

THE CONTEMPT JUDGE

Case No.: STL-14-05/T/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 3 June 2015
Original language: English
Classification: Public

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 DEFENCE APPLICATION 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 18 May 2015, after calling its final witness, the Defence requested the admission into evidence of 83 items pursuant to Rule 154 of the Tribunal's Rules of Procedure and Evidence ("Rules").¹ In a confidential annex—the "Bar Table"—the Defence listed each item for which it seeks admission and provided reasons.²
2. On 26 May 2015, the *Amicus Curiae* Prosecutor ("*Amicus*") responded to the Application, opposing it in significant part.³ In a confidential annex, he indicated, with respect to each Bar Table item, whether he objected to admission and, if so, why.⁴
3. Having considered the Parties' submissions and reviewed the items, I grant the Application in part, as explained below and as provided in the attached annex.

APPLICABLE LAW

4. Admitting certain material into evidence from the "bar table" is a well-established practice before international criminal courts and tribunals, including this Tribunal.⁵ The practice permits the chamber or judge, in the interests of judicial economy, 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.⁶

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/T/CJ, F0155, Defence Application for Admission of Evidence Pursuant to Rule 154 of the Rules of Procedure and Evidence, Public with Confidential Annex, 18 May 2015 ("Application"); All further references to filings and decisions refer to this case number unless otherwise stated.

² F0155/A01, Confidential Annex A, Confidential, 18 May 2015 ("Bar Table").

³ F0158, Response to "Defence Application for Admission of Evidence Pursuant to Rule 154 of the Rules of Procedure and Evidence" Dated 18 May 2015, Public with Confidential Annex, 26 May 2015 ("Response").

⁴ F0158/A01, Annex A, Confidential, 26 May 2015 ("Response to Bar Table").

⁵ See F0120, Decision on *Amicus Curiae* Prosecutor's Motion for Admission of Evidence Pursuant to Rule 152, Confidential, 9 April 2015 ("First Bar Table Decision"); 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, F1308, 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.

⁶ Rule 60 *bis* (H) STL RPE.

5. 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.

6. 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.⁷ To demonstrate probative value, the tendering party need only show sufficient indicia of reliability.⁸ Probative value, in this context, is distinct from the weight ultimately attributed to a document or record by the Chamber.⁹ The offering party must further be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case.¹⁰

DISCUSSION

Documents/Other Records by Category

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

8. The Defence submits that the items should be admitted from the Bar Table just as certain of the *Amicus's* exhibits were admitted from the bar table.¹¹ The Defence asserts that the items concern issues addressed during the trial and that they are relevant and probative to matters that were litigated. Indeed, with respect to some items, similar material has already been admitted. Finally, the Defence states that the *Amicus* has had access to the items since 29 April 2015 at the latest.¹²

⁷ See Trial Chamber 30 December 2014 Bar Table Decision, para. 29.

⁸ See Trial Chamber 13 January 2014 Bar Table Decision, para. 8.

⁹ See Trial Chamber 28 January 2014 Bar Table Decision, para. 7.

¹⁰ See Trial Chamber 30 December 2014 Bar Table Decision, para. 29.

¹¹ Application, para. 3.

¹² *Id.* at para. 4.

9. The *Amicus* acknowledges that bar table motions are an accepted part of international practice and does not oppose admission of many of the Defence's items.¹³ However, he objects to much of the material as insufficiently relevant or probative in regard to Defence allegations or any other issues in this case.¹⁴ Citing my First Bar Table Decision, he argues that "third-party media items which are not supported or corroborated by any other evidence" should not be admitted.¹⁵ In light of that decision, such items which allegedly go to the acts and conduct of the Accused¹⁶ should be rejected; especially because the *Amicus* will not have an opportunity to confront or otherwise respond to this evidence. The *Amicus* contends that, when he sought admission of material from the bar table, the Defence asserted that publications should not be deemed reliable to prove the truth of their content because, *inter alia*, the authors would not be available for cross-examination. With respect to similar items here, no witness contextualized their content and the *Amicus* had no opportunity to challenge the evidence.¹⁷ The *Amicus* further submits that the same reasoning applies to two *Al Jadeed* broadcasts for which the Defence seeks admission. The *Amicus* has had no chance to test the truth of their content.¹⁸

