

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No.: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis, Registrar

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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 FOR THE ADMISSION OF
LOCATIONS RELATED EVIDENCE’**

Office of the Prosecutor:

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& Mr Alexander Milne

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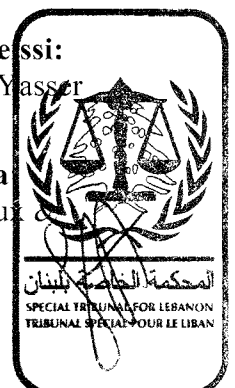
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INTRODUCTION

1. The Prosecution intends to use computer software, the ‘Electronic Presentation of Evidence’, to present in court and on an electronic map, geographical locations relevant to its case.¹ The Prosecution believes that this software will assist it in visually representing relevant events, such as the movements of the former Lebanese Prime Minister Mr Rafik Hariri, before his assassination in Beirut on 14 February 2005, and the movements of mobile telephones used by those—including the Accused—who are relevant to the Prosecution’s case.²

2. To allow it to enter the data of these locations into the software, the Prosecution seeks to tender into evidence, under Rule 155 of the Special Tribunal’s Rules of Procedure and Evidence, seventeen statements by fifteen Witnesses: PRH009, PRH012, PRH020, PRH063, PRH065, PRH075, PRH087, PRH263, PRH312, PRH400, PRH420, PRH539, PRH550, PRH553 and PRH583.³ To the same end, the Prosecution seeks to tender into evidence, under Rule 154, four exhibits. It also seeks leave to amend its exhibit list filed under Rule 91, as seven of the seventeen witness statements and one of the four exhibits are not on the exhibit list.⁴

3. Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra responded to the motion.⁵ The Prosecution subsequently filed a reply.⁶

4. On 30 June 2015, the Trial Chamber asked counsel for Mr Sabra for supplementary submissions on why they requested to cross-examine certain witnesses under Rule 155 (C); counsel filed these confidentially and *ex parte* on 2 July 2015.⁷

¹ See for instance, STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1704, Prosecution Rule 154 Motion for the Admission of Geographic and Locations Related Materials, 16 October 2014, para. 10.

² F1986, Prosecution Motion for the Admission of Locations Related Evidence, 3 June 2015, para. 2.

³ Prosecution motion, para. 1.

⁴ Prosecution motion, paras 1 and 6.

⁵ F2008, Response by the Ayyash Defence to the “Prosecution Motion for the Admission of Locations Related Evidence”, 17 June 2015; F2011, Badreddine Defence Response to “Prosecution Motion for the Admission of Locations Related Evidence”, 17 June 2015; F1994, Oneissi Defence Response to the ‘Prosecution Motion for the Admission of Locations Related Evidence’ dated 3 June 2015, 9 June 2015; F2009, Sabra Defence Response to “Prosecution Motion for the Admission of Locations Related Evidence”, 17 June 2015.

⁶ F2018, Prosecution Reply to Defence Responses to “Prosecution Motion for the Admission of Locations Related Evidence”, 22 June 2015.

DISCUSSION

A. Admission of statements into evidence under Rule 155

5. In earlier decisions, the Trial Chamber determined the procedural safeguards for admitting statements into evidence under Rule 155.⁸ These allow it to receive written testimony in lieu of live oral testimony in the courtroom. In particular, a statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to proof of the acts or conduct of the Accused, may not be admitted without cross-examination. In addition, Rule 155 (C) states that the Trial Chamber may decide, providing reasons, that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of a statement or transcript, in whole or in part, without cross-examination. These principles are applicable here.

6. The statements may conveniently be divided into two categories—statements by Prosecution staff and statements by non-Prosecution staff. The Trial Chamber will address each statement separately below.

(i) Statements by Prosecution staff

7. Statements in this category are from Prosecution investigators or analysts and do not go to acts or conduct of the Accused. The Prosecution seeks to have them admitted in lieu of examination in chief, under Rule 155.

Witness 550

8. Witness 550 is Prosecution investigator. He marks on a map the location of a clinic where he interviewed a medical doctor, and annexes the screenshot of that map to his statement. The

⁷ Email from the Trial Chamber's Senior Legal Officer to the Parties, dated 30 June 2015; F2009, Sabra Defence Addendum to Response to Prosecution Motion for the Admission of Locations Related Evidence, 2 July 2015.

⁸ STL-11-01/PT/TC, F937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; 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. 3.

Prosecution submits that the location of this clinic is relevant because it was visited by people related to Mr Ayyash.⁹

9. Counsel for Mr Sabra initially required the witness's attendance for cross-examination, but subsequently withdrew their request.¹⁰

10. The Trial Chamber considers this statement as relevant and probative, notably to the Prosecution's attempt to attribute telephones to Mr Ayyash.¹¹ The statement also conforms to the requirements of Rule 155 and the relevant Practice Direction.¹² As a result, and because the witness went to the clinic and interviewed the doctor practising there, the statement is reliable. Moreover, it does not go to the acts and conduct of the Accused. The Trial Chamber accordingly finds Witness 550's statement to be admissible into evidence under Rule 155.

