

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE CONTEMPT JUDGE

Case No.: STL-14-06/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 19 January 2016
Original language: English
Classification: Public

IN THE CASE AGAINST

AKHBAR BEIRUT S.A.L.
IBRAHIM MOHAMED ALI AL AMIN

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

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

**Counsel for *Akhbar Beirut* S.A.L. and
Mr Ibrahim Mohamed Ali Al Amin:**
Mr Antonios Abou Kasm



INTRODUCTION

1. The *Amicus Curiae* Prosecutor (“*Amicus*”) requests the admission into evidence, pursuant to Rule 154 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of most of his Rule 91 (G) (iii) exhibits (“Motion”).¹ The *Amicus* intends to tender such evidence from the “Bar Table”, without requiring a witness to testify to the accuracy of the evidence. In a confidential annex to the Motion, the *Amicus* lists each exhibit for which he seeks admission and provides reasons.²

2. The Defence opposes significant parts of the Motion. In a confidential annex, the Defence indicates its position with respect to each Bar Table exhibit, including whether it objects to its admission and, if so, why.³

APPLICABLE LAW

3. Admitting certain material into evidence from the “bar table” is a well-established practice before international criminal courts and tribunals, including this Tribunal.⁴ The practice permits the chamber or judge to receive documentary evidence without requiring witness testimony as a means to achieve judicial economy. In order to gain admission from the bar table, material must satisfy the basic requirements for admission articulated in Rules 154 and 149 (C) and (D). Such Rules apply *mutatis mutandis* in contempt proceedings.⁵

4. 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

¹ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0122, Motion for Admission of Evidence Pursuant to Rule 154, 16 November 2015 (“Motion”). All further references to filings and decisions refer to this case number unless otherwise stated.

² F0122/A01, Motion for Admission of Evidence Pursuant to Rule 154, Annex A, Confidential, 16 November 2015 (“Bar Table”).

³ F0130, Defence Response to the Motion for Admission of Evidence under Rule 154, 30 November 2015 (“Response”); F0130/A01, Defence Response to the Motion for Admission of Evidence under Rule 154, Annex A, Confidential, 30 November 2015 (“Response to Bar Table”).

⁴ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0120, Decision on *Amicus Curiae* Prosecutor’s Motion for Admission of Evidence Pursuant to Rule 154, 9 April 2015 (“*New T.V. S.A.L./Khayat* Bar Table Decision”), para. 7; see also STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1802, Decision on Prosecution’s Motion for Admission into Evidence of 485 Documents, Photographs and Witness Statements Relevant to Rafik Hariri’s Movements and to Political Events, 30 December 2014 (“Trial Chamber 30 December 2014 Bar Table Decision”), para. 29; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014 (“Trial Chamber 28 January 2014 Bar Table Decision”), paras 5-7; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/TC, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 (“Trial Chamber 13 January 2014 Bar Table Decision”), paras 4-6.

⁵ Rule 60 *bis* (H) STL RPE.

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.

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

DISCUSSION

I. Documents/Other Records by Category

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

7. The *Amicus* asserts that, due to this trial's short timeframe and in the interests of efficiency and judicial economy, there is no reason to delay the admission of non-testimonial evidence.¹⁰ He claims that all of the Bar Table exhibits are sufficiently reliable to demonstrate what he considers relevant to his case and that the Defence has had the vast majority of his documentary evidence for months.¹¹ Finally, he avers that, if the Bar Table exhibits are admitted now, the Parties can use the evidence during opening and closing statements, the trial can

⁶ *New T.V. S.A.L./Khayat* Bar Table Decision, para. 7; *See also* Trial Chamber 30 December 2014 Bar Table Decision, para. 29.

⁷ *New T.V. S.A.L./Khayat* Bar Table Decision, para. 7; *See also* Trial Chamber 13 January 2014 Bar Table Decision, para. 8.

⁸ *New T.V. S.A.L./Khayat* Bar Table Decision, para. 7; *See also* Trial Chamber 28 January 2014 Bar Table Decision, para. 7.

