

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

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The PROSECUTOR
v.
SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**DECISION ON FOUR PROSECUTION MOTIONS ON CALL SEQUENCE
TABLES RELATED TO SALIM JAMIL AYYASH, HASSAN HABIB MERHI, ASSAD
HASSAN SABRA, MUSTAFA AMINE BADREDDINE, AND FIVE WITNESS
STATEMENTS**

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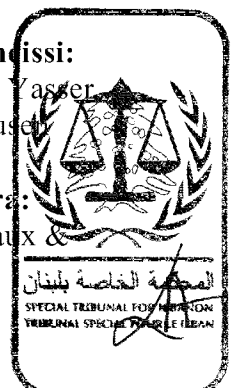
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BACKGROUND

1. The Prosecution filed four motions seeking the admission into evidence of ‘call sequence tables’, and associated witness statements, said to assist to prove the involvement of three Accused, and the former Accused, Mustafa Amine Badreddine, in assassinating the former Prime Minister of Lebanon, Mr Rafik Hariri in Beirut on 14 February 2005.

2. The amended consolidated indictment against the four Accused alleges that five interconnected mobile telephone groups operating in four closed networks—referred to in colour-coded terms as red, blue, yellow, and green networks, plus a group of ‘purple phones’—planned, prepared and executed the attack against Mr Hariri that assassinated him and killed and injured many others.¹

3. The Prosecution case relies upon telecommunications data and records, including call data records. The Prosecution used information extracted from call data records generated and maintained by three Lebanese communication service providers, Ogero, Touch and Alfa to produce what it terms ‘call sequence tables’. These make call data records accessible and capable of presentation and analysis without altering the data. Prosecution analysts produced these tables in a ‘standardized’ and ‘mechanical’ manner by ‘copying and pasting the relevant data from the underlying material’.

4. Call sequence tables present chronological sequences of calls relating to a particular, or target, telephone number over a specified period of time, comprising relevant call data records and cell site information.² The Trial Chamber has defined call sequence tables in previous decisions.³ Similarly, Short Message Service (SMS) call sequence tables provide the time of the SMS, the recipient’s number, the sender and the recipient, and content of the SMS. For each call, these tables detail:⁴ the other number in contact with the target number; the time and the date of the call; the type of call (voice or SMS); the duration; the International Mobile

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, dated 12 July 2016, 15 September 216, para. 14.

² STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1832, Prosecution Motion for the Admission of Green Network Related Call Sequence Tables and Related Statement, 28 January 2015, paras 4-13 (Green network motion).

³ F2793, Reasons for decision admitting Prosecution cell site evidence, 26 October 2016, para. 12 (Cell site decision), referring to F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIIC and the STL’s Prosecution, 6 May 2015 (Decision of 6 May 2015), para. 2.

⁴ F1831, Prosecution Motion for the Admission of Red Network Related Call Sequence Tables and Related Statement, 28 January 2015, para. 11 (Red network motion).

Equipment Identity (IMEI)⁵ of the handset used by the target number; the cell identity and name of the cell sector used by the target number at the start of the call;⁶ and the cell identity and cell sector at the end of the call, when necessary.

5. To illustrate the essence of call sequence tables, extracts are set out below from proposed Prosecution call sequence table exhibits, namely (a) an extract of exhibit P488.1 MFI—a call sequence table related to the alleged false claim of responsibility for the attack on Mr Hariri;⁷ and (b) an extract from exhibit P489.1 MFI of an SMS call sequence table also related to the false claim of responsibility.

Extract of CST/0372 (R91-805316)
DATE RANGE 14/02/2005 AFTER 12:00
PHONE NUMBER FOR PRH006

Call No.	Time (hh:mm:ss)	Outgoing	Incoming	SMS / Voice	Duration (sec)	Cell Name
022	12:57:37	PRH006	PRH115	SMS		Riad_El_Soloh_B
023	12:58:51	Person 6	PRH006	Voice	4	Riad_El_Soloh_B
024	13:00:37	—	PRH006	SMS		Riad_El_Soloh_B
025	13:37:43	PRH006	PRH430	SMS		Riad_El_Soloh_C
026	13:39:51	—	PRH006	SMS		Riad_El_Soloh_B
027	13:44:59	PRH006	PRH430	SMS		Riad_El_Soloh_B
028	13:46:12	—	PRH006	SMS		Riad_El_Soloh_B
029	13:52:42	PRH115	PRH006	SMS		Riad_El_Soloh_B
030	14:05:16	XXXX568	PRH006	Voice	41	Riad_El_Soloh_B
031	14:05:18	XXXX808	PRH006	SMS		Riad_El_Soloh_B
032	14:08:30	PRH006	XXXX808	SMS		Riad_El_Soloh_B
033	14:08:55	—	PRH006	SMS		Riad_El_Soloh_B
034	14:13:46	PRH006	PRH430	SMS		Riad_El_Soloh_B
035	14:14:27	PRH006	PRH115	SMS		Riad_El_Soloh_B
036	14:15:01	PRH006	XXXX691	SMS		Riad_El_Soloh_B
037	14:24:33	XXXX987	PRH006	Voice	23	Riad_El_Soloh_B
038	14:24:39	—	PRH006	SMS		Riad_El_Soloh_B
039	14:24:45	—	PRH006	SMS		Riad_El_Soloh_B
040	14:30:31	PRH006	PRH430	SMS		Riad_El_Soloh_B
041	14:31:52	—	PRH006	SMS		Riad_El_Soloh_B

(a) an extract from exhibit P488.1 MFI related to the false claim of responsibility that the Prosecution used during the testimony of Witness PRH006. It illustrates calls and

⁵ Every mobile telephone handset has a unique International Mobile Equipment Identity (IMEI) number. *See* F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 9 and footnote 28.

⁶ Cell identity and cell sector names correspond to longitudinal and latitudinal coordinates of cell tower locations, azimuths and shape files that provide a prediction of best server coverage (cell site data) provided by the Lebanese communications service providers. Cell sector names are short-form alphanumeric identifiers used by communication service providers for a particular cell identity. Red network motion, para. 12 and footnote 6.

⁷ As pleaded in the amended consolidated indictment, paras 3, 15-23, 64, 68 and 70.

SMS messages between Witnesses PRH006, PRH115, PRH430 and others on 14 February 2005 between 12:57:37 and 14:31:52, connecting to the Touch cell Riad_El_Soloh_B, near the offices of Al-Jazeera in Beirut.

Extract of SMS CST/ 0142 (R91-805348)
DATE RANGE 14/02/2005 - 14/02/2005 (12:30-18:00)
PHONE NUMBER for PRH006

SMS No	CST Call No	Time from CST (MSC)	Time from SMS clock	Outgoing	Incoming	SMS Content
0017	022	12:57:37	12:53:53	PRH006	PRH115	Enfa,aret 3et we 7adna ("An explosive device blown up here near us")
0018	025	13:37:43	13:33:58	PRH006	PRH430	I should come back now at last time of us, with pictures Ghassan is here come
0021	027	13:44:54	13:41:14	PRH006	PRH430	Where is u
0023	029	13:52:42	13:48:38	PRH115	PRH006	7'it it ya 7'it it ("It's ruined - it's ruined - it's ruined")
0024	032	14:04:13	14:04:41	PRH006	XXXXXXX	yes we are all ok don't worry my dear
0026	034	14:13:46	14:10:01	PRH006	PRH430	Harin mat ("Harin died")
0029	035	14:14:27	14:10:42	PRH006	PRH115	Harin mat
0030	036	14:15:01	14:11:16	PRH006	XXXXXXX	Harin mat
0032	040	14:30:31	14:26:46	PRH006	PRH430	Come back alone Ghassan wants u to be here in office
0034	043	15:14:06	15:10:21	PRH006	Person 7	Call me I'm worry
0036	050	15:31:27	15:24:29	PRH115	PRH006	Wallah i al serves nali ana fir 7 yajlo th 2h shi nos ba3a bunim fir w t 3 fir ma w t 3 it la 3ndik ("By God this shared taxi which I am in is going to cause me a stroke. He has been turning around with me for half an hour and I still haven't reached your place")
0037	048	15:32:07	15:26:23	PRH006	Staff Member 1	Call me
0038	049	15:31:03	15:27:18	PRH006	XXXXXXX	Call me
0041	057	15:53:00	15:48:55	PRH115	PRH006	fi 3lina kande 2 atid mish mish at 3 yos ("I'm in the car - there is a white box on it, I daren't go and get it")
0042	060	15:55:31	15:50:09	PRH115	PRH006	Got it what you A ("I got it, a vhs tape A")
0043	058	15:53:55	15:50:10	PRH006	PRH115	Khalak jeyin ("Stay where you are we are coming")
0046	059	15:55:08	15:51:24	PRH006	PRH115	Khalak hedei ghassan ("Stay where you are Ghassan is coming down")

- (b) an extract from exhibit P488.1 MFI of an SMS call sequence table related to the false claim of responsibility that the Prosecution used during the testimony of Witness PRH006. It shows the content of text messages sent and received on 14 February 2005 between 12:57:37 and 14:31:52, relating to witnesses connected with Al-Jazeera.

6. The Prosecution is using the cell tower, identified in the call data records by its 'cell ID', to which mobiles connected to prove the location of the caller, and, in conjunction with other evidence, to prove that those in the network were engaging in the surveillance and

observation of Mr Hariri's movements or planning the attack in Beirut on 14 February 2005.⁸ To establish the location of the mobile users, the Prosecution must first prove the accuracy of the predicted coverage of each cell and, subsequently, that the call data records accurately show the cells to which the mobiles connected.⁹

7. Telephone attribution is the process of establishing that an individual mobile user used a particular SIM card, identified by its International Mobile Subscriber Identity (IMSI) and its associated telephone number (or 'target number'), over a specified period of time (or 'attribution period').¹⁰ When one of the Accused allegedly simultaneously used multiple mobiles, Prosecution analysts use the data underlying the call sequence tables to conduct 'cell site analysis'. This provides the approximate location and movements of a person from the location of the cell tower that a mobile has connected to.