Witness 583

11. Witness 583 was a Prosecution investigator. In March 2010, he photographed and recorded the global positioning system (GPS) coordinates of nine locations linked to what the Prosecution pleads in its consolidated indictment was a false claim of responsibility for the attack of 14 February 2005 made by Ahmad Abu Adass.¹³ The nine locations include the four public telephone booths from where calls claiming responsibility were allegedly made after the attack, the tree where the videotape recording the claim of responsibility was found, the residence of Ahmad Abu Adass, and two mosques in Beirut at which he prayed.¹⁴

12. Counsel for Mr Sabra and Mr Oneissi both require Witness 583 to be present for cross-examination. Counsel for Mr Oneissi argue that his evidence is closely linked to the allegations against Mr Oneissi, and, counsel for Mr Sabra that he was directly involved in investigations that are material and relevant to the Sabra Defence case.¹⁵

⁹ Prosecution motion, para. 13; Annex A, line 8.

¹⁰ Sabra response, paras 12-13; Sabra addendum, para. 4.

¹¹ Prosecution motion, Annex A, line 8.

¹² 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.

¹³ F1444, Redacted Version of the Consolidated Indictment, 7 March 2014, paras 3, 23 and 44.

¹⁴ Prosecution motion, para. 14; Annex A, line 10.

¹⁵ Oneissi response, paras 2-3; Sabra response, paras 12-13; Sabra addendum, para. 5.

13. The Trial Chamber considers Witness 583's statement to be relevant to and probative of the Prosecution's allegations in relation to the false claim of responsibility. The statement also conforms with Rule 155 and the Practice Direction, and does not go to the acts and conduct of the Accused. Defence counsel have put nothing before the Trial Chamber to cast any doubt on the reliability of the statement. The Trial Chamber accordingly finds Witness 583's statement to be admissible. As the Prosecution alleges in its consolidated indictment that Mr Oneissi participated with Mr Sabra in planning the false claim of responsibility for the attack, the Trial Chamber considers that counsel for Mr Oneissi and Mr Sabra have justified their request to cross-examine Witness 583.¹⁶ The Prosecution must therefore call him and make him available for cross-examination in accordance with Rules 155 (C) and 156.

Witness 312

14. Witness 312 is a Prosecution investigator who made two statements.¹⁷ In his first statement, he describes collecting insurance records for an accident involving a car registered in Mr Ayyash's name, and annexes these records. This evidence establishes the location of the car accident, which is relevant to attributing telephone numbers to Mr Ayyash at the time and place of the accident.¹⁸

15. Counsel for Mr Ayyash argue that the statement is unnecessary hearsay and other witnesses are better placed to provide the same evidence, although they take no position on its admissibility.¹⁹ Counsel for Mr Badreddine and Mr Sabra request the witness's appearance for cross-examination, as he was involved in investigations linked to these two Accused.²⁰

16. The Trial Chamber considers this statement to be relevant and probative. The Prosecution has explained how it will use the statement to attribute telephones to Mr Ayyash. Defence counsel have put nothing before the Trial Chamber to cast any doubt on the reliability of the statement. The statement conforms with Rule 155 and the Practice Direction, and does not go to the acts and conduct of the Accused. The statement is admissible. As this witness was involved in Prosecution investigations concerning Mr Badreddine and Mr Sabra, Defence counsel may cross-examine him.

¹⁶ Consolidated indictment, para. 3 (c) and (d).

¹⁷ Dated 10 May 2013 and 28 November 2014.

¹⁸ Prosecution motion, para. 15, Annex A, line 14.

¹⁹ Ayyash response, para. 10.

²⁰ Badreddine response, paras 22-23; Sabra response, paras 12-13; Sabra addendum, para. 7.

The Prosecution must call the witness and make him available for cross-examination under Rules 155 (C) and 156.

17. The Prosecution also seek to tender Witness 312's second statement. There, the witness describes photographing, in August 2007, as a UNHCR investigator, two mobile telephone stores in Tripoli—Nejmeh Cell and Echo Cell—that sold SIM cards allegedly used in planning the attack, and the vehicle dealership in Tripoli where the Mitsubishi Canter allegedly used in the attack was sold.²¹

18. Counsel for Mr Ayyash argue that Witness 312 misidentified the location of the dealership. They refer to testimony by its owner, Witness 063, who testified that it was 250 meters from the site in Witness 312's photographs.²² Counsel for Mr Badreddine argue that the statement is therefore unreliable.²³ The Prosecution then acknowledged this error, and stated that it 'no longer seeks to rely' on Witness 312's statement 'as it relates to the location of the car dealership'.²⁴

19. The Trial Chamber considers that part of Witness 312's statement, namely paragraphs 12 (c) and 15 and the four annexed photographs, as irrelevant and not probative. The remainder of the statement, however, is relevant and probative and admissible under Rule 155 (C). The Trial Chamber invites the Prosecution to re-submit the statement without the part concerning the incorrect location of the dealership.

Witness 400

20. Witness 400, a Prosecution investigator, made two statements.²⁵ In the first, he describes GPS coordinates and includes photographs of locations relevant to the Prosecution's case. These include the vehicle dealership in Tripoli, Mr Hariri's residences and places he visited, the Echo Cell and Nejmeh Cell mobile telephone stores, and the Samino jewellery stores that the Prosecution alleges Mr Badreddine owned under the alias of Sami Issa.²⁶ To identify the various locations he surveyed, the witness relies on addresses and descriptions in statements of other witnesses. To locate the

²¹ Prosecution motion, para. 14, Annex A, line 13.

²² Ayyash response, paras 6-7; Transcript no. 159 of 5 June 2015, pp. 51-52.

