

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

Case No: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 31 October 2016

Original language: English

Classification: Public

The PROSECUTOR

v.

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

**DECISION ON THE ADMISSION OF CALL SEQUENCE
TABLES RELATED TO THE MOVEMENTS OF MR RAFIK HARIRI
AND RELATED EVENTS, AND FOUR WITNESS STATEMENTS**

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

Head of Defence Office:
Mr François Roux

Counsel for Mr Hassan Habib Merhi:
Mr Mohamed Aouini, Ms Dorothee Le Fraper du Hellen & Mr Jad Khalil

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

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse, Mr Yasser Hassan & Ms Natalie von Wistinghausen

Counsel for Mr Assad Hassan Sabra:
Mr David Young, Mr Guénaél Mettraux
Mr Geoffrey Roberts



INTRODUCTION

1. Through telecommunications evidence, the Prosecution seeks to prove that the former Lebanese Prime Minister, Mr Rafik Hariri, was under surveillance by the Accused in the months before his assassination on 14 February 2005. This includes proving the movements of the four Accused and Mustafa Amine Badreddine—who are alleged to be supporters of Hezbollah; showing relevant communications between Syrian and Hezbollah officials in Lebanon and the Accused and Mr Badreddine; proving how Mr Badreddine acquired information about Mr Hariri's movements; showing how a false claim of responsibility for the assassination was carried out; and proving communication between the Accused, Salim Jamil Ayyash and mobiles allegedly used at the crime scene before and after the assassination.

2. The Prosecution alleges that five interconnected mobile telephone networks—colour-coded as red, green, blue and yellow, operating in four closed networks, and, additionally one group of 'purple' mobiles—were involved in planning, preparing and executing the attack that resulted in Mr Hariri's death, and the death of and injury to many others.¹ Between 14 January 2005 and the date of Mr Hariri's death, while observing his movement, including at his residences, the eight red network mobiles communicated almost exclusively within the network.² The 'purple phones', a group of three mobiles, were used to coordinate a false claim of responsibility for the attack, made soon after the explosion.³

3. To prove this, the Prosecution's case against the four Accused relies heavily on telecommunications data, comprised of call data records, cell site information and subscriber records. This data was generated by three Lebanese telecommunication service providers, Alfa, Touch and Ogero. From this underlying material, Prosecution analysts extracted relevant data and entered it, in a standardised and mechanical manner without altering the content, into what the Prosecution terms 'call sequence tables'. This decision admits into evidence specified 'call sequence tables'.

4. The Prosecution sought the admission into evidence, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, of call sequence tables, including roaming, edited and reduced SMS call sequence tables, related to Mr Hariri's movements and related events. The Prosecution also requests, under Rule 155, the admission of relevant witness

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

² Amended Consolidated Indictment, paras 15 (a), 22.

³ Amended Consolidated Indictment, para. 15 (e).

statements of Prosecution analysts, Ms Kei Kamei (Witness PRH308), Ms Helena Habraken (Witness PRH371), Ms Nicole Blanch (Witness PRH698), and an investigator, Mr Gary Platt (Witness PRH147), on the production of some of the tables.⁴ The Prosecution withdrew its request to admit call sequence tables for Ogero landlines.⁵

5. Call sequence tables have been defined and described in previous decisions.⁶ Most specifically, in the decision of 6 May 2015, at paragraph 2, the Trial Chamber described call data records and call sequence tables as:

Call data records contain information routinely collected by these providers in connection with telephones using their services, for customer billing and systems management. ... As call data records are ‘without further analysis largely unintelligible’, the Prosecution extracted information from the call data records and entered it into what it terms ‘call sequence tables’ to make them accessible and capable of presentation and analysis without altering the data. Produced by a Prosecution analyst in a ‘standardized’ and ‘mechanical’ manner by ‘copying and pasting the relevant data from the underlying material,’ 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. For each call, they detail:

- the other telephone number in contact with the target number;
- the time and the date of the call;
- the type of call (voice or Short Message Service (SMS));
- the duration;

⁴ F2140, Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events, 26 August 2015, confidential with confidential annexes A, B, C, D and E, (‘Prosecution motion’). Public redacted version of the Prosecution motion was filed on 10 October 2016. The Prosecution sought the correction of annex A, particularly the correction of the date range entry for the base call data used to produce the call sequence table CST-0361. *See*, F2607, Supplementary Submission to Prosecution Motion for the Admission of Yellow Phone-Related Call Sequence Tables and Related Statements, 30 May 2016, paras 1 (b), 4. *See also*, the Trial Chamber’s Decision noting the correction, transcript of 21 July 2016, p. 84. The Prosecution also filed a corrigendum to correct two ERN references and a title in annexes B and C. *See*, F2140, Corrigendum to “Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events” Dated 26 August 2015, 27 August 2015, confidential, (‘Corrigendum to the Prosecution motion’).