8. The Prosecution also uses cell site analysis to determine whether two or more mobile telephones 'co-locate', that is whether the mobiles use 'cell sites' in the same area at approximately the same time and or travel the same route over the same timeframe, to permit an inference that the user(s) of the mobiles were together.¹¹

9. The Prosecution filed four motions seeking the admission into evidence, under Rules 154 and 155 of the Special Tribunal's Rules of Procedure and Evidence,¹² of call sequence tables and related witness statements.¹³

10. The statements describe the production of these tables for numbers attributable to three Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Assad Hassan Sabra, and the

⁸ Amended consolidated indictment, para. 14.

⁹ F2793, Cell site decision, para. 5.

¹⁰ F2123, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Ayyash, 18 August 2015; the Prosecution filed a public redacted version of this motion (except annexes) on 7 October 2016 (Prosecution Ayyash CST motion).

¹¹ Prosecution Ayyash CST motion, para. 19.

¹² Rule 154: 'Subject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149 (C) and (D).' Rule 155 (A): 'Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.'

¹³ Prosecution Ayyash CST motion; F2124, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Merhi, 18 August 2015; the Prosecution filed a public redacted version of this motion (except annexes) on 11 October 2016 (Prosecution Merhi CST motion); F2125, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Sabra, 18 August 2015; the Prosecution filed a public redacted version of this motion (except annexes) on 7 October 2016 (Prosecution Sabra CST motion); F2137, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Badreddine and Related Statements, 21 August 2015; the Prosecution filed a public redacted version of this motion (except annexes) on 7 October 2016 (Prosecution Badreddine CST motion).

former Accused, Mr Badreddine.¹⁴ Counsel for Mr Ayyash, Mr Merhi, Mr Sabra, and counsel then acting for Mr Badreddine responded, opposing the admission of the call sequence tables into evidence.¹⁵ Defence counsel did not contest the relevance of the evidence but challenged its reliability and hence its probative value.

11. The call sequence tables are to be read in conjunction with the pleaded particulars concerning the five groups of network mobiles that the Prosecution describes in the amended consolidated indictment: the red, green, blue and yellow networks and the group of ‘purple phones’.¹⁶ In a decision of 6 May 2015, the Trial Chamber deferred admitting numerous call sequence tables related to these networks—set out in five Prosecution motions—until at least one witness had testified about the provenance of the underlying call data records and the production of the call sequence tables.¹⁷

12. In July and November 2015, and September 2016, Prosecution analysts, Ms Kei Kamei (Witness PRH308), Mr Andrew Donaldson (Witness PRH230), Ms Helena Habraken (Witness PRH371), Mr Lachlan Christie (Witness PRH313) and Mr Christian Carnus (Witness PRH377) testified on the production of call sequence tables.¹⁸

13. The Prosecution also called Witnesses PRH705 and PRH707, representing respectively Touch and Alfa, who testified between January and July 2016.¹⁹ They explained how call data records were generated and provided by their companies to the United Nations International Independent Investigation Commission (UNIIC) and Prosecution through responses to

¹⁴ F0019-AR126.11, Decision on Badreddine Defence interlocutory appeal of the “Interim decision on the death of Mr Mustafa Amine Badreddine and possible termination of the proceedings”, 11 July 2016; F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016. Mr Badreddine is named in the amended consolidated indictment as a co-conspirator, paras 3 and 48-51.

¹⁵ F2157, Ayyash Defence Consolidated Response to Prosecution Motions for the Admission of Call Sequence Tables and Related Witness Statements, 1 September 2015 (Ayyash Defence consolidated response); F2164, Merhi Defence Consolidated Response to the Prosecution’s Six Motions for Admission of Call Sequence Tables, 1 September 2015 (Merhi Defence consolidated response); F2158, Sabra Defence Consolidated Response to Four Motions for the Admission of CSTs and SMS CSTs, 1 September 2015 (Sabra Defence consolidated response); F2162, Badreddine Defence Consolidated Response to Six Prosecution Motions for the Admission of Call Sequence Tables and Related Statements, 1 September 2015 (Badreddine Defence consolidated response).

¹⁶ Red network motion; F1840, Prosecution Motion for the Admission of Yellow Phone Related Call Sequence Tables and Related Statement, 3 February 2015 (Yellow network motion); Green network motion; F1836, Prosecution Motion for the Admission of Purple Phone Related Call Sequence Tables, 30 January 2015 (Purple phone motion); F1837, Prosecution Motion for the Admission of Blue Network-Related Call Sequence Tables and Related Statements, 2 February 2015 (Blue network motion). *See* amended consolidate indictment, paras 14-19.

¹⁷ Decision of 6 May 2015, para. 115.

¹⁸ Transcripts of 20-22 July 2015, 16-19 November 2015 and 27 September 2016.

¹⁹ Witness PRH707 testified on 29 January 2016; 9-12, 15-18 February 2016 and 18-19 April 2016; Witness 707 was cross-examined on: 20-22 April 2016 and 3-4 May 2016 and 25 July 2016. Witness PRH705 testified on: 5-6, 9-12 May 2016 and 19-20 July 2016; Witness 705 was cross-examined on: 20-21 July 2016.

requests for assistance sent to the Government of the Lebanese Republic. Following its decisions finding excerpts of the two witnesses' statements *prima facie* admissible,²⁰ the Trial Chamber received further submissions on the admissibility of those statements and the call sequence tables tendered by the Prosecution in its four motions.²¹

14. On 30 September and 10 October 2016, the Trial Chamber admitted into evidence selected paragraphs, and annexes attached to Witness 707's and 705's statements.²² The Trial Chamber, on 26 October 2016, also admitted into evidence the cell site evidence tendered by the Prosecution.²³

GENERAL SUBMISSIONS

15. The Prosecution's four motions described the evidence intended to be proved by the call sequence tables. Related witness statements describe the production of these tables for numbers attributable to Mr Ayyash, Mr Merhi, Mr Sabra and Mr Badreddine.

16. Counsel for Mr Ayyash, Mr Sabra and Mr Badreddine argued that the motions and the related witness statements were premature and inconsistent with the Trial Chamber's decision of 6 May 2015. Defence counsel argued that the information provided by the Prosecution was insufficient to assess the reliability and probative value of the call data records used to produce the call sequence tables.

17. The Defence requested the Trial Chamber to defer a decision on the four motions until the Prosecution had led evidence as to the provenance and reliability of the underlying call

²⁰ F2552, Corrected Version of Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 11 May 2016; F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016 (Written reasons of 13 May 2016).

²¹ Email from the Trial Chamber Senior Legal Officer to the Parties, dated 28 July 2016; F2676, The Defence for Hussein Hassan Oneissi Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement, 29 July 2016; F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016; F2678, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705, 29 July 2016; F2680, Sabra Joinder to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707" and "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 1 August 2016; F2682, Adjonction de la défense de Merhi aux "The Defence for Hussein Hassan Oneissi Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement", 5 August 2016; F2683, Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers, 8 August 2016 (Ayyash further submissions of 8 August 2016); F2684, Adjonction de la défense de Merhi aux "Ayyash Defence Further Submissions on Prosecution Motion Related to Evidence from Call Service Providers", 8 August 2016; F2685, Sabra Joinder to "Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers", 8 August 2016.

²² F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016 (Decision of 30 September 2016); F2767, Decision of 10 October 2016. The Trial Chamber delivered a decision in court on 8 September 2016, transcript, pp 3-4, admitting these documents into evidence.

²³ F2793, Cell site decision, 26 October 2016.

data records. Further, the Prosecution must also lead evidence on the methods it had employed to attribute the mobiles to the Accused.

18. The Prosecution has since called its analysts on the production of the call sequence tables, and Witnesses 705 and 707 on the reliability of the underlying data and cell site evidence. These submissions are now moot.

19. Defence counsel also submitted that the witness statements should be first added to the Prosecution's list of exhibits.²⁴ Trial Chamber has rejected this argument before and does so again.²⁵

20. On 28 July 2015, the Appeals Chamber decided an appeal from the Trial Chamber's decision of 6 May 2015.²⁶ Counsel for Mr Ayyash and Mr Badreddine submitted that the Prosecution cannot rely on this appellate decision to decide on the admissibility of the call sequence tables as it did not deal with the issues of admissibility of the underlying data addressed in the Trial Chamber's decision of 6 May 2015.²⁷

THE FOUR CALL SEQUENCE TABLE MOTIONS

First motion: call sequence tables related to Salim Jamil Ayyash

21. The Prosecution seeks the admission into evidence, under Rule 154, of ten call sequence tables, a combined call sequence table, two SMS call sequence tables and, under Rule 155, one related witness statement. The call sequence tables and SMS call sequence tables present the call data records of two landline telephones and four mobiles that the Prosecution attributes to Mr Ayyash; a handset used with two of these mobiles; and two mobiles attributable to Mr Ayyash's relatives.²⁸ The Prosecution, however, no longer intends to tender call sequence tables of the landlines it was attributing to Mr Ayyash.²⁹ Ten call sequence tables related to Mr Ayyash remain.

²⁴ F2157, Ayyash Defence Consolidated Response to Prosecution Motions for the Admission of Call Sequence Tables and Related Witness Statements, 1 September 2015, paras 1-2, 11, 13 and 22-24 (Ayyash Defence Consolidated Response); F2162, Badreddine Defence Consolidated Response to Six Prosecution Motions for Admission of Call Sequence Tables and Related Statements, 1 September 2015, para. 11 (Badreddine Defence Consolidated Response).

²⁵ Decision of 6 May 2015.

²⁶ STL-11-01/T/AC/AR126.9, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, Decision on Appeal by Counsel for Mr Oneissi against the Trial Chamber's Decision on the Legality of the Transfer of Call Data Records, 28 July 2015.

²⁷ Ayyash Defence Consolidated Response, paras 15-17; Badreddine Defence Consolidated Response, para. 9.

²⁸ Prosecution Ayyash CST motion, paras 1-3.

²⁹ F2672, Prosecution Notice of Withdrawal of Requests to Admit Landline Call Sequence Tables, 28 July 2016, para. 1; the Prosecution filed a public redacted version of this motion on 15 August 2016. The withdrawn call sequence tables are CST-0185, CST-0265 and CST-0386.