1. Al Jadeed TV reports

10. The Defence seeks the admission of videos and transcripts for certain *Al Jadeed* TV investigative reports published between 2004-2015 that are not directly related to the broadcasts at issue in this case ("2012 Broadcasts").¹⁹ It argues that these items are relevant to demonstrating *Al Jadeed* TV's role as an "independent investigative journalism public watchdog" and that the 2012 Broadcasts comprised an investigative journalism report with no criminal motive.²⁰ The *Amicus* objects to admission on the basis that the Defence provides no detail for the reports' content, fails to connect the items to the 2012 Broadcasts and that reports

¹³ Response, para. 1.

¹⁴ *Id.* at paras 3-4.

¹⁵ *Id.* at para. 6.

¹⁶ 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.).

¹⁷ Response, para. 7.

¹⁸ *Id.* at para. 8.

¹⁹ Bar Table, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 (The Defence requests admission of the item with ERN number 1D1405_487_EN_T_05737-05737. However, the document uploaded on Legal Workflow contains two pages, 1D1405_487_EN_T_05736-05737 and 1D1405_487_EN_T_05737-05737. I find it proper to admit both pages into the record), 79, 80, 81.

²⁰ *Ibid.*

unrelated to the subject matter of this case are irrelevant to the Accused's *mens rea*. He submits that neither relevance nor probative value has been established.²¹

11. A review of the items confirms that they go to *Al Jadeed* TV's general investigative journalism practices. I am satisfied that they are relevant to and probative of the Accused's professional conduct in its investigative journalism and thus can inform my determination in regard to the Accused's *mens rea*. Further, I generally consider that publications of the Accused, for which there are no challenges as to authenticity, have the necessary indicia of reliability. Finally, the Defence has adequately demonstrated where and how the items fit into its case and their admission will not result in unfair prejudice. I therefore admit these items 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.

2. Lebanese service documents

12. The Defence seeks the admission of the "underlying appeal annexed to the notice of service document [...] shown to Witness Akram Rahal" and "the notice of service for a final order with the underlying decision attached".²² It asserts that these items concern the service of documents in criminal proceedings by Lebanese authorities and are similar to other admitted evidence. They are relevant to the alleged service of the Pre-Trial Judge's 10 August 2012 Order in supporting the Defence position that that certain Articles of Lebanon's Code of Criminal Procedure governed that service.²³ The *Amicus* does not object to the items' admission.²⁴

13. I am satisfied that these items are relevant to and probative of the issue of service disputed in this case. Indeed, I have already admitted similar material. Moreover, the items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I therefore admit these items from the Bar Table.

²¹ Response to Bar Table, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81.

²² Bar Table, 82, 83.

²³ *Ibid.*

²⁴ Response to Bar Table, 82, 83.

3. Translations of signatures on exhibits signed by two Defence witnesses

14. The Defence seeks the admission of translations of DT05's and DT13' signatures on various exhibits these witnesses were shown during their testimony.²⁵ The *Amicus* does not object to the items' admission.²⁶

15. I am satisfied that these items are relevant and of probative value in regard to the witnesses' confirmation that they reviewed these exhibits, all of which were admitted into evidence. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I therefore admit these items from the Bar Table.

4. Karma Khayat passport documents

16. The Defence seeks the admission of a few pages from Ms Karma Mohamed Tahsin Al Khayat's passport.²⁷ It submits that these are relevant to showing that Ms Khayat was not in Lebanon on certain important dates in this case and thus to her lack of knowledge of the Pre-Trial Judge's 10 August 2012 Order, as well as her willingness to cooperate with the Tribunal even while outside Lebanon.²⁸ The *Amicus* does not object to the items' admission.²⁹

17. I am satisfied that these items are relevant to and probative of the Accused's *mens rea*. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I therefore admit these items from the Bar Table.

