

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 October 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ORDERING THE ARREST OF
MR SALIM JAMIL AYYASH, MR HASSAN HABIB MERHI, MR HUSSEIN
HASSAN ONEISSI AND MR ASSAD HASSAN SABRA**

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**Victims' Legal Representatives:**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 Guénaël Mettraux
& Mr Geoffrey Roberts

1. On 28 June 2011, the Pre-Trial Judge confirmed indictments against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi, and Mr Assad Hassan Sabra.¹ On the same date, he issued arrest warrants and international arrest warrants for their apprehension.²
2. On 31 July 2013, the Pre-Trial Judge confirmed an indictment against Mr Hassan Habib Merhi and issued arrest warrants and international arrest warrants for his apprehension.³ On 9 August 2013, after confirming amendments to the amended indictment, he issued arrest warrants and international arrest warrants to apprehend Mr Ayyash, Mr Badreddine, Mr Oneissi, and Mr Sabra.⁴
3. On the Prosecution's request, the Trial Chamber joined the case of Mr Merhi to that of the other four Accused on 11 February 2014,⁵ and on 7 March 2014, the Prosecution filed a consolidated indictment against the five Accused, charging them with nine offences connected with the attack of 14 February 2005 in Beirut, Lebanon. These included conspiracy aimed at committing a terrorist act by means of an explosive device—that resulted in the death of twenty-two people, including the former Lebanese Prime Minister Rafik Hariri—and the premeditated intentional attempted homicide of 231 people.⁶ On 4 April 2014, the Trial Chamber declared that the consolidated indictment was operative in the proceedings.⁷
4. On 11 April 2014, the Prosecution requested the Trial Chamber to issue new arrest warrants, orders and requests for transfer and detention against the five Accused to replace those issued by the Pre-Trial Judge in respect of the amended indictment in the case of *Prosecutor v. Salim Jamil*

¹ STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011.

² STL-11-01/I, Warrants to Arrest Mr Salim Jamil Ayyash Including Transfer and Detention Order, 28 June 2011; STL-11-01/I, Warrants to Arrest Mr Mustafa Amine Badreddine Including Transfer and Detention Order, 28 June 2011; STL-11-01/I, Warrants to Arrest Mr Hussein Hassan Oneissi Including Transfer and Detention Order, 28 June 2011; STL-11-01/I, Warrants to Arrest Mr Assad Hassan Sabra Including Transfer and Detention Order, 28 June 2011.

³ *Prosecutor v. Hassan Habib Mehri*, STL-13-04/I/PTJ, Decision relating to the Examination of the Indictment of 5 June 2013 Issued against Mr. Hassan Habib Merhi, Confidential, 31 July 2013; Public Redacted Version dated 11 October 2013; Warrant to Arrest Mr Hassan Habib Merhi and Order for Transfer and Detention, 31 July 2013; STL-13-04/I/PTJ, International Warrant to Arrest Mr Hassan Habib Merhi and Request for Transfer and Detention, 31 July 2013.

⁴ STL-11-01/PT/PTJ, Warrant to Arrest Mr Salim Jamil Ayyash and Order for Transfer and Detention, 9 August 2013; STL-11-01/PT/PTJ, International Warrant to Arrest Mr Salim Jamil Ayyash and Request for Transfer and Detention, 9 August 2013; STL-11-01/PT/PTJ, Warrant to Arrest Mr Mustafa Amine Badreddine and Order for Transfer and Detention, 9 August 2013; STL-11-01/PT/PTJ, International Warrant to Arrest Mr Mustafa Amine Badreddine and Request for Transfer and Detention, 9 August 2013; STL-11-01/PT/PTJ, Warrant to Arrest Mr Hussein Hassan Oneissi and Order for Transfer and Detention, 9 August 2013; STL-11-01/PT/PTJ, International Warrant to Arrest Mr Hussein Hassan Oneissi and Request for Transfer and Detention, 9 August 2013; and STL-11-01/PT/PTJ, Warrant to Arrest Mr Assad Hassan Sabra and Order for Transfer and Detention, 9 August 2013; STL-11-01/PT/PTJ, International Warrant to Arrest Mr Assad Hassan Sabra and Request for Transfer and Detention, 9 August 2013.

