

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

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: 16 September 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

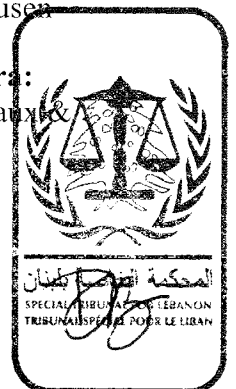
**DECISION ON AGREEMENTS AS TO EVIDENCE BETWEEN PROSECUTION
AND SABRA DEFENCE ON UNITED NATIONS FACT-FINDING MISSION
AND UNHCR REPORTS**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad Mair

**Legal Representatives of
Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**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 Guénaél Mettraux &
Mr Geoffrey Roberts

1. The Trial Chamber, on 26 July 2016, issued a decision on Mr Assad Hassan Sabra's motion seeking judicial notice of United Nations Fact-Finding Mission and United Nations International Independent Investigation Commission (UNIIC) reports. The Trial Chamber in that decision identified facts that were not 'facts of common knowledge', but were not necessarily facts in dispute and observed that it could accept agreements as to evidence between individual Accused and the Prosecution with respect to these facts.¹

2. Consequently, the Trial Chamber ordered the Parties to the proceedings to attempt to reach agreement as to the evidence under Rule 122 of the Special Tribunal's Rules of Procedure and Evidence in relation to the facts listed in Table B of that decision, namely, selected facts taken from the United Nations Fact-Finding Mission report and nine UNIIC reports.²

3. After reaching agreement with the Prosecution, counsel for Mr Sabra subsequently filed a table of paragraphs from the United Nations Fact-Finding Mission and the relevant UNIIC reports.³

4. Rule 122 provides:

The Prosecutor and the Defence may agree that an alleged fact [...] is not contested, and, accordingly, a Chamber may consider such alleged fact as being proved, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

5. The Trial Chamber has carefully examined the proposed agreed facts and considers each of the facts listed in the table below to be proved in the case against Mr Sabra. Table A comprises the facts agreed between the Prosecution and the counsel for Mr Sabra. Table B is a consolidated list of the facts agreed between the Prosecutor and counsel for the four Accused as recorded in its decision of 11 April 2014⁴ and the 18 facts agreed between the Prosecution and counsel for Mr Sabra.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2665, Decision on Sabra Defence Motion Seeking Judicial Notice of United Nations Fact-Finding Mission and UNIIC Reports, 26 July 2016, ('Decision of 26 July 2016') paras 29-30 and Table B.

² Decision of 26 July 2016, para. 31 and Disposition.

³ F2698, Sabra Notice to the Trial Chamber regarding Certain Paragraphs from the UNIIC Reports, 22 August 2016.

⁴ F1492, Second Decision on Agreed Facts under Rule 122, 11 April 2014 ('Decision of 11 April 2014').

6. Individual case management meetings will be held in the near future to attempt to reach agreement on these facts with counsel for the other three Accused.⁵

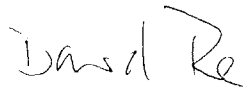
DISPOSITION

FOR THESE REASONS, the Trial Chamber:

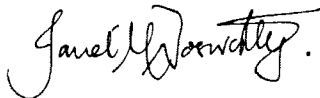
RECORDS under Rule 122 the agreement of the Prosecutor and counsel for Mr Sabra in relation to the 18 facts listed in Table A that it may consider proved at trial in the case against Mr Sabra.

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

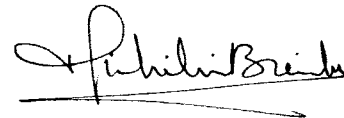
Leidschendam,
The Netherlands
16 September 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

⁵ F2714, Order Appointing Judge Rapporteur for Reaching Agreement between the Parties on Matters in Dispute Including Trial Scheduling, 7 September 2016.

