of Lebanon.¹⁵

8. The Prosecution disclosed all of these communications-related materials to the Defence shortly after obtaining them¹⁶ and submits that the Defence will have sufficient time to prepare.¹⁷

Defence submissions

9. Counsel for Mr Merhi object to adding the four communications-related records. They submit that the Prosecution provides no valid reason for adding the data which it only sought in February, June and September 2014, and that adding the materials will prejudice their case. Given that the Prosecution has taken several years to identify this end cell data and months for several experts to analyse it, counsel for Mr Merhi argue that, with their one telecommunications expert, they will not be able to effectively analyse the evidence by spring 2015, when the Prosecution foresees calling this evidence.¹⁸

b) Call sequence tables

Prosecution submissions

10. The Prosecution seeks to add to its exhibit list 96 call sequence tables, detailing 90 telephone calls and six SMSs (short message service texts). The Prosecution submits that these call sequence tables represent the most comprehensive, reliable and relevant extracts of the call data for the relevant telephones. Fifty-nine of these call sequence tables replace call sequence tables currently on the exhibit list.

¹⁴ ERN D0413621-D0413621, a list provided by MTC Touch.

¹⁵ Prosecution motion, para. 9.

¹⁶ ALFA's first set of end cell call data records was disclosed on 29 May 2014. The second was disclosed on 25 July 2014. The third set of end cell call data records was disclosed on 11 September 2014. This list of short codes was disclosed on 1 December 2014. Prosecution motion, para. 29, footnote 37.

¹⁷ Prosecution motion, para. 29.

¹⁸ Merhi Defence response, para. 2.

11. Out of the remaining 37 call sequence tables, 31 were extracted from data sources already contained on the exhibit list, and the remaining six incorporate end cell data or newly received roaming information.¹⁹

12. The Prosecution submits that 13 of the call sequence tables are relevant to establishing the chronology of events leading to the assassination of former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005, especially in relation to his movements and meetings. One call sequence table contains call data of a contact common to two of the Accused, Mr Mustafa Amine Badreddine and Mr Merhi, and another three show call data of frequent communication with the Accused, Mr Badreddine. Eight call sequence tables provide evidence relevant to the movements of the Accused, Mr Ayyash and Mr Badreddine.²⁰ Twelve call sequence tables show the call data of telephones relevant to the disappearance of Mr Ahmad Abu Adass on 16 January 2005, and his claim of responsibility for the attack on Mr Hariri on a videotape given to Al-Jazeera television in Beirut on 14 February 2005, and broadcast that day.²¹

13. The Prosecution submits that the Defence had all but four of the data sources used to produce these call sequence tables, and the four new sources were disclosed shortly after the Prosecution received them.²² Moreover, it produced these call sequence tables to facilitate the presentation of evidence, so adding them to the exhibit list should not unduly impact Defence preparation nor cause significant delay.²³ The Prosecution submits that there is good cause to add all of these call sequence tables as it produced them as the result of further investigative work and analysis, and that their addition will assist in the presentation of communications evidence.²⁴

Defence submissions

14. Counsel for Mr Merhi object to 34 of the call sequence tables extracted from the three proposed data sets with end cell call data. They also object on the basis of lack of relevance to six call sequence tables pertaining to political meetings that Mr Hariri attended.²⁵

¹⁹ Prosecution motion, paras 10-13.

²⁰ Prosecution motion, annex A.

²¹ Prosecution motion, para. 14. F1444, Redacted Version of the Consolidated Indictment, paras 23, 27-28 and 44.

²² For the dates of disclosure, see footnote 15, above.

²³ Prosecution motion, paras 23 and 25-26.

²⁴ Prosecution motion, para. 28.

²⁵ Merhi Defence response, paras 2-3.

