



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

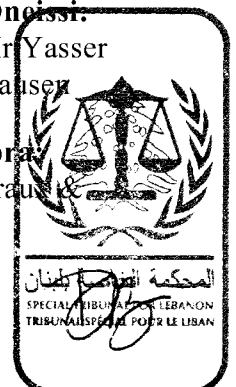
Registrar: Mr Daryl Mundis

Date: 7 April 2016

Original language: English

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

DECISION ON IN-COURT SUMMARIES OF EVIDENCE**Office of the Prosecutor:**Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne**Counsel for Mr Salim Jamil Ayyash:**Mr Eugene O'Sullivan, Mr Emile Aoun &
Mr Thomas Hannis**Victims' Legal Representatives:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Mustafa Amine Badreddine:**Mr Antoine Korkmaz, Mr Iain Edwards &
Ms Mylène Dimitri**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Jad Youssef Khalil**Counsel for Mr Hussein Hassan Oneissi:**Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie Von Wistinghausen**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts

INTRODUCTION

1. This decision concerns whether the Trial Chamber should modify its procedures in relation to accepting in-court summaries of written evidence and whether it should allow the Parties and Legal Representative of Victims to present mid-trial thematic summaries of evidence. The Trial Chamber has decided to supplement its guidelines attached to its directions on the conduct of proceedings to encompass and allow mid-trial thematic summaries of evidence.

BACKGROUND

2. The Trial Chamber, on 16 January 2014, after having heard the Parties and the Legal Representative of Victims, issued directions on the conduct of the proceedings under Rule 130 (A) of the Special Tribunal's Rules of Procedure and Evidence.¹ According to these directions, a Party tendering a witness statement into evidence under Rules 155 or 156 in lieu of oral testimony or examination-in-chief, must read a summary of the witness' statement into the court record.² Rule 130 (A) allows the Trial Chamber, after hearing the Parties, 'to give directions on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial, and expeditious trial.'³ The Special Tribunal's Appeals Chamber has held that the Trial Chamber enjoys a broad margin of discretion in conducting the proceedings before it.⁴

3. At a hearing on 5 November 2015, the Trial Chamber invited the Parties and the Legal Representative of Victims, under Rule 130 (A), to present submissions on the possible use of mid-trial summaries.⁵ The Trial Chamber described them as in-court oral summaries from the Prosecution, the Defence, or the Legal Representative of Victims, of parts of the evidence after it has been led or as it is being led.⁶ The Trial Chamber highlighted the magnitude and

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1326, Directions on the Conduct of the Proceedings, 16 January 2014.

² Guidelines on the Conduct of the Proceedings, para. 8, as attached to Directions on the Conduct of the Proceedings.

³ See also F1858, Corrected Version of 'Decision on Simultaneous or Concurrent Testimony of Expert Witnesses' of 17 February 2015, 23 March 2015, para. 27 (where the Trial Chamber highlights that Rule 130 (A) gives the Trial Chamber a wide discretion in the conduct of the proceedings).

⁴ STL-11-01/T/AC/AR126.7, F0013, Decision on Appeal by Counsel for Mr Merhi against Trial Chamber's 'Decision on Trial Management and Reasons for Decision on Joinder', 21 May 2014, paras 18, 30.

⁵ Transcript of 5 November 2015, pp 8-9, 50-51. See also transcript of 5 November 2015, pp 51-56, where counsel for the Accused and the Legal Representative of Victims expressed their preference for making written submissions.

⁶ Transcript of 5 November 2015, pp 47-51. See also transcript of 5 November 2015, p. 5, lines 10-17, and p. 6. Judge Lettieri raised the prospect of a summary, by the Prosecution, of 'the first relevant results of the evidence' in order to have a clear framework of the evidence up to the present, and highlighted that 'periodical provisional summaries can be very helpful for the comprehension'.

complexity of the Prosecution’s case—which is divided into several segments—as favouring this course.⁷ The Legal Representative of Victims and counsel for the Accused, Mr Assad Hassan Sabra, then expressed concerns about the time taken to read summaries of admitted evidence—statements and documents—onto the court record.⁸

4. The Legal Representatives of Victims and counsel for the Accused, with the exception of counsel for Mr Mustafa Amine Badreddine, filed submissions in relation to the presentation in court of (i) summaries of evidence admitted under Rules 154 and 155; and (ii) mid-trial summaries or thematic summaries of evidence.⁹ The Prosecution responded to the submissions of counsel for Mr Salim Jamil Ayyash,¹⁰ and counsel for Mr Sabra replied.¹¹

A. PRESENTATION OF MID-TRIAL THEMATIC SUMMARIES OF EVIDENCE

5. The views of the Parties and the Legal Representative of Victims diverge on mid-trial summaries. The Prosecution, and counsel for Mr Hussein Hassan Oneissi and Mr Sabra explicitly—and counsel for Mr Badreddine tacitly¹²—support their use. That view is also supported by the Legal Representative of Victims. Two Parties—counsel for Mr Ayyash and Mr Hassan Habib Merhi—oppose them.

