



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: 11 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 PROSECUTION MOTION TO ADD INVENTORY AND
SUPPORTING DOCUMENTS RELATING TO THE SEARCHES
OF THE RESIDENCE OF AHMED ABU ADASS**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne

Victims' Legal Representatives:

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Salim Jamil Ayyash:

Mr Eugene O'Sullivan, Mr Emile Aoun &
Mr Thomas Hannis

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 Dorothée Le Fraper
du Hellen & Mr Jad Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Youssef
Hassan & Ms Natalie von Wistinghausen

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution seeks to amend its exhibit list, filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence, by adding a list (or 'inventory') of items seized at Mr Ahmed Abu Adass's residence and six supporting documents, and to admit them into evidence, under Rules 149 (C) and 154.¹ The list indexes the 2109 items seized during the searches of Mr Abu Adass's residence in Beirut on 14 February 2005; six supporting documents accompany the list and describe the collection and transmission of the seized items.² The Trial Chamber requested the Prosecution to tender this list following a discussion in court, on 16 November 2015, in relation to these seized items.³ Counsel for the five Accused did not respond to the motion.

SUBMISSIONS

2. On 14 February 2005, shortly after Lebanese television aired a 'false claim of responsibility' for the assassination of the former Lebanese Prime Minister, Mr Rafik Hariri, a team from the Lebanese Army, followed by a team from the Lebanese Internal Security Forces (ISF), searched Mr Abu Adass's residence and seized 2109 items. The United Nations International Independent Investigation Commission (UNIIC) received the seized items, after sending a request for assistance to the Lebanese Government. The UNIIC then transmitted them to the Prosecutor of the Special Tribunal. The Prosecution subsequently prepared the index of all 2109 items.⁴

3. In addition to the list, the proposed evidence comprises six documents: (i) an information brief dated 14 February 2005 prepared by the ISF documenting the seized items; (ii) a report by the Military Police of the Lebanese Army dated 21 February 2005 issued by the Military Investigating Judge Mezher; (iii) an inventory of material transmitted by Prosecutor-General of Lebanon to the UNIIC on 9 May and 5 June 2006; (iv) a response of the Prosecutor-General of Lebanon to the UNIIC dated 25 January 2007 in relation to the items seized at Mr Abu Adass's residence; (v) a 'compilation report' from the Lebanese authorities in response to a UNIIC's request for assistance dated 9 January 2008; and (vi) copies of photographs and computer prints. These documents assist in understanding the list

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Mehri, Oneissi, and Sabra*, F2477, Prosecution Motion to Add Inventory and Supporting Documents Relating to the Searches of the Residence of Ahmed Abu Adass, 1 March 2016.

² Prosecution motion, paras 3-5.

³ Transcript of hearing on 16 November 2015, pp 38-41.

⁴ Prosecution motion, paras 4-5.

and provide the underlying evidence and indicia of reliability for the list.⁵

DISCUSSION

A. Amendment of the exhibit list

4. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list, 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.⁶ 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.⁷

5. The Prosecution's motion seeks to amend its exhibit list by adding a list of items seized from Mr Abu Adass's residence and six supporting documents, and then to admit them into evidence. The Trial Chamber, having reviewed the list and the supporting documents, finds that they are all *prima facie* relevant and probative. Adding these documents to the exhibit list will not unduly impact Defence preparations for trial nor cause significant delay. The list and the supporting documents were disclosed to the Defence between July 2012 and March 2016. The Trial Chamber is satisfied that the interests of justice allow the Prosecution to amend its exhibit list.

B. Admission into evidence of documents under Rule 154

6. 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 and this Trial Chamber. 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. Only *prima facie*—rather than definite—reliability and probative value is required at this stage. Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering

⁵ Prosecution motion, paras 6-9.

⁶ F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence,' 9 July 2015, para. 66.

⁷ Decision of 9 July 2015, para. 66.

party must also demonstrate, with clarity and specificity, where and how each document or record fits into its case.⁸

7. The Trial Chamber is satisfied that the list and the supporting documents are relevant and probative of the seizure and subsequent transfer of the items found at Mr Abu Adass's residence, in other words, the 'chain of custody'. Moreover, the Defence does not oppose their admission into evidence. And, as specified in the motion, the tendered documents will not impede the Defence ability to prepare in any way, but will rather facilitate its understanding of whether any items seized are of relevance to the Defence case. The Trial Chamber accordingly finds the list of seized items and the supporting documents admissible under Rule 154.

CONFIDENTIALITY

8. The Prosecution requests that Annex B to the motion, containing summaries of larger supporting documents, remain confidential. The Trial Chamber re-emphasises the public nature of the proceedings. Because the information in the annex is publicly summarised in paragraph 7 of the Prosecution motion, the annex should remain confidential without requiring a publicly redacted version.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

GRANTS the Prosecution leave to amend its exhibit list by adding the list of seized items and the supporting documents listed in Annex A;

DECLARES the list of seized items and the supporting documents admissible under Rule 154;

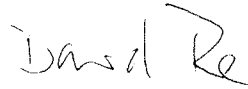
DECIDES that it will, at a suitable stage in the proceedings, formally admit the list of seized items and the supporting documents into evidence; and

ORDERS Annex B to remain confidential.


⁸ Decision of 9 July 2015, para. 66.

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

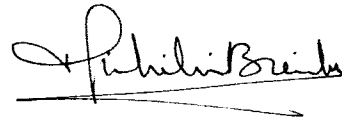
Leidschendam,
The Netherlands
11 April 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