15. Counsel for Mr Oneissi object on the basis of lack of *prima facie* relevance and probative value to the seven call sequence tables relating to the chronology of events leading to the 14 February 2005 attack on Mr Hariri, and specifically, to Mr Hariri's political meetings. They object to eight call sequence tables of telephone numbers that were in contact with telephone number 3598095. They also object to three call sequence tables related to the false claim of responsibility. Counsel submit that they were only made aware of the existence of the 56 amended call sequence tables on the date of their disclosure. They also submit that the Prosecution has included in its exhibit list call data records for all Lebanese telephone numbers from 2003 to 2005, and the mere existence of large databases on the exhibit list cannot serve as good cause to adduce new call sequence tables.²⁶

c) Subscriber notes

Prosecution submissions

16. The Prosecution also seeks leave to add 16 subscriber notes to its exhibit list. A subscriber note is an extract of records produced by Lebanese telecommunications service providers for their internal databases. Subscriber notes contain information about the subscriber to a particular telephone number, along with an address for the subscriber, an alternate telephone number, the activation date of the telephone line and the type of subscription (for example, pre-paid).²⁷

17. Twelve subscriber notes provide details for telephone lines in Mr Hariri's residences—Quraitem Palace in Beirut and a villa in Faqra—used to organise Mr Hariri's meetings and provide relevant information to establish Mr Hariri's movements in the months before his death. Another note provides subscriber information for a telephone number belonging to a member of Mr Hariri's security convoy, therefore relevant to establishing Mr Hariri's movements. Two subscriber notes contain information about telephones of members of the Lebanese Parliament who met Mr Hariri and who were involved in relevant political events in the months before Mr Hariri's assassination.²⁸ The last subscriber note provides information on a telephone line in contact with those responsible for organizing meetings with Mr Hariri, attributing that line to Mr Hasan Nasrallah, the Secretary-General of Hezbollah, thus providing relevant evidence of Mr Hariri's movements and meetings.²⁹

²⁶ Oneissi Defence response, paras 7-11.

²⁷ Prosecution motion, annex A.

²⁸ Bassem Yammout and Nasser Kandil. Prosecution motion, para. 15 and footnote 18.

²⁹ Prosecution motion, para. 15.

18. The Prosecution also submits that the subscriber notes are extracted from databases already on the exhibit list, and will streamline the presentation of evidence and support the reliability of other exhibits which are relevant to the attribution of these telephone numbers.³⁰

Defence submissions

19. Counsel for Mr Merhi and Mr Oneissi object, on the basis of lack of relevance, to two subscriber notes related to the Lebanese Parliament members and the subscriber note for the telephone in contact with people responsible for arranging meetings for Mr Hariri.³¹

d) Witness statements related to locations

Prosecution submissions

20. The Prosecution seeks leave to add five witness statements relating to relevant locations from witnesses already on its witness list. These include: locations in Greater Beirut relevant to the false claim of responsibility and the disappearance of Mr Ahmad Abu Adass; locations in Tripoli relevant to the purchase of red network handsets and SIM cards and the Mitsubishi Canter van allegedly used to transport the explosives to the blast site;³² a location in southern Lebanon relevant to the movements of persons related to the Accused, Mr Ayyash; locations relevant to Mr Hariri's movements; and locations relevant to the Accused, Mr Badreddine's movements.³³ Three statements are by Prosecution investigators who went to, photographed or took global positioning satellite (GPS) readings of relevant locations, and two statements are from witnesses scheduled to testify later in the proceedings. One of the statements renders a statement already on the exhibit list compliant with the relevant Practice Direction.³⁴ Three of the statements were taken in the last three months of 2014, and the Prosecution recently assessed the fifth statement—taken in May 2014 and disclosed in June 2014—as providing relevant evidence.³⁵

³⁰ Prosecution motion, paras 15-16 and 24.

³¹ Merhi Defence response, para. 3; Oneissi Defence response, para. 7.

³² F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, paras 4, 26, 32.

³³ Prosecution motion, paras 17-18.

³⁴ STL-PD-2010-02, 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.

³⁵ Prosecution motion, para. 30. The Prosecution also notes that this witness, although anticipated to testify live, is not scheduled for the next few months.