TABLE A

Fact Finding Mission Report⁶ –24 March 2005	
Page/Paragraph Number	Facts
Page 5, paragraph 8	However, during 2004, certain voices in Lebanon suggested amending the Constitution in order to extend the term of Mr. Lahoud.
Page 6, paragraph 13	On 2 October 2004 former Minister Marwan Hemadeh narrowly escaped death when a bomb exploded next to his car. His guard was killed in the explosion.
Page 13, paragraph 40	Mr Abu Adas, a male of Palestinian origin, was born in Jeddah (Saudi Arabia) on 29 August 1982 and came to Lebanon with his family in 1991. He is the son of Taysir Abu Adas and Nehad Moussa Nafeh.
First UNIIC Report⁷ –20 October 2005	
Page 5, Summary	The main lines of investigation of the Commission focused on the crime scene, technical aspects of the crime, analysis of telephone intercepts, the testimony of more than 500 witnesses and sources, as well as the institutional context in which the crime was committed.
Page 12, paragraph 7	Shortly after the signing of the memorandum of understanding, the Lebanese authorities transmitted to the Commission an 8,000-page case docket containing all the information and evidence collected since 14 February 2005.
Page 12, paragraph 8	The Commission established close links with the Lebanese security and judicial authorities. Regular discussions were held, particularly with the judicial authorities, to exchange updated information and files, share results and plan for the emerging phases of the investigation. Most of the witnesses interviewed by the Commission were summoned through the Lebanese judicial and security authorities.
Page 21, paragraph 46	The file was handed over to the new Investigative Judge, Judge Abou Arraj. Judge Abou Arraj was Investigative Judge for the investigation from 22 February to 23 March 2005. He was appointed by First Judge Tanios Khoury, at the Supreme Council, and the file was registered at Abou Arraj's office on 22 February 2005 [.]
Page 24, paragraph 48	On 23 March 2005, Judge Abou Arraj stepped down from the post of Investigative Judge.
Second UNIIC Report⁸ - 12 December 2005	
Page 11, paragraph 46	As in any criminal inquiry of this nature, the investigation has

⁶ Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of the former Prime Minister Rafik Hariri, 24 March 2005, S/2005/203.

⁷ Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005), 20 October 2005, S/2005/662.

⁸ Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005), 12 December 2005, S/2005/775.

	sought a comprehensive understanding of all possible perpetrators, modus operandi and motives. To that end, the Commission is in the process of reviewing a substantial volume of material from Government agencies regarding their surveillance operations; interviewing witnesses to examine more thoroughly the relationships between Mr. Hariri and various significant individuals; continuing the investigation into Mr. Abu Adass; enhancing telephone analysis; and pursuing any leads regarding potential motives or perpetrators.
Page 13, paragraph 56	As noted in the previous report, the UNIIC investigation confirmed that, during the period prior to the assassination, there was growing tension between Mr. Hariri and senior Syrian officials, including Syrian President Bashar Al-Assad.
Fourth UNIIC Report⁹ - 10 June 2006	
Page 5, paragraph 9	Considerable progress has been made in building a solid organization capable of meeting the significant investigative, analytical, security, translation and interpretation, and other challenges associated with its mandate. Nonetheless, sustaining an undertaking of such complexity over an extended period of time remains a critical focus of the Commission's work. Certainty of mandate and predictability of financial, human and other resources are the backbone of any organizational growth. They constitute the underpinning of the systematic and methodological approach advocated in the Commission's previous report. The Commission thus welcomes the request of the Government of Lebanon to the Secretary-General dated 4 May 2006 to extend its mandate for a further period of up to one year. Such an extension would provide a sense of continuity and stability, guarantee steady operations and planning, and offer assurances to staff.
Page 22, paragraph 104	In order to assist the investigation, the full and unconditional cooperation of the Syrian Arab Republic with the Commission remains crucial. On the basis of information received, further requests will be formulated and addressed to the Syrian Arab Republic. In all its meetings with Syrian officials, the Commission received assurances of the intention of the Syrian Arab Republic to comply fully with all its requests and to support the Commission's pursuit of those who killed former Prime Minister Hariri. Syrian officials have also offered to actively cooperate with and assist the Commission by making available information in their possession which may be relevant to the investigation. The Commission will continue to request full cooperation from Syrian authorities, including in collecting documents, seeking specific information and facilitating the interviews of Syrian citizens.
Page 23, paragraph 109	The internal working procedure sets out the standard operating procedures applicable to the different investigative and

⁹ Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), 10 June 2006, S/2006/375.

	managerial aspects of the Commission's work. The investigative matters regulated include the modalities of interviews of witnesses and suspects; the treatment of sensitive sources; and the management of forensic exhibits and evidence. Managerial issues encompass a code of conduct and interpretation and translation standards. In addition, the internal procedure standardizes the relations of the Commission with Member States and their judicial authorities, in particular regarding requests for assistance.
Ninth UNIIC Report¹⁰ - 28 November 2007	
Pages 16-17, paragraph 83	The Commission also maintains a close working relationship with the Lebanese authorities which provide security to the Commission's staff and facilities. The Commission is grateful to the Lebanese Army and to the Internal Security Forces for their unflinching support.
Tenth UNIIC Report¹¹ - 28 March 2008	
Page 3, paragraph 3	Terrorist investigations are by definition complex and difficult. The Commission faces additional challenges, including the magnitude of the attacks, their continuing nature and the fact that the investigations are conducted in an environment dominated by ongoing security concerns. Despite these difficulties, the Commission has continued its methodical approach in assisting the Lebanese authorities to solve the cases, being guided exclusively by the facts and the evidence and exploring all investigative leads.
Pages 3-4, paragraph 8	In the last four months, the Commission witnessed a deteriorating security environment. A number of attacks targeted members of the Lebanese security forces and the international community. The political and economic conditions in the country have also led to a number of street demonstrations that resulted in violent clashes and shootings.
Page 4, paragraph 13	The Commission has accelerated the pace of its operations. Since it last reported, it has more than doubled the number of requests for assistance sent to Lebanon and other States, from 123 to 256.
Eleventh UNIIC Report¹² - 2 December 2008	
Page 5, paragraphs 22-23	First, the Commission has faced difficulties in obtaining potentially sensitive information for investigative purposes. The Commission also frequently sends formal requests for assistance for specific information to Member States. The Commission is