⁵ F2672, Prosecution Notice of Withdrawal of Requests to Admit Landline Call Sequence Tables, 28 July 2016, confidential. A public redacted version of the notice was filed on 15 August 2016.

⁶ 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 UNIIC and STL’s Prosecution, 6 May 2015, (‘Decision of 6 May 2015’), para. 2. *See also*, F2750, Reasons for Admitting Witness PRH705’s Statements and Annexes into Evidence, 30 September 2016, (‘Witness 705 Decision of 30 September 2016’), para. 4; F2797, 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, 31 October 2016, (‘Call Sequence Tables Decision of 31 October 2016’), paras 4-5.

- the IMEI 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; and
- the cell identity and cell sector at the end of the call, when necessary.

6. Roaming call sequence tables are the complete chronological sequence of calls made by Touch subscribers while abroad. They show the time of call according to the local clock, the telecommunications operator's name and the country where the roaming user is. Edited call sequence tables are extracts reflecting the call data of a target telephone for specific days. Reduced SMS call sequence tables of selected texts show the time the SMS was sent, the recipient's number and the direction of the SMS.⁷

7. Counsel for the four Accused, Mr Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, and counsel acting for the then Accused, Mr Badreddine⁸ opposed the motion.⁹

8. In the decision of 6 May 2015 on a similar Prosecution motion, the Trial Chamber ordered the Prosecution to lead evidence on the gathering, retrieval and storage of call data records, and on the production of call sequence tables.¹⁰ Witnesses PRH707 and PRH705, representing Alfa and Touch, respectively, testified about business practices and records, in particular the generation, business use, gathering, maintenance and storage of call data

⁷ Prosecution motion, paras 13-16.

⁸ STL-11-01/T/AC/AR126.11, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, 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 Proceedings", 11 July 2016; STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016; F2655, Version Corrigée de la « Notification de la fin de la commission d'office de Mes Antoine Korkmaz, Iain Edwards et Mylène Dimitri, respectivement conseil principal et co-conseil de l'équipe de Défense de M. Mustafa Amine Badreddine » en date du 15 juillet 2016, 18 July 2016.

⁹ F2182, Ayyash Defence Response to Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events, 9 September 2015, confidential with confidential annex A, ('Ayyash response'); F2191, Badreddine Defence Response to the "Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events", 10 September 2015, confidential, ('Badreddine response'); F2190, Réponse de la Défense de Merhi à la "Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events", 10 September 2015, confidential, ('Merhi response'); F2183, Réponse à la « Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events », 10 September 2015, ('Oneissi response'); F2186, Sabra Defence Response to Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events, 10 September 2015, ('Sabra response').

¹⁰ Decision of 6 May 2015, para. 115 and disposition.

records, including international roaming call data, cell site data and subscriber records.¹¹ Other witnesses testified about producing the call sequence tables—this is set out in the Trial Chamber’s general decision of 31 October 2016 on call sequence tables.¹²

9. After Witnesses 705 and 707’s evidence¹³ the Trial Chamber received further Defence submissions on their evidence and the admissibility of the call sequence tables.¹⁴ The Prosecution responded,¹⁵ and counsel for Mr Oneissi replied.¹⁶ The Trial Chamber subsequently admitted selected paragraphs and annexes of the witness statements, and the Prosecution’s general cell site evidence, and decided on the general admissibility of call sequence tables.¹⁷

¹¹ Witness 707 testified on 29 January, 9-12, 15-18 February, 18-19 April 2016; Witness 707 was cross-examined on 20-22 April, 3-4 May and 25 July 2016. Witness 705 testified on 5-6, 9-12 May, and 19-20 July 2016; Witness 705 was cross-examined on 20-21 July 2016.

¹² Call Sequence Tables Decision of 31 October 2016, paras 12, 88-93, 95.

¹³ Decision, transcript of 4 May 2016, pp 21-24, and F2597, Written Reasons for the Trial Chamber’s Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016; 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.