22. The Prosecution submits that these call sequence tables, read with other evidence, including the call sequence tables of network mobiles described as ‘Red 741’, ‘Green 300’, ‘Blue 233’ and ‘Yellow 294’, provide evidence that Mr Ayyash used these network mobiles during the relevant period to plan and execute Mr Hariri’s assassination.³⁰

23. The call sequence table for two personal mobiles (or ‘personal mobile phones’ or ‘PMPs’ as described by the Prosecution) with other evidence, shows contact relating to an accident involving Mr Ayyash’s BMW in November 2004, and the repair of his Toyota Camry in May 2005.³¹ The Trial Chamber has now received evidence of this.³²

24. The call sequence tables and SMS call sequence tables are probative as they show that all four mobiles had similar contact and geographic profiles. All four were frequently used in Hadath in South Beirut and in Harouf in Southern Lebanon where Mr Ayyash had residences. When he moved house to Hadath, in February 2003, his calling patterns changed.³³

25. The tables provide a record of Mr Ayyash’s calls, and, in conjunction with other evidence, support the attribution of the relevant mobiles to him. These demonstrate that the four personal mobiles share the same profiles³⁴ and that they were in contact with Mr Ayyash’s family members. He also used the same SIMs (3767165 and 3523935) in the same handset (proved by its IMEI) in a BMW carphone that Mr Ayyash owned in 2004. Another two SIMs (3523935 and 3020091) shared another handset. Text messages from his personal mobile phone 3020091 were sent to a relative’s mobile (ending in 888) on 20 January 2005. Further, three texts were sent from his personal mobile, 3831170 to 3121486, a mobile attributed to Mr Badreddine. This, with other evidence, supports the inference that Mr Ayyash was using 3831170. The handset use and text message data provide further evidence that the mobile and handset are attributable to Mr Ayyash.³⁵

³⁰ Prosecution Ayyash CST motion, para. 4.

³¹ Prosecution Ayyash CST motion, para. 24.

³² Witness Mahmoud Assi (PRH030) testified on 1 October 2015; *see* transcript of 1 October 2015, pp 5-80; *see also* exhibits P604.1 through to P604.17, P688, P688.1 through to P688.6, P689, P690, P691, P692, P693, P694, P695, P696, P697, P699.

³³ Prosecution Ayyash CST motion, paras 25-26.

³⁴ A telephone profile includes: (2) ‘contact profiles’ comprising the numbers in contact with the target phone that contribute to the identification of the user are highlighted; (2) cell utilization analysis or ‘geographic profiling’ is conducted by analysing the call and cell site data to identify patterns of calls and movements; (3) the use and change in use or ‘swapping’ of particular mobile phone handsets, as indicated by the IMEI are analysed to determine if this information is relevant to the identity of the user; and (4) text message content is analysed in relation to other evidence about the Accused, if available. *See* Prosecution Ayyash CST motion, para. 18.

³⁵ Prosecution Ayyash CST motion, paras 24-33, 29-30 and 36-37.

26. The Prosecution submits that the call sequence tables and SMS call sequence tables are admissible under Rule 154 as they are relevant, probative, bear sufficient indicia of reliability, and their admission does not prejudice the fair trial rights of the Accused. The evidence is relevant because it assists to attribute a mobile to Mr Ayyash, and with other documentary and witness evidence, also assists in attributing four personal mobiles to him, and two mobiles to relatives.³⁶

27. The call sequence tables are sufficiently reliable as the call data records and SMS data content records were obtained (on DVDs and hard drives) either through a request for assistance or directly from the Lebanese communication service providers. The call sequence tables and SMS call sequence tables were produced from these bulk call data records and SMS content records through copying, sorting, and formatting the records in Microsoft Excel software.³⁷ The production of the call sequence tables and SMS call sequence tables was standardized and mechanical. The reliability of the call sequence tables as representations of the underlying material can be tested by comparing the call sequence tables to the underlying material. With regard to the fair trial rights of the Accused, the Prosecution states that the underlying data was disclosed to the Defence.³⁸

28. The Prosecution also seeks to add to its exhibit list a specific call sequence table correcting a formatting error in a previous version of this table.³⁹

29. The Ayyash Defence objects to the allegations made by the Prosecution in its call sequence table motions including the attribution of a specified telephone to Mr Ayyash. Further, the Prosecution should seek the addition of two tendered witness statements to its list before seeking their admission into the evidence.⁴⁰

Admissibility of Ms Stanford's statement (Witness PRH458)

30. A Prosecution analyst, Ms Stanford, describes the production of ten SMS call sequence tables.⁴¹ As her statement details the material and methodology used to produce certain proposed SMS call sequence tables, it is relevant and probative with regard to their reliability. The statement does not relate to the acts and conduct of the Accused as charged in the

³⁶ Prosecution Ayyash CST motion, para. 21.

³⁷ Prosecution Ayyash CST motion, paras 39-40.

³⁸ Prosecution Ayyash CST motion, paras 44, 47.

³⁹ Prosecution Ayyash CST motion, para. 5. The previous version of the table is SMS CST 0146.

⁴⁰ Ayyash Defence Consolidated Response, paras 19-20.

⁴¹ In response to F2033, Prosecution Rule 91 Submission for Five Witness Statements on the Production of Call Sequence Tables and SMS Call Sequence Tables, 30 June 2015, the Trial Chamber, on 15 July 2015, allowed the Prosecution to add this statement to its exhibit list; see transcript of 15 July 2015, pp 88-91.

amended consolidated indictment, but only to the reliability of the call sequence tables that she produced.

31. The Prosecution submits that the admission of this statement will not prejudice the rights of the Accused to a fair trial. It is cumulative to the evidence of another Prosecution analyst, Ms Kamei, who has already testified on the production of call sequence tables.⁴²

Second motion: call sequence tables related to Assad Hassan Sabra

32. The Prosecution requests the admission into evidence, under Rule 154, of two call sequence tables, two SMS call sequence tables and, under Rule 155, one related witness statement.

33. The call sequence tables and SMS call sequence tables present the call data records of two specific personal mobiles attributable to Mr Sabra. The proposed call sequence tables, read in conjunction with other evidence, provide evidence that Mr Sabra, in 2005 and 2006, used these personal mobiles together with network mobile, 'Purple 018'.⁴³

34. Personal mobiles 546 and 657 are attributable to Mr Sabra and his wife from a few weeks after Purple 018 ceased its use on 16 February 2005. The users of the three mobiles shared similar contact and geographical profiles. The users were addressed in some text messages by names corresponding to the given names or nicknames of Mr Sabra and his wife. They activated cell towers most frequently near the residences of the Sabra family, Mr Sabra's parents and his wife's parents.⁴⁴

35. The Prosecution submits that the call sequence tables and SMS call sequence tables are admissible under Rule 154 as they are relevant, probative, bear sufficient indicia of reliability, and their admission does not prejudice Mr Sabra's rights to a fair trial.⁴⁵

36. The call sequence tables and SMS call sequence tables of the mobiles used during the timeframe relevant to the attack on Mr Hariri are probative as they share their telephone profile with network telephone, 'Purple 018', and thus assist in attributing the mobiles to Mr Sabra. The call sequence tables and SMS call sequence tables show that the two personal mobiles share similar contact and geographic profiles, in particular having contact with Mr Sabra's family members.

⁴² Prosecution Ayyash CST motion, paras 52-58.

⁴³ Prosecution Sabra CST motion, paras 1-3.

⁴⁴ Prosecution Sabra CST motion, paras 16-19.

⁴⁵ Prosecution Sabra CST motion, para. 34.

37. Additionally, the Prosecution submits that the cell site evidence in the call sequence tables shows that the mobiles were most active near the residence of Mr Sabra's family members. Finally, the SMS content of the telephones also shows that members of Mr Sabra's family used the two personal mobiles.⁴⁶

38. The Prosecution reiterates its arguments with regard to the indicia of reliability and its denial of any potential prejudice to the fair trial rights of the Accused as summarised above for the call sequence tables motion related to Mr Ayyash. Again, it states that the underlying material has been disclosed to the Defence. Defence counsel cross-examined the analysts who produced them.⁴⁷

39. The Prosecution also seeks to add to its exhibit list and to admit into evidence a call sequence table for a specified personal mobile, correcting a typographical error in the table for the same number, and to replace the previous table.⁴⁸

40. The Sabra Defence submits that the Prosecution has not tendered any evidence as to the personal profiles of the Accused, or the attribution of the telephones to the Accused or their relatives.⁴⁹ According to the Defence counsel, Prosecution analyst, Mr Donaldson, compiled the attribution reports that link the Accused to the network mobiles and therefore the Trial Chamber should hear his evidence first and the Defence should be allowed to cross-examine him before admitting the call sequence tables and SMS call sequence tables.⁵⁰ The Trial Chamber's decision on the admissibility of the call sequence tables should therefore be deferred until it has heard his testimony.⁵¹ The Sabra Defence does not object to the addition to the exhibit list of three specified call sequence tables tendered by the Prosecution, as a precursor to their admission, to correct formatting of typographical errors in former versions of these exhibits.⁵²

41. Mr Donaldson has testified as to the production of call sequence tables; these arguments have thus been superseded and are no longer relevant or sustainable.

⁴⁶ Prosecution Sabra CST motion, paras 16-22.

⁴⁷ Prosecution Sabra CST motion, paras 30-31.

⁴⁸ Prosecution Sabra CST motion, para. 33. The Prosecution tenders CST-0404 to replace CST-0193.

⁴⁹ Sabra Defence Consolidated Response, para. 14.

⁵⁰ Sabra Defence Consolidated Response, paras 15 and 17.

⁵¹ Sabra Defence Consolidated Response, para. 18.

⁵² Sabra Defence Consolidated Response, para. 19.