¹⁰ *Ninth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007), 28 November 2007, S/2007/684.*

¹¹ *Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007), 28 March 2008, S/2008/210.*

¹² *Eleventh report of the International Independent Investigation Commission established pursuant to Security Council Resolution 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008), 2 December 2008, S/2008/752.*

	mindful of the burden imposed on States in responding to such requests. While the vast majority of requests are responded to in a timely and comprehensive manner, the Commission notes that late or incomplete responses slow progress in the investigation.
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TABLE B

1. Consolidated list of agreed facts between the Prosecution and Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra.¹³

- i. In addition to killing Mr. Rafiq Hariri, the explosion killed 21 other persons listed in Schedule A of the Indictment;
- ii. The explosion injured 226 persons listed in Schedule B of the Indictment;
- iii. The video of the claim of responsibility was later broadcast on television;
- iv. Mr. Rafiq Hariri was born on 1 November 1944 in the city of Sidon, Lebanon;
- v. Mr. Rafiq Hariri served as Prime Minister of Lebanon in five governments from 31 October 1992 to 4 December 1998, and from 26 October 2000 until his resignation on 26 October 2004;
- vi. Mr. Rafiq Hariri was a prominent political figure in Lebanon;
- vii. After his resignation, Mr. Rafiq Hariri started preparing for parliamentary elections which were due to start in late May 2005;
- viii. Parliament is located at Place de l'Etoile, Beirut; and
- ix. In his armoured vehicle, Mr. Rafiq Hariri was accompanied by the Member of Parliament, Mr. Bassel Fuleihan.

2. Facts agreed between the Prosecution and Mr Assad Hassan Sabra.

- i. However, during 2004, certain voices in Lebanon suggested amending the Constitution in order to extend the term of Mr. Lahoud.¹⁴
- ii. On 2 October 2004 former Minister Marwan Hemadeh narrowly escaped death when a bomb exploded next to his car. His guard was killed in the explosion.¹⁵

¹³ Decision of 11 April 2014.

¹⁴ *Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of the former Prime Minister Rafik Hariri*, 24 March 2005, S/2005/203, p. 5, para. 8.

¹⁵ *Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of the former Prime Minister Rafik Hariri*, 24 March 2005, S/2005/203, p. 6, para. 13.

- iii. Mr. Abu Adas, a male of Palestinian origin, was born in Jeddah (Saudi Arabia) on 29 August 1982 and came to Lebanon with his family in 1991. He is the son of Taysir Abu Adas and Nehad Moussa Nafeh.¹⁶
- iv. The main lines of investigation of the Commission focused on the crime scene, technical aspects of the crime, analysis of telephone intercepts, the testimony of more than 500 witnesses and sources, as well as the institutional context in which the crime was committed.¹⁷
- v. Shortly after the signing of the memorandum of understanding, the Lebanese authorities transmitted to the Commission an 8,000-page case docket containing all the information and evidence collected since 14 February 2005.¹⁸
- vi. The Commission established close links with the Lebanese security and judicial authorities. Regular discussions were held, particularly with the judicial authorities, to exchange updated information and files, share results and plan for the emerging phases of the investigation. Most of the witnesses interviewed by the Commission were summoned through the Lebanese judicial and security authorities.¹⁹
- vii. The file was handed over to the new Investigative Judge, Judge Abou Arraj. Judge Abou Arraj was Investigative Judge for the investigation from 22 February to 23 March 2005. He was appointed by First Judge Tanios Khoury, at the Supreme Council, and the file was registered at Abou Arraj's office on 22 February 2005[.]²⁰
- viii. On 23 March 2005, Judge Abou Arraj stepped down from the post of Investigative Judge.²¹
- ix. As in any criminal inquiry of this nature, the investigation has sought a comprehensive understanding of all possible perpetrators, modus operandi and motives. To that end, the Commission is in the process of reviewing a substantial volume of material from Government agencies regarding their surveillance operations; interviewing witnesses to examine more thoroughly the relationships between Mr. Hariri and various

¹⁶ *Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of the former Prime Minister Rafik Hariri*, 24 March 2005, S/2005/203, p. 13, para. 40.