¹⁴ Email from the Trial Chamber’s Senior Legal Officer to the Parties, 8 July 2016. The Defence filed the following submissions: 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 (‘Oneissi supplemental submissions’); 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, confidential; F2680, Sabra Joinder to “Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707” and “Ayyash Defence Submission 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; F2684, Adjonction de la Défense de Merhi aux “Ayyash Defence Further Submissions on Prosecution Motions 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.

¹⁵ 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, confidential; F2700, Consolidated Prosecution Response to Defence Submissions in Relation to the Admission of Call Sequence Tables and Evidence Obtained from Lebanese Communications Service Providers, 22 August 2016, confidential with confidential annex A, (‘Consolidated Prosecution response’).

¹⁶ F2705, Reply to Consolidated Prosecution Response to Defence Submissions in Relation to the Admission of Call Sequence Tables and Evidence Obtained from Lebanese Communication Service Providers, 29 August 2016, (‘Oneissi reply’).

¹⁷ Decision, transcript of 8 September 2016, p. 3, read together with Witness 705 Decision of 30 September 2016; Decision, transcript of 8 September 2016, pp 3-4, read together with F2767, Written Reasons for Admitting Witness PRH707’s Statements and Annexes into Evidence, 10 October 2016 (‘Witness 707 Decision of 10 October 2016’); Decision, transcript 8 September 2016, p. 4, read together with F2793, Reasons for Decision Admitting Prosecution’s Cell Site Evidence, 26 October 2016 (‘Cell Site Evidence Decision of 26 October 2016’); Call Sequence Tables Decision of 31 October 2016.

THE EVIDENCE

10. The Prosecution, under Rule 154, seeks to admit into evidence; thirty-four call sequence tables, six edited call sequence tables, five roaming call sequence tables, and two reduced SMS call sequence tables. As a precondition to their admission, the Prosecution also wants to add eleven call sequence tables and six edited call sequence tables to its exhibit list, and seeks the admission, under Rule 155, of four witness statements on the production of certain call sequence tables. According to the Prosecution, under Rules 149 (C), (D), and 154, the call sequence tables are relevant, probative, and reliable.¹⁸

11. The Prosecution argues that when read in conjunction with other evidence, the call sequence tables, roaming call sequence tables and SMS call sequence tables provide evidence related to:

- (a) Mr Hariri's activities in the months before his assassination;
- (b) interactions between Syrian and Hezbollah officials in Lebanon and the Accused, and Mr Badreddine;
- (c) movements of the Accused and Mr Badreddine at relevant times;
- (d) Mr Badreddine's methods of acquiring information about Mr Hariri;
- (e) the planning and the execution of the false claim of responsibility; and
- (f) communications between Mr Ayyash with mobiles used at the crime scene before and after Mr Hariri's assassination.¹⁹

(a) Mr Hariri's activities in the months before 14 February 2005

12. The senior Syrian military intelligence officer stationed in Lebanon in 2004 and 2005 was Brigadier-General Rustom Ghazaleh. According to the Prosecution, Mr Hariri met him for the last time on 9 January 2005. Call sequence tables before and after this meeting reveal that Mr Ghazaleh contacted a 'senior Hezbollah official' who then contacted another high-ranking Hezbollah official, and Mr Badreddine.²⁰

13. The Trial Chamber has heard evidence that Mr Ghazaleh and Mr Hariri disagreed on significant issues related to the upcoming elections in Lebanon and on Mr Hariri's vision on governing the country. On this occasion, Mr Hariri informed Mr Ghazaleh that he would

¹⁸ Prosecution motion, para. 10.

¹⁹ Prosecution motion, para. 18.

²⁰ Prosecution motion, para. 21.

remove four members of Parliament from his 2005 election list.²¹ A reduced SMS call sequence table records text messages identifying a relevant ‘senior Hezbollah official’.²²

14. Call sequence tables also corroborate evidence that Mr Mustafa Nasser, a political advisor to Mr Hariri, was his intermediary in arranging meetings with the Secretary-General of Hezbollah, Mr Hassan Nasrallah, in December 2004 and January 2005. These call sequence tables record contacts between Mr Nasser and an advisor to Mr Nasrallah, Mr Hussein Khalil and his assistant Mr Khalil Farhat, on 25 December 2004, before and after Mr Nasser met Mr Hariri in his villa at Faqra, Lebanon.²³

