

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

Date: 12 July 2016

Original language: English

Type of document: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**DECISION ALLOWING THE PROSECUTION TO AMEND ITS EXHIBIT
LIST TO REPLACE ATTRIBUTION REPORTS OF MR ANDREW
DONALDSON (WITNESS PRH230)**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Milne

**Legal Representatives of
Participating Victims:**

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

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis &
Mr Chad Mair

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Jad 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 Guénaël Mettraux &
Mr Geoffrey Roberts



INTRODUCTION

1. The Prosecution requests the Trial Chamber's leave to amend its exhibit list, filed under Rule 91 of the Special Tribunal's Rules of Procedure and Evidence, by adding five 'updated attribution reports' (Evidence of Telephone Attribution) related to the Accused and to Mr Mustafa Amine Badreddine. They are authored by Mr Andrew Donaldson (Witness PRH230).¹ These reports would replace the 'attribution reports' currently on the Prosecution's exhibit list, prepared by the same witness. No Defence counsel responded to the motion.

SUBMISSIONS

2. The Prosecution submits that the proposed amendments to its exhibit list are in the interests of justice. The updated attribution reports are *prima facie* relevant and probative of allegations pleaded in the consolidated indictment, as they present Mr Donaldson's analysis and conclusions regarding the underlying evidence related to the attribution of relevant telephone numbers to the Accused.

3. There is good cause to grant its request, as the updated attribution reports: (i) 'reflect important evidence' that the Prosecution obtained after the completion of the attribution reports currently on the exhibit list; and (ii) incorporate the Prosecution's reassessment of its methodology with respect to address locations and its reassessment of the sources and evidence for attribution.

4. Adding the updated attribution reports to the exhibit list is consistent with the rights of the Accused to adequate time to prepare for trial because the reports were disclosed to the Defence in November 2015 and Mr Donaldson will not be recalled to testify until later in 2016.

5. According to the Prosecution, adding the updated attribution reports will also facilitate the Defence's preparation for the attribution phase of its case since these reports: (i) analyse new evidence which has been disclosed to the Defence and added to the Prosecution's exhibit list—such as end cell data for the telephones operating on the Alfa network, vehicle registration data and data related to address and locations in Lebanon; (ii) provide additional details, explanations and analysis of evidence relevant to the Prosecution's attribution case which Mr Donaldson did not reference in his current reports, such as the analysis of specific examples of co-location and an analysis of Mr

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2444, Prosecution Request to Amend its Exhibit List to Replace Attribution Reports of Witness PRH230, 9 February 2016, paras 1, 19.

Oneissi's appointments with Witnesses PRH067 and PRH371; (iii) reflect a revised and more accurate approach to 'address points', which is based on the Prosecution's reassessment of its prior methodology;² (iv) reflect a thorough review of the underlying sources, as some references have been removed as duplicative or are no longer relied upon, and others have been added when related to sources derived from new evidence; and (v) incorporate typographical and grammatical errors in the existing reports.

DISCUSSION

6. The Trial Chamber may, in the interests of justice, allow a party to amend its exhibit list. In doing so, it 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, among other factors, 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.³

7. These reports update existing attribution reports and cover the same subject matter.⁴ The attribution of telephones to the Accused is a key part of the Prosecution's case, as alleged in the consolidated indictment.⁵ The updated attribution reports are therefore *prima facie* relevant and probative.

8. The analysis in the updated reports reflects new attribution-related evidence, like end cell data, obtained after the current reports were produced. Good cause exists to allow the Prosecution to add these reports to its exhibit list. Further, the newly obtained 'evidence' analysed in the updated

² Prosecution Motion, paras 2, 9, 12. The Prosecution explains that the revised methodology takes a more holistic view of the underlying evidence relevant to addresses, including not only GPS data, but also Land Registry plots and other corroborating data.

³ F2544, Decision on Prosecution Motion to Add Inventory and Supporting Documents relating to the Searches of the Residence of Ahmed Abu Adass, 11 April 2016, para. 4; F2270, Decision Authorising the Prosecution to Amend Its Exhibit List, 15 October 2015, para. 4; F2149, Decision on Prosecution Motion to Admit 62 Photographs, 28 August 2015, para. 3; F1901, Decision on Prosecution Motion to Amend its Exhibit List and Oneissi Defence Request to Stay the Proceedings, 13 April 2015 (Decision of 13 April 2015), para. 34; 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.

⁴ A telephone attribution report examines evidence regarding the attribution of one or more telephone numbers to each one of the Accused. See F1852, Decision on Prosecution Motion to Add Four Items to the Exhibit List, 13 February 2015, para. 11, fn. 22.

⁵ Consolidated indictment, paras 14-47.

reports has been added to the Prosecution's exhibit list, after the Trial Chamber found that the relevant amendments were in the interests of justice.⁶

9. Allowing these additions will not adversely affect the Defence's ability to prepare for trial or cause undue delay given that: the updated attribution reports would replace previous versions on the exhibit list; were disclosed to the Defence in November 2015—after their completion and in advance of the motion; and Mr Donaldson will not testify until later this year. Each updated report contains annexes explaining the updates and changes to the reports currently on the exhibit list.⁷ Further, the motion is unopposed by any of the counsel for the Accused.

10. Additionally, the Trial Chamber considers that—according to the Prosecution's submissions—the updated reports, besides reflecting new evidence, provide explanations and analysis of other additional relevant evidence, incorporate the Prosecution's apparently improved methodology with regard to the location of addresses and correct typographical and grammatical errors. The resulting increased comprehensibility and accuracy of Mr Donaldson's reports may facilitate the Defence preparation and assist the Trial Chamber.

11. The Trial Chamber is therefore satisfied that it is in the interests of justice to allow the Prosecution to amend its exhibit list.

12. Allowing these additions to the Prosecution exhibit list, however, does not mean that the Trial Chamber will receive them into evidence.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ALLOWS the Prosecution's motion for leave to amend its exhibit list by adding the five reports listed in Annex A of its motion.

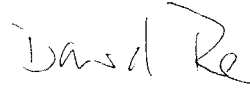
⁶ See, for example, with regard to end cell data, Decision of 13 April 2015, paras 6, 37, 47, disposition.

⁷ For each updated attribution report, there are separate annexes for the following categories of changes: 'typographical errors', 'additions and edits', and 'empirical changes'.

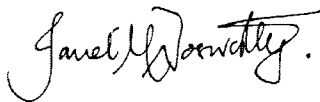
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,
The Netherlands

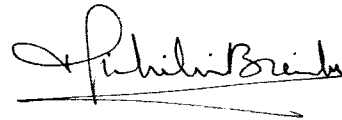
12 July 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