¹⁷ *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662, p. 5, summary.

¹⁸ *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662, p. 12, para. 7.

¹⁹ *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662, p. 12, para. 8.

²⁰ *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662 p. 21, para. 46.

²¹ *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662 p. 24, para. 48.

significant individuals; continuing the investigation into Mr. Abu Adass; enhancing telephone analysis; and pursuing any leads regarding potential motives or perpetrators.²²

- x. As noted in the previous report, the UNIIC investigation confirmed that, during the period prior to the assassination, there was growing tension between Mr. Hariri and senior Syrian officials, including Syrian President Bashar Al-Assad.²³
- xi. Considerable progress has been made in building a solid organization capable of meeting the significant investigative, analytical, security, translation and interpretation, and other challenges associated with its mandate. Nonetheless, sustaining an undertaking of such complexity over an extended period of time remains a critical focus of the Commission's work. Certainty of mandate and predictability of financial, human and other resources are the backbone of any organizational growth. They constitute the underpinning of the systematic and methodological approach advocated in the Commission's previous report. The Commission thus welcomes the request of the Government of Lebanon to the Secretary-General dated 4 May 2006 to extend its mandate for a further period of up to one year. Such an extension would provide a sense of continuity and stability, guarantee steady operations and planning, and offer assurances to staff.²⁴
- xii. In order to assist the investigation, the full and unconditional cooperation of the Syrian Arab Republic with the Commission remains crucial. On the basis of information received, further requests will be formulated and addressed to the Syrian Arab Republic. In all its meetings with Syrian officials, the Commission received assurances of the intention of the Syrian Arab Republic to comply fully with all its requests and to support the Commission's pursuit of those who killed former Prime Minister Hariri. Syrian officials have also offered to actively cooperate with and assist the Commission by making available information in their possession which may be relevant to the investigation. The Commission will continue to request full cooperation

²² *Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005)*, 12 December 2005, S/2005/775, p. 11, para. 46.

²³ *Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005)*, 12 December 2005, S/2005/775, p. 13, para. 56.

²⁴ *Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 10 June 2006, S/2006/375, p. 5, para. 9.

- from Syrian authorities, including in collecting documents, seeking specific information and facilitating the interviews of Syrian citizens.²⁵
- xiii. The internal working procedure sets out the standard operating procedures applicable to the different investigative and managerial aspects of the Commission's work. The investigative matters regulated include the modalities of interviews of witnesses and suspects; the treatment of sensitive sources; and the management of forensic exhibits and evidence. Managerial issues encompass a code of conduct and interpretation and translation standards. In addition, the internal procedure standardizes the relations of the Commission with Member States and their judicial authorities, in particular regarding requests for assistance.²⁶
- xiv. The Commission also maintains a close working relationship with the Lebanese authorities which provide security to the Commission's staff and facilities. The Commission is grateful to the Lebanese Army and to the Internal Security Forces for their unfailing support.²⁷
- xv. Terrorist investigations are by definition complex and difficult. The Commission faces additional challenges, including the magnitude of the attacks, their continuing nature and the fact that the investigations are conducted in an environment dominated by ongoing security concerns. Despite these difficulties, the Commission has continued its methodical approach in assisting the Lebanese authorities to solve the cases, being guided exclusively by the facts and the evidence and exploring all investigative leads.²⁸
- xvi. In the last four months, the Commission witnessed a deteriorating security environment. A number of attacks targeted members of the Lebanese security forces and the international community. The political and economic conditions in the country

²⁵ *Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 10 June 2006, S/2006/375, p. 22, para. 104.

²⁶ *Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 10 June 2006, S/2006/375, p. 23, para. 109.

²⁷ *Ninth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 28 November 2007, S/2007/684, pp 16-17, para. 83.

²⁸ *Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 28 March 2008, S/2008/210, p. 3, para. 3.

have also led to a number of street demonstrations that resulted in violent clashes and shootings.²⁹

- xvii. The Commission has accelerated the pace of its operations. Since it last reported, it has more than doubled the number of requests for assistance sent to Lebanon and other States, from 123 to 256.³⁰
- xviii. First, the Commission has faced difficulties in obtaining potentially sensitive information for investigative purposes. The Commission also frequently sends formal requests for assistance for specific information to Member States. The Commission is mindful of the burden imposed on States in responding to such requests. While the vast majority of requests are responded to in a timely and comprehensive manner, the Commission notes that late or incomplete responses slow progress in the investigation.³¹

²⁹ *Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 28 March 2008, S/2008/210, pp 3-4, para. 8.

³⁰ *Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 28 March 2008, S/2008/210, p. 4, para. 13.

³¹ *Eleventh report of the International Independent Investigation Commission established pursuant to Security Council Resolution 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008)*, 12 December 2008, S/2008/752, p. 5, paras 22-23.