15. Roaming call sequence tables also show that Mr Nasser, when travelling abroad, continued his contact with these Hezbollah officials, with Mr Hariri’s security apparatus and telephones associated with Quraitem palace, Mr Hariri’s Beirut residence, to arrange meetings between Mr Hariri and Hezbollah officials.²⁴ Call sequence tables and roaming call sequence tables for telephones of members of Mr Hariri’s staff support inferences related to Mr Hariri’s movements, including when travelling outside of Lebanon.²⁵

16. The Prosecution submits that call sequence tables for the telephone numbers attributable to Mr Yahya Al-Arab, Mr Hariri’s chief of security, and Mr Ghazaleh, when read with other evidence,²⁶ support an inference that Mr Al-Arab visited Mr Ghazaleh at the Syrian headquarters, in Anjar, Lebanon, on various dates between November 2004 and February 2005, including on 13 February 2005, the day before the assassination.²⁷

²¹ Prosecution motion, para. 23. *See* testimony of Mr Ghazi El-Youssef (Witness PRH265), transcript of 11 March 2015, pp 51, 54-55, explaining that when preparing for the 2005 elections Mr Hariri did not include Mr Adnan Arakji, Mr Nasser Kandil, Mr Bassem Yamout and Mr Bechara Merhej—previously imposed by the Syrian security apparatus in Lebanon—in his election list on the basis of opposing the Syrian presence in Lebanon. *See also* transcript of 11 March 2015, pp 112-116, where the witness explains his understanding of the discussion between Mr Hariri and Mr Ghazaleh, having listened to a covertly recorded audiotape of the meeting, which was admitted into evidence as exhibit P395 (and exhibit P395.1 for the transcript). *See also* testimony of Mr Hani Hammoud (Witness PRH052), transcript of 19 May 2015, pp 84-85.

²² Prosecution motion, para. 22.

²³ Prosecution motion, para. 26.

²⁴ Prosecution motion, para. 26.

²⁵ Prosecution motion, para. 34.

²⁶ *See* the testimony of Mr Ghaleb Ahmad El-Chammaa (Witness PRH282), transcript of 11 February 2015, pp 22-31, describing the amount, the method and the reasons for monthly payments that Mr Ghazaleh asked from Mr Hariri. *See also* the testimony of Mr Fuoad Siniora (Witness PRH108), transcript of 24 March 2015, pp 26-29, explaining that during his visit to the former Prime Minister, on the Saturday before his assassination, Mr Yahya El-Arab (also known as Abou-Tareq) reported to Mr Hariri that he delivered the ‘parcel’ to Mr Ghazaleh. *See also* the testimony of Mr Hani Hammoud, transcript of 20 May 2015, pp 35-36, describing that on 13 February 2005 Mr Abou-Tareq took an envelope from Mr Hariri’s desk and on the same evening reported to the former Prime Minister that he had seen Mr Ghazaleh.

²⁷ Prosecution motion, para. 24.

17. The late Mr Wissam Al-Hassan was the head of the information branch of the Lebanese Internal Security Forces, and in charge of Mr Hariri's public security. The Prosecution intends to corroborate, through call sequence tables for telephones associated with Mr Al-Hassan, Mr Al-Arab, and Mr Hariri's staff (and other evidence)²⁸ that Mr Hariri and members of his staff travelled to and from Faqra between 24 December 2004 and 1 January 2005.²⁹

18. Call sequence tables relevant to the movements and locations of Mr Hariri are in turn relevant to the surveillance activity of the 'red network' mobiles. For example, on 31 January 2005, Mr Hariri was reasonably expected to attend a meeting of the Lebanese Syrian Economic and Social Cooperation Commission at the Parliament. Call sequence tables show surveillance activity of the 'red network' telephones in the area of the Parliament on the same day. Call sequence tables of contacts between Mr Bassel Fuleihan, a former Lebanese Minister of Finance, and Mr Al-Hassan at the same time are relevant for the same reason.³⁰

19. Two members of the Lebanese Parliament, Mr Atef Majdalani and Mr Ghattas Khoury, attended a funeral at the Saint Michael Church, in Beirut, on 12 February 2005 with Mr Hariri.³¹ Call sequence tables corroborate that this coincided with surveillance activity of the 'red network' mobiles around the area at the time.³²

(b) Interaction between Syrian and Hezbollah officials and the Accused and Mr Badreddine

20. Paragraph 49 of the amended consolidated indictment pleads that the four Accused and Mr Badreddine were 'supporters of Hezbollah'. The Trial Chamber has heard evidence of the political and personal relationship between Mr Hariri and senior Hezbollah officials in the months before his death. Call sequence tables for the telephones attributed to Mr Amine Sherri and Mr Ali Ammar, two political figures associated with Hezbollah, demonstrate their contact with Mr Badreddine at the relevant time, and show that Mr Ammar was also in contact with Mr Merhi.³³

²⁸ See testimony of Mr Ghazi Youssef, transcript of 10 March 2015, p. 80.