Admissibility of Ms Kamei's witness statement

42. The Prosecution seeks the admission into evidence of a statement by Prosecution analyst, Ms Kamei, dated 15 May 2015 containing evidence which explains the production of four call sequence tables, including the call sequence table of a specific personal mobile attributable to Mr Sabra.⁵³ The statement describes the underlying material and methodology used to produce specific call sequence tables. It does not relate to the acts and conduct of the Accused as charged in the amended consolidated indictment. Admitting this statement, the Prosecution argues, contributes to expediting the trial without prejudicing the rights of the Accused to a fair trial. Further, Ms Kamei's statement is similar in format and content to the evidence of other Prosecution analysts, including Mr Donaldson, Ms Habraken, Mr Christie, and Ms Stanford, who have testified on the production of call sequence tables.⁵⁴

Third motion: call sequence tables related to Hassan Habib Merhi

43. The Prosecution also seeks the admission into evidence, under Rule 154, of five call sequence tables, one SMS call sequence table, and one combined call sequence table. The call sequence tables and the SMS call sequence table present (i) the call data records of one mobile used by Mr Merhi and his family members; (ii) four mobiles used to contact Mr Merhi; and (iii) the SMS content of a mobile used by Mr Merhi and his family. The combined call sequence tables present the call data records of 'Purple 231' and 'Green 071' which the Prosecution attributes to Mr Merhi.⁵⁵

44. The Prosecution submits that the call sequence tables, with other evidence, demonstrate that these telephones were used by Mr Merhi from December 2002 to February 2005 and September 2004 to February 2005.⁵⁶ These call sequence tables and SMS call sequence tables are also admissible under Rule 154 as they are relevant, probative and reliable, and their admission does not prejudice the rights of the Accused to a fair trial.⁵⁷

45. The call sequence tables and SMS call sequence table are relevant and probative as, read in conjunction with other evidence, they assist in attributing the mobiles 'Purple 231'

⁵³ In response to F2033, Prosecution Rule 91 Submission for Five Witness Statements on the Production of Call Sequence Tables and SMS Call Sequence Tables, 30 June 2015, the Trial Chamber, on 15 July 2015, allowed the Prosecution to add this statement to its exhibit list; see transcript of 15 July 2015, p. 86. The statement was disclosed on 15 May 2015. This statement is an addendum to Ms Kamei's previous statement of 14 January 2015 and is exhibit P516 MFI, see transcript of 23 July 2015, p. 4.

⁵⁴ Prosecution Sabra CST motion, paras 35-41.

⁵⁵ Prosecution Merhi CST motion, paras 1-4.

⁵⁶ Prosecution Merhi CST motion, para. 4.

⁵⁷ Prosecution Merhi CST motion, para. 33.

and ‘Green 071,’ and another mobile, to Mr Merhi, and attribute the others to the relatives of Mr Merhi. The evidence demonstrates that a specified number and ‘Purple 231’ are attributable to Mr Merhi as he had used these mobiles to frequently contact and send text messages to his family members and associates. Additionally, the Prosecution submits that the same number and ‘Purple 231’ share similarities in geographic location.⁵⁸

46. Further, the combined call sequence tables are probative as they provide a chronological record of Mr Merhi’s calls using network mobiles attributable to him. Similarly, the third party call sequence tables of four numbers assist in attributing ‘Purple 231’ to Mr Merhi. For example, the contact and geographical profile of 3686091 supports the attribution of ‘Purple 231’ to Mr Merhi as the tables show frequent contacts that include Mr Merhi’s family and associates. It was used most frequently near his home and in Ain Qana, a village linked to him and his family. It also includes frequent co-location between the two mobiles in southern Lebanon, Mount Lebanon and the Lebanese Syrian border. Both also activated cell towers near Beirut Airport when Mr Merhi’s wife and son travelled to and from Iran in September and October 2004; their use continued in Lebanon when the two were in Iran.⁵⁹

47. Two specified mobile numbers provide evidence that Mr Merhi used ‘Purple 231’ to receive delivery of household goods. Similarly, another number, through its geographical location, can be attributed to Mr Merhi’s wife. The remaining third party call sequence tables also demonstrate that the remaining mobiles are attributable to Mr Merhi’s relatives.⁶⁰

48. The Prosecution arguments about reliability and prejudice to the Accused are the same as for the other motions. Also, the underlying material has been disclosed to the Defence.⁶¹ Moreover, Defence counsel cross-examined the relevant analysts—including Mr Spartak Mkrtchyan (Witness PRH111) and Mr Peter Sommer (Witness PRH542)—who were involved in producing the relevant call sequence tables.⁶²

49. Counsel for Mr Merhi argued that the Prosecution motions are premature because, in view of the Trial Chamber’s decision of 6 May 2015, the Trial Chamber was unable to assess

⁵⁸ Prosecution Merhi CST motion, para. 16.

⁵⁹ Prosecution Merhi CST motion, para. 16.

⁶⁰ Prosecution Merhi CST motion, paras 17-22.

⁶¹ Prosecution Merhi CST motion, paras 24-25, 27, 30.

⁶² Prosecution Merhi CST motion, para. 31.

the authenticity and reliability of the tendered call sequence tables until it had heard evidence on the provenance of the call data records and the production of the call sequence tables.⁶³

50. This argument too has been superseded and is no longer relevant.

Fourth motion: call sequence tables related to Mustafa Amine Badreddine

51. The Prosecution seeks the admission into evidence, under Rule 154, of twenty-two call sequence tables, ten SMS call sequence tables, and, under Rule 155, three related witness statements, in respect of Mr Badreddine's pleaded role. Mr Badreddine is named in the amended consolidated indictment as a co-conspirator to the conspiracy alleged.⁶⁴ He was named on the consolidated indictment as an Accused person when the Prosecution filed its motion.

52. The call sequence tables present the call data records of twelve mobiles the Prosecution submits were used by Mr Badreddine during the relevant time, and eight mobiles used by his associates and acquaintances. The SMS call sequence tables present the SMS content of three of the twelve mobiles that the Prosecution alleges were used by Mr Badreddine,⁶⁵ and seven of the eight attributed to his associates and acquaintances.

53. The Prosecution submits that the call sequence tables and SMS call sequence tables, when read with other evidence, including the call sequence tables of 'Green 023', provide evidence that Mr Badreddine used 'Green 023' during the period relevant to planning and executing the attack on Mr Hariri.⁶⁶

54. The Prosecution likewise submits that the call sequence tables and SMS call sequence tables are admissible under Rule 154. They are relevant, probative, and have the necessary indicia of reliability for admission into evidence.⁶⁷

55. The call sequence tables and SMS call sequence tables—together with other relevant evidence—support the attribution of 'Green 023' to Mr Badreddine from 6 September 2004 to 14 February 2005. Further, a comparison of the personal mobiles and the sequential mobiles⁶⁸ shows that Mr Badreddine used, at the relevant time, multiple mobiles for different purposes. For example, he used personal mobiles over extended periods with a wide range of contacts

⁶³ Merhi Defence consolidated response, paras 2-8.

⁶⁴ Amended consolidated indictment, paras 3,19.

⁶⁵ 3966663, 3833354 and 3121486.

⁶⁶ Prosecution Badreddine CST motion, para. 4.

⁶⁷ Prosecution Badreddine CST motion, para. 50.

⁶⁸ 'Sequential mobile telephones' were used in sequential order, meaning that each mobile was used for a period of weeks or months and then replaced by another. See amended consolidated indictment, para. 16.

and a high volume of calls and SMS messages, while he used pre-paid sequential mobiles sparingly over limited periods of time, and replaced them frequently.⁶⁹

56. The personal mobiles shared several contacts included acquaintances of Mr Badreddine when he was as a registered student at the American Lebanese University in Beirut 2004 and 2005, female acquaintances, and employees at the Samino jewellery stores in Beirut that he owned under his alleged alter ego, 'Sami Issa'.

57. The most consistent use of these mobiles was near these stores, the university, near his apartment in the coastal town of Joumieh, and in certain locations in South Beirut.⁷⁰ Near identical text messages sent and received between 2004 and September 2005 are also relevant, for example, birthday greetings around 6 April (Mr Badreddine's birthday), messages from two shoe and clothing shops, and while he was at the university.⁷¹ Further, third party contacts are relevant for the July 2006 war, the death of Mr Badreddine's sister in law in November 2005 in Harouf, for family travel from Beirut Airport in 2004 and 2005, and contact with Samino jewellery stores, university friends, female acquaintances and Sami Issa's bodyguard.⁷²

58. With regard to the reliability and potential prejudice to the fair trial rights of the Accused, the Prosecution makes the same arguments summarised above in relation to the call sequence tables motion related to Mr Ayyash. It also states that the underlying material has been disclosed to the Defence.⁷³ Further, the Defence cross-examined the analysts who produced the relevant call sequence tables.⁷⁴

59. The Prosecution seeks to add to its exhibit list a specific call sequence table reproducing a previous version of this table.⁷⁵

60. The Badreddine Defence objected to the conclusions reached by the Prosecution from the call sequence tables.⁷⁶ His name as an Accused person was removed from the amended consolidated indictment on 7 September 2016.⁷⁷ No Defence counsel acting for the remaining

⁶⁹ Prosecution Badreddine CST motion, para. 18.

⁷⁰ Prosecution Badreddine CST motion, paras 22-23.

⁷¹ Prosecution Badreddine CST motion, para. 27.

⁷² Prosecution Badreddine CST motion, para. 38.

⁷³ Prosecution Badreddine CST motion, paras 39-40, 45.

⁷⁴ Prosecution Badreddine CST motion, paras 47-48.

⁷⁵ Prosecution Badreddine CST motion, para. 5. CST-0403 to replace CST-0191.

⁷⁶ Counsel for Mr Badreddine submitted that they will make full submissions in this regard at the appropriate time, *see* Badreddine Defence Consolidated Response, para. 10. This is now moot.

⁷⁷ F2713, Decision amending the consolidated indictment, 7 September 2016.

four Accused have filed submissions in relation to the possible use of this evidence against them in the Prosecution's case.