Defence submissions

21. Counsel for Mr Oneissi object, on the basis that no good cause exists for these additions. They submit that the delay was of the Prosecution's own making, since the Prosecution has had the witnesses on its witness list since 15 November 2012 and has had ample time to interview them.³⁶

e) Exhibits provided by Witness 052, Mohamad Hammoud

Prosecution submissions

22. On 10 October 2014, the Prosecution interviewed Witness 052, Mr Mohamad Hammoud, and during this interview, Mr Hammoud provided ten new relevant documents and a video. The Prosecution seeks leave to add them to its exhibit list. These include: an annotated extract of a map of Beirut; two statements of the Qornet-Chehwan group—a Lebanese political coalition of Maronite Christians³⁷—dated 4 September and 18 December 2004; seven documents relating to meetings held at the Bristol Hotel in 2004 by various political groups; and a video recording of portions of the Bristol Group meetings.³⁸ The Prosecution submits that the annotated map, an extract of the Zawarib Greater Beirut Atlas 2005 edition,³⁹ shows an office of Brigadier-General Rustom Ghazaleh, the former Chief of Syrian intelligence in Lebanon, and is relevant to the relationship between Syrian and Lebanese officials.⁴⁰ The remaining materials are records of political events, helpful to provide a more complete understanding of the political context in Lebanon. They were disclosed to the Defence on 6 November 2014, shortly after their receipt by the Prosecution. These materials are not unduly burdensome to Defence preparation, as they comprise one-page newspaper articles or similarly short records.⁴¹

23. On 16 January 2015, during the testimony of Dr Ghattas Khoury, the Trial Chamber viewed the video recording of portions of the Bristol Group meetings, and admitted the video into evidence.⁴²

³⁶ Oneissi Defence response, para. 11.

³⁷ Transcript of 20 November 2014, pp. 22-25.

³⁸ Prosecution motion, para. 19. Footnote 28 incorrectly cites one of the documents as 60301212-60301224, when the correct ERN is 60301222-60301224.

³⁹ Exhibit P298.

⁴⁰ Prosecution motion, para. 20.

⁴¹ Prosecution motion, para. 31.

⁴² Exhibit P365. Transcript of 16 January 2015, pp. 9-10 (marking the video for identification) and p. 34 (admitting the video into evidence).

Defence submissions

24. Counsel for Mr Ayyash, Mr Merhi and Mr Oneissi object to all of the documents in this category as lacking *prima facie* relevance and probative value.⁴³

f) Information from the Special Syrian Judicial Commission

Prosecution submissions

25. The Prosecution seeks leave to add a document, dated 13 April 2007, from the Special Syrian Judicial Commission—a body established by the Syrian Arab Republic to deal with matters related to the United Nations International Independent Investigation Commission (UNIIC)—to its exhibit list.⁴⁴ The Special Syrian Judicial Commission provided the document in response to a UNIIC request for assistance to the Syrian government. The document provides subscriber information—in particular, ownership information—for specific Syrian telephone lines and is relevant to the contact between Syrian and Lebanese officials.⁴⁵ The Prosecution recently assessed this document as being relevant to its case and adding this one 13-page document should not unduly impact Defence preparation.⁴⁶

Defence submissions

26. Counsel for Mr Ayyash, Mr Merhi and Mr Oneissi object to this document as lacking *prima facie* relevance and probative value.⁴⁷ Counsel for Mr Oneissi also submit that no good cause exists to allow this proposed amendment, as the document is dated 2007, has been in the possession of the Prosecution since the establishment of the Special Tribunal and any delay was therefore caused by the Prosecution itself.⁴⁸

⁴³ Ayyash Defence response, para. 4; Merhi Defence response, para. 3; Oneissi Defence response, para. 7.

⁴⁴ Prosecution motion, para. 21.

⁴⁵ Prosecution motion, para. 21.

⁴⁶ Prosecution motion, para. 32.

⁴⁷ Ayyash Defence response, para. 4; Merhi Defence response, para. 3; Oneissi Defence response, para. 7.

⁴⁸ Oneissi Defence response, para. 11.