²⁹ Prosecution motion, para. 25.

³⁰ Prosecution motion, para. 32.

³¹ See testimony of Mr Atef Majdalani (Witness PRH491), transcript of 28 April 2015, pp 54-55; and testimony of Mr Ghazi El-Youssef (Witness PRH265), transcript of 12 March 2015, p. 111.

³² Prosecution motion, para. 33.

³³ Prosecution motion, para. 35.

(c) Movements of the Accused and Mr Badreddine

21. Mr Badreddine is alleged to have been a co-conspirator in the conspiracy pleaded in the amended consolidated indictment. Through call sequence tables of the telephone of 'Jad', a body guard of 'Sami Issa', an alias used by Mr Badreddine, the Prosecution also seeks to draw inferences from the timing of Mr Badreddine's movements.³⁴

(d) Mr Badreddine's attempts to gain information about Mr Hariri

22. The Prosecution alleges that Mr Badreddine, under the guise of 'Sami Issa' befriended a relative of Mr Hariri in an attempt to obtain information about Mr Hariri.³⁵

23. Based on call sequence tables for the mobiles attributed to a relative of Mr Hariri, the Prosecution submits that the relative was in Faraya between Christmas and New Year's Eve 2004, while the former Prime Minister stayed at his Faqra villa. The Prosecution submitted that it intended to present evidence demonstrating that on 25 and 29 December 2004 the relative was visited by his friend, 'Sami Issa'.³⁶ It has since done so; the relative has provided this evidence.

24. These call sequence tables show that this relative was in frequent contact with members of Mr Hariri's security apparatus, and with a 'personal mobile phone' (PMP 663) attributed to Mr Badreddine. The reduced SMS call sequence table for one of the relative's mobiles contains text messages relevant to identifying the user and his activities on 15 January 2005, and his whereabouts at locations frequented by both Mr Hariri and Mr Badreddine. These call sequence tables are relevant to and probative of assessing Mr Badreddine's motives in developing a relationship with the relative, to acquire information about Mr Hariri.³⁷

(e) False claim of responsibility

25. The Prosecution alleges that the Accused used Mr Abu Addas to make a false claim of responsibility, on a video, for the attack against the former Prime Minister, following which they delivered the video tape to a location where it was retrieved by an employee of Al-

³⁴ Prosecution motion, para. 36.

³⁵ Prosecution motion, paras 28, 30-31.

³⁶ Prosecution motion, para. 28.

³⁷ Prosecution motion, paras 29-31.

Jazeera news agency, and broadcast later on television.³⁸ Mr Merhi, Mr Oneissi and Mr Sabra used certain mobiles, the ‘purple phones’, during the planning and execution of the false claim of responsibility.³⁹

26. The Prosecution requests the admission of call sequence tables of five mobiles, termed the ‘associate purple phones’, which were in contact with the three ‘purple phones’ because they record calls relevant to the false claim of responsibility. More specifically, ‘associate purple phones’ were used at relevant times in locations connected to Mr Addas, namely, his home address and the Arab University Mosque that he frequented. These call sequence tables also reflect a period of irregular inactivity on 16 January 2015, the day of Mr Adass’s disappearance.⁴⁰

(f) Communications between Mr Ayyash’s and other mobiles

27. The Prosecution tenders the call sequence tables for three unattributed telephones which were in contact with each other on 13, 14 and 15 February 2005 while connecting with cell sites in the vicinity of the crime scene. One was also in contact with a mobile described as ‘personal mobile phone 170’, or ‘PMP 170’, attributed to Mr Ayyash several times the night before Mr Hariri’s assassination, while PMP 170 activated the cell tower in the vicinity of the crime scene. These two mobiles were also in contact in the early morning before the assassination. The Prosecution concludes that the purpose of these phone calls was to report relevant information from the crime scene to Mr Ayyash.⁴¹

Prosecution’s legal submissions

28. The Prosecution submits that the call data records, SMS content records and cell site information used to produce the call sequence tables are relevant and reliable and therefore probative.