²³ Badreddine response, para. 21.

²⁴ Prosecution reply, para. 4.

²⁵ Dated 15 January 2015 and 5 February 2015.

²⁶ STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1077, Redacted Version of the Prosecution's Updated Pre-Trial Brief, dated 23 August 2013, 31 October 2013, para. 14.

vehicle dealership and the mobile telephone stores, for example, he relies on Witness 312's second statement.²⁷

21. Counsel for Mr Sabra do not oppose the admission of either of this witness's statements, but require his attendance in court for cross-examination on the basis that he was directly involved in investigations material and relevant to the Sabra Defence case.²⁸ Counsel for Mr Ayyash and Mr Badreddine point out that Witness 400 misidentified the location of the Tripoli dealership.²⁹

22. The Trial Chamber finds the part of Witness 400's statement concerning the dealership, at paragraphs 15-22, irrelevant and not probative,³⁰ and invites the Prosecution, as it has already undertaken to do, to resubmit it without these irrelevant parts.³¹ The remainder of the statement is relevant, probative and reliable, and may accordingly be admitted under Rule 155 (C).

23. The Prosecution seeks to also tender Witness 400's second statement, which provides the GPS coordinates and photographs of Mr Hariri's villa in Naameh.³²

24. The Trial Chamber considers Witness 400's second statement relevant to and probative of Mr Hariri's movements, as the Prosecution alleges in the consolidated indictment that the Accused, Mr Ayyash, and others observed Mr Hariri's movements to learn the routes and movements of his convoy and his vehicle's position within it.³³ Defence counsel have not challenged the statement's *prima facie* reliability. The statement also complies with Rule 155 and the Practice Direction, and does not go to the acts and conduct of the Accused. The Trial Chamber accordingly finds this statement admissible. As counsel for Mr Sabra have justified their request to cross-examine the witness, the Prosecution must call him and make him available for cross-examination under Rules 155 (C) and 156.

²⁷ Dated 28 November 2014. Prosecution motion, para 16, and Annex A, line 11.

²⁸ Sabra response, paras 12-13; Sabra addendum, para. 6.

²⁹ Ayyash response, paras 6-8; Badreddine response, para. 26.

³⁰ Paragraphs 15-22 of the statement.

³¹ Prosecution reply, paras 3-4.

³² Prosecution motion, para. 14 and Annex A, line 11.

³³ Prosecution motion, Annex C, line 101; consolidated indictment, paras 20-22.

Witness 539

25. Witness 539 is a Prosecution investigator. He recorded the GPS coordinates and photographed what appears to be a physiotherapy clinic where Mr Oneissi allegedly received treatment.³⁴ The Prosecution argues that this is relevant to attribute a telephone number to Mr Oneissi.³⁵

26. Counsel for Oneissi require Witness 539's attendance for cross-examination because his statement supports the Prosecution attributing a telephone number to Mr Oneissi.³⁶ Counsel for Mr Sabra argue that the witness was directly involved in investigations that are material and relevant to their case, and want to cross-examine him.³⁷

27. The Trial Chamber considers Witness 539's statement as relevant to and probative of the Prosecution's case and specifically, the attribution of a telephone to Mr Oneissi.³⁸ The statement is *prima facie* reliable. The statement complies with Rule 155 and the Practice Direction, and the Defence have not challenged its reliability. Moreover, the statement does not go to the acts and conduct of the Accused. It is admissible. Counsel for Mr Oneissi and Sabra have justified their request to cross-examine the witness. The Prosecution therefore must call him and make him available for cross-examination under Rules 155 (C) and 156.

Witness 420

28. Witness 420 is a former Prosecution investigator. His statement attaches investigator notes and photographs of the Samino jewellery stores in Furn el Chebbak and Mar Elias.³⁹

29. Counsel for Mr Badreddine submit that the Samino stores are critical to the Prosecution's case against Mr Badreddine and the provenance of some of the information the witness has relied on

³⁴ Prosecution motion, para. 14; Annex A, line 15.

³⁵ Prosecution motion, Annex A, line 15; Annex C, line 43.

³⁶ Oneissi response, paras 2-3.

³⁷ Sabra response, paras 12-13; Sabra addendum, para. 8.

³⁸ Prosecution motion, Annex A, line 15; Annex C, line 43.

³⁹ Prosecution motion, para. 14; Annex A, line 16; Annex C, lines 126 and 128.

is unclear. For this reason, and although they take no position on the admissibility of this statement, they require Witness 420's attendance for cross examination.⁴⁰

30. The Trial Chamber considers this statement relevant to and probative of the Prosecution's allegations against Mr Badreddine and attributing mobile telephones to him.⁴¹ The statement is reliable, and conforms to the requirements of Rule 155 and the relevant Practice Direction. It does not go to the acts and conduct of the Accused. Witness 420's statement is therefore admissible. Defence counsel have made a case to cross-examine the witness; the Prosecution must therefore make him available for cross-examination under Rules 155 (C) and 156.