ONEISSI DEFENCE REQUEST TO STAY THE PROCEEDINGS

Defence submissions

27. In addition to responding negatively to the Prosecution motion, counsel for Mr Oneissi made a request—but contained in their response—seeking an order to stay the proceedings. Based on the repeated amendments to the Prosecution’s witness and exhibit lists, they seek an order directing the Prosecution to complete disclosure, re-file its witness and exhibit lists, and resubmit its pre-trial brief. Their request for a stay of proceedings is to allow the Prosecution to comply with this order.⁴⁹

28. Counsel for Mr Oneissi objected broadly to all of the proposed amendments, submitting that the Prosecution has failed to demonstrate the *prima facie* relevance and probative value of the proposed additional evidence, the existence of good cause for not seeking these additions to its exhibit list earlier, or the appropriateness of the stage of the proceedings. They submit that, given the current stage of the proceedings and the fact that this evidence was not shown to the Pre-Trial Judge, the Prosecution was under a heightened obligation to demonstrate the relevance of the proposed exhibits and how they fit into the Prosecution case.⁵⁰

29. They submit that the purpose of the exhibit list is to provide, during the pre-trial phase, a summary of the evidence to be tendered at trial—to assist the Pre-Trial Judge and Trial Chamber—but that the role of the exhibit and witness lists has been in effect annulled by repeated amendments. They argue that late and significant amendments undermine the purpose of the pre-trial phase and cause delay by forcing the Defence to constantly adapt its preparation to an evolving case revealed piecemeal via newly disclosed elements.⁵¹ Additionally, counsel for Mr Oneissi complained of Prosecution disclosures not under a rule but under the heading ‘other’ as not giving sufficient notice as to how the disclosed material was relevant.⁵²

30. Counsel argue that disclosure after the start of trial undermines the purpose of the pre-trial disclosure obligations. The commencement of trial in the context of an ever-shifting and uncertain Prosecution case is a serious breach of the rights of the Accused to a fair trial.⁵³ This ongoing

⁴⁹ Oneissi Defence response, paras 18-28.

⁵⁰ Oneissi Defence response, para. 17.

⁵¹ Oneissi Defence response, paras 13-14 and 16.

⁵² Oneissi Defence response, para. 23.

⁵³ Oneissi Defence response, paras 20-24 and 26-27.

disclosure and amendments to the witness and exhibit lists is proof that the alleged unfairness will continue throughout trial.

Prosecution submissions

31. The Prosecution opposes the requests. It submits that nothing in the Special Tribunal's Statute or Rules of Procedure and Evidence either requires the Prosecution to have completed disclosure before the end of the pre-trial phase or prohibits amendments to its witness and exhibit lists after the commencement of trial. Although the Prosecution must disclose exhibits and witness statements when it files its witness and exhibit lists, it is not prohibited from subsequently continuing its investigations or seeking the Trial Chamber's leave to amend these.⁵⁴

32. The Prosecution submits that, in applying the standard for permitting amendments to its witness and exhibit lists, the Trial Chamber ensures the rights of the Accused to a fair trial. The Prosecution, once allowed to amend its witness and exhibit lists, must disclose new exhibits and witness statements, but, in practice, it discloses proposed exhibits and witness statements in advance of seeking leave to amend the lists.⁵⁵ Also, disclosure obligations under Rule 113⁵⁶ are another reason why disclosure remains an ongoing process.⁵⁷ As counsel for Mr Oneissi did not demonstrate prejudice to their preparations for trial as a result of any disclosure made after the start of trial, the Trial Chamber is in a position to ensure the fair trial rights of the Accused and a stay is unwarranted.⁵⁸

33. In response to the Defence complaint about disclosure under the heading 'other', the Prosecution explained its use of the heading for situations where disclosure under a specific rule is inapplicable. These include: before requesting permission to amend the witness or exhibit list, thus making disclosure under Rule 91 inappropriate; when the materials in question will be used in support of a motion, such as demonstrating indicia of reliability; or when removing materials from its witness and exhibit lists.⁵⁹ Moreover, the Prosecution submits that counsel for Mr Oneissi is aware of how it uses

⁵⁴ Prosecution response, para. 6.