29. Mr Platt, a Prosecution investigator produced edited call sequence tables with shortened date ranges extracting call records from six call sequence tables which are the subject of this and other Prosecution motions.⁴² Mr Platt, who has commenced his

³⁸ Amended Consolidated Indictment, paras 23, 44.

³⁹ Amended Consolidated Indictment, para. 15 (e).

⁴⁰ Prosecution motion, paras 39-42.

⁴¹ Prosecution motion, paras 37-38.

⁴² Prosecution motion, paras 6, 14. The relevance of three edited call sequence tables was addressed by the Prosecution in F2127, Prosecution Motion for the Admission of Call Sequence Tables Relevant to the Purchase of the Mitsubishi Canter and the Sale of the Red Network Handsets, 19 August 2015, and in F2137, Prosecution

testimony,⁴³ will testify on the movements of the mobiles relevant to the Prosecution's case. The edited call sequence tables are to facilitate his testimony using the Electronic Presentation of Evidence software.⁴⁴

30. The underlying material was obtained, on DVDs and hard drives, either through a request for assistance via the Lebanese Prosecutor-General and the Ministry of Telecommunications, or directly from the Lebanese communications service providers, Touch and Alfa. The call sequence tables and SMS call sequence tables were produced from these bulk data records, individual text files and SMS content records through copying, sorting and formatting the records in Microsoft Excel, and adding the cell site information.⁴⁵

31. To finalise the roaming call sequence tables, the relevant Prosecution analyst queried a list of short-codes related to the foreign communications service providers and inserted the corresponding name and country of the providers into the tables. The production of these tables was a standardized and mechanical process; their reliability may be tested by comparing the call sequence tables to the underlying data. The Prosecution also relies on Mr Platt's statement as to the production and the reliability of the edited call sequence tables.⁴⁶

32. Further, the probative value of the call sequence tables is not outweighed by any prejudicial effect because the Prosecution has made the underlying material available to the Defence for review and the Defence has had the opportunity to cross-examine the analysts who produced the call sequence tables.⁴⁷

Defence submissions

33. Counsel for the four Accused and counsel for Mr Badreddine opposed the admission into evidence of the call sequence tables challenging their relevance and reliability, and hence their probative value.

34. However, most of the arguments regarding the reliability and probative value of the evidence have been superseded by the Trial Chamber's decisions related to Witnesses 705's

Motion for the Admission of Call Sequence Tables Related to the Accused Badreddine and Related Statements, 21 August 2015, para. 38 (g).

⁴³ See transcripts of 4-6, 14-15 April and 26-27 July 2016.

⁴⁴ Prosecution motion, paras 43.

⁴⁵ Prosecution motion, paras 47-51.

⁴⁶ Prosecution motion, paras 49-51, 53.

⁴⁷ Prosecution motion, paras 52, 55-56.

and 707's evidence, its decision on cell site evidence, and its general decision on call sequence tables.⁴⁸ The submissions are recited here for completeness.

Prosecution failed to establish the reliability of the call sequence tables

35. Defence counsel argue that the Prosecution's motion is premature and inconsistent with the Trial Chamber's decision of 6 May 2015. Even though the Prosecution has led evidence on the production of call sequence tables, it is yet to offer evidence pertaining to the provenance of the underlying call data records. The Trial Chamber is not in the position to properly evaluate the reliability of the call sequence tables until the Prosecution presents evidence on the implementation and maintenance of the Structured Query Language (SQL) database, and of the three Lebanese telecommunications companies.⁴⁹

36. Counsel for Mr Ayyash add that the Prosecution has not established the reliability of the roaming call data records, and take issue with the Prosecution's relying on untendered evidence to demonstrate reliability and chain of custody.⁵⁰

37. Counsel for Mr Sabra additionally argue that the admission of the edited call sequence tables and the reduced SMS call sequence tables are also premature, because the Trial Chamber has to hear evidence on what criteria had been followed during their production. The Trial Chamber should defer its decision until it is satisfied—following cross-examination—that it has all contextual information to assess the reliability of these call sequence tables.⁵¹ Counsel for Mr Badreddine challenge the reduced SMS call sequence table of the telephone number of the 'senior Hezbollah official' on the basis that it is unclear how some of the SMS messages were selected.⁵²

38. These submissions were drafted before the Trial Chamber heard evidence as to the production of the call sequence tables and as to the reliability of the cell site evidence—and hence the call data records. It has now decided on the general reliability of the cell site evidence and the call data records from which the call sequence tables are extracted. The Trial Chamber has held the evidence to be *prima facie* reliable and thus probative.