Witness 263

31. Witness 263 is a Prosecution analyst. His statement and its annexes describe the methods he used and the materials he consulted to establish the coordinates of various places that will be plotted into the Electronic Presentation of Evidence module.⁴²

32. Counsel for Mr Badreddine take no position on the admissibility of this statement for the purposes of the module, but observe that it relies on Witness 400's first statement to plot the location of the Tripoli vehicle dealership.⁴³ The Prosecution recognises Witnesses 312 and 400's misidentification of the dealership's location, but does not address that Witness 263 relied, notably, on Witness 400's statement to plot that location.⁴⁴

33. The Trial Chamber finds the parts of Witness 263's statement concerning the dealership, that is, paragraph 21 and line 139 of Annex I, irrelevant and not probative. The Prosecution is invited to resubmit the statement without these irrelevant parts. The remainder of the statement is relevant, probative and reliable. The Trial Chamber considers those portions admissible under Rule 155 (C).

⁴⁰ Badreddine response, para. 20.

⁴¹ F1077, Redacted Version of the Prosecution's Updated Pre-Trial Brief, 31 October 2013, paras 40 and 42.

⁴² Prosecution motion paras 3 and 7, Annex A, line 17.

⁴³ Badreddine response, para. 27.

⁴⁴ Prosecution reply, paras 3-4.

Ayyash and Badreddine Defence argument on verification of locations

34. Counsel for Mr Ayyash generally argue with respect to the statements by Prosecution staff, that while they do not contest the accuracy of the GPS readings, the statements are not inherently reliable. The Prosecution should therefore independently verify that the location of each GPS reading is correct.⁴⁵ Counsel for Mr Badreddine make a similar argument and state that the Prosecution should verify the accuracy of Witness 400's survey.⁴⁶

35. The Trial Chamber does not consider it necessary, at this point, to require an independent verification of the Prosecution's GPS data. It is satisfied that each statement is relevant, probative and *prima facie* reliable. Defence counsel may challenge the reliability of the evidence in cross-examination, and adduce evidence to support their own case. The Trial Chamber will determine the weight of the evidence, if any, at the conclusion of the trial, and in light of all the evidence adduced.⁴⁷

(ii) *Statements by non-Prosecution staff*

36. The Prosecution seeks to tender eight statements by non-Prosecution staff. These witnesses each have 'personal knowledge' of a location and provide an address, describe a location or mark it on a map.⁴⁸ All but one—Witness 065—are expected to testify in person, or have already testified.⁴⁹ Some of these statements—those of Witnesses 012, 020 and 087—go to proof of the acts and conduct of the Accused.⁵⁰

Witness 065

37. Witness 065 provides the address of an apartment in Jounieh allegedly frequented by Mr Badreddine, using the alias of Sami Issa. He also describes Sami Issa and his lifestyle, and provides

⁴⁵ Ayyash response, para. 4.

⁴⁶ Badreddine response, paras 3-26.

⁴⁷ See F1841, Decision on 'The Defence for Hussein Hassan Oneissi Request for Certification of the "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" of 30 December 2014', 3 February 2015, para. 14.

⁴⁸ Prosecution motion, para. 9

⁴⁹ Prosecution motion, paras 4 (b), (c) and (d).

⁵⁰ Prosecution motion, para. 4 (d).

the telephone number of someone associated with him. The Prosecution submits that the number is relevant to attributing telephones to Mr Badreddine.⁵¹

38. Counsel for Mr Badreddine object to the statement's admission without cross-examination. They submit that, contrary to the Prosecution's characterization, the statement goes to the acts and conduct of the Accused, as it concerns the attribution of telephones to Sami Issa and to proving that Mr Badreddine and Sami Issa are the same person.⁵²

39. The Trial Chamber considers this statement relevant and probative of the Prosecution's allegations against Mr Badreddine and attributing mobile telephones to him.⁵³ The statement complies with Rule 155 and the Practice Direction, and Defence counsel have put nothing before the Trial Chamber to cast doubt on its reliability. The Trial Chamber does not consider that sufficient proximity exists between the evidence of the telephone number of a person linked to Sami Issa and Mr Badreddine's acts or conduct as an Accused, to justify not admitting the statement under Rule 155. Establishing that a person used a particular telephone number does not, of itself, go to the acts and conduct of an Accused person.

40. Witness 065's statement is admissible. Nevertheless, the nature of the evidence—Mr Badreddine's lifestyle, activities and alleged alias—justifies Defence counsel's request to cross-examine him under Rule 155 (C). The Prosecution must therefore call the witness and, in accordance with Rules 155 (C) and 156, make him available for cross-examination.

Witnesses 063 and 075

41. Witness 063 owned the vehicle dealership in Tripoli where the Mistubishi Canter owned by Witness 075, and allegedly used in the attack, was sold to two unnamed men.⁵⁴ The Prosecution seeks to tender a statement from each describing the location of the dealership.⁵⁵ Both statements refer generally to the area or the road where the dealership is situated.

⁵¹ Prosecution motion, para. 13.

⁵² Badreddine response, paras 13-14.

⁵³ Redacted version of the updated pre-trial brief, paras 40 and 42.

⁵⁴ Transcript no. 158 of 4 June 2015, pp 72-76.

⁵⁵ Prosecution motion, para. 10.