Submissions supporting mid-trial summaries

6. The Legal Representative of Victims, counsel for Mr Oneissi and Mr Sabra submit that periodical summaries of the Prosecution’s evidence—where differing pieces of evidence are placed in the larger context of its case—are appropriate given the complexity of the

⁷ Transcript of 5 November 2015, pp 49-51.

⁸ Transcript of 5 November 2015, pp 59-63.

⁹ F2341, Observations of the Legal Representative of Victims regarding the Practice of Documentary Readings, 27 November 2015; F2349, Defence for Hussein Hassan Oneissi Joinder to “Observations of the Legal Representative of Victims regarding the Practice of Documentary Readings” dated 27 November 2015, 2 December 2015; F2358, Submissions by the Ayyash Defence regarding the Use of Summaries of Evidence during Court Proceedings, 4 December 2015; F2363, Joining of the Merhi Defence to the “Submissions by the Ayyash Defence Regarding the Use of Summaries of Evidence during Court Proceedings”, 8 December 2015; F2368, Sabra Defence Submissions on “Observations of the Legal Representative of Victims regarding the Practice of Documentary Readings”, 9 December 2015. The ‘Ayyash Defence Submissions on “Prosecution Witness Schedule for the Week Commencing 4 April 2016”’, filed on 24 March 2016, object to the Prosecution’s evidentiary review scheduled for 4 April 2016, requesting the Trial Chamber not to permit it.

¹⁰ F2384, Prosecution Response to Submissions by the Ayyash Defence regarding the Use of Summaries of Evidence during Court Proceedings, 17 December 2015.

¹¹ F2389, Sabra Defence Reply to “Prosecution Response to Submissions by the Ayyash Defence regarding the Use of Summaries of Evidence during Court Proceedings”, 21 December 2015.

¹² Counsel for Mr Badreddine filed no submissions, but at the hearing of 16 December 2015, appeared to solicit the Prosecution to make a mid-trial summary with regard to a specific issue; transcript of 16 December 2015, pp 77-78. This can be considered as a tacit approval of the practice.

proceedings.¹³ Summaries allow evidence to be presented in context before the Trial Chamber, the Parties, the victims and the public.¹⁴ Counsel for Mr Sabra submit that the presentation of periodical summaries of evidence should not be limited to the Prosecution, but should be available to any Party which elects to make use of it.¹⁵ They also submit that the other Parties should be allowed to respond.¹⁶ The Prosecution states that ‘this is one of the most complex, detailed, and layered cases that it is possible to present’,¹⁷ and that it is entirely appropriate and within the Trial Chamber’s discretion to seek guidance through the presentation of summaries of evidence.¹⁸

Submissions opposing mid-trial summaries

7. Counsel for Mr Ayyash, joined by counsel for Mr Merhi, object to thematic summaries,¹⁹ and request the Trial Chamber to ‘discontinue’ their use.²⁰ They also object to what they called an ‘expanded summary’.²¹ Even if summaries of evidence admitted under Rules 154²² and 155 continued, they should be limited to the content of the statements or documents itself, without the inclusion of extraneous information, such as those relating to the relationship between the summarised evidence and other evidence.²³

8. Such extraneous information either comes from the Prosecution directly, or results from questions posed by the Trial Chamber.²⁴ Consequently, counsel argue that they are unable to prepare for, or verify the veracity of, the Prosecution’s responses, as they have no notice of the questions.²⁵ Further, the use of mid-trial summaries ‘is not provided for in the rules, [and is] outside of the Trial Chamber’s general ability to control proceedings pursuant

¹³ Legal Representative of Victims’ submission, para. 36; Oneissi Defence submission, para. 2; Sabra Defence submissions, paras 2, 15-16.

¹⁴ Legal Representative of Victims’ submission, para. 36; Oneissi Defence submission, para. 2; Sabra Defence submissions, paras 15-16.

¹⁵ Sabra Defence submission, paras 3, 17-18.