Admissibility of Ms Habraken's, Mr Adrian Kirwan's (Witness PRH431) and Mr Leroy Stockton's (Witness PRH512) statements

61. The Prosecution also seeks the admission into evidence of the statement of Prosecution analyst, Ms Habraken, describing the negative results she obtained searching the SMS content of 'blue' and 'green' network numbers.⁷⁸ Additionally, it requests the admission of Mr Kirwan's and Mr Stockton's statements that explain the selection of SMS messages for inclusion in the reduced SMS call sequence tables produced for two specified numbers. The statements are relevant to the reliability of the tendered SMS call sequence tables.⁷⁹

FURTHER SUBMISSIONS—WITNESSES 705 AND 707

62. After the testimony of Witnesses 705 and 707,⁸⁰ the Trial Chamber received further submissions on both the admissibility of parts of their statements, and of the admissibility of the Prosecution's cell site evidence.⁸¹ The Prosecution filed three responses to the Defence's further submissions,⁸² and counsel for the Accused, Mr Hassan Hussein Oneissi, replied to

⁷⁸ In response to F2033, Prosecution Rule 91 Submission for Five Witness Statements on the Production of Call Sequence Tables and SMS Call Sequence Tables, 30 June 2015, the Trial Chamber, on 15 July 2015, allowed the Prosecution to add this statement (ERN 60303416-60303421) to its exhibit list; *see* transcript of 15 July 2015, p. 86.

⁷⁹ Prosecution Badreddine CST motion, paras 8 and 52-53.

⁸⁰ F2552, Corrected Version of Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 11 May 2016; Written reasons of 13 May 2016.

⁸¹ Email from the Trial Chamber Senior Legal Officer to the Parties, dated 28 July 2016; F2676, The Defence for Hussein Hassan Oneissi Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement, 29 July 2016; F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2015; F2678, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705, 29 July 2016, the Defence filed a public redacted version of these submissions on 3 August 2016; F2680, Sabra Joinder to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707" and "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 1 August 2016; F2682, Adjunction de la défense de Merhi aux "The Defence for Hussein Hassan Oneissi Supplemental Submissions in Relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement", 5 August 2016; F2683, Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers, 8 August 2016; F2684, Adjunction de la défense de Merhi aux "Ayyash Defence Further Submissions on Prosecution Motion Related to Evidence from Call Service Providers", 8 August 2016; F2685, Sabra Joinder to "Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence from Call Service Providers", 8 August 2016.

⁸² F2689, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707", 15 August 2016; F2690, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 15 August 2016; F2700, Consolidated Prosecution Response to Defence Submissions in Relation to the Admission of Call Sequence Tables and Evidence Obtained from Lebanese Communication Services Providers, 22 August 2016, Confidential with Confidential Annex A (Consolidated Prosecution response).

one of those responses.⁸³ The submissions are summarised in the decisions of 30 September 2016 and 10 October 2016.⁸⁴

63. Counsel for Mr Ayyash, joined by counsel for Mr Sabra and Mr Merhi, maintained their objection to the admission of the tendered call sequence tables, submitting that the Prosecution has not established the reliability and provenance of the call data records underlying the call sequence tables, as requested by the Trial Chamber.⁸⁵

64. They argued that regardless of whether Witnesses 705 and 707 were qualified as ‘company representatives’ or ‘corporate witnesses’ testifying on behalf of their company, most of their evidence was not from their own personal knowledge but based on hearsay, and that they were not working at those companies in 2004 and 2005. Rather than providing direct evidence, based on their own personal knowledge, these witnesses merely relied on, and relayed, information obtained from predecessors, colleagues, or departments within the company. Therefore, the Defence was limited, if not entirely foreclosed, from conducting meaningful cross-examination on much of the evidence provided by the witnesses.

65. With regard to Witness 707, specifically, counsel for Mr Ayyash, Mr Sabra and Mr Merhi, submit that the witness’s written evidence on the retrieval of call data records is limited to paragraphs 132 and 133 of his statement of 11 November 2015 (exhibit P1192), only focusing on ‘end cell’ data, and that no information is provided about who retrieved the data, and the protocol followed, to establish that call data records provided by Alfa to the Tribunal are an authentic copy of the data held by the company. Witness 707’s testimony only added some more information—naming the teams that responded to requests for retrieval of data—but without specifying who these persons were or their role in the process.⁸⁶

66. With regard to Witness 705, counsel for Mr Ayyash, for Mr Sabra and Mr Merhi submit that he testified that, in 2004 and 2005, Touch outsourced the role of analysts responsible for retrieving call data records, but no evidence was provided as to who the work was outsourced to, their competence, or for how long this procedure was in place.⁸⁷

⁸³ F2705, Reply to Consolidated Prosecution Response to Defence Submissions in Relation to the Admission of Call Sequence Tables and Evidence Obtained from Lebanese Communication Services Providers, 29 August 2016.

⁸⁴ Decision of 30 September 2016, paras 10-17; Decision of 10 October 2016, paras 10-38

⁸⁵ Ayyash further submissions of 8 August 2016, paras 3, 5, 21-31 and 47. *See also* paras 36-38.

⁸⁶ Ayyash further submissions of 8 August 2016, paras 32-35.

⁸⁷ Ayyash further submissions of 8 August 2016, para. 36.

67. The Prosecution responded that the Trial Chamber should decide on the admissibility of the proposed call sequence tables on the basis of the totality of the evidence submitted by the Prosecution, and not limit it to the in-court testimony of Witnesses 705 and 707, and the selected paragraphs from their statements. As ordered by the Trial Chamber in its decision of 6 May 2015, the Prosecution requested the admission of statements made by Ms Kamei, Mr Donaldson, Ms Habraken, Mr Christie, Mr Carnus, Mr Mkrtchyan, and Ms Stanford, who are Prosecution staff members involved in producing the call sequence tables, and one expert report from Mr Sommer. All except Ms Stanford testified.⁸⁸

68. The Prosecution argues that the Ayyash Defence focused exclusively on the in-court evidence of Witnesses 705 and 707 as the only method of proving the reliability of this type of evidence, while the Trial Chamber imposed no such restriction.

69. Considering that the Trial Chamber's decisions only require *prima facie* rather than definite reliability and probative value, the Prosecution has therefore no obligation to produce a witness with personal and direct knowledge of every possible question on the data and records used to produce the call sequence tables.⁸⁹

DISCUSSION

Legal principles

70. The Trial Chamber, in its 6 May 2015 decision, referred to the general practice and principles of international criminal law, including those from the Special Tribunal's Statute and Rules of Procedure and Evidence,⁹⁰ relating to the admission and exclusion of evidence, namely that:

- a Chamber may admit any relevant evidence, taking into account, among other things, the probative value of the evidence;
- a Chamber is not bound by any national rules of evidence; and
- a Chamber may exclude evidence obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage the integrity of the proceedings.⁹¹

⁸⁸ Consolidated Prosecution response, para. 14.

⁸⁹ Consolidated Prosecution response, paras 15, 17-19, 23.

⁹⁰ Article 21 (2) of the Statute of the Special Tribunal, Rules 3, 149 and 162.

⁹¹ Decision of 6 May 2015, para 66.

71. The Prosecution tenders ‘from the bar table’, under Rule 154, numerous call sequence tables, combined call sequence tables and SMS call sequence tables related to each of the four Accused and to Mr Badreddine. Defence counsel contested the reliability and probative value of the evidence arguing that, in view of the Trial Chamber’s decision 6 May 2015, the Prosecution motions were premature. Defence counsel moved the Trial Chamber to defer its decision until it had heard evidence on the provenance of the call data records and the production of the call sequence tables.

72. The Trial Chamber has also defined procedural safeguards for the admission of material tendered ‘from the bar table’, that is, without requiring a witness to attest to the document: it must be relevant and probative, and its probative value must not be outweighed by the need to ensure a fair trial.⁹² Only *prima facie*—rather than definite—reliability and probative value is required at this stage.⁹³ Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate with clarity and specificity, where and how each document or record fits into its case.⁹⁴

Relevance of the call sequence tables

73. No contest is made to the relevance of the evidence and the Trial Chamber is satisfied that these call sequence tables are all relevant to the allegations pleaded, particularly in paragraphs 16 to 19 of the amended consolidated indictment which relate to the network groups and attribution. The call sequence tables are relevant to the attribution to each of the four Accused and to Mr Badreddine of network, personal and sequential mobiles allegedly involved in the planning and carrying out of the attack on Mr Hariri.

General reliability of the cell site and call data records evidence

74. The Trial Chamber ordered the Prosecution to call at least one witness who can testify to the creation of the call sequence tables and to the collection, storage and reliability of their

⁹² F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1781, Corrected Version of “Decision on Prosecution Motion to Admit into Evidence Geographic Documents” of 8 December 2014, 10 December 2014, para. 4.

⁹³ Decision of 6 March 2015, para. 33; F1350, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 7; STL-11-01/PT/TC, F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 8.

⁹⁴ Decision of 6 March 2015, para. 33; Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4-6.

underlying materials, to allow the evaluation of admissibility of the tendered colour-coded call sequence tables and the reliability of their underlying data.⁹⁵

75. As noted above at paragraphs 12 and 13, Prosecution analysts testified in July and November 2015, and September 2016, and the Trial Chamber heard extensive evidence from Witnesses 707 and 705 between January and July 2016. It is accordingly satisfied, for the reasons set out in the previous decisions,⁹⁶ of the *prima facie* reliability of the evidence, and hence its probative value.

Preliminary matters

76. In their submissions following Witnesses 707's and 705's evidence, Defence counsel argue that most of the witnesses' evidence came not from their own personal knowledge but from hearsay. The Trial Chamber has received insufficient information to assess the reliability of the proposed evidence, and argue on this basis, that admitting it would violate the fair trial rights of the Accused.

77. The Trial Chamber, when it admitted into evidence parts of Witnesses 707's and 705's statements, dismissed these objections to the hearsay of corporate witnesses. The Special Tribunal's Rules of Procedure and Evidence allow a Chamber to admit hearsay evidence, the established principles of probative value apply, and admitting hearsay evidence at this stage is distinct from the weight that the Trial Chamber may ultimately give to this evidence.⁹⁷ The Prosecution was not required (to attempt) to call a witness or witnesses with first-hand personal knowledge of the details or the origins of every aspect of each of the business records produced in the normal course of business or the records produced for the purpose of litigation.⁹⁸ Counsel for Mr Badreddine also stated that English translations of five SMS call sequence tables have not been disclosed and should not be therefore admitted into evidence. The Prosecution informed the Trial Chamber that the English translations of five SMS call sequence tables were disclosed in September 2016.⁹⁹

⁹⁵ Decision of 6 May 2015, paras 113, 115 and disposition.