⁵⁵ Prosecution response, paras 7-9.

⁵⁶ Rule 113 (A): 'Subject to the provisions of Rules 116, 117 and 118, the Prosecutor shall, as soon as practicable, disclose to the Defence any information in his possession or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor's evidence.'

⁵⁷ Prosecution response, para. 15.

⁵⁸ Prosecution response, para. 16.

⁵⁹ Prosecution response, paras 9-10.

the heading, as it sends a letter to the Defence when it discloses materials under this heading, explaining the use of the heading. The Prosecution provided three examples of these letters in confidential Annexes A, B and C and noted that counsel for Mr Oneissi has never asked for clarification of the heading.⁶⁰

DISCUSSION

I. Amending the exhibit list

34. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit list. 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 amendments would result in undue delay.⁶¹

35. The Trial Chamber has carefully reviewed all of the documents that the Prosecution seeks to add to the exhibit list. The proposed additions to the Prosecution exhibit list were disclosed to the Defence in advance of the motion. Most of the proposed additions are excerpts of or derived from materials already on the exhibit list, or are related to persons on the witness list.

36. With regard to Defence submissions that political context evidence is unrelated to the charges in the consolidated indictment, the Trial Chamber has held that it will hear this evidence as relevant background evidence, because it gives context to much of the other evidence adduced by the parties and could possibly explain any non-private motives for the commission of an offence the Trial Chamber could find proven.⁶²

⁶⁰ Prosecution response, paras 11-14; Prosecution response, Annexes A-C.

⁶¹ F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 31; F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1780, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists, 8 December 2014, para. 15.

⁶² 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, para. 30; 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; Decision on the scope of Mr Marwan

a) Communications-related data

37. The Trial Chamber finds the communications-related data *prima facie* relevant and probative to the movement of relevant telephones, including those the Prosecution submits are attributable to the Accused. As the Prosecution obtained this material only in 2014, the Trial Chamber is satisfied that good cause exists to allow its addition to the Prosecution's exhibit list.

b) Call sequence tables

38. The Trial Chamber is satisfied that these call sequence tables are *prima facie* relevant and probative of a number of relevant topics, including Mr Hariri's movements, contacts and movements of the Accused, and the disappearance of, and claim of responsibility by, Mr Ahmad Abu Addas. Since nearly all of the call sequence tables either had a previous version on the exhibit list or were extracted from data sources on the exhibit list, their addition will not be burdensome to the Defence's trial preparations. Considering that many of the call sequence tables include data from the end cell call data records the Prosecution received in 2014, the Trial Chamber is satisfied that good cause exists to allow the addition of the call sequence tables to the Prosecution's exhibit list.

39. With regard to the objections of counsel for Mr Merhi to the three new call data records and the call sequence tables produced from these records, the Trial Chamber reiterates that the Prosecution disclosed the call data records to the Defence shortly after their receipt and nearly all of the call sequence tables either replace call sequence tables currently on the exhibit list or are derived from sources currently on the exhibit list. Additionally, this decision only allows the Prosecution to add the call data records and call sequence tables to its exhibit list. The Defence may produce their own call sequence tables from this data. Given these considerations, the Trial Chamber finds that allowing the addition of these call data records and call sequence tables to the Prosecution's exhibit list causes no prejudice to the trial preparations of the Defence.

Hamade's evidence, transcript of 17 November 2014, pp. 2-15, in particular pp. 10-11; Decision on adding Mr Walid Jumblatt and Mr Ali Mohammad Hamade to the Prosecution's witness list, transcript of 9 December 2014, pp. 7-13.