42. Witness 063 and Witness 075, however, have already testified.⁵⁶ The Trial Chamber admitted into evidence an extract of the same statement by Witness 063 that the Prosecution now seeks to tender—the page containing the dealership’s address.⁵⁷ During cross-examination, counsel for Mr Ayyash also showed Witness 063 photographs allegedly representing his showroom. These are the photographs included in Witness 400 first and Witness 312’s second statements.⁵⁸ The witness testified that they were of adjacent businesses, and marked the location of his dealership on a map, exhibit 1D148.⁵⁹ The Prosecution did not elicit evidence from Witness 075 of the location of Witness 063’s dealership.⁶⁰

43. On these grounds, counsel for Mr Ayyash and Mr Badreddine argue that Witness 063 and Witness 075’s statements should not be admitted, as they are either no longer relevant or simply unnecessary.⁶¹

44. The Trial Chamber agrees with Defence counsel. The request to admit Witness 063’s statement is moot, as the relevant page of that statement was admitted into evidence while the witness was testifying. In addition, the Trial Chamber has received sufficient evidence concerning the location of the dealership. Accordingly, it does not consider it necessary to admit Witness 075’s statement.

Witness 553

45. Witness 553 owned the Nejmeah Cell mobile telephone business in Nejmeah Square, Tripoli. His store allegedly sold SIM cards that were later used in the telephone networks planning Mr Hariri’s assassination.⁶² The Prosecution asks for his statement to be admitted into evidence ‘only’ to establish the location described, because it intends to call him to testify in relation to the rest of his

⁵⁶ Witness 063 testified on 4, 5 and 10 June 2015: Transcript no. 158 of 4 June 2015; Transcript no. 159 of 5 June 2015; Transcript no. 160 of 10 June 2015. Witness 075 testified on 15 and 16 June 2015: Transcript no. 161 of 15 June 2015; Transcript no. 162 of 16 June 2015.

⁵⁷ Exhibit P474; Transcript no. 158 of 4 June 2015, pp 68-69 and 103.

⁵⁸ See paras 17-19 and 20-22 of this decision.

⁵⁹ Transcript no. 159 of 5 June 2015, p. 51-57.

⁶⁰ Transcript no. 161 of 15 June 2015, pp. 8-9.

⁶¹ Ayyash response, paras 6-7 and 12; Badreddine response, paras 6-8.

⁶² Prosecution motion, Annex A, line 5; consolidated indictment, paras 14-15.

evidence. Should this witness not testify, however, the Prosecution wishes to ‘resubmit’ this statement under Rule 155 in its entirety.⁶³

46. Counsel for Mr Sabra oppose the admission of this statement on the basis that it is unnecessary if the witness is expected to testify.⁶⁴

47. The witness is not yet scheduled to testify, but the Trial Chamber accepts that the Prosecution might need his evidence on certain points for the purposes of the Electronic Presentation of Evidence module before his appearance. In this case, however, as pointed out by counsel for Mr Sabra, the location of Nejme Cell is mentioned in several other witness statements that the Trial Chamber has already admitted or declared admissible, such as those of Mr Ahmad Srour, and Witnesses PRH004 and PRH117.⁶⁵ Witness 553’s statement contains no additional information on the location of his store. Given that he will be called to testify, no compelling reason exists to admit his statement under Rule 155 now, and the Trial Chamber declines to do so.

Witness 009

48. In 2005, Witness 009 was a member of the Lebanese Internal Security Forces and the team leader assigned to Mr Hariri’s convoy.⁶⁶ The Prosecution wishes to tender his statement because he marked a map with various places visited by Mr Hariri that it argues are relevant to its case.⁶⁷ As with Witness 553, the Prosecution only seeks to tender this statement to prove the places described in it, and it intends to call the witness to testify in relation to the rest of his evidence.⁶⁸

49. Counsel for Mr Badreddine take no position on the admissibility of this statement solely to establish places visited by Mr Hariri, but request his appearance for cross-examination. They argue,

⁶³ Prosecution motion, para. 4(c).

⁶⁴ Sabra response, paras 5-8.

⁶⁵ Sabra response, Annex A; F1953, Decision on Prosecution Motion to Admit the Statements of Deceased Witnesses PRH249 and PRH093, 18 May 2015; F1820, Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in lieu of Oral Testimony Relating to ‘Red Network’ Mobile Telephone Subscription, 19 January 2015; Exhibits P464, P376 and P374; Transcript no. 114 of 4 February 2015, pp. 8-11; Transcript no. 153 of 22 May 2015, p. 35.

⁶⁶ Prosecution motion, Annex A, line 6; F1742, Decision on Expert and Witness Statements of Witnesses PRH009 and PRH101, 7 November 2014, para. 3.

⁶⁷ Prosecution motion, para. 12. At Annex A of its motion, and for those statements it seeks to tender ‘only’ to establish the locations referred in them, the Prosecution identifies the specific page numbers it considers relevant for some statements (such as those of Witness 020 and 553). However, it does not do this for Witness 009.

⁶⁸ Prosecution motion, para. 4(c).

notably, that he was ‘the subject of inquiries’ from the Defence during another witness’s cross-examination on matters that could seriously affect his credibility.⁶⁹

50. Counsel for Mr Sabra object to the admission of this statement, on the basis that the witness will testify. They list, in an annex to their response, the other witness statements admitted into evidence or declared admissible, including another by Witness 009, describing most of the locations he marked.⁷⁰

51. The Trial Chamber is satisfied that Witness 009’s statement is relevant to Mr Hariri’s movements and the routes of his convoy, and that it is probative. His statement is cumulative to the evidence of other witnesses in relation to the locations he describes. In addition, the Trial Chamber has already found another of his statements admissible.⁷¹ The Trial Chamber considers Witness 009’s statement *prima facie* reliable. As the Prosecution intends to call this witness to testify, his statement may be admitted into evidence under Rule 156 when he testifies. There is accordingly no need to rule on counsel for Mr Badreddine’s request for cross-examination.