⁹⁶ Decision of 30 September 2016, paras 25, 27, 31, 36, 43, 50, 55, 72, 79, 84, 93, 99-100 and 128; Decision of 10 October 2016, paras 46-49, 52, 62, 74, 78-79, 84, 108-109, 114, 117-119, 124-125, 130, 133, 139-140, 144, 146, 150, 152-153, 156, 159, 166, 168, 171-172, 178, 186, 193, 195 and 198; Cell site decision, paras 20, 32, 55-57, 60-61, 65-74, 78-79, 82-96, 101-103, 108-109, 113-114, 120-127, 133, 139, 145-147, 155, 160-162.

⁹⁷ Corrected decision of 11 May 2016, para. 49; Written reasons of 13 May 2016, para. 19. *See also* Decision of 30 September 2016, para. 21; Decision of 10 October 2016, para. 44.

⁹⁸ Decision of 30 September 2016, paras 22 and 25.

⁹⁹ Email from the Prosecution to the Trial Chamber's Legal Officer on 25 October 2016.

Witnesses 707's and 705's evidence

78. In the course of Witnesses 707's and 705's extensive testimonies, the Trial Chamber received ample evidence on the provenance of the underlying call data records and SMS data content, and particularly regarding the generation, retrieval and storage of this data, from which the proposed call sequence tables were produced. In its decisions admitting the written evidence of these two witnesses, the Trial Chamber carefully analysed and satisfied itself that the relevant paragraphs from Witnesses 707's and 705's statements and accompanying annexes describing the process by which the business records were generated, stored, and retrieved were *prima facie* reliable.¹⁰⁰

79. Witness 707 testified that call data records are generated by the mobile switching centre (MSC) in real-time, automatically, without human intervention.¹⁰¹ The witness explained that each 'event' passing through an MSC creates a record: this is the call data record. This will occur both for pre-paid or post-paid SIM cards: a field, in the call data records, will show whether it is pre-paid or post-paid.¹⁰² Alfa recorded the call data for billing, marketing and statistical purposes.¹⁰³ The witness testified on how call data is treated by mediation, and archived on magnetic tapes, kept in safes in the main headquarters of the company, and, from 1 August 2004, in the data warehouse.¹⁰⁴ Call data records are stored also in the billing system for one or two years.¹⁰⁵ The witness explained how the call data is retrieved from Alfa's archives.¹⁰⁶

80. The Trial Chamber carefully analysed Witness 707's written statement and accompanying testimony describing how the business records were generated, stored, and retrieved. The statements explain how the business records were produced in the ordinary course of business. Alfa's regular practice is to generate these records that were created between 2004 and 2005. The Defence's argument that because the witness did not work at Alfa in 2004 and 2005 and was not involved in generating all of these annexes that the

¹⁰⁰ Decision of 30 September 2016, paras 56-100; Decision of 10 October 2016, paras 80-156.

¹⁰¹ Transcript of 29 January 2016, pp 110 and 118; transcript of 10 February 2016, pp 59-63 referring also to exhibit P772, Ericsson manual, dated 12 March 2004, applicable to the mobile switching centres which were used by Alfa in 2004-2005, as they were Ericsson mobile switching centres; transcript of 17 April 2016.

¹⁰² Transcript of 29 January 2016, pp 111-112.

¹⁰³ Transcript of 29 January 2016, pp 111 and 119.

¹⁰⁴ Transcript of 10 February 2016, pp 29, 40, 41, 44, 57, 67-68, 75-78. The witness explained that there was no write access to the files created by the mobile switching centre before reaching the mediation device and that a very limited number of people had access, in 2004 and 2005, to the safes.

¹⁰⁵ Transcript of 10 February 2016, pp 44, 74-75.

¹⁰⁶ Transcript of 10 February 2016, pp 24, 43-54 and 78.

paragraphs and annexes are unreliable was similarly rejected by the Trial Chamber. Witness 707 satisfactorily explained how they would have been created. The annexes were generated by qualified Alfa employees in the ordinary course of business and hence make them business records. The Trial Chamber dismissed the Defence's objections on the grounds that hearsay is admissible and that even though the witness did not work at Alfa between 2004 and 2005, he was provided the information by qualified employees at Alfa. The Trial Chamber was satisfied that these paragraphs and annexes are probative of the business practices of Alfa. They are *prima facie* reliable even though the witness does not have first-hand knowledge about all of the information in these paragraphs and annexes.¹⁰⁷

81. Similarly, Witness 705 testified that every time a Touch subscriber calls someone, call data records are generated in the MSC automatically, for billing, technical or administrative purposes.¹⁰⁸ Call data is then automatically transferred to the mediation device and to the billing system, where it is also archived.¹⁰⁹ The mediation includes the polling (automatic transfer through file transfer protocol of the binary call data records), the formatting and filtering.¹¹⁰ The information can only be retrieved via file transfer protocol pull by personnel with a valid username and password.¹¹¹ In 2004 and 2005, the retrieval of call data records was outsourced to a company, International Turnkey Systems (ITS), with which Touch had a contractual relationship between 2005 and 30 June 2010.¹¹²

82. The witness had a general understanding of how call data records were generated, mediated and used in 2004-2005, because of his working experience and interactions with colleagues who worked on such issues for the company.¹¹³ He explained that, when a request for assistance to retrieve the call data records is approved by the Lebanese Telecommunications Minister, Touch asks the appropriate team to start the call data records retrieval: an analyst runs the query and retrieves the call data records from the archives database, and the response is sent back to the requestor through the legal process of the company.¹¹⁴

¹⁰⁷ Decision of 10 October 2016, paras 154-156.

¹⁰⁸ Transcript of 5 May 2016, p. 66; and transcript of 10 May 2016, pp 10 and 77.

¹⁰⁹ Transcript of 10 May 2016, pp 73-74.

¹¹⁰ Transcript of 10 May 2016, p. 78, transcript of 11 May 2016, p. 10.

¹¹¹ Transcript of 10 May 2016, pp 19-20.

¹¹² Transcript of 11 May 2016, pp 21-22.

¹¹³ Transcript of 10 May 2-16, pp. 76-77.

¹¹⁴ Transcript of 11 May 2016, p. 23.

83. With respect to Witness 705 and Touch, the Trial Chamber held that the relevant paragraphs in his statement explain the methods used at Touch to produce the business records in the ordinary course of business. Touch's regular practice is to generate these records, and these were created in 2004 and 2005.

84. The Trial Chamber dismissed the Defence argument that because as the witness did not work at Touch in 2004 and 2005 and was not involved in the generation of all of these annexes, the tendered paragraphs and annexes were unreliable. Even though the witness does not have first-hand knowledge about all of the information in these paragraphs and annexes, the Trial Chamber found that the paragraphs and annexes were reliable because they were generated by qualified Touch employees. In addition, the witness provided, in his evidence, explanations satisfactory to the Trial Chamber for the purposes of establishing the *prima facie* reliability of the evidence.¹¹⁵

85. The Trial Chamber formally admitted into evidence specific paragraphs of Witnesses 705's and 707's statements, and related annexes, concerning the generation, storage and retrieval of call data records, containing information, among other things, with regard to Witness 705, on: a description of call data records;¹¹⁶ data flow starting from the MSC;¹¹⁷ archiving of call data records containing non-billing related information;¹¹⁸ and the relationship between Touch and ITS.¹¹⁹ And, with regard to Witness 707: data flow from the MSC to billing;¹²⁰ retrieval of call data records for the Special Tribunal;¹²¹ and the procedure for retrieving individual text files for a specific number when compared to bulk data.¹²²

Cell site evidence

86. In 2005, Alfa provided to the UNHIC a spreadsheet containing cell ID codes. From 2007 onwards, Alfa and Touch provided to the UNHIC and the Prosecution all cell site material. Both companies handed over spreadsheets of data, shape files and, in Alfa's case, coverage maps, at least two years after the 14 February 2005 attack. The cell site data was generated and maintained in Alfa's and Touch's usual course of business for system

¹¹⁵ Decision of 30 September 2016, paras 99-100.

¹¹⁶ Decision of 30 September 2016, para. 52, referring to exhibit P826, para. 64.

¹¹⁷ Decision of 30 September 2016, para. 57, referring to exhibit P826, paras 147-148.

¹¹⁸ Decision of 30 September 2016, para. 58, referring to exhibit P826, para. 161.

¹¹⁹ Decision of 30 September 2016, para. 113, referring to exhibit P1093, paras 11-13, 16-17.

¹²⁰ Decision of 10 October 2016, paras 85-86, referring to exhibit P1192, paras 105 and 111.

¹²¹ Decision of 10 October 2016, para. 88, referring to exhibit P1192, paras 127-128.

¹²² Decision of 10 October 2016, para. 89, referring to exhibit P1192, paras 132-133.

management purposes, and accordingly met the requirement of *prima facie* reliability for admission under Rule 154. To show that the cell site evidence was reliable, the Prosecution annexed documents obtained from Alfa and Touch describing how some of it was generated, and showing its chain of custody from the companies to the UNIIIC or Special Tribunal.¹²³

87. The Trial Chamber, in its decision, carefully analysed the proposed cell site evidence, comprising the ten items proposed for admission, and the evidence of Witnesses 705 and 707. Having reviewed each piece of evidence, and the evidence in its totality, the Trial Chamber satisfied itself that the evidence was relevant and that the Prosecution had demonstrated its *prima facie* reliability and hence its probative value. It held that, although the Defence pointed to possible deficiencies in the underlying cell site data, and in particular in relation to Alfa's maps of its cell coverage in 2004 and 2005, this did not deprive the material of its probative value at the stage of its admission into evidence.¹²⁴

Evidence on the production of call sequence tables

88. To assess the reliability of the Prosecution's call sequence tables, including roaming call sequence tables, edited call sequence tables and reduced SMS call sequence tables, the Trial Chamber considered the available information relating to their production. Prosecution analysts described the process of creating call sequence tables from the call data records, the method used, the peer review process and the correction of errors in the call sequence tables.¹²⁵ The Prosecution's database administrator testified about receiving, storing and processing raw call data provided by Alfa and Touch, and the design, implementation, maintenance and repair of the Structured Query Language (SQL) database that enables call record analysis.¹²⁶

89. Further, the Prosecution led evidence on the authenticity of the underlying call data records and on the production of the call sequence tables. For example, the Prosecution, in compliance with the 6 May 2015 decision, called Ms Kamei who produced and supervised the

¹²³ F2004, Corrected Version of "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015, paras 5, 21 and 24; Annex B.