⁴⁸ Witness 705 Decision of 30 September 2016; Witness 707 Decision of 10 October 2016; Cell Site Evidence Decision of 26 October 2016; Call Sequence Tables Decision of 31 October 2016.

⁴⁹ Ayyash response, paras 7-9, 12; Badreddine response, para. 8; Merhi response, paras 4-8; Oneissi response, para. 4; Sabra response, paras 4-11.

⁵⁰ Ayyash response, paras 13, 15.

⁵¹ Sabra response, paras 14-17.

⁵² Badreddine response, para. 11.

39. So, in reverse order, after having already decided that the evidence is probative, the issue for determination in this decision is whether the evidence is also relevant.

Lack of relevance of some call sequence tables

40. Counsel for the four Accused and Mr Badreddine challenged the relevance of some of the call sequence tables, specifically:

- contacts between Syrian and Hezbollah officials and Mr Badreddine when there was a marked deterioration in the relationship between Mr Hariri and the Syrian leadership;⁵³
- the nature of meetings between Mr Ghazaleh and Mr Al-Arab;⁵⁴
- contacts between Mr Mustafa Nasser, Mr Hussein Khalil and Mr Khalil Farhat;⁵⁵
- interactions between Mr Badreddine and Mr Hariri's relative;⁵⁶
- that two political figures associated with Hezbollah were in contact with Mr Badreddine and Mr Merhi;⁵⁷
- that call sequence tables of his bodyguards' telephones can show inferences concerning the timing of specific movements of Mr Badreddine;⁵⁸
- that users of unattributed telephones reported information on the scene before and after Mr Hariri's assassination;⁵⁹ and
- that the call activity of the 'associate purple phones' is connected to the planning and execution of the false claim of responsibility.⁶⁰

41. Counsel for Mr Ayyash submit that the Prosecution failed to demonstrate the relevance of Mr Ghazaleh's role and his telephone contacts to any of the live issues in the case. Counsel object to the Prosecution's allegations that unknown mobile users were reporting relevant information about the crime scene to Mr Ayyash on 14 and 15 February 2005, before and after Mr Hariri's assassination.

⁵³ Ayyash response, para. 17; Badreddine response, paras 10-11; Merhi response, para. 15; and Sabra response, para. 21; referring to the Prosecution motion, paras 20-23.

⁵⁴ Ayyash response, para. 17; and Merhi response, para. 15; referring to Prosecution motion, para. 24.

⁵⁵ Ayyash response, para. 23; referring to Prosecution motion para. 26.

⁵⁶ Badreddine response, paras 12-13; referring to Prosecution motion para. 31.

⁵⁷ Merhi response, para. 15; Sabra response, para. 21, referring to Prosecution motion, para. 35.

⁵⁸ Badreddine response, paras 14-15, referring to Prosecution motion, para. 36.

⁵⁹ Ayyash response, paras 19-21; and Badreddine response, para. 16; referring to Prosecution motion, para. 38.

⁶⁰ Badreddine response, paras 19-22; Merhi response, paras 9, 12-14; Oneissi response, paras 6-8; and Sabra response, paras 25-27; referring to Prosecution motion, paras 40-41.

42. These allegations are new and fail the relevance test for their admission into evidence. Counsel object to the relevance of the call sequence tables for the numbers of Mr Nasser, Mr Khalil and Mr Farhat. According to Defence counsel, the Prosecution's allegations are new with regards to the role of these political figures. These allegations appear in footnotes in the Prosecution motion, which is contrary to Article 16 (4) of the Special Tribunal's Statute. Edited call sequence tables are also not relevant, according to counsel, and their admission would unnecessarily duplicate the evidence.⁶¹

43. Counsel for Mr Badreddine argued not only that the Prosecution motion lacks justification as to the relevance of the call sequence tables, but that it also breaches the Defence's right to a fair trial. According to counsel, the Prosecution—through a bar table motion—introduces new allegations on matters going into the acts and conduct of the Accused. Counsel state that the relevance of the edited call sequence table for the telephone attributed to one of Mr Badreddine's bodyguards has not been addressed in the Prosecution's motion. Counsel object to the admission of the call sequence table for the telephone of 'Jad' because the Prosecution sought its admission without specifying the dates or movements to which it is relevant.⁶² The relevance of some of the SMS contents selected for the reduced SMS call sequence tables is ambiguous; therefore counsel request that the motion be dismissed or the decision on the admission of the reduced SMS call sequence tables be deferred until Ms Stanford appears for cross-examination.⁶³ Regarding the call sequence table for Witness PRH416, the Prosecution has failed to explain its relevance or the significance of the selected dates.⁶⁴