5. Receipts for delivery of *Al Jadeed TV*'s response to Registrar's 7 August 2012 letter

18. The Defence seeks the admission of LibanPost receipts related to the transmission of *Al Jadeed TV*'s response to the Registrar's 7 August 2012 letter.³⁰ It contends that these are relevant to the factual narrative of *Al Jadeed TV*'s response to the letter and in demonstrating the

²⁵ Bar Table, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.

²⁶ Response to Bar Table, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.

²⁷ Bar Table, 1, 2.

²⁸ *Ibid.*

²⁹ Response to Bar Table, 1, 2.

³⁰ Bar Table, 41, 42, 43.

Accused's willingness to cooperate with the Tribunal.³¹ The *Amicus* does not object to the items' admission.

19. I am satisfied that these items are relevant to and probative of the Accused's *mens rea*. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I therefore admit these items from the Bar Table.

6. Screenshots of the Tribunal's website's "Ask the tribunal" page

20. The Defence seeks the admission of screenshots of the Tribunal's "Ask the tribunal" page in 2014 which show the following answer to a question about who the Tribunal can put on trial: "The STL can only try individuals. It cannot put states or non-state groups on trial."³² The Defence asserts that these items are relevant to the corporate Accused's *mens rea*; specifically, to whether the corporate Accused could have reasonably foreseen that the acts and conduct in question could constitute a crime within the Tribunal's jurisdiction.³³ The *Amicus* argues that that this issue has been specifically adjudicated by the Appeals Panel in this case and in case STL-14-06 and thus opposes admission.³⁴

21. The Appeals Panel has indeed decided that the Tribunal has jurisdiction over legal persons in contempt proceedings. However, the Defence has not tendered these items to dispute that decision, but rather in relation to an element of the charges. I am satisfied that the items could bear on my *mens rea* determination and therefore that they are relevant and of probative value. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I thus admit these items from the Bar Table.

7. Company profile of Tahseen Khayat Group

22. The Defence seeks the admission of a company profile produced by and of the Tahseen Khayat Group, which includes a section on the corporate Accused.³⁵ It submits that the profile

³¹ *Ibid.*

³² Bar Table, 46, 47.

³³ *Ibid.*

³⁴ Response to Bar Table, 46, 47.

³⁵ Bar Table, 48.

provides relevant background information.³⁶ The *Amicus* asserts that the corporate Accused's relationship to the Tahseen Khayat Group has no relevance.³⁷

23. I am satisfied that this item is relevant to and probative of my understanding of the corporate Accused's structure and consequently to the issue of corporate liability. The item has the necessary indicia of reliability, its admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how it fits into its case. I therefore admit this item from the Bar Table.

8. Emails between Karma Khayat and the Tribunal's Office of the Prosecutor

24. The Defence seeks the admission of emails between Ms Khayat and staff members from the Tribunal's Office of the Prosecutor ("OTP").³⁸ One set of emails concerns Ms Khayat's requests to interview the Prosecutor and host the OTP spokesperson on *Al Jadeed* TV. The other set concerns Ms Khayat's request to the OTP for a comment on the Lebanese Interior Minister's supposed refusal to comply with an OTP request for assistance without authorization from the Lebanese judiciary.³⁹ The Defence submits that both sets of emails demonstrate the Accused's willingness to cooperate with and their professional and independent approach in covering the Tribunal.⁴⁰ Further, the emails concerning the Interior Minister are relevant to the Accused's *mens rea* because the Registrar's 7 August 2012 letter was addressed directly to the Accused without Lebanese judicial authorization.⁴¹ The *Amicus* does not object to the items' admission.

25. I am satisfied that these items are relevant to and probative of the Accused's *mens rea*. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I thus admit these items from the Bar Table.

9. Correspondence relating to the former *Amicus*'s suspect interviews

26. The Defence seeks the admission of correspondence from 2013 between the former *Amicus Curiae* Investigator ("former *Amicus*") in these proceedings and Ms Maya Habli, as well

³⁶ *Ibid.*

³⁷ Response to Bar Table, 48.