Witness 087

52. Witness 087 provides the address of Ahmad Abu Adass’s residence.⁷² His statement also describes seeing Mr Abu Adass at the Arab University mosque in Beirut shortly before he disappeared, and apparently teaching someone how to pray.⁷³ The Prosecution submits that this statement goes to the acts and conduct of the Accused, therefore it seeks its admission ‘only’ to establish the locations referred to in it.⁷⁴ The Prosecution will call the witness to testify in person on the other aspects of his evidence.

53. Counsel for Mr Badreddine take no position on this statement’s admissibility ‘for the sole purpose of establishing the location of Ahmad Abu Adass’s residence’.⁷⁵ They warn, however,

⁶⁹ Badreddine response, para. 16.

⁷⁰ Sabra response, paras 5-8; Annex A.

⁷¹ F1742, Decision on Expert and Witness Statements of Witnesses PRH009 and PRH101, 7 November 2014.

⁷² Prosecution motion, Annex A, line 1.

⁷³ Prosecution motion, para. 18.

⁷⁴ Prosecution motion, para. 4 (d).

⁷⁵ Badreddine response, para. 10.

against the difficulties that may arise from the Prosecution's proposed approach to admit the statement if the witness's testimony contradicts the location surveyed by Witness 583.⁷⁶

54. Counsel for Mr Sabra object to the admission of the statement and point out that the Trial Chamber has already declared admissible statements from Ahmad Abu Adass's father giving the residential address.⁷⁷

55. The Trial Chamber has already admitted Mr Abu Adass's father's statements into evidence.⁷⁸ Witness 087's statement contains no additional evidence on the residential address. In addition, the Prosecution will be calling this witness to testify. The Trial Chamber is not satisfied of the need to admit Witness 087's statement into evidence now, particularly as his statement goes to proof of acts and conduct of the Accused, and declines to do this.

Witness 012

56. Witnesses 012 gives the address of the Reuters office in Beirut which, on 14 February 2005, received a telephone call claiming responsibility for the attack earlier that day.⁷⁹

57. Counsel for Mr Badreddine and Mr Sabra object to the admission of her statement on the grounds that it is unnecessary, since the Prosecution intends to call her to testify.⁸⁰

58. The Trial Chamber agrees. As this witness will be testifying, it is not necessary to admit her statement into evidence under Rule 155 solely to prove Reuters' address.⁸¹

Witness 020 (Ghassan Ben Jeddo)

59. Witness 020, Ghassan Ben Jeddo, also provides the address of the Al-Jazeera office in Beirut, that also received several calls claiming responsibility on the day of the attack.⁸² During his testimony on 8 July 2015, Mr Ben Jeddo gave the relevant address.⁸³

⁷⁶ Badreddine response, para. 10.

⁷⁷ Sabra response, paras 7-8. Annex A.

⁷⁸ Exhibit P461; Transcript no. 153 of 22 May 2015, p. 23.

⁷⁹ Prosecution motion, para. 18, Annex A, line 7.

⁸⁰ Badreddine response, para. 11; Sabra response, paras 5-8.

⁸¹ Prosecution motion, para. 4 (d).

⁸² Prosecution motion, para. 18, Annex A, line 2.

60. For the same reasons as for Witness 012, counsel for Mr Badreddine and Mr Sabra oppose the admission of Mr Ben Jeddo's statement.⁸⁴

61. Again, the Trial Chamber agrees. It is not necessary to admit Mr Ben Jeddo's statement under Rule 155 solely to prove Al-Jazeera's Beirut address. Both he and Witness PRH115, who was at Al-Jazeera's office the day of the attack, have provided this address during testimony.⁸⁵

B. Amendment of the exhibit list

62. The Trial Chamber has previously held that it may, in the interests of justice, allow a party to amend its exhibit lists, but 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 general factors that include: (i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.⁸⁶

63. The Prosecution requests leave to amend its exhibit list to add eight exhibits: the two statements of Witness 400,⁸⁷ the statements of Witnesses 065, 075, 087, 263 and 539, and a series of satellite photographs by European Space Imaging GmbH.⁸⁸ It argues that it has good cause to add the photographs as it only received them in January 2015. The statements replace others already on the exhibit list to make them compliant with Rule 155, or streamline and render more comprehensible documents already on the exhibit list, or were only recently taken.⁸⁹

64. Counsel for Mr Ayyash do not object to the amendment.⁹⁰ Counsel for Mr Badreddine object to adding Witness 075's statement because the Trial Chamber has already heard evidence on the

⁸³ Provisional Transcript no. 168 of 8 July 2015, pp. 60 and 70-72; Exhibit P496.

⁸⁴ Badreddine response, para. 9; Sabra response, paras 5-8, Annex A.

⁸⁵ Witness PRH115; Transcript no. 167 of 7 July 2015, p. 86.

⁸⁶ F1820, Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony relating to 'Red Network' Mobile Telephone Subscriptions, 19 January 2015, para. 5.

⁸⁷ Annex E of the Prosecution motion appears to incorrectly date Witness 400's statement of 5 February 2015 as 30 January 2015.

⁸⁸ Prosecution motion, paras 32-33, Annex E.

⁸⁹ Prosecution motion, paras 33 and 34.