¹⁶ Sabra Defence submission, para. 18.

¹⁷ Transcript of 5 November 2015, p. 64.

¹⁸ Transcript of 5 November 2015, pp 63-66.

¹⁹ Ayyash Defence submission, paras 1, 8-9.

²⁰ Ayyash Defence submission, paras 1, 9, 46. Counsel for Mr Ayyash point to the fact that the Trial Chamber, on two occasions, requested from the Prosecution, or ‘raised the prospect’ of, a mid-trial or thematic summary. See Ayyash Defence submission, paras 7-8.

²¹ Ayyash Defence submission, paras 9, 15. Counsel for Ayyash describe an ‘expanded summary’ as a summary which includes ‘information that goes beyond the four corners of the documents being summarized’.

²² Rule 154 allows the Trial Chamber to admit evidence in the form of a document or other record ‘from the bar table’, without requiring a witness to produce or to identify it.

²³ Ayyash Defence submission, paras 15, 30-32.

²⁴ Ayyash Defence submission, para. 30.

²⁵ Ayyash Defence submission, para. 31.

to Rule 130'.²⁶ A Trial Chamber's discretion in controlling the conduct of the proceedings is limited to its obligation to ensure a fair and expeditious trial and the use of thematic summaries violates both prongs of this limitation.²⁷

9. The 'cumulative effect' of the summaries prejudices the fair trial rights of the Accused.²⁸ The repetition of the Prosecution's version of events could, by the concept of 'illusory truth effect', subconsciously influence the Trial Chamber.²⁹ Any summary of the evidence should only occur after all the evidence is presented, in conformity with Rule 147 on closing arguments.³⁰ Any mid-trial summary would be an 'incomplete story based on incomplete evidence'.³¹ The balancing measure—which the Trial Chamber has proposed—consists of 'forcing' the Defence to provide its own summaries and demonstrates the inherent prejudice in the summaries and is in violation of the Accused's right to remain silent.³² The use of thematic summaries would also 'violate the Defence right to an expeditious trial', as the court time dedicated to this could be used to hear the evidence of witnesses.³³

10. Further, the request for thematic summaries reveals a need for greater clarity in the Prosecution's case.³⁴ Similar concerns, however, are addressed in the Rules by challenges to the indictment and the presentation of final briefs and closing arguments by the Parties.³⁵ The Trial Chamber, however, dismissed the motions by the Defence of four of the Accused alleging defects in the form of the amended indictment.³⁶ Any difficulty in understanding the evidence, and its connection to the case, lies in the manner the evidence is presented by the Prosecution, which should be more coherent.³⁷

Prosecution's response

11. The Prosecution responded, with regard to 'expanded summaries', arguing that counsel for Mr Ayyash has not demonstrated any prejudice in the Trial Chamber posing

²⁶ Ayyash Defence submission, para. 36.

²⁷ Ayyash Defence submission, para. 37.

²⁸ Ayyash Defence submission, paras 38.

²⁹ Ayyash Defence submission, para. 38.

³⁰ Ayyash Defence submission, para. 38.

³¹ Ayyash Defence submission, para. 43.

³² Ayyash Defence submission, para. 39.

³³ Ayyash Defence submission, para. 44.

³⁴ Ayyash Defence submission, para. 36.

³⁵ Ayyash Defence submission, para. 36.

³⁶ Ayyash Defence submission, para. 35.

³⁷ Ayyash Defence submission, para. 41.

questions to the Prosecution without advance notice to the Parties.³⁸ Similarly, no prejudice to the Accused has been demonstrated by thematic summaries.³⁹ Given the complexity of the case and the Prosecution's reliance on thousands of pieces of circumstantial evidence, summaries of evidence may assist the Trial Chamber in understanding how a piece of evidence fits into the Prosecution's theory of the case.⁴⁰ Therefore, instead of causing undue delay, summaries promote overall efficiency.⁴¹ Moreover, the Statute does not recognize a defence right to an expeditious trial as distinct from an accused's right to be tried without undue delay.⁴² The opinion of Defence counsel that the time spent on thematic summaries would have been better spent elsewhere does not demonstrate a violation of Mr Ayyash's right to be tried without undue delay.⁴³ Further, Defence counsel do not address the impact—on their claim of prejudice as resulting from delay—of the fact that proceedings are *in absentia*, and therefore the Accused are not detained.⁴⁴