⁹ *New T.V. S.A.L./Khayat* Bar Table Decision, para. 7; *See also* Trial Chamber 30 December 2014 Bar Table Decision, para. 29.

¹⁰ Motion, paras 8-9.

¹¹ *Id.* at para. 10.

proceed without procedural delays and the Court will be able to view the evidence overall as the trial advances.¹²

8. The Defence does not object to the principle of admission of documentary evidence from the Bar Table, however, the Defence is opposed to the admission of the majority of the exhibits submitted by the *Amicus* in this case.¹³ The Defence submits that, in international criminal law, media exhibits are generally treated with great caution and admissible through the Bar Table only for limited purposes, if at all.¹⁴ Following the case-law in the *New TV S.A.L./Khayat* case, the Defence takes issue with third party media items purportedly going to the acts and conduct of the Accused, as their probative value is outweighed by their prejudicial impact on a fair trial.¹⁵ In contrast, the Defence accepts that third party media items which do not relate to the acts and conduct of the Accused may be admitted, provided that they are relevant to the case, have probative value and the *Amicus* has adequately demonstrated where and how they fit into his case.¹⁶ However, the Defence asserts that for a large proportion of the *Amicus's* media evidence, he does not demonstrate that they are sufficiently reliable and relevant to be admitted.¹⁷ As for the media evidence expressing journalistic views and opinions, analyses or interpretations for which no information has been provided regarding their source or authors.¹⁸ Finally, the Defence submits that it is not opposed to media items sourced from the Accused, provided that they are relevant to the case and have the required probative value.¹⁹

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

9. The *Amicus* seeks admissions of a large number of written media items not created, produced and/or published by the Accused containing (1) supposed statements of the Accused, or of persons employed with or by the Accused, (2) descriptions of supposed reactions by the aforementioned persons or (3) other information on the Accused's purported behavior for proof of the *actus reus* and/or *mens rea* of the offence charged.²⁰ The Defence argues that the *Amicus* has not provided sufficient indicia of reliability regarding their content and that the prejudice of

¹² Motion, para. 11.

¹³ Response, para. 9; Response to Bar Table.

¹⁴ *Id.* at para. 10.

¹⁵ *Id.* at para. 11.

¹⁶ *Id.* at para. 12.

¹⁷ *Id.* at para. 13.

¹⁸ *Ibid.*

¹⁹ *Id.* at para 14.

²⁰ Bar Table, exh.108, exh.109, exh.110, exh.111, exh.113, exh.114, exh.115, exh.116, exh.117, exh.118, exh.119, exh.120.

admitting such items substantially outweighs their respective probative value.²¹ The Defence further opposes the admission of exhibits 110, 111, 118, 119 and 120, on the basis that these items were not included in the *Amicus's* original exhibit list filed in accordance to Rule 91 (G) (iii).²²

10. I note that in my previous Decision on 18 December 2015, I permitted the *Amicus* to add the exhibits in question to his exhibit list in the interests of justice.²³ However, in the context of a Bar Table motion, I have to be satisfied that these exhibits have probative value but at the same time do not unfairly prejudice the Accused. These media items describe behaviour of or alleged statements attributed to the Accused. The probative value of such items is outweighed by their prejudicial impact on a fair trial. I am not satisfied that these media exhibits have the necessary indicia of reliability and consider that, given their intended purpose in the case, their probative value would be outweighed by their prejudicial impact without appropriate oral testimony. I therefore shall not admit them from the Bar Table.