³⁸ Bar Table, 49, 50.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Bar Table, 50.

as with the Lebanese Prosecutor General.⁴² The correspondence concerns the former *Amicus*'s efforts to conduct suspect interviews with Ms Khayat and other *Al Jadeed* TV staff members.⁴³ The Defence contends that the items demonstrate the Accused's and *Al Jadeed* TV staff member's willingness to cooperate with the Tribunal and goes to the Accused's knowledge of the Pre-Trial Judges 10 August 2012 Order.⁴⁴ The *Amicus* does not object to the items' admission.

27. I am satisfied that these items are relevant to and probative of the Accused's *mens rea*. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I thus admit these items from the Bar Table.

10. Karma Khayat's qualifications

28. The Defence seeks the admission of various academic diplomas, as well as investigative journalism and other training certificates, earned by Ms Khayat.⁴⁵ It submits that these items show Ms Khayat's academic achievements and her efforts to build investigative journalism and business management skills.⁴⁶ In doing so, the items are relevant to the professional nature in which the 2012 Broadcasts were investigated and produced.⁴⁷ The *Amicus* objects to these items, arguing that they demonstrate nothing with regard to the 2012 Broadcasts.⁴⁸ Moreover, certain of the items are wholly unrelated to journalism and the subject matter of this case.⁴⁹

29. The Defence has not provided sufficient context for the various diplomas and certificates to establish their relevance and probative value in regard to the issues in this case. The documents and the Bar Table contain hardly any information with respect to the content of the programs completed by Ms Khayat or her undergraduate and graduate studies. I do not consider that the diplomas and certificates alone can inform my evaluation of the acts and the conduct of the Accused. I thus do not admit these items from the Bar Table.

⁴² Bar Table, 16, 17, 18, 19.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Bar Table, 3, 4, 5, 6, 7, 8.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Response to Bar Table, 3, 4, 5, 6, 7, 8.

⁴⁹ *Ibid.*

11. ARIJ and Thomson Foundation awards

30. The Defence seeks the admission of photographs portraying various awards given by Arab Reporters for Investigative Journalism (“ARIJ”) and the Thomson Foundation to the corporate Accused and its staff members for substantive and technical aspects of their work.⁵⁰ The Defence asserts that these items are relevant to the Accused’s stature during the time period pertinent in this case.⁵¹ The *Amicus* objects to these items on the grounds that the photographs do not demonstrate that the awards concerned *Al Jadeed* TV reports or the reasons for the awards.⁵² Moreover, the Defence has not established authenticity.⁵³

31. Without additional documentary evidence or testimony, I cannot find these photographs relevant and of probative value. The Defence has not presented information on the criteria for the awards or the underlying work that would allow me to conclude that such awards are probative to the specific issues before me. Moreover, it has not sufficiently authenticated the content of the photographs. I thus do not admit these items from the Bar Table.

32. The Defence also seeks the admission of an article published in 2008 by the Thomson Foundation about the 2008 Inquirer Award winners.⁵⁴ *Al Jadeed* TV journalists are referred to as winners in the investigative reporting for television category.⁵⁵ The *Amicus* opposes admission for the same reasons as the photographs described above.⁵⁶ Moreover, he contends that it cannot be admitted because it is a third-party media item going to the acts and conduct of the Accused.⁵⁷

33. I note that the Defence does not show how this article relates to the Thomson Foundation award photographs. However, I am satisfied that this article is relevant to and probative of the Accused’s professional reputation in investigative journalism during the pertinent time period in this case, and thus to *mens rea*. It sufficiently describes the purpose of and criteria for the awards won by the *Al Jadeed* TV journalists. Moreover, I reject the *Amicus*’s argument that this item goes to the acts and conduct of the Accused because the content has no connection to the 2012

⁵⁰ Bar Table, 9, 10, 11, 12, 13, 14, 20, 21, 22.

⁵¹ *Ibid.*

⁵² Response to Bar Table, 9, 10, 11, 12, 13, 14, 20, 21, 22.

⁵³ *Ibid.*

⁵⁴ Bar Table, 23.

⁵⁵ *Ibid.*

⁵⁶ Response to Bar Table, 23.

⁵⁷ *Ibid.*

Broadcasts or related events, but rather to the general investigative journalism practices of the Accused.

34. The item has the necessary indicia of reliability, its admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how it fits into its case. I thus admit it from the Bar Table.