12. With regard to the 'illusory truth effect', professional judges, unlike lay jurors, must provide a written, reasoned opinion supporting the judgement that is confined to the evidence on the record.⁴⁵ Summaries are not closing submissions.⁴⁶ The appropriate time for the Defence to propose thematic summaries is during the Defence cases, when the relevant evidence is presented, as this would assist the Trial Chamber and ensure that court time is not spent on extensive submissions.⁴⁷ Finally, responses to thematic summaries by Parties should be made in closing briefs and submissions.⁴⁸

Sabra Defence reply

13. Counsel for Mr Sabra, replying to the Prosecution on the timing of, and responses to, thematic summaries, submit that the Trial Chamber has recognised that the Parties can respond to thematic summaries at the time of the summary.⁴⁹ When they presented a mid-trial summary during the Prosecution's case, the Trial Chamber offered the Prosecution the

³⁸ Prosecution response to Ayyash Defence submission, para. 6.

³⁹ Prosecution response to Ayyash Defence submission, paras 9-15.

⁴⁰ Prosecution response to Ayyash Defence submission, paras 2-3.

⁴¹ Prosecution response to Ayyash Defence submission, para. 3.

⁴² Prosecution response to Ayyash Defence submission, para. 12.

⁴³ Prosecution response to Ayyash Defence submission, para. 15.

⁴⁴ Prosecution response to Ayyash Defence submission, para. 14.

⁴⁵ Prosecution response to Ayyash Defence submission, para. 9.

⁴⁶ Prosecution response to Ayyash Defence submission, para. 4.

⁴⁷ Prosecution response to Ayyash Defence submission, para. 11.

⁴⁸ Prosecution response to Ayyash Defence submission, para. 11.

⁴⁹ Sabra reply, para. 4.

opportunity to respond.⁵⁰ The Prosecution, however, made no timely objection, and has failed to articulate any legal basis to reconsider the ruling.⁵¹ No court time would be saved by postponing Defence summaries until after the close of the Prosecution's case, and the Trial Chamber would not be assisted to wait until then, given the lengthy duration of the Prosecution's case.⁵²

Discussion

14. This case is very technical and very complex. The Trial Chamber has sat for 223 days, and has received the evidence of 207 witnesses, 1,082 exhibits and the transcript is of 51,415 pages.⁵³ All Parties and the Legal Representative of Victims acknowledge this complexity,⁵⁴ leading them, with the exception of counsel for Mr Ayyash and Mr Merhi, to support the presentation of periodical summaries of evidence.

15. Mid-trial thematic summaries could be very useful to the Trial Chamber. But, like an opening or closing statement, they are not evidence. And, as the Prosecution has submitted with regard to its thousands of pieces of circumstantial evidence, in most instances, 'the potential relevance of these individual pieces may only be considered in the context of other related pieces of evidence'.⁵⁵ Such summaries can therefore aid the Trial Chamber, Parties and participating victims—and the public—in understanding the voluminous evidence and how some pieces of evidence relate to other pieces and to the evidence as a whole. For this reason, they can promote the overall efficiency of the trial.

16. Mid-trial summaries may also clarify how admitted evidence relates to other anticipated pieces of evidence and how it fits in the larger context of the case. They may help to better contextualise the evidence. An opening statement may be viewed as a form of 'roadmap' for a court, and judicial academic support exists for mid-trial supplements to the

⁵⁰ Sabra reply, para. 4, *referring to* transcript of 19 November 2015, p. 121, lines 17-19.

⁵¹ Sabra reply, paras 3-5.

⁵² Sabra reply, paras 8-10. Counsel equate the use of thematic summaries by the Defence with their right to make an opening statement or file amended versions of a pre-trial brief. *See* Sabra reply, para. 6.

⁵³ This represents the total page count of all three language versions of the transcripts (English, French, Arabic) as of Monday 4 April 2016.

⁵⁴ Legal Representative of Victims' submission, para. 36; Ayyash Defence submission, para. 41; Sabra Defence submission, para. 9.

⁵⁵ Prosecution response to Ayyash Defence submission, para. 2.

initial statement.⁵⁶ Mid-trial summaries, it is stressed, have no evidentiary value. No qualitative assessment is made of the evidence.