⁵ STL-11-01/T/TC and STL-13-04/PT/TC, Transcript of 11 February 2014, pp 91-96.

⁶ STL-11/01/T/TC, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, 7 March 2014.

⁷ STL-11/01/T/TC, Decision on Prosecution Motion on a Consolidated Indictment and Amending Witness and Exhibit List, 4 April 2014.

Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra and the indictment in that of *Prosecutor v. Hassan Habib Merhi*. The Prosecution also sought the Trial Chamber's authorisation to request the INTERPOL General Secretariat to issue and circulate INTERPOL notices, including red notices.⁸

5. In separate decisions, in February 2012 and December 2013, the Trial Chamber decided to proceed with trials *in absentia* against Mr Ayyash, Mr Badreddine, Mr Oneissi, and Mr Sabra, and then Mr Merhi. It concluded that each had absconded or otherwise could not be found and that all reasonable steps had been taken to secure their appearance before the Special Tribunal for Lebanon and to inform them of the charges against them.⁹ None have since been apprehended.

6. On 31 May 2016, the Trial Chamber was informed that the Accused, Mr Badreddine, had died near Damascus, the Syrian capital, in the week commencing 8 May 2016. The Prosecution, in a hearing held on this date, presented a number of pieces of circumstantial material concerning Mr Badreddine's death.¹⁰

7. On 1 June 2016, the Trial Chamber delivered an interim decision deciding by majority (Judge Braidy dissenting) that 'it did not believe that sufficient evidence has yet been presented to convince it that the death of Mustafa Amine Badreddine had been proved to the requisite standard'.¹¹ The Trial Chamber issued the written reasons for its interim decision on 7 June 2016.¹²

8. The Appeals Chamber decided on 11 July 2016¹³ by majority (Judges Baragwanath and Nsereko dissenting) to set aside the Trial Chamber's decision and found that sufficient evidence had been presented to convince it that the death of Mr Badreddine had been 'sufficiently proven on the balance of probabilities'.¹⁴ The Appeals Chamber directed the Trial Chamber to terminate the

⁸ STL, *Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra*, STL-11/01/TC, Prosecution Request for Issuance of Arrest Warrants, Orders and Requests for Transfer and Detention, 11 April 2014 (Prosecution request of 11 April 2014). Counsel for Mr Ayyash, Mr Merhi, Mr Oneissi, and Mr Sabra did not file any response, while counsel for Mr Badreddine responded expressing '*toutes réserves sur la validité des actions du Procureur*', without any further explanation, STL-11/01/TC, Réponse de la Défense de M. Badreddine à "Prosecution Request for Issuance of Arrest Warrants, Orders and Requests for Transfer and Detention", 15 April 2014.

⁹ STL-11-01/I/TC, Decision to Hold Trial *in Absentia*, 1 February 2012; STL-13-04/I/TC, Decision to Hold Trial *in Absentia*, 20 December 2013.

¹⁰ Transcript of 31 May 2016, pp 12-61 and 76-77.

¹¹ Transcript of 1 June 2016, pp 56-57.

¹² STL-11/01/T/TC, Reasons for Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings, 7 June 2016, paras 4-5.

¹³ STL-11/01/T/AC/AR126.11, Decision on Badreddine Defence Interlocutory Appeal of the "Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings", 11 July 2016 (Decision on Badreddine Defence Interlocutory Appeal).

¹⁴ Decision on Badreddine Defence Interlocutory Appeal, para. 53, p. 21.

proceedings against Mr Badreddine without prejudice to resuming the proceedings should evidence that he is alive be adduced in the future.