40. Several motions for the admission into evidence of some of these call sequence tables await the Trial Chamber's decision.⁶³ The Trial Chamber therefore emphasizes that this decision concerns only whether the Prosecution may add them to its exhibit list. It has no impact on their admissibility.

c) Subscriber notes

41. The subscriber notes are *prima facie* relevant to, and probative of, Mr Hariri's movements and meetings in the months before his assassination. Since they are extracted from databases already on the Prosecution's exhibit list, their addition to the exhibit list will not cause undue delay and is therefore in the interests of justice.

d) Witness statements related to locations

42. The witness statements are *prima facie* relevant to, and probative of, relevant locations around Beirut, Tripoli, Southern Lebanon, and locations relevant to the movements of Mr Hariri and the Accused, Mr Badreddine. All of the witnesses are already on the witness list. One statement has a previous version on the exhibit list. The remaining statements were taken in the 2014. Therefore, the Trial Chamber finds that the addition of these witness statements to the exhibit list will not unduly burden the Defence's trial preparations and that good cause exists for their addition.

e) Exhibits provided by Witness 052, Mr Mohamad Hammoud

43. The 11 documents provided by Mr Hammoud are *prima facie* relevant to the political context prevailing in Lebanon in the months and years leading up to Mr Hariri's assassination. The Prosecution obtained the documents on 10 October 2014, during Mr Hammoud's interview, therefore good cause exists to seek their addition now. Also, considering that the documents are one-page newspaper articles or map extracts, the Trial Chamber is satisfied that their addition to the Prosecution's exhibit list will not unduly burden the Defence.

⁶³ F1831, Prosecution Motion For the Admission of Red Network-Related Call Sequence Tables and Related Statement, 28 January 2015; F1832, Prosecution Motion for the Admission of Green Network Related Call Sequence Tables and Related Statement, 29 January 2015; F1836, Prosecution Motion for the Admission of Purple Phone Related Call Sequence Tables, 30 January 2015; F1837, Prosecution Motion for the Admission of Blue-Network Related Call Sequence Tables and Related Statements, 2 February 2015; F1840, Prosecution Motion for the Admission of Yellow Phone Related Call Sequence Tables and Related Statement, 3 February 2015.

f) Information from the Special Syrian Judicial Commission

44. This single, thirteen-page document from the Special Syrian Judicial Commission is *prima facie* relevant to and probative of the contact between Syrian and Lebanese officials. Although it has been in the Prosecution's possession for some time, the fact that it is relatively short and its content is not complicated means that its addition will not unduly burden the Defence preparations for trial.

45. The Trial Chamber is therefore satisfied that all of the proposed additions to the Prosecution's exhibit list are *prima facie* relevant and probative.

46. The Trial Chamber reiterates that it is only allowing the Prosecution to amend its exhibit list. This decision does not admit any document into evidence. If the Prosecution seeks to admit these documents into evidence, the Defence may then raise any objections to the Trial Chamber admitting any of these documents into evidence.

47. 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. It is satisfied that it is in the interests of justice to allow the Prosecution to amend its exhibit list.

II. Request for a stay of proceedings and an order to the Prosecution to complete disclosure and re-file its exhibit and witness lists and pre-trial brief

48. The Special Tribunal's Statute and Rules do not explicitly refer to the power to stay proceedings, but its Appeals Chamber has found that the Trial Chamber has inherent jurisdiction to make such an order.⁶⁴ That power is discretionary and involves 'an exercise of judicial assessment dependent on judgment rather than on any conclusion as to fact based on evidence'.⁶⁵ The Trial Chamber has held that a stay of proceedings is a 'drastic remedy', necessary only if: (i) the essential preconditions of a fair trial are missing, and (ii) there is no sufficient indication that this will be resolved during the trial process.⁶⁶

⁶⁴ CH/AC/2010/02, *In the Matter of El Sayed*, Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing, 10 November 2010, para. 46.

⁶⁵ STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1270, Decision on Defence Motion to Stay the Proceedings, 17 December 2013, para. 9.

⁶⁶ F1270, Decision on Defence Motion to Stay the Proceedings, 17 December 2013, paras 9-13.