12. Third-party media reporting on the Tribunal

35. The Defence seeks the admission of Al Jazeera and New York Times media items from 2015 on the work of the United Nations International Independent Investigation (“UNIIC”) and the Tribunal.⁵⁸ It contends that both items rely on confidential UNIIC/Tribunal information. The items are relevant to the continuing interest of international media in the UNIIC/Tribunal and the use of confidential information, and the *mens rea* of the Accused in that they could have reasonably relied on the international media in determining whether their reporting could be criminal. The Defence adds that these items go to the consistent approach of the international media as explored during the cross-examination of witness AP02, Mr John Allen Comeau.⁵⁹ The *Amicus* opposes admission, claiming that publications after the 2012 Broadcasts cannot be relevant to the Accused’s *mens rea* and that there is no “concrete link” between these items and reports from years earlier.⁶⁰

36. I am not persuaded that information related to the publication of purportedly confidential Tribunal information by third-parties published in 2015 is relevant and of probative value with respect to the Accused’s *mens rea* at the time of the broadcasts in question. I thus do not admit these items from the Bar Table.

13. UNDP items related to Al Jadeed TV

37. The Defence seeks the admission of a speech by the United Nations Development Program’s (“UNDP”) Resident Representative in Lebanon concerning the partnership agreement signed with the corporate Accused in 2013 and an article published by UNDP describing this partnership.⁶¹ The Defence avers that these items are relevant to prove the corporate Accused’s

⁵⁸ Bar Table, 44, 45.

⁵⁹ *Ibid.*

⁶⁰ Response to Bar Table, 44, 45.

⁶¹ Bar Table, 24, 25.

willingness to engage with international institutions and its professional and socially conscious conduct.⁶² The items thus go to *mens rea*.⁶³ The *Amicus* objects on the ground that these items are third-party media publications going to the acts and conduct of the Accused.⁶⁴

38. I am satisfied that these items are relevant to and probative of the corporate Accused's professionalism with respect to investigative journalism during the pertinent time period in this case, and thus its *mens rea*. The items sufficiently describe the terms and purpose of the corporate Accused's relationship with UNDP and relate directly to its activities in investigative journalism. Moreover, I reject the *Amicus*'s argument that this item goes to the acts and conduct of the Accused because the content has no connection to the 2012 Broadcasts or related events, but rather to the general investigative journalism practices of the Accused. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I thus admit these items from the Bar Table.

14. International Media Support item

39. The Defence seeks the admission of a memorandum of understanding signed in 2008 between the corporate Accused and International Media Support for the purposes of facilitating youth programming and collaboration between Danish, Lebanese, Jordanian and Syrian public service television broadcasters.⁶⁵ The Defence submits that this item demonstrates the corporate Accused's efforts to improve the skills and experience of its staff prior to the 2012 Broadcasts.⁶⁶ The *Amicus* does not object to the item's admission.

40. I am satisfied that this item is relevant to and probative of the corporate Accused's professionalism with respect to investigative journalism during the pertinent time period in this case, and thus its *mens rea*. The item sufficiently describes the terms and purpose of the corporate Accused's relationship with International Media Support and relates directly to its activities in investigative journalism. The items have the necessary indicia of reliability, their admission will not result in unfair prejudice and the Defence has adequately demonstrated where and how they fit into its case. I thus admit this item from the Bar Table.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Response to Bar Table, 24, 25.

⁶⁵ Bar Table, 15.

⁶⁶ *Ibid.*

15. Garnet Education items

41. The Defence seeks the admission of several items related to awards won by Garnet Education, a company that is part of the Tahseen Khayat Group.⁶⁷ The Defence argues that these items are relevant to the corporate Accused's *mens rea* because it is also part of this award-winning and respected group.⁶⁸ The *Amicus* objects because Garnet Education is a different entity than the corporate Accused and the Defence has proven no link between these two entities that could go to *mens rea*.⁶⁹

42. I agree with the *Amicus*'s assertion that the Defence has not demonstrated a connection between the awards won by Garnet Education and the corporate Accused's professionalism. I am not persuaded that these items are relevant or of probative value to this case. I thus do not admit these items from the Bar Table.