11. Additionally, the *Amicus* seeks admission of interviews and press conferences of Mr Ibrahim Al Amin in which he states that he does not recognize the legitimacy of the Tribunal and would refuse to comply with any order.²⁴ The *Amicus* asserts that these exhibits demonstrate defiance of and intent to undermine the Tribunal. The Defence objects to two exhibits for lack of relevance with regard to the present case.²⁵

12. On summary review of these exhibits, Mr Ibrahim Al Amin appears in a video interview and press conference and reacts to these proceedings. Accordingly, I find the videos and transcripts relevant to the acts and conduct of the Accused, and that they possess the necessary indicia of reliability. It is also apparent that the Accused's statements were not given to persons in authority or under situations of duress. As a result, their admission will not result in unfair prejudice to the Accused. Further, the *Amicus* has adequately demonstrated where and how the exhibits fit into his case. I therefore admit these exhibits from the Bar Table. I emphasize that deciding to admit evidence does not constitute a binding determination as to its authenticity or

²¹ Response Bar Table, exh.108, exh.109, exh.110, exh.111, exh.113, exh.114, exh.115, exh.116, exh.117, exh.118, exh.119, exh.120.

²² Response Bar Table, exh.110, exh.111, exh.118, exh.119, exh.120.

²³ F0164, Public Redacted Version of Decision on Motions to Amend the *Amicus Curiae* Prosecutor's Exhibit and Witness List, 18 December 2015, para. 32.

²⁴ Bar Table, exh.114, exh.115, exh.116, exh.117, exh.118, exh.119.

²⁵ Response Bar Table, exh.114, exh.115, exh.116, exh.117, exh.118, exh.119.

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

13. The *Amicus* seeks admission of written media items not created, produced and/or published by the Accused. The items cover reactions from the Tribunal and others to the January 2013 *Al Akhbar* articles which gave rise to the present contempt proceedings (“*Al Akhbar* articles”), the impact of other disclosures related to actual or purported Tribunal witnesses, the supposed purpose of disclosures and past responses of international courts to disclosures. Through these items, the *Amicus* wishes to demonstrate the effects of the Accused’s acts and conduct and/or that publishing identifying information about alleged confidential witnesses violates journalistic standards in Lebanon.²⁶ The Defence opposes the admission of these items, arguing that the *Amicus* has failed to demonstrate that their content is sufficiently reliable and that the prejudice of admitting such items substantially outweighs their respective probative value.²⁷

14. I deem all of these exhibits relevant and of probative value, and I find that the *Amicus* has adequately demonstrated where and how they fit into his case. I also determine that the information provided by certain exhibits, regarding the reaction of some sectors of the Lebanese media to the publishing of identifying information, can contextualize the effects that such disclosures may have had on public confidence in the Tribunal’s ability to protect confidentiality as charged in the indictment.²⁸ Further, as these exhibits do not relate to the acts and conduct of the Accused, I am satisfied that their admission would not result in unfair prejudice. I therefore admit these exhibits from the Bar Table. I reiterate that the weight ultimately given to these exhibits are not an issue to be decided at the admissibility stage.

²⁶ Bar Table, exh. 90, exh. 91, exh. 92, exh. 93, exh. 94, exh. 95, exh. 96, exh. 97, exh. 98, exh. 99, exh. 100, exh. 101, exh. 102, exh. 103, exh. 104, exh. 105, exh. 106, exh. 107, exh. 112, exh. 113, exh. 124.

²⁷ Response Bar Table, exh. 90, exh. 91, exh. 92, exh. 93, exh. 94, exh. 95, exh. 96, exh. 97, exh. 98, exh. 99, exh. 100, exh. 101, exh. 102, exh. 103, exh. 104, exh. 105, exh. 106, exh. 107, exh. 112, exh. 113, exh. 124.

²⁸ F0001, Order in Lieu of an Indictment, 31 January 2014.

3. Media items sourced from the Accused

15. The *Amicus* seeks admission of media items created, produced and/or published by the Accused for proof of the Accused's acts and conduct and the impact of such conduct.²⁹ The items include the *Al Akhbar* articles and media coverage of related Tribunal filings, further alleged disclosures of confidential Tribunal information, the Tribunal's reaction to alleged disclosures by other persons, the effects of other disclosures, and the Tribunal's contempt proceedings.³⁰ The Defence does not object to the admission of most of these items.³¹ However, with respect to some, the Defence opposes admission of items for lack of relevance or indicia of reliability.³² Further, the Defence opposes the admission of exhibit 50 on the basis that this item was not included in the *Amicus*'s original exhibit list.³³