17. The Trial Chamber has full control over the conduct of the trial. This includes the use of mid-trial summaries, and although the Rules do not specifically envisage mid-trial thematic summaries, the Trial Chamber's directions on the conduct of the proceedings 'are intended to supplement the Special Tribunal's Statute and Rules [...]'.⁵⁷ The Trial Chamber has a wide discretion in the conduct of the proceedings, to the extent that its directions are 'necessary and desirable to ensure a fair, impartial and expeditious trial'.⁵⁸ The Trial Chamber's directions do not address mid-trial summaries, but state that the administrative guidelines for the conduct of the proceedings 'may be varied if required in the interests of justice'.⁵⁹ A Trial Chamber's organic familiarity with the day-to day conduct of the Parties and the practical demands of the case is at the basis of its discretion in relation to trial management.⁶⁰ In the Trial Chamber's view, it is now appropriate to supplement these directions to allow mid-trial thematic summaries of evidence.

18. With regard to the suggestion by counsel for Mr Ayyash that the need for thematic summaries may result from deficiencies in the consolidated indictment, the Trial Chamber reiterates that the Prosecution, in the consolidated indictment, is not required to plead evidence.⁶¹ However, organisation of the evidence in a long and complex case, involving five Accused and 72 participating victims, is very, very challenging. Using mid-trial thematic summaries is a proportionate and sensible tool that cannot prejudice the rights of the Accused to a fair trial.

19. Indeed, arguments of prejudice to the Accused lack merit. While repetition of a proposition may, of course, strengthen a belief that a proposition is true, this does not of itself

⁵⁶ See William W. Schwarzer, Reforming Jury Trials, in *The University of Chicago Legal Forum*, 1990, pp 144-146. Referring to complex litigation and lengthy jury trials, Judge Schwarzer, then a Judge of the United States District Court, highlighted the need for jurors, after looking at an opening statement as 'a road map', to consult 'their maps' more than once. He refers to alternative approaches, such as interim summations or interim statements as supplements to the opening statement. Further, in the United States of America, the practice of 'interim statements' has been recommended in cases of complex litigation and lengthy trials. See *Manual for Complex Litigation*, Fourth Federal Judicial Center, 2004, p. 147. Although the manual deals with civil cases, there is no substantive difference in practice between lengthy and complex civil and criminal proceedings.

⁵⁷ Directions on the Conduct of the Proceedings, para. 1.

⁵⁸ See Rule 130 (A).

⁵⁹ Directions on the Conduct of the Proceedings, para. 1.

⁶⁰ See in this sense, e.g., ICTY, *Prosecutor v. Jadranko Prlić et al.*, IT-04-74-AR73.4, Decision on Prosecution Appeal Following Trial Chamber's Decision on Remand and Further Certification, 11 May 2007, para. 17.

⁶¹ F1105, Decision on Alleged Defects in the Form of the Amended Indictment of 21 June 2013, 13 September 2013, para. 17.

hold in relation to a Trial Chamber hearing intermittent mid-trial thematic summaries of evidence. The Trial Chamber, at the conclusion of the case, can only assess the oral and written evidence formally received onto the court record. A summary—whether of a witness statement, or an expert report, or a thematic tranche of evidence—is no more than a submission, or a ‘roadmap’. It is not evidence and the Trial Chamber will not treat it as such. And, as noted, the Trial Chamber must give a reasoned judgement based only upon the evidence on the court record.

20. Further, the studies on voters’ psychology and campaign messages, and the concept of ‘illusory truth effect’—relied on by counsel for Mr Ayyash—do not demonstrate that judges are, or can be influenced to the prejudice of the Accused by hearing summaries of evidence. To the contrary, these summaries aim to assist the judges in their comprehension of the evidence.

21. Counsel for Mr Ayyash also rely on an extract from the ICTY’s *Haradinaj* Trial Judgement which highlights ‘how deceptive a first impression based on an incomplete story can be’.⁶² But this, however, only illustrates how a Trial Chamber, composed of three judges, ultimately bases its conclusions on the assessment of the evidence in its totality, and not on mid-trial thematic summaries. It is therefore not deceived by ‘a first impression based on an incomplete story’.⁶³ Further, the argument that allowing the Defence to present their own thematic summaries of evidence somehow infringes the Accused’s right to remain silent is entirely without merit. The Prosecution must prove its case beyond reasonable doubt. The Accused have a statutory right to silence. Allowing the Defence to summarise evidence is ‘forcing’ no-one to do anything.⁶⁴

22. Thematic summaries also cannot violate the right to an expeditious trial. The Trial Chamber will carefully consider any request by any of the Parties or by the Legal Representative of Victims to make a mid-trial thematic summary of evidence and may regulate its timing and length. For example, at the hearing of 19 November 2015—during the

⁶² Ayyash Defence submission, para. 42, referring to ICTY, *Prosecutor v. Ramush Haradinaj et al.*, IT-04-84-T, Judgement, 3 April 2008, para. 161, where the Trial Chamber highlighted that, in light of the more detailed evidence it had received, ‘the apparent conclusion would have been the wrong conclusion’.