16. Miscellaneous media items related to *Al Jadeed TV*

43. The Defence seeks the admission of a screenshot of the website announcing *Al Jadeed TV*'s broadcast of the final ceremony for the Lebanon Outstanding Woman Award.⁷⁰ The Defence argues that this item demonstrates the progressive social values of the corporate Accused, and thus its *mens rea*.⁷¹ The *Amicus* opposes admission on the grounds that the item is a third-party media publication going to the acts and conduct of the Accused and is irrelevant because it only shows that *Al Jadeed TV* covered the event.⁷²

44. I am not satisfied that the Defence has shown the relevance of this item. The mere fact that *Al Jadeed TV* aired this ceremony conveys nothing useful about the corporate Accused's *mens rea*. Consequently, I do not admit this item from the Bar Table.

45. The Defence also seeks the admission of a video showing an *Al Jadeed TV* host rebuking a supposed conservative cleric and an article in *Foreign Policy* magazine describing an *Al Jadeed TV* reality television competition.⁷³ The Defence contends that these items demonstrate the

⁶⁷ Bar Table, 26, 27, 28.

⁶⁸ *Ibid.*

⁶⁹ Response to Bar Table, 26, 27, 28.

⁷⁰ Bar Table, 29.

⁷¹ *Ibid.*

⁷² Response to Bar Table, 29.

⁷³ Bar Table, 30, 31.

progressive social values of the corporate Accused, and thus its *mens rea*.⁷⁴ With respect to the video, the *Amicus* objects that the reaction of one particular employee of the corporate Accused in a situation unrelated to this case cannot show anything in relation to the Accused's *mens rea*.⁷⁵ With respect to the article, the *Amicus* objects on the basis that it is a third-party media item going to acts and conduct of the Accused.⁷⁶

46. The Defence has not demonstrated how these items are related to the Accused's investigative journalism practices. Therefore, I am not satisfied that the items are relevant to and probative of the Accused's *mens rea* with respect to charges in this case. I therefore do not admit these items from the Bar Table.

17. Items related to threats against *Al Jadeed* S.A.L. personnel

47. The Defence seeks the admission of third-party media items related to threats and attacks against the corporate Accused's personnel and facilities.⁷⁷ It also tenders two video produced by *Al Jadeed* TV; one describing the arrest of Mr Tahseen Al Khayat by the Lebanese armed forces, the other showing the aftermath of the arson attack on *Al Jadeed* TV's premises, along with a copy of a complaint filed by Ms Khayat in connection with this attack.⁷⁸ The Defence further submits two photographs of the memorial of Ali Shaaban, a deceased *Al Jadeed* TV cameraman.⁷⁹ The Defence argues that these items demonstrate the corporate Accused's role as an independent watchdog within Lebanese society, and thus that it had no criminal motive in producing the 2012 Broadcasts.⁸⁰ The *Amicus* opposes admission because certain of the items are third-party media publications going to the acts and conduct of the Accused; certain of the *Al Jadeed* TV items go to proof of the veracity of the facts described therein; the photographs must be coupled with a reliable explanation for the cameraman's death; and all the items are irrelevant to the 2012 Broadcasts.⁸¹

48. I am not persuaded that information on attacks or threats against the corporate Accused's personnel or facilities is relevant to and probative of its professional standards and thus its

⁷⁴ *Ibid.*

⁷⁵ Response to Bar Table, 30.

⁷⁶ *Id.* at 31.

⁷⁷ Bar Table, 32, 34, 35, 38.

⁷⁸ Bar Table, 33, 36, 37.

⁷⁹ Bar Table, 39, 40.

⁸⁰ *Id.* at 32, 33, 34, 35, 36, 37, 38, 39, 40.

⁸¹ Response to Bar Table, 32, 33, 34, 35, 36, 37, 38, 39, 40.

mens rea in publishing the 2012 Broadcasts. Consequently, I do not admit these items from the Bar Table.

DISPOSITION

FOR THESE REASONS;

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

I

GRANT the Application in part;

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

REQUEST the Registry to assign exhibit numbers to the admitted material; and

DISMISS the Application in all other respects.

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

Dated 3 June 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