16. I note that in my previous Decision on 18 December 2015, I permitted the *Amicus* to add exhibit 50 to his exhibit list in the interests of justice.³⁴ I am satisfied that all of these exhibits are relevant and of probative value to the acts and conduct of the Accused and/or to their impact. I generally consider that publications of the Accused, for which there are no challenges as to authenticity, have the necessary indicia of reliability. Moreover, the *Amicus* has adequately demonstrated where and how the items fit into his case and their admission will not result in unfair prejudice. I therefore admit these exhibits from the Bar Table.³⁵ I reiterate the distinction between admitting material into evidence now and the weight I may give any such evidence at a later stage.

²⁹ Bar Table, exh. 1, exh. 2, exh. 3, exh. 4, exh. 9, exh. 10, exh. 14, exh. 24, exh. 25, exh. 26, exh. 27, exh. 28, exh. 29, exh. 31, exh. 32, exh. 33, exh. 34, exh. 35, exh. 36, exh. 37, exh. 38, exh. 39, exh. 40, exh. 41, exh. 42, exh. 43, exh. 44, exh. 45, exh. 46, exh. 47, exh. 48, exh. 49, exh. 50, exh. 51, exh. 52, exh. 53, exh. 54, exh. 55, exh. 56, exh. 57, exh. 58, exh. 59, exh. 60, exh. 61, exh. 62, exh. 63, exh. 64, exh. 65, exh. 66, exh. 67, exh. 68, exh. 69, exh. 70, exh. 71, exh. 72.

³⁰ *Ibid.*

³¹ Response Bar Table, exh. 1, exh. 2, exh. 3, exh. 4, exh. 9, exh. 10, exh. 14, exh. 24, exh. 25, exh. 26, exh. 27, exh. 28, exh. 29, exh. 31, exh. 32, exh. 33, exh. 34, exh. 35, exh. 36, exh. 37, exh. 38, exh. 39, exh. 40, exh. 41, exh. 42, exh. 43, exh. 44, exh. 45, exh. 46, exh. 47, exh. 48, exh. 49, exh. 50, exh. 51, exh. 52, exh. 53, exh. 54, exh. 55, exh. 56, exh. 57, exh. 58, exh. 59, exh. 60, exh. 61, exh. 62, exh. 63, exh. 64, exh. 65, exh. 66, exh. 67, exh. 68, exh. 69, exh. 70, exh. 71, exh. 72.

³² *Id.*, exh. 3, exh. 26, exh. 27, exh. 28, exh. 29, exh. 35, exh. 38, exh. 39, exh. 40, exh. 41.

³³ *Id.* exh.50

³⁴ F0164, Decision on Motions to Amend the *Amicus Curiae* Prosecutor's Exhibit and Witness List, 18 December 2015, para. 32.

³⁵ Bar Table, exh. 1, exh. 2, exh. 3, exh. 4, exh. 9, exh. 10, exh. 14, exh. 24, exh. 25, exh. 26, exh. 27, exh. 28, exh. 29, exh. 31, exh. 32, exh. 33, exh. 34, exh. 35, exh. 36, exh. 37, exh. 38, exh. 39, exh. 40, exh. 41, exh. 42, exh. 43, exh. 44, exh. 45, exh. 46, exh. 47, exh. 48, exh. 49, exh. 50, exh. 51, exh. 52, exh. 53, exh. 54, exh. 55, exh. 56, exh. 57, exh. 58, exh. 59, exh. 60, exh. 61, exh. 62, exh. 63, exh. 64, exh. 65, exh. 66, exh. 67, exh. 68, exh. 69, exh. 70, exh. 71, exh. 72.

