

**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: 20 May 2015

Original language: English

Classification: Public

**DECISION CERTIFYING THE TRIAL CHAMBER'S DECISION OF 6 MAY 2015
FOR INTERLOCUTORY APPEAL**

(Extract from Official Public Transcript of Hearing on 20 May 2015, page 2, line 2 to page 4,
line 20)

On the 6th of May, 2015, the Trial Chamber issued a "Decision on five Prosecution motions on call sequence tables and eight witness statements and on the legality of the transfer of call data records to UNIIC and STL's Prosecution."

The decision related to the Prosecution's application to use what it termed call sequence tables - this is information extracted from the metadata of the Lebanese telecommunications call data records – the Prosecution wants to use this in its case against the five accused. Call sequence tables make the raw call data records intelligible. They show, for example, the numbers of telephones connecting to each other, that is, the time and date of the call, the type of call, for example, SMS or voice, and the duration. The Prosecution has used this metadata to construct its case against the five accused.

In the decision the Trial Chamber held that the transfer of Lebanese telecommunications call data records to the United Nations International Independent

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Investigation Commission and the Special Tribunal's Prosecution was lawful and did not infringe "international standards on human rights."

Specifically, the Trial Chamber concluded at paragraph 108 of the decision that "since the transfer of the legally collected call data records was neither unlawful nor arbitrary, no violation of international standards on human rights has occurred." And further at paragraph 110, "no violation justifying the exclusion pursuant to Rule 162 of the call data records or call sequence tables derived from the data has occurred."

The effect of this decision is that the Trial Chamber would admit the call sequence tables at an appropriate time into evidence.

The Trial Chamber, on the 7th of May, 2015, extended the time for the parties to file any application for certification for interlocutory appeal under Rule 126(C) of the Rules of Procedure and Evidence until Tuesday, the 19th of May.

On the 19th of May, 2015, the Defence of Mr. Hussein Hassan Oneissi orally sought certification of the decision, posing the following two questions for interlocutory appeal:

Firstly, did the Trial Chamber err in concluding that the Commissioner of the United Nations International Independent Investigation Commission and the Prosecutor of the Special Tribunal for Lebanon could legally request and obtain call data records from Lebanese telecommunications companies Alfa and MTC without either Lebanese or international judicial authorization.

Second, did the Trial Chamber err in concluding that the absence of judicial control does not violate any international human rights standard on the right to privacy, justifying the exclusion of the call data records under Rule 162?"

Both relate to the Trial Chamber's findings in paragraphs 87, 108, and 110, and the disposition of the decision, and the accompanying reasons in paragraphs 87 through to 110. Counsel for Mr. Mustafa Amine Badreddine joined the application. The Prosecution did not oppose the application.

Rule 126(C) of the Tribunal's Rules of Procedure and Evidence permits the Trial Chamber to certify for interlocutory appeal an issue in a decision "that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings."

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The admission into evidence of call sequence tables produced from the Lebanese call data records is integral to the Prosecutor's case against the five accused, as pleaded in the consolidated indictment.

Defence counsel have precisely identified two issues for certification. The Trial Chamber is satisfied - because of the importance of this evidence to the Prosecution's case - that the issues identified would significantly affect the outcome of the trial. To admit the call sequence tables into evidence, the underlying data in the call data records must also be admissible and have not infringed Rule 162(B) which contains a mandatory exclusion of evidence obtained in violation of "international standards on human rights." The Appeals Chamber's immediate resolution of these two issues would therefore "materially advance the proceedings."

The Trial Chamber therefore certifies for interlocutory appeal the issues identified in the two questions referred to above.

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