⁶³ According to Rule 168 (B), in the relevant part, the Judgement shall be accompanied or followed as soon as possible by a reasoned opinion, in writing.

⁶⁴ See ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on Opening and Closing Statements, 22 May 2008, para. 16, where the Trial Chamber holds that ‘[i]t is for the accused to decide whether he or she wishes to make an unsworn written or oral statement during the trial (Article 67 (1)(h) of the Statute) or a closing statement after the prosecution (Rule 141(2) of the Rules)’.

Prosecution's case—the Trial Chamber requested the counsel for Mr Sabra to make a 'midpoint summary', or a presentation of 'the points of the Defence case'.⁶⁵ Counsel for Mr Sabra relied on information received as part of disclosure from the Prosecution.⁶⁶ Prosecution counsel actually 'welcomed' this summary.⁶⁷ This, however, was more of an explanation of what the Defence case was in relation to particular points of the Prosecution's case, than a mid-trial thematic summary of evidence.

23. The Trial Chamber does not agree with the Prosecution that any 'Defence mid-trial summary' should be postponed until after the Prosecution ends its case, or that any response can only be made in the context of the closing briefs or submissions. Contextually, however, and in reality, a Defence thematic mid-trial summary during the Prosecution's case is more likely to relate to the essence of a Defence case, rather than to Defence evidence presented during the Prosecution's case.

24. The Trial Chamber, on the basis of the practical demands of the case, and in particular its complexity, length, and technicality—especially in relation to the highly complex and technical telecommunications evidence—finds that mid-trial summaries of evidence may be an effective and useful tool in the conduct of the proceedings. Mid-trial summaries, it is emphasised, are not supposed to be procedural avenues for the Parties to argue their case, nor 'closing' or 'mid-trial submissions' through which the Prosecution requests the Trial Chamber to draw factual conclusions. They should be explanatory rather than argumentative.

B. IN-COURT SUMMARIES OF EVIDENCE ADMITTED UNDER RULES 154, 155 AND 156

25. The second issue under consideration, but not one on which the Trial Chamber sought submissions, is the practice of reading onto the record summaries of witness statements and documents. In paragraph 8 of the guidelines attached to the directions issued on 16 January 2014, the Trial Chamber stated that a Party tendering a witness statement into evidence under Rules 155, 156 and 158 must read a summary of the witness statement into the court record. Although the guidelines do not mention Rule 154, the same procedure has been followed in summarising documentary evidence.

⁶⁵ Transcript of 18 November 2015, p. 75; transcript of 19 November 2015, pp 101-121.

⁶⁶ Transcript of 19 November 2015, p. 101.

⁶⁷ Transcript of 18 November 2015, pp 52, 77.

Submissions

26. The Legal Representative of Victims and counsel for Mr Ayyash, Mr Merhi, Mr Oneissi and Mr Sabra filed submissions questioning the efficiency of the Prosecution's reading of in-court summaries of evidence admitted under Rules 154 and 155.⁶⁸

27. They do not object *per se* to the in-court summarising of evidence under Rules 154 and Rule 155,⁶⁹ but request the Trial Chamber to adopt an alternative approach by collectively describing it, by theme and topic, in pre-scheduled hearings dedicated to the presentation of periodical summaries of the Prosecution's evidence.⁷⁰

28. In effect, however, their submissions ostensibly seek the Trial Chamber's reconsideration (under Rule 140) of its directions of 16 January 2014.⁷¹ They submit that this practice adversely affects the expeditiousness of the proceedings, as the time could be better spent doing other work out of court.⁷² Counsel for Mr Sabra submit that these summaries of evidence are not brief—unlike at other international criminal tribunals—and undermine the very purpose of these Rules, which is to ensure judicial efficiency in lengthy international criminal proceedings.⁷³ They also propose, if documentary readings continue, that the Defence Office, under Rule 57 (F), should represent the interests of the Accused during the court time dedicated to this purpose.⁷⁴ The Legal Representative of Victims and counsel for Mr Sabra and Mr Ayyash argue that the underlying purpose to inform the public is already accomplished through the public filings concerning the determination on the admissibility of

⁶⁸ Legal Representative of Victims' submission, paras 5, 40; Oneissi Defence submission, para. 2; Sabra Defence submission, para. 2; Ayyash Defence submission, paras 1, 44; Merhi Defence submission, paras. 1-2. The Legal Representatives of Victims and counsel for Mr Oneissi, Mr Ayyash and Mr Merhi do not take issue with the reading in court of summaries of witness statements admitted pursuant to Rule 156 of the Rules, prior to the cross-examination of the relevant witnesses. *See* Legal Representative of Victims' submission paras 1, 7; Oneissi Defence submission, para. 2; Ayyash Defence submission, paras 1, 25.