¹²⁴ Decision of 26 October 2016, paras 160-161.

¹²⁵ Ms Kamei, Mr Donaldson, Ms Habraken, Mr Christie and Mr Carnus testified on 20-22 July and 16-19 November 2015, and 27 September 2016.

¹²⁶ Mr Spartak Mkrtchyan testified on 14-15 September 2015.

production of numerous call sequence tables.¹²⁷ She demonstrated how call sequence tables were produced.¹²⁸

90. Ms Kamei testified that call sequence tables and SMS call sequence tables do not alter the underlying call data records, as only formatting changes are applied.¹²⁹ Two types of source materials were used to produce the call sequence tables, namely: (i) individual text files for individual numbers, as received from the Prosecution in response to requests for all the calls made and received, or the SMS sent and received, for a particular number of interest; and (ii) bulk data for multiple numbers, received from the Prosecution in response to requests for all telephone calls made in Lebanon for a certain date range. They were provided in large files, divided per day and not per number. They were then imported into the SQL database, where analysts searched by number.¹³⁰ Efforts were made to use individual text files, whenever available, as this involved fewer steps with less possibility of an error or discrepancy.¹³¹

91. With regard to both type of source material, examples were produced in court and marked for identification.¹³² Ms Kamei described the steps in producing the call sequence tables—copying or importing the data, and in the case of bulk data, copying those in the SQL database using specific queries, in Excel. Formatting changes were made such as removing the Lebanon country prefix, adding ‘not available’ for blank fields, and removing duplicate rows. In addition to call data records, Alfa and Touch provided a list of cell tower names that were added to the call sequence tables.¹³³

92. Mr Kamei also testified that all call sequence tables are ‘peer reviewed’ by other analysts.¹³⁴ The peer review is a form of quality assurance in which another analyst does a ‘spot check’ to compare it with the raw data.¹³⁵ A validation process takes place if a new version of a call sequence table is created, as it is cross-checked against the previous table,

¹²⁷ Transcript of 20 July 2015, p. 3.

¹²⁸ Transcripts of 20 July 2015, pp 9-11, 16-97 and of 21 July, pp 4-75. *See* exhibits P511 MFI (transcript of 20 July 2015, p. 33); P512 (transcript of 20 July 2015, p. 41); P513 (transcript of 20 July 2015, pp 46-47); exhibit P514 MFI (transcript of 20 July 2015, p. 54).

¹²⁹ Transcript of 20 July 2015, pp 10-11.

¹³⁰ Transcript of 20 July 2015, pp 11, 17, 29-30, 33-35, 38-39.

¹³¹ Transcript of 20 July 2015, p. 42.

¹³² *See e.g.*, exhibit P511 MFI, transcript of 20 July 2015, p. 33.

¹³³ Transcript of 20 July 2015, pp 47, 53, 56-60, 62.

¹³⁴ Transcript of 20 July 2015, pp 58-59.

¹³⁵ Transcript of 20 July 2015, pp 60-61; transcript of 21 July 2015, pp 6-7.

cell by cell, using an Excel function, and any difference is noted in the analyst's statement.¹³⁶ The number of errors was very small, in proportion to the entirety of all the call sequence tables.¹³⁷ The list of call sequence tables produced by Ms Kamei is exhibit P516.¹³⁸

93. For the other witnesses who produced the call sequence tables, their statements were received into evidence under Rule 156, and they were cross-examined by Defence counsel.¹³⁹

94. Finally, the Sabra Defence argues that the Trial Chamber should receive into evidence the attribution reports produced by Prosecution analyst, Mr Donaldson, before admitting the call sequence tables. However, Mr Donaldson's attribution reports are not subject to the Prosecution motions addressed in this decision. The Trial Chamber is not convinced that hearing Mr Donaldson's evidence on attribution is a prerequisite to admitting the call sequence tables and the relevant witness statements, or that the right of each Accused to a fair trial will be prejudiced. The Sabra Defence's request that he is cross-examined before the admission of the tendered documents is unsubstantiated. Mr Donaldson is scheduled to testify again later this year; he can be further cross-examined then, if necessary.

95. The provenance of the underlying raw data and their demonstrative call sequence tables was sufficiently explained in the testimonies of the Prosecution witnesses, Mr Mkrtchyan, Mr Kirwan, Mr Stockton, Ms Kamei, Mr Christie, Mr Carnus and Ms Habraken who were cross-examined by Defence counsel.¹⁴⁰ The Trial Chamber is satisfied that the call sequence tables and their underlying material bear the necessary indicia of reliability to admit them into evidence.

¹³⁶ Transcript of 20 July 2015, pp 60-61, 75.

¹³⁷ Transcript of 21 July 2015, p. 7.

¹³⁸ Transcript of 20 July 2015, pp 83-85.

¹³⁹ Witnesses' exhibit numbers: Mr Donaldson, exhibit number P525; Mr Christie, exhibit number P529; Mr Carnus, exhibit number P530 MFI; Ms Hebraken, exhibit number P528 MFI.

¹⁴⁰ Prosecution analysts—Ms Habraken, Mr Donaldson, Ms Kamei, Mr Carnus and Mr Christie—provided evidence in court on 20-22 July 2015, 16-19 November 2015 and 27 September 2016 on the production of call sequence tables. On 14 September 2015, Mr Mkrtchyan, the Prosecution's computer information system officer and database administrator testified on the format of the raw call data and SMS content received by the Prosecution, the database he created and populated with the raw data and the stored procedure he wrote to search the database and enabled the creation of some of the call sequence tables. On 29 January, 9-12 and 15-18 February, 18-22 April, 3-6 and 9-11 May, 19-21 and 25 July 2016, Witnesses PRH707 and PRH705 testified about the Alfa and Touch networks, business practices and records, and, in particular, about the generation, business use, gathering and storage of call data records. They provided evidence about the extraction of those records and how they were provided to the Prosecution. Both witnesses were extensively cross-examined by Defence counsel.

Admitting the five witness statements into evidence

96. In earlier decisions, the Trial Chamber determined the procedural safeguards for admitting written statements into evidence under Rule 155 in lieu of live in-court testimony.¹⁴¹ A statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to proof of the acts or conduct of the Accused, may not be admitted without cross-examination. In addition, Rule 155 (C) states that the Trial Chamber may decide, providing reasons, that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of a statement or transcript, in whole or in part, without cross-examination. These principles are applicable here.

97. The Prosecution submits that five statements are relevant, probative, reliable and do not address the acts or conduct of the Accused, as charged in the amended consolidated indictment. The statements are from Prosecution analysts, Ms Habraken, Mr Stockton, Ms Kamei, Ms Stanford and Mr Kirwan. They explain how the call sequence tables related to Mr Ayyash, Mr Sabra, Mr Merhi, and the former Accused, Mr Badreddine, were produced from the call data records and the SMS records, namely:

- Ms Habraken described in her statement the negative results of her research of the SMS content of specific ‘blue’ and ‘green’ network numbers;
- Mr Stockton explained the procedure of selection of SMS messages for inclusion in the reduced SMS call sequence tables produced for two specified telephone numbers on the basis of their relevance to the reliability of the SMS call sequence tables;
- Ms Kamei’s statement explains the production of four call sequence tables, including the call sequence table of a specified personal mobile telephone number attributable to Mr Sabra;
- Ms Stanford’s statement describes the production of ten SMS call sequence tables, including the SMS call sequence table of a personal mobile attributable to Mr Ayyash; and

¹⁴¹ STL-11-01/PT/TC, F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; STL-11-01/T/TC, F1785, Corrected Version of “Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony Relating to Rafik Hariri’s Movements and Political Events” of 11 December 2014, 13 January 2015, para. 3; F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related Evidence’, 9 July 2015, para. 5.

- Mr Kirwan explains the process of selecting SMS messages used in two reduced SMS call sequence tables for two specific telephone numbers.

98. In their responses, Defence counsel opposed the admission of the five witness statements, arguing that their admission is premature because the Trial Chamber must first hear evidence on the provenance of the call data records and the production of the call sequence tables. This is no longer relevant as the Trial Chamber has now heard the pertinent testimony.

99. In its decision of 6 May 2015, the Trial Chamber found that the admission of the witness statements of six Prosecution analysts on the production of call sequence tables was premature because it required further contextual evidence from the Prosecution to properly evaluate their probative value and the reliability of the subject matter of those statements—namely, producing the call sequence tables, and the underlying data. The Trial Chamber deferred its decision until hearing such evidence. The Trial Chamber also held that, if it finds the call data records reliable and declares the call sequence tables admissible, it will accordingly declare those statements admissible as integral associated exhibits.¹⁴²

100. Having heard the testimony of Witnesses 705, 707 and the Prosecution analysts, Ms Habraken, Mr Stockton and Ms Kamei, and having reviewed the statements (including the annexes accompanying these statements) of these analysts, the Trial Chamber finds those relevant to, and probative of, the reliability of the proposed call sequence tables. Accordingly, the statements are admissible under Rule 155. The proposed statements have sufficient indicia of reliability under both Rule 155 and the relevant Practice Direction.¹⁴³ Defence counsel have not sought to have the witnesses called for cross-examination or to further cross-examine them. The witness statements do not concern the acts and conduct of the Accused and both contain evidence cumulative to Ms Kamei's evidence. The statements of the five Prosecution analysts are therefore admissible without requiring the witnesses to attend court for cross-examination.

Amending the Prosecution's exhibit list

101. In the motions related to Mr Ayyash, Mr Sabra, and Mr Badreddine, the Prosecution sought to amend its exhibit list to replace specific call sequence tables with updated tables

¹⁴² Decision of 6 May 2015, para. 118.