49. Counsel for Mr Oneissi ask the Trial Chamber to order the Prosecution to complete disclosure and to re-file its witness and exhibit lists and pre-trial brief. They request a stay of proceedings so the Prosecution may comply with that order.

a) Request for an order to complete disclosure

50. Counsel's argument—that the preconditions of a fair trial are missing because of the Prosecution's repeated disclosures—assumes that all disclosure must be completed before trial. This argument is unfounded. Under the Pre-Trial Judge's working plan, the Prosecution had an obligation to disclose all of the witnesses and materials it intended to use at trial by 15 November 2012.⁶⁷ This does not, however, prevent the Prosecution from continuing its investigations or refining the evidence it would like to use at trial. New evidence may be found or new witnesses may come forward. In such instances, the Prosecution is under a continuing obligation to disclose that new evidence to the Defence, even if trial has begun.

51. Counsel also complained about disclosure under the heading of 'other', instead of under a rule. The Prosecution explained their use of the heading 'other' and, as counsel for Mr Oneissi never asked the Prosecution for clarification and made no specific submissions on why using the heading 'other' violates the essential preconditions of fairness, the Trial Chamber is satisfied that this practice is fully consonant with the Prosecution's disclosure obligations.

52. The Trial Chamber therefore finds that counsel for Mr Oneissi's request for an order to complete disclosure lacks merit.

b) Request for an order to the Prosecution to re-file witness and exhibit lists

53. Similarly, counsel for Mr Oneissi argue that repeated amendments to the Prosecution's witness and exhibit lists renders the working plan meaningless and demonstrates that the essential preconditions of a fair trial are missing.

54. The Trial Chamber may allow the Prosecution to amend its witness and exhibit lists if it is in the interests of justice. In doing so, the Trial Chamber balances the rights of the Accused to a fair trial and the Prosecution's right to present its evidence. This balancing exercise is directly aimed at

⁶⁷ STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0496, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012, para. 21.

ensuring that the trial retains the essential preconditions of a fair trial, and, therefore, an order to the Prosecution to re-file its witness and exhibit lists is unwarranted. The Trial Chamber emphasizes, again, that this decision merely allows the Prosecution to add these documents to its exhibit list and that the vast majority of these additions have previous versions on the exhibit list or are extracted from the exhibit list.

c) Request for an order to the Prosecution to resubmit its pre-trial brief

55. Counsel for Mr Oneissi's submission that they have no notice of the case against them merely reiterates their arguments against allowing evidence of the political context in Lebanon. This argument has been previously considered by the Trial Chamber and rejected.⁶⁸ The Trial Chamber therefore will not order the Prosecution to re-file its pre-trial brief.

d) Request for a stay of proceedings

56. For the reasons above, the Trial Chamber will not issue the orders requested by counsel for Mr Oneissi. Since the Trial Chamber does not consider these orders appropriate, it also rejects the submission that the essential preconditions of a fair trial are missing. Therefore, a stay of proceedings is unwarranted.

57. Having decided that the essential preconditions of a fair trial are not missing, the Trial Chamber does not need to decide whether or not there is sufficient indication that any unfairness will be resolved during the trial process.

III. Confidentiality of the motion and annexes

58. Because they contain confidential information, the Prosecution seeks to maintain the confidential status of the annexes to its motion.⁶⁹ The Trial Chamber reiterates the public nature of these proceedings and orders the Prosecution either to file a public redacted version of the annexes or have them reclassified as public.

⁶⁸ 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, para. 30.

⁶⁹ Prosecution motion, para. 33.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list;

DENIES the request from counsel for Mr Hussein Hassan Oneissi to order the Prosecution to complete disclosure, re-file their witness and exhibit lists and resubmit a pre-trial brief;

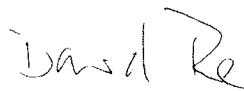
DENIES the request from counsel for Mr Oneissi to stay the proceedings; and

ORDERS the Prosecution to file public or redacted versions of the annexes to its motion and response or to have them reclassified as public.

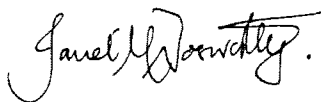
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,
 The Netherlands

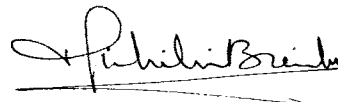
13 April 2015



 Judge David Re, Presiding



 Judge Janet Nosworthy



 Judge Micheline Braidy