⁹⁰ Ayyash response, para. 2.

same subject, namely the Tripoli dealership's location.⁹¹ They take no position on adding Witnesses 065, 087, 263 and 539's statements or the satellite photographs.⁹² Counsel for Mr Oneissi and Mr Sabra take no position on the proposed amendment.⁹³

65. As the Trial Chamber has declined to admit into evidence the statements of Witnesses 075 and 087, they cannot be added to the exhibit list. The Trial Chamber is satisfied that adding the statements of Witness 065, 263, 400 and 539, and the satellite photographs will not prejudice Defence preparations for trial nor delay the trial, and grants the application.

C. Admission of four exhibits

66. The Trial Chamber has previously acknowledged that admitting evidence 'from the bar table', under Rule 154, without requiring a witness to produce or to identify it, is a well-established practice before international courts and tribunals.⁹⁴ Material tendered in this manner—like any other evidentiary material—must meet the basic requirements for the admission of evidence in Rule 149 (C) and (D), in that it must be relevant and probative, and its probative value must not be outweighed by its prejudicial effect.⁹⁵ Only *prima facie*—rather than definite—reliability and probative value is required at this stage.⁹⁶ Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.⁹⁷

67. To allow it to identify and plot relevant locations on a map, the Prosecution seeks the admission into evidence under Rule 154 of four exhibits.⁹⁸ The exhibits are a business card for Samino Jewellery stores, a map marked by Witness PRH089, an extract from a letter from the

⁹¹ Badreddine response, paras 6-7.

⁹² Badreddine response, paras 10, 13, 19, 27 and 32.

⁹³ Oneissi response, para. 1; Sabra response, para. 3.

⁹⁴ F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 5-7; 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, para. 4.

⁹⁵ F1781, Decision on Prosecution Motion to Admit into Evidence Geographic Documents, 8 December 2014, para. 4.

⁹⁶ Decision of 28 January 2014, para. 7; Decision of 13 January 2014, para. 8.

⁹⁷ Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4-6.

⁹⁸ Prosecution motion, para. 2; Annex B.

Banque du Liban (the Lebanese central bank) listing addresses of a Lebanese bank, and satellite photographs of Lebanon taken by European Space Imaging GmbH.⁹⁹

68. Counsel for Mr Ayyash, Mr Oneissi and Mr Sabra take no position on the admission of these exhibits into evidence.¹⁰⁰ Counsel for Mr Badreddine object to the Samino business card and Witness 089's map, but not to the letter from the Banque du Liban and the satellite photographs.¹⁰¹

(i) Samino Jewellery business card

69. The Prosecution seeks to tender a business card for the Samino Jewellery store showing its three addresses. The Prosecution argues that the stores are linked to Mr Badreddine's alleged alias of Sami Issa, and that—considered with cell site coverage for the surrounding area—they are relevant to attributing telephones to him.¹⁰²

70. The Prosecution obtained the card from Witness PRH306.¹⁰³ Although the Prosecution does not specify whether it will tender that statement into evidence later or call him to testify, counsel for Mr Badreddine point out, based on information available to them—such as the Prosecution's consolidated witness list filed under Rule 91—that the witness is expected to testify.¹⁰⁴

71. Counsel for Mr Badreddine object to the admission of the business card and require that the Prosecution first establish its provenance and authenticity through Witness 306's testimony. They also argue that the addresses of two of the three branches on the card are not specific enough to find the stores.¹⁰⁵

72. Counsel for Mr Badreddine do not specify which addresses are not specific enough. They also do not explain what additional information is necessary to sufficiently describe the addresses.¹⁰⁶

⁹⁹ Prosecution motion, Annex E.

¹⁰⁰ Ayyash response, para.14; Oneissi response, para. 1; Sabra response, para. 3.

¹⁰¹ Badreddine response, paras 31-32.

¹⁰² Prosecution motion, para. 27.

¹⁰³ Prosecution motion, para. 27.

¹⁰⁴ Badreddine response, para. 29.

¹⁰⁵ Badreddine response, para. 29.

¹⁰⁶ This is because in Lebanon, addresses often do not include post codes or house numbers, and are described by reference to neighbourhoods, nearby landmarks or the names of buildings.

73. The Prosecution has demonstrated the business card's relevance to its case on the telephones it attributes to Mr Badreddine. The Trial Chamber is accordingly satisfied that it is relevant and probative. The Trial Chamber has reviewed Witness 306's statement and is also satisfied of the card's provenance and its reliability as a business record. The Prosecution has shown where and how the information on the card fits into its case. The Samino business card is therefore admissible into evidence under Rule 154.

(ii) Letter from the Special Investigation Commission of the Banque du Liban

74. The Prosecution seeks to tender a one page extract from a letter dated 30 March 2012 from the Special Investigation Commission of the Banque du Liban to the Special Tribunal's Prosecutor in response to a request for assistance. The extract lists the addresses of three branches of the Lebanese banking group Audi-Saradar.¹⁰⁷

75. The Prosecution argues that these addresses are relevant to the attribution of telephone numbers to Mr Ayyash. Specifically, Mr Ayyash allegedly used telephones the Prosecution attributes to him, in the locality of these branches, when banking transactions were made on his bank accounts.¹⁰⁸

76. The Trial Chamber is satisfied of the letter's relevance and probative value to the Prosecution's case, in particular, in relation to attributing telephones to Mr Ayyash. The letter is reliable, given that it comes from Lebanon's central banking authority, and its provenance is clear. The Prosecution has demonstrated how and where the information in the letter fits into its case. The extract of the letter is accordingly admissible into evidence under Rule 154.