⁶⁹ Legal Representative of Victims' submission, paras 32, 40; Oneissi Defence submission, para. 2; Sabra Defence submissions, paras 15-16.

⁷⁰ Legal Representative of Victims' submission, paras 32, 34, 37-38, 40; Oneissi Defence submission, para. 2; Sabra Defence submissions, paras 15-16.

⁷¹ Legal Representative of Victims' submission, paras 5, 40; Oneissi Defence submission, para. 2; Sabra Defence submission, paras 3, 20-21; Ayyash Defence submission, paras 1, 46. According to counsel for Mr Sabra, the changes sought would require the Trial Chamber to vary the Directions on the Conduct of Proceedings issued on 16 January 2014, either through a *proprio motu* reconsideration, or through the adoption of further directions under Rule 130, upon hearing the Parties.

⁷² Legal Representative of Victims' submission, paras 20-24; Oneissi Defence submission, para. 2; Sabra Defence submission, paras 2, 9-10; Ayyash Defence submission, para. 44; Merhi Defence submission, paras 1-2.

⁷³ Sabra Defence submission, paras 6-8. *See also* Ayyash Defence submission, para. 21.

⁷⁴ Sabra Defence submission, para. 14.

the relevant evidence and that in-court summaries are unnecessary.⁷⁵ Counsel for Mr Sabra also suggest that the publicity of the proceedings could be guaranteed, instead, by making these summaries available on the Special Tribunal's official website.⁷⁶

Discussion

29. Rules 154, 155 and 156 are designed to expedite complex international criminal law proceedings by allowing chambers to admit documents and witness statements into evidence in lieu of oral testimony. Their efficient and strategic use may save many, many, days, if not weeks or months, of court time. The practice of reading summaries of Rule 155 and Rule 156 witness statements originates at the International Criminal Tribunal for the Former Yugoslavia (ICTY),⁷⁷ with an underlying rationale of ensuring the public character of the trial.⁷⁸ The same rationale must also apply to reading summaries onto the record of documents admitted under Rule 154.

30. The Trial Chamber, since the commencement of the trial, has adopted a practice of first ruling on the admissibility of the documents and witness statements in a written decision. Thereafter, it formally admits them onto the court record in a public hearing, when the moving party reads a short summary of the statement or document—or, where there are many documents, a representative sample. It then allocates exhibit numbers. Relevant parts of the summaries of witness statements or documents are then publicly broadcast. The public policy purpose of this, as at the ICTY, is to allow those following the proceedings—such as the public and the media—to better understand the evidence. It also assists the Trial Chamber, the Parties and Legal Representative of Victims in contextualising the evidence, in summarised form, in the transcript.

31. The Trial Chamber, however, has generally only done this when it has had free court time resulting from the unavailability of witnesses. It last did this, for documents, on 5 November 2015,⁷⁹ and for witness statements, on 12 November 2015.⁸⁰ The Legal

⁷⁵ Legal Representative of Victims' submission, para. 23; Sabra Defence submission, paras 4-5; Ayyash Defence submission, paras 22-23, 27.

⁷⁶ Sabra Defence submission, para. 12.

⁷⁷ Transcript of 5 November 2015, pp 60-61, where this was highlighted by the Trial Chamber.

⁷⁸ For example, ICTY, *Prosecutor v. Momčilo Krajišnik*, IT-00-39-T, transcript of 3 September 2004, p. 5422, 'We do it because the procedure under Rule 92 *bis* under which written statements can be introduced into evidence makes it unclear for the outside world what approximately has been admitted into evidence, and therefore a short summary of what that evidence is about is read in court in order to serve the best of the ability of this Chamber the public character of the trial'.

⁷⁹ Transcript of 5 November 2015, pp 4, 10-47.

Representative of Victims himself acknowledged that this practice has generally been sporadic, occupying little court time.⁸¹ In the Trial Chamber's view, it is a non-issue.