9. On 11 July 2016, the Trial Chamber ordered the termination of proceedings against Mr Badreddine without prejudice, and ordered the Prosecution, under Rule 71 (A) (iii) of the Special Tribunal's Rules of Procedure and Evidence, to file an amended consolidated indictment.¹⁵

10. On 7 September 2016, the Trial Chamber declared the amended consolidated indictment dated 12 July 2016 to be the operative indictment in the proceedings, under Rules 71 (A) (iii) and 71 (B), and dismissed Defence objections to its form.¹⁶

11. On 15 September 2016, the Prosecution filed a signed version of the amended consolidated indictment. It also requested the Trial Chamber to annul and replace the existing arrest warrants, orders and requests for transfer and detention for the four Accused. In view of the Trial Chamber's order of 11 July 2016, the Prosecution requested the Trial Chamber to annul the arrest warrants, orders and requests relating to Mr Badreddine.¹⁷ It requested the Trial Chamber to order the Registrar to transmit to the Government of the Lebanese Republic the amended consolidated indictment and the new arrest warrants, and to order the Government to serve the amended consolidated indictment on the four Accused, under Rule 76.¹⁸

12. In these circumstances, new arrest warrants should be issued in respect of the amended consolidated indictment and service of the amended consolidated indictment should be attempted on the four Accused. The Prosecutor is also authorised to contact INTERPOL in the manner previously requested, and authorized by the Trial Chamber.¹⁹

DISPOSITION

FOR THESE REASONS,

Pursuant to Articles 18 (2) and 21 (4) of the Statute of the Special Tribunal for Lebanon, Articles 1 and 15 (2) of the Annex to United Nations Security Council Resolution 1757 (2007), Rules 14, 20,

¹⁵ STL-11-01/T/TC, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

¹⁶ STL-11-01/T/TC, Decision Amending the Consolidated Indictment, 7 September 2016.

¹⁷ STL-11-01/T/TC, Prosecution's Filing of the Signed Version of the Amended Consolidated Indictment and Request for Modified Arrest Warrants, Orders, and Requests for Transfer and Detention, 15 September 2016 (Prosecution's Filing of 15 September 2016), paras 2, 6, 8 and 11.

¹⁸ Prosecution's Filing of 15 September 2016, para. 11.

¹⁹ Prosecution request of 11 April 2014; STL-11-01/T/TC, Decision Ordering the Arrest of Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi and Mr Assad Hassan Sabra, 17 April 2014.

68 (J) (i), 71 (D), 76, 77 (A), 79, 82, 83, 84, 101 (G) and 130 (B) of the Special Tribunal for Lebanon's Rules of Procedure and Evidence, section 4.1 of the Cooperation Agreement between the International Criminal Police Organization – INTERPOL and the Special Tribunal for Lebanon, and the Agreement between the United Nations and the Kingdom of the Netherlands concerning the headquarters of the Special Tribunal for Lebanon,

THE TRIAL CHAMBER:

ANNULS the arrest warrants, orders and requests for the transfer and detention of Mustafa Amine Badreddine;

ISSUES arrest warrants and international arrest warrants, and requests for transfer and detention for:

- Mr Salim Jamil Ayyash,
- Mr Hassan Habib Merhi,
- Mr Hussein Hassan Oneissi, and
- Mr Assad Hassan Sabra;

ORDERS the Registrar to transmit to the Government of the Lebanese Republic the amended consolidated indictment, the annexed arrest warrants, and their attachments;

ORDERS the Government of the Lebanese Republic to serve the amended consolidated indictment on Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi, and Mr Assad Hassan Sabra;

AUTHORISES the Prosecutor to request the INTERPOL General Secretariat to issue and circulate INTERPOL notices of all types, including red notices relating to Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi, and Mr Assad Hassan Sabra; and

ORDERS—in the manner described in the annexed arrest warrants and international arrest warrants—the arrest, transfer to the Headquarters of the Special Tribunal in the Kingdom of the Netherlands, and the detention of Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi, and Mr Assad Hassan Sabra.

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

Leidschendam,
The Netherlands,
11 October 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