¹⁴³ STL-PD-2010-02, Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155, 15 January 2010.

correcting typographical or formatting errors.¹⁴⁴ The Defence did not oppose the amendment. The Trial Chamber is of the view that it is in the interests of justice to allow the request.

CONCLUSION

102. The Trial Chamber has carefully considered the testimony and statements of Witnesses 705 and 707, the testimony of the Prosecution analysts and others witnesses in producing the call sequence tables, the cell site evidence and the submissions. It is now satisfied that it has received sufficient evidence on the provenance of the underlying call data records and SMS data content, and particularly regarding the gathering, retrieval and storage of this data, from which the proposed call sequence tables were produced. The evidence has established the *prima facie* reliability of the call sequence tables tendered by the Prosecution in the four motions.

103. For these reasons, the Trial Chamber is satisfied of the relevance of the proposed call sequence tables and the five witness statements (and attached annexes), and that each has probative value. In assessing their probative value, the Trial Chamber was satisfied that each call sequence table and witness statement had the necessary *prima facie* reliability to provide that probative value. The documents are therefore admissible. However, the mere admission into evidence of these documents does not determine any weight the Trial Chamber may ultimately give to them. It will assess this evidence at the appropriate point in the proceedings and provide reasons for its reliance on, or rejection of, any of the documents. Whether they can be used in the manner suggested by the Prosecution is for the Trial Chamber's later evaluation.

CONFIDENTIALITY

104. The Prosecution requested the Trial Chamber to maintain the confidentiality of the annexes accompanying the four motions as they contain mobile numbers used by third parties until the Trial Chamber decides otherwise, either upon the motion of the Prosecution or after having given the Prosecution the opportunity to be heard on the issue of lifting the confidential status.¹⁴⁵ Only the responses filed by counsel for Mr Ayyash, Mr Merhi and Mr Badreddine remain confidential.

¹⁴⁴ Prosecution Ayyash CST motion, para. 5; Prosecution Merhi CST motion, para. 4; Prosecution Badreddine CST motion, para. 5.

¹⁴⁵ Prosecution Ayyash CST motion, para. 59; Prosecution Sabra CST motion, para. 42; Prosecution Merhi CST motion, para. 34; Prosecution Badreddine CST motion, para. 59.

105. The Trial Chamber will order counsel for Mr Ayyash and Mr Merhi to file public redacted version of their responses. The Trial Chamber will maintain the confidentiality of the annexes to the Prosecution motions until it decides otherwise.¹⁴⁶ The Trial Chamber orders the Head of the Defence Office to file a public redacted version of the response filed by then counsel for Mr Badreddine, or to have it reclassified as public.

REQUEST TO EXCEED THE WORD LIMIT

106. The Prosecution also requests, based on the complexity of the motions and the inclusion of general submissions on attribution methodology to provide guidance to the Trial Chamber and the Parties, authorization to exceed the word limit by 700 words in its motion related to Mr Ayyash and by 1177 words in the motion related to Mr Badreddine.¹⁴⁷ The Badreddine Defence argued that the Prosecution exceeded the word limit in its motions related to Mr Ayyash and Mr Badreddine without requesting authorisation to do so in advance as required under Article 5 (3) of the relevant Practice Direction.¹⁴⁸

107. The Trial Chamber, in the circumstances, will allow the Prosecution's request to exceed the word limits. The increase was justifiable, but should have been sought in advance, and the Parties are again reminded to do this.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

ALLOWS the Prosecution to amend its exhibit list to replace two call sequence tables (CST-0403 and CST-0404);

¹⁴⁶ On 7 and 11 October 2016, the Prosecution filed a public redacted version of F2123, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Badreddine and Related Statements, 21 August 2015; F2125, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Sabra, 18 August 2015; F2124, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Merhi, 18 August 2015 and F2137, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Badreddine, 21 August 2015.

¹⁴⁷ Prosecution Ayyash CST motion, para. 9; *see also* relief requested; Badreddine CST motion, para. 9; *see also* relief requested.

¹⁴⁸ Badreddine Defence Consolidated Response, para. 4. Article 5 (3) of the Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013: A party must seek authorisation in advance from the relevant Judge or Chamber to exceed the word limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing. If necessary, a Judge or Chamber may vary the word limits *proprio motu*.

DECLARES admissible, under Rule 154 the call sequence tables listed at the end of this decision, as listed in annexes A to the each of the four motions (except for CST-0185, CST-0265 and CST-0386);

ORDERS that any existing call sequence tables marked for identification become exhibits;

DECLARES admissible, under Rule 155, the statements of:

- Ms Nadine Stanford of 3 February 2015, listed in annex D to the Prosecution motion related to Mr Salim Jamil Ayyash;
- Mr Adrian Kirwan of 23 March 2015, listed in annex D to the Prosecution motion related to Mr Mustafa Amine Badreddine;
- Mr Leroy Stockton of 19 February 2015, listed in annex D to the Prosecution motion related to Mr Mustafa Amine Badreddine;
- Ms Helena Habraken of 23 January 2015, listed in annex D to the Prosecution motion related to Mr Mustafa Amine Badreddine; and
- Ms Kei Kamei of 15 May 2015, listed in annex D to the Prosecution motion related to Mr Assad Hassan Sabra;

DECIDES that it will, at a suitable stage in the proceedings, formally admit the documents into evidence and allocate exhibit numbers to them;

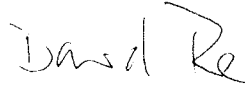
GRANTS the Prosecution's request to exceed the word limit in its motions related to Mr Ayyash and Mr Badreddine;

ORDERS counsel for Mr Ayyash and Mr Merhi, to file public redacted versions of their responses; and

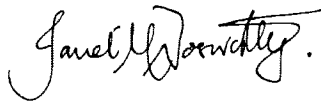
ORDERS the Head of the Defence Office to file a public redacted version of F2162, Badreddine Defence Consolidated Response to Six Prosecution Motion for Admission of Call Sequence Tables and Related Statements, 1 September 2015, or have it reclassified as public.

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

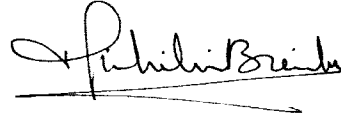
Leidschendam,
The Netherlands
31 October 2016



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

LIST OF CALL SEQUENCE TABLES

Call sequence tables and SMS call sequence tables related to Salim Jamil Ayyash

CST-0186	CST-0397	CST-0174	CST-0159	CST-0345
CST-0212	CST-0398	CST0399	CST-SMS 0134	CST-SMS 0146

Call sequence tables and SMS call sequence tables related to Hassan Habib Merhi

CST-258	CST-0282	CST-0139	CST-0140	CST-0348
CST-0256	CST-SMS-0126			

Call sequence tables and SMS call sequence tables related to Assad Hassan Sabra

CST-0192	CST-0404	CST-SMS-0116	CST-SMS-0115	
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Call sequence tables and SMS call sequence tables related to Mustafa Amine Badreddine

Personal mobile phone (PMP) call sequence tables and SMS call sequence tables				
CST-0377 (ERN 60182428)	CST-0377 (ERN 60137312, 60137313)	CST-0377 (ERN 60182166)	CST-0377 (ERN 60004576A)	ECT-SMS-0047 (ERN 60118418)
ECT-SMS-0047 (ERN 60115748)	ECT-SMS-0047 (ERN 60117577)	CST-0389 (ERN 60182428)	CST-0389 (ERN 60137312, 60137313)	CST-0389 (ERN 60182166)
CST-0389 (ERN 60004576A)	ECT-SMS-0046 (ERN 60118418)	ECT-SMS-0046 (ERN 60115748)		
Sequential mobile phone (SMP) call sequence tables and SMS call sequence tables				
CST-0187 (ERN 60137312, 60137313)	CST-0187 (ERN 60182166)	CST-0376 (ERN 60290363) (Data used for which portion of CST: 09-03-04 to 31-07-04)	CST-0376 (ERN 60290363) (Data used for which portion of CST: 01-08-04 to 31-08-04)	CST-0376 (ERN 60066017-60066018)
CST-0376 (ERN 60295553)	CST-0376 (ERN 60296086)	CST-0376 (ERN 60294742)	CST-0202	CST-0198
CST-0196	CST-0197	CST-SMS-0120	CST-0195	CST-0188 (ERN 60066017-60066018)
CST-0188 (ERN 60065314A)	CST-0264	CST-0190	CST-0403	
Third party mobile call sequence tables and SMS call sequence tables				
CST-0203	CST-0204	CST-0205	CST-0206	CST-SMS-0127
CST-0373 (ERN 60182166)	CST-0373 (ERN 60004576A)	CST-0211 (ERN 60004576A)	CST-0211 (ERN 60066017-60066018)	CST-0269
CST-SMS-0133	CST-SMS-0136 (ERN 60118418)	CST-SMS-0136 (ERN 60115748)	CST-SMS-0137	CST-SMS-0138 (ERN 60118418)
CST-SMS-0138 (ERN 60115748)	CST-SMS-0139 (ERN 0118418)	CST-SMS-0139 (ERN 0115748)	CST-SMS-0139 (ERN 0117577)	CST-SMS-0139 (ERN 0120464)

CST-SMS-0139 (ERN 60122246)	CST-SMS-0139 (ERN60126583)	CST-SMS-0139 (ERN60126517)	CST-SMS-0139 (ERN60128739)	CST-SMS-0139 ERN 60137240
CST-0360	CST-SMS-0132 (ERN 0115748)	CST-SMS-132 (ERN 0118418)		
Combined call sequence tables				
CST-0339_ BADREDDINE combined with end cell (Data Source ERN: D0390140- D0395531)	CST-0339_ BADREDDINE combined with end cell (Data Source ERN: D0395532- D0398015)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0388908- D0388913)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0058931- D0059173)	CST- 0339_BADRE DDINE combined with end cell (Data Source ERN: D0388914- D0389045)
CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0059987- D0059998)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0059913- D0059954)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0059955- D0059986)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0059894- D0059912)	CST- 0339_BADRE DDINE combined with end cell (Data Source ERN: D0059174- D0059193)
CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0322576- D0322592)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0059215- D0059238)	CST- 0339_BADRED DINE combined with end cell (Data Source ERN: D0059239- D0059257)		