4. Legal claim against the Tribunal

17. The *Amicus* seeks admission of a purported legal claim submitted to and brought against the Tribunal by thirteen persons in October 2013. The claim related to the alleged disclosure by other media organizations in Lebanon of confidential witness information.³⁶ He asserts that the impact described in the claim goes to the effects of alleged contempt in this case, as well as, in conjunction with an *Al Akhbar* article reporting on the claim, and the Accused's awareness of such effects.³⁷ The Defence argues that the document is not relevant and has no probative value.³⁸ The Defence further argues that in the *New TV S.A.L./Khayat* judgment, it was found that this exhibit had no probative value with respect to the impact of the disclosures of purported confidential witnesses in that case.³⁹

18. In the *New TV S.A.L./Khayat* judgment, it was found that this evidence lacked sufficient probative value with respect to the alleged impact of the disclosure of purportedly confidential information in that case after reviewing the entirety of the evidence.⁴⁰ However, this ruling does not preclude the admissibility of this evidence in this case. As I have recalled earlier, the present stage only concerns a preliminary admissibility assessment whereas the ultimate weight to be attributed to the evidence is decided after the presentation of all the evidence in the trial in view of the entirety of the record. I find that this exhibit is *prima facie* relevant and of probative value to the effects of the Accused's alleged disclosures. Together with other evidence that the *Amicus* intends to tender, it is also relevant and of probative value to the Accused's awareness of the potential effects of disclosing purportedly confidential witness-related information in general. Moreover, the *Amicus* has adequately demonstrated where and how the exhibit fits into his case. I therefore admit this exhibit from the Bar Table.

5. Tribunal material

19. The *Amicus* seeks admission of various official Tribunal filings and press releases, issued before and during the alleged commission of the charged criminal acts, which relate to media broadcasts of purported confidential Tribunal information, Tribunal protective measures and

³⁶ Bar Table, exh.121.

³⁷ *Id.* exh.54.

³⁸ Response Bar Table, exh.121.

³⁹ *Ibid.*

⁴⁰ *New TV S.A.L./Khayat*, Public Redacted Version of Judgment, 18 September 2015, para. 119.

Tribunal confidentiality orders.⁴¹ These include the Registrar's Notice of Cease and Desist of 18 January 2013, which is central to the allegations of contempt in the Order in Lieu of an Indictment⁴². The *Amicus* intends to use these exhibits to show the Accused's *mens rea*.⁴³ The Defence, in objecting to most of these exhibits, argues that their mere existence is not probative of whether the Accused had knowledge of these materials and, in regards to some of the exhibits, that their content is not relevant to the present case.⁴⁴ Further, the Defence opposes the admission of exhibit 82, 83, 84, 85, 86, 87, 88 and 89, on the basis that the items were not included in the *Amicus*'s original exhibit list.⁴⁵ However, I note that in my previous Decision on 18 December 2015, I permitted the *Amicus* to add the exhibit in question to his exhibit list in the interests of justice.⁴⁶

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

6. Reports of service

21. The *Amicus* seeks admission of the Report of Service of the Registrar's Notice of Cease and Desist of 21 January 2013, signed by two chief warrant officers of the Lebanese Judicial Police, purportedly proving service on Mr Nizar Saghie and consequently the Accused's knowledge of the Notice of Cease and Desist.⁴⁷ In addition, the *Amicus* seeks admission of

⁴¹ Bar Table, exh.18, exh.20, exh.73, exh.74, exh.75, exh.76, exh.77, exh.78, exh.79, exh.80, exh.81, exh.82, exh.83, exh.84, exh.85, exh.86, exh.87, exh.88, exh.89.

⁴² F0001, Order in Lieu of an Indictment, 31 January 2014.

⁴³ Bar Table, exh.18, exh.20, exh.73, exh.74, exh.75, exh.76, exh.77, exh.78, exh.79, exh.80, exh.81, exh.82, exh.83, exh.84, exh.85, exh.86, exh.87, exh.88, exh.89.

⁴⁴ Response Bar Table, exh.73, exh.74, exh.76, exh.77, exh.78, exh.79, exh.80, exh.81, exh.82, exh.83, exh.84, exh.85, exh.86, exh.87, exh.88, exh.89.

⁴⁵ *Id.* exh.82, exh.83, exh.84, exh.85, exh.86, exh.87, exh.88, exh.89.