32. But it is a real issue in that significant court time has been saved by admitting the evidence of 89 witnesses under Rules 155 and 156. The time taken to read summaries of their statements onto the record is but a tiny percentage of the time that would have been required for oral testimony. It also guarantees the transparency of the proceedings.

33. The right to a public hearing, unlike other procedural rights, involves more than the interest of the Accused. It also ensures both the public's right to know and the integrity of the judicial process. The Appeals Chamber has stressed the importance of the public nature of the proceedings and has emphasized that the Special Tribunal, in serving the Lebanese people, operates on the fundamental principle of open and transparent justice.⁸² This is particularly so, where—as stressed by the Legal Representative of Victims—the victims participating in the proceedings have access to public information only, and this trial is held *in absentia*.⁸³

34. The public filings, including the Trial Chamber's decisions, on the admissibility of evidence declared admissible under Rules 154, 155 and 156 do not necessarily of themselves properly inform the public about the content of the written evidence. As their focus is on the relevance and probative value of the evidence proposed for admission, the contents of the relevant statements or documents are not always or sufficiently summarised in those decisions or submissions.⁸⁴ Moreover, some evidence is subject to protective measures ordered under Rule 133 and is redacted or not made public. Furthermore—unlike transcripts—evidence admitted under Rules 154, 155 and 156 is not, pursuant to a decision of the Registrar, available on the Special Tribunal's website. These documents are also not available on the website of the International Criminal Court, and are publicly released only after some considerable delay on the ICTY's website.

35. The Trial Chamber is therefore satisfied that its directions on the conduct of the proceedings were neither erroneous nor an abuse of power, nor that any new facts or a

⁸⁰ Transcript of 12 November 2015, pp 1-6.

⁸¹ Legal Representative of Victims' submission, paras 19, 26.

⁸² STL-11-01/T/AC/AR126.6, Decision on Appeal by Counsel for Mr Oneissi against the Pre-Trial Judge's "Decision on the Oneissi Defence's Request for Disclosure regarding a Computer", 12 May 2014, para. 8.

⁸³ Legal Representative of Victims' submission, para. 3.

⁸⁴ Contrary to what counsel for Mr Ayyash argue, the fact that all information regarding the relevance of the proposed evidence must be contained, and addressed, in the relevant motions and decisions does not mean that the content of the anticipated evidence is also necessarily addressed, or summarized, in the relevant filings. See Rule 149 (C), reading 'A Chamber may admit any relevant evidence which it deems to have probative value'.

material change in the circumstances have arisen after the decision was made. No reconsideration of the decision issuing the directions is therefore required under Rule 140. For efficiency, however, the Trial Chamber agrees that, wherever possible, witness summaries and documents, covering the same type of information should be summarized together, or collectively, so long as this is not detrimental to a clear understanding of the content of the evidence.

36. Finally, counsel for Mr Sabra's request to be represented by the Defence Office, under Rule 57 (F), during the court time dedicated to the reading of summaries is rejected. The Defence Office provides assistance to assigned or appointed Defence counsel.⁸⁵ It does not substitute or replace Defence counsel in representing and defending the rights of the Accused and in attending court hearings.

CONCLUSION

37. The Trial Chamber reiterates the importance of the public nature of the proceedings. No change is required to the directions on the conduct of the proceedings in relation to summarising evidence in lieu of oral testimony or examination in chief. The Parties, however, should ensure that, in all circumstances, summaries of written evidence are presented concisely. Whenever possible and appropriate, they should summarize together, or collectively, witness statements or documentary evidence covering the same type of information, and—if the circumstances so allow—incorporate them into mid-trial summaries.

38. Mid-trial summaries are extremely useful in contextualising a case as complex and technical as this one. They are permissible under Rule 130 (A). There is no prejudice to the rights of the Accused to a fair, impartial and expeditious trial. The Trial Chamber will therefore supplement its guidelines attached to the directions on the conduct of the proceedings to permit intermittent mid-trial thematic summaries of evidence.

FOR THESE REASONS, the Trial Chamber, having heard the Parties and the Legal Representative of Victims gives the following direction on the conduct of the proceedings under Rule 130 (A), to supplement its existing guidelines:

Where the Trial Chamber deems it necessary to gain a better understanding of the evidence, the Parties and the Legal Representative of Victims—upon its request,

⁸⁵ See Rules of Procedure and Evidence – Tribunal's President's Explanatory Memorandum (as of 12 April 2012), para. 22.

shall—or, with its leave may, present an in-court mid-trial thematic summary of evidence.

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

Leidschendam,
The Netherlands
7 April 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