(iii) Map marked by Witness 089

77. The Prosecution seeks to tender an extract of a statement by Witness 089—a map on which he marked the approximate location of his apartment. Mr Badreddine allegedly occasionally visited the apartment. With cell site coverage of this area, the location allows the attribution of telephones to

¹⁰⁷ Prosecution motion, para. 28; Annex B.

¹⁰⁸ Prosecution motion, para. 28.

Mr Badreddine. The map is reliable because the statement bears the indicia of reliability required by Rule 155. Witness 089 is expected to testify in the trial.¹⁰⁹

78. Counsel for Mr Badreddine argue that Witness 089, in his interview with Prosecution investigators, was uncertain of the location of his apartment on the map, and made an imprecise mark on the map. For this reason, it should not be admitted into evidence.¹¹⁰

79. The Trial Chamber has reviewed Witness 089's interview and examined the map. It is not convinced by these objections. The marking, although obscured, is visible. The interview transcript shows that the witness, despite expressing some initial hesitation, located the 'LAU' (presumably, the Lebanese American University), and positioned his apartment in relation to it.

80. The Trial Chamber is satisfied of the relevance of this map to the Prosecution's case on the telephones that it attributes to Mr Badreddine, and of its probative value. It is reliable, given that the witness identifies his own apartment on it, and its provenance is clear. The Prosecution has demonstrated how and where the location identified on the map fits into its case. The map is accordingly admissible into evidence under Rule 154.

(iv) Satellite photographs of Lebanon

81. The Prosecution also seeks to tender high resolution photographs of areas of Lebanon taken on specific dates in 2004 and 2005. The areas are relevant to the Prosecution case because Mr Hariri travelled there, they are related to the Accused, or network telephones, as alleged in the consolidated indictment, operated there.¹¹¹ The Prosecution acquired the photographs from European Space Imaging GmbH, a supplier of global very high-resolution satellite imagery. The Prosecution submits that the photographs' technical information includes details on the processing they have undergone, and how and when the photographs were taken.¹¹²

82. The Trial Chamber is satisfied of the photographs' relevance and probative value in the context of the Prosecution's intended use of locations to map out various elements of its case. The

¹⁰⁹ Prosecution motion, para. 29.

¹¹⁰ Badreddine response, para. 30.

¹¹¹ Prosecution motion, para. 30; consolidated indictment, paras 14-15.

¹¹² Prosecution motion, para. 31; Annex B, line 4.

Prosecution has also demonstrated the photographs' *prima facie* reliability, and how and where they fit into its case. They are accordingly admissible under Rule 154.

CONFIDENTIALITY

83. Because they contain confidential witness information, the Prosecution seeks to maintain the confidential status of the annexes to its motion.¹¹³ 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.

GENERAL REMARKS

84. The Trial Chamber again reminds the Parties of the importance of communicating and reaching agreement on matters that are not in dispute.¹¹⁴ It appears that several issues, the subject of this motion, such as the address of Al Jazeera and Reuters in Beirut, are not in dispute. The Trial Chamber strongly encourages the Parties to reach agreement out-of-court on these issues.

¹¹³ Prosecution motion, para. 36.

¹¹⁴ See e.g, F2037, Decision on Prosecution Motion to Admit under Rule 155 the Statements of 13 Witnesses in relation to Telephone Distribution and Subscription, 30 June 2015, paras 40-41.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list by adding the statements of Witnesses PRH065, PRH263, PRH400 and PRH539 and the satellite photographs by European Space Imaging GmbH;

DENIES the Prosecution leave to amend its exhibit list to add the statements of Witnesses PRH075 and PRH087;

DECLARES admissible under Rule 155 the statement of Witness PRH550;

DECLARES admissible in part under Rule 155 (C) the statements of Witness PRH263, PRH312, PRH400, invites the Prosecution to resubmit them without their irrelevant parts, and requires the Prosecution to make Witnesses PRH312 and PRH400 available for cross-examination under Rule 156;

DECLARES admissible under Rule 155 (C) the statements of Witnesses PRH065, PRH420, PRH539, and PRH583 and requires the Prosecution to make them available for cross-examination under Rule 156;

DECLARES admissible under Rule 156 the statement of Witness PRH009;

DENIES the Prosecution's request to admit under Rule 155 the statements of Witnesses PRH012, PRH020, PRH063, PRH075, PRH087 and PRH553;

DECLARES admissible under Rule 154 the Samino Jewellery business card, the extract of the letter from the Special Investigation Commission of the Banque du Liban to the Special Tribunal's Prosecutor, the map marked by Witness PRH089, and the satellite photographs by European Space Imaging GmbH;

DECIDES that it will, at a suitable stage in the proceedings, formally admit the statements and exhibits into evidence;

ORDERS the Prosecution to file a public redacted version of the annexes to its motion or have them reclassified as public; and

ORDERS that the Sabra Defence Addendum to Response to Prosecution Motion for the Admission of Locations Related Evidence, be made public upon the completion of the evidence of Witnesses PRH312, PRH400, PRH539 and PRH583.

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

Leidschendam,
The Netherlands

9 July 2015

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