⁴⁶ F0164, Decision on Motions to Amend the *Amicus Curiae* Prosecutor's Exhibit and Witness List, 18 December 2015, para. 32.

⁴⁷ Bar Table, exh.19.

Report of Service of the Order Requesting the Cooperation of the Lebanese Authorities to Cease Dissemination of Information of 27 August 2013, purportedly proving service on *Al Akhbar* of the official letter sent by the Lebanese Press Association and the Accused's knowledge of the Order.⁴⁸ The Defence submits that I previously decided not to rule on the admission of the Report of Service of the Registrar's Notice of Cease and Desist until the testimony of AP03 and AP04.⁴⁹ The Defence further submits the *Amicus* "does not indicate the link between the designated signatory of that document and Mr Al Amin and Akhbar Beirut S.A.L., who did not sign the said document."⁵⁰ It would be fair for the person who signed the document to give evidence before the Tribunal to enable me to make an informed decision as to its reliability and avoid any undue prejudice.⁵¹

22. With respect to the Report of Service of the Registrar's Notice of Cease and Desist, I recall that I have previously ruled to defer my decision on the admissibility of this item until its submission at trial.⁵² Regarding the Report of Service of the Order Requesting the Cooperation of the Lebanese Authorities to Cease Dissemination of Information, I note that this exhibit contains a letter from the Head of the Lebanese Press Association to Mr Al Amin attaching the Order and bears the signature of Mr Moussa Farhat, an alleged employee of *Al Akhbar* newspaper, acknowledging receipt of the letter. However, it is not clear from the content of the exhibit how the letter was sent to Mr Al Amin and the circumstances in which the signature of Mr Farhat was collected. I conclude that further explanation at trial by a person who can speak to the exhibits content is appropriate to inform my decision on its reliability and avoid potential unfair prejudice. I therefore shall not admit this exhibit from the Bar Table.

7. *Al Akhbar* screenshots

23. The *Amicus* seeks admission of computer screenshots of *Al Akhbar's* Facebook page and Twitter page, purportedly showing that a link to the *Al Akhbar* articles were available on the company's Facebook page and Twitter page on 20 January 2013.⁵³ The Defence argues that the dissemination of the articles in question were not clearly stated in the Order of in Lieu of

⁴⁸ Bar Table, exh.21.

⁴⁹ Response Bar Table, exh.19.

⁵⁰ *Id.*, exh.21.

⁵¹ *Ibid.*

⁵² F0103, Decision on the *Amicus Curiae* Prosecutor's Motion for Admission of Written Statements under Rule 155 and the Defence Request for Exclusion of Witnesses from the Prosecution Witness List, Confidential, 20 August 2015, p.11.

⁵³ Bar Table, exh.5, exh.6, exh.7, exh.8, exh.11, exh.12, exh.13, exh.15, exh.16, exh.17.

Indictment.⁵⁴ Moreover, given the importance of the question of the alleged dissemination, an explanation by a person who can attest to the content and the possible availability of the articles is imperative to avoid any undue prejudice.⁵⁵

24. I find that these documents are relevant to the acts and conduct of the Accused and that the *Amicus* has adequately demonstrated where and how they fit into his case, as the screenshots allegedly prove that the articles were publicly available on the internet during a relevant period. However, considering the importance of the articles' availability to the alleged guilt of the Accused and the Defence's objections, I conclude that further explanation at trial by a person who can speak to the documents' content is required in order to inform my decision on their reliability and to avoid potential unfair prejudice. I note in this regard that a person involved in the exhibit's collection is scheduled to appear as an oral witness and can speak to the documents' content and the context.⁵⁶ I therefore shall not admit this exhibit from the Bar Table.

