

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:** 22 September 2016

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**ORDER TO DEFENCE AND INVITATION TO PROSECUTION AND  
PARTICIPATING VICTIMS AND HEAD OF DEFENCE OFFICE TO FILE  
SUBMISSIONS ON THE POSSIBLE APPOINTMENT OF *AMICUS CURIAE***

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**Office of the Prosecutor:**

Mr Norman Farrell &amp; Mr Alexander Milne

**Legal Representatives of****Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra**Head of Defence Office:**

Mr François Roux

**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 Guénaél Metwally  
Mr Geoffrey Roberts

1. The Trial Chamber, on 7 September 2016, declared operative the Prosecutor's amended consolidated indictment, filed on 12 July 2016.<sup>1</sup> The decision was consequent to its decision terminating the proceedings against the former Accused, Mr Mustafa Amine Badreddine.<sup>2</sup>

2. In its decision, the Trial Chamber considered the submissions of Defence counsel concerning their ability to challenge any evidence led by the Prosecution about the role of Mr Badreddine as a co-conspirator in the conspiracy alleged in the amended consolidated indictment. The Trial Chamber is mandated under Article 16 of the Statute of the Special Tribunal to guarantee a fair trial. This includes the provision of adequate assistance to Defence counsel in meeting the Prosecution's case. This is especially acute in circumstances where the Prosecution asserts that the acts attributable to Mr Badreddine are inextricably linked to the case against the remaining four Accused, and where he was separately represented, in a competent and effective way, until the case against him was terminated.

3. At paragraphs 51 and 52 of the decision, the Trial Chamber held:

The Trial Chamber has carefully considered the arguments concerning possible violations of the rights of the Accused to trial without undue delay and to have adequate time to prepare their defence. The Trial Chamber recognizes that meeting the case in relation to Mr Badreddine's involvement in the conspiracy as alleged may place some additional burden on Defence counsel. Assigned Defence counsel of course have professional and ethical responsibilities to carry out their assignment, regardless of the circumstances, independent of the assistance of other Defence counsel, much less former Defence counsel. In this regard, assigned Defence counsel appearing before the Special Tribunal are in the same position as those appearing before the ICTY, ICTR and ICC in challenging the evidence against those they represent, even where it may include evidence relating to alleged unindicted accomplices.

The Trial Chamber will of course consider any Defence application to adjust the witness schedule, or adjourn cross-examination, based upon the need for adequate preparation time to cross-examine witnesses.<sup>3</sup> If necessary, the Trial Chamber could give

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2713, Decision Amending the Consolidated Indictment, 7 September 2016.

<sup>2</sup> F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

<sup>3</sup> [Footnote 48] Consolidated Defence Response, para. 35 (referring to F2668, Response to the Prosecution Submission of the Consolidated Amended Indictment Pursuant to the Trial Chamber's Order of 11 July 2016, 26 July 2016).

consideration to an application under Rule 131 for the appointment of *amicus curiae* to assist the Trial Chamber in hearing evidence relating to Mr Badreddine's role. In this respect, the Trial Chamber notes that Mr Badreddine's former assigned counsel are already familiar with this evidence. The Trial Chamber also notes the duty of the Head of Defence Office under Rule 57 (E) (ii) to provide 'adequate facilities to defence counsel and persons entitled to legal assistance in the preparation of a case'. The Trial Chamber may also, under Rule 130 (A), 'give directions on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial, and expeditious trial.'

4. The Trial Chamber also ordered the Prosecution 'to file a summary statement of any evidence it wishes to lead in relation to paragraph 49 of the amended consolidated indictment pleading that the four Accused were supporters of Hezbollah'.<sup>4</sup> This will be filed on 23 September 2016.<sup>5</sup>

5. As a consequence of the complaints made by Defence counsel about the difficulties they face in challenging any evidence relating to Mr Badreddine's role, the Trial Chamber wishes to explore all options to ensure that Defence counsel have the necessary means to meet the evidence relating to Mr Badreddine's pleaded role in the conspiracy alleged.

6. One possibility could be appointing *amicus curiae* under Rule 131 of the Special Tribunal's Rules of Procedure and Evidence. But to avoid any ambiguity, the Trial Chamber emphasises that an *amicus curiae*, if appointed, would appear before the Trial Chamber to assist it in the proper determination of the case—specifically, Mr Badreddine's role in the charges as alleged against the four Accused, and hence, ultimately, whether they are guilty. The role of *amicus curiae* would be to assist the Trial Chamber by their assisting the Defence in challenging evidence specific to Mr Badreddine's role. This may also accord with the Prosecutor's duties under Rule 55 (C) to assist the Trial Chamber in 'establishing the truth', consistent with his ongoing obligation to respect 'the fundamental rights of suspects and accused'. But, it is stressed, this is just one option among others, including orders under Rule 130 (A) to ensure a 'fair, impartial, and expeditious trial'.

7. The Trial Chamber therefore orders counsel for Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra to file separate submissions by **Friday 30 September 2016** on these issues. The Prosecution, Participating

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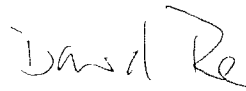
<sup>4</sup> Decision of 7 September 2016, disposition.

<sup>5</sup> See transcript of 16 September 2016, pp 63-64.

Victims and the Head of Defence Office are invited to file submissions and observations by the same date.

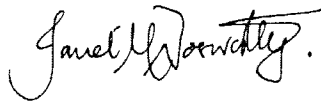
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands  
22 September 2016



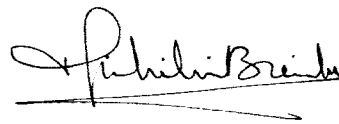
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