8. Expert Report

25. The *Amicus* seeks admission of the expert report and *curriculum vitae* of Dr Anne-Marie de Brouwer, who is scheduled to appear as an expert witness.⁵⁷ The Defence argues that the opinion given by this expert does not fall within the scope of her expertise. The Defence further argues that in the *New TV S.A.L./Khayat* judgment it was found that the Expert Report was not reliable.⁵⁸ I note that, having reviewed the entire evidence in the *New TV S.A.L./Khayat* case, I ruled that Dr de Brouwer's evidence lacked sufficient probative value with respect to the alleged impact of the disclosure of purportedly confidential information in Lebanon.⁵⁹ While this ruling does not preclude the admissibility of Dr de Brouwer's evidence in this case, I find it proper not to rule on the admissibility of her report and *curriculum vitae* until having heard her testimony in court.

⁵⁴ Response Bar Table, exh.6, exh.5, exh.7, exh.8, exh.11, exh.12, exh.13, exh.15, exh.16, exh.17.

⁵⁵ *Ibid.*

⁵⁶ F0083/A02, Prosecution's Pre-Trial Brief Pursuant to Rule 91(G) (i), 5 March 2015.

⁵⁷ Bar Table, exh.122, exh.123.

⁵⁸ Response Bar Table, exh.122, exh.123.

⁵⁹ *New TV S.A.L./Khayat* case, Redacted Version of Judgment, 18 September 2015, para. 109.

9. Criminal Record of Ibrahim Al Amin

26. The *Amicus* seeks admission of Mr Ibrahim al Amin's criminal record.⁶⁰ He asserts that "[t]he document shows that Ibrahim Al Amin was convicted in the past by the Court of Publications for similar conduct."⁶¹ The Defence opposes the admission of this document on the basis that this document was not included in the *Amicus*'s original exhibit list⁶², and further, that the document is not relevant to the present case and its probative value would be substantially outweighed by the prejudice to the Accused.⁶³

27. The *Amicus* has merely stated the content of this document but has not made clear how it is relevant to his case. Should the *Amicus* be tendering this exhibit as "propensity evidence", I note that it is a long-standing principle in common law jurisdictions, adopted by the international tribunals that "[e]vidence as to the character of an Accused is generally inadmissible to show the Accused's propensity to act in conformity therewith."⁶⁴ As a result, documents showing an accused's prior criminal convictions, are not admissible for the sole purpose of establishing that the Accused was capable of committing the crime, is inclined to commit the crime, or on some prior occasion actually did have the intent to commit the crime.⁶⁵ This evidence is excluded because the highly prejudicial effect of the evidence is likely to outweigh its probative value, including by obscuring more direct evidence of the alleged crime,⁶⁶ and tends to undermine both the presumption of innocence and reverse the onus which requires the Prosecution to prove the case beyond a reasonable doubt.

28. In any event, as the *Amicus* has not demonstrated how this exhibit fits into his case, I shall not admit the document from the Bar Table.

10. Other material not subject to objection

⁶⁰ Bar Table, exh.30.

⁶¹ *Ibid.*

⁶² Response Bar Table, exh.30.

⁶³ *Ibid.*

⁶⁴ ICTR, *Prosecutor v Bagosora et al*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003 ("*Bagosora* Decision"), para. 12; ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*, 17 February 1999.

⁶⁵ *Bagosora* Decision, para. 12.

⁶⁶ *Id.* at para. 17.

29. With respect to the Bar Table exhibits not addressed above, for which there are no objections to admission,⁶⁷ I am satisfied they are relevant and of probative value, and that the *Amicus* has adequately demonstrated where and how they fit into his case. Moreover, their probative value is not outweighed by prejudicial impact. I therefore admit these exhibits from the Bar Table.

II. Confidentiality

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

⁶⁷ Bar Table, exh.22, exh.23. I note the Defence opposed the admission of exh.23 on the basis that this item was not included in the *Amicus's* original exhibit list filed in accordance to Rule 91 (G) (iii). Subject to my previous decision exh.23 has been added to the exhibit list, the Defence now has no further objections.

DISPOSITION

FOR THESE REASONS;

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

I

GRANT the Motion in part;

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

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

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

DISMISS the Motion in all other respects.

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

Dated 19 January 2016

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