44. Counsel for Mr Merhi submit that the Prosecution's allegations with regards to the 'associated purple phones' are not pleaded in the indictment. Counsel contest the relevance of the related call sequence tables and argue that their admission would seriously affect the fairness of the trial.⁶⁵

45. Counsel for Mr Oneissi argue that the motion pleads new material facts with regards to these mobiles. This is contrary to Article 16 (4) of the Statute and Rules 68 (D) and 91 (G); therefore the Trial Chamber should order the Prosecution to amend the indictment and its pre-

⁶¹ Ayyash response, paras 16-17, 19-21, 23.

⁶² Badreddine response, para. 14.

⁶³ Badreddine response, paras 9-16.

⁶⁴ Badreddine response, para. 15.

⁶⁵ Merhi response, paras 11-12, 14.

trial brief. The Prosecution provided no information as to the relevance of these call sequence tables to the planning and execution of the claim of responsibility.⁶⁶

46. According to counsel for Mr Sabra, the Prosecution fails to explain how the call sequence tables related to the contacts between Syrian and Hezbollah officials and the Accused, and related to the false claim of responsibility are relevant to the Prosecution's case. The Prosecution has yet to plead any material allegation as to the purported role of any Hezbollah or Syrian official in the assassination of Mr Hariri or to the conspiracy between the Accused and these officials. For the same reason, counsel oppose the admission of the call sequence tables of the 'associate purple phones'.⁶⁷

47. Counsel for Mr Ayyash do not make further submissions regarding movements of the Accused. Counsel for Mr Sabra do not oppose the admission of the call sequence tables in regard to the movements and meetings of Mr Hariri, the movements of the Accused at relevant times, the methods used by Mr Badreddine to acquire information about the former Prime Minister and contacts between Mr Ayyash and mobiles used in the vicinity of the crime scene on 13, 14 and 15 February 2005.⁶⁸ Counsel for Mr Oneissi take no position in regard to the allegations contained in the Prosecution's motion.⁶⁹ Counsel for Mr Mehri do not specifically mention the movements of the Accused but is opposed to the Prosecution's 'vague allegations not pleaded in the indictment.'⁷⁰

Further submissions after the testimony of Witnesses 705 and 707

48. Defence Counsel filed further submissions about the evidence of Witnesses 705 and 707, the admissibility of the call sequence tables and the cell site evidence. Counsel for Mr Ayyash, joined by counsel for Mr Merhi and Mr Sabra, maintain their objections to the reliability and probative value of the call sequence tables.⁷¹

49. The Prosecution responded that the evidence must be considered in its totality, including but not limited to the testimony of Witnesses 705 and 707 and that the Defence

⁶⁶ Oneissi response, paras 6-8, 14-15.

⁶⁷ Sabra response, paras 22, 25.

⁶⁸ Sabra response, paras 19-20.

⁶⁹ Oneissi response, para. 16.

⁷⁰ Mehri response, para. 14.

⁷¹ Ayyash further submission, paras 3-4, 22-28, 31-34, 36, 38, 42, 45. Counsel for Mr Oneissi submit similar arguments with regards to the admissibility of Alfa call sequence tables and cell site evidence; however their supplemental submissions do not explicitly relate to the Prosecution motion. *See*, Oneissi supplemental submissions, paras 4, 27-29, 35, 55-56, 64, 69. The Oneissi supplemental submissions, the related Prosecution response and the Oneissi reply are addressed in the relevant Trial Chamber decisions.

challenges go to the weight rather than the *prima facie* admissibility of the evidence.⁷² The Trial Chamber has already set out these arguments in its decisions admitting selected paragraphs of the witnesses' statements and annexes.⁷³

DISCUSSION

Admission of evidence under Rule 154

50. The Trial Chamber has previously acknowledged the general principles and rules of international criminal law relating to the admission and exclusion of evidence, and the procedural safeguards for the admission of material tendered 'from the bar table', under Rule 154.⁷⁴ These are applicable here.

Reliability of these call sequence tables

51. The Trial Chamber has held that the telecommunications evidence received from Alfa and Touch—including the cell site evidence and the call data records—is generally *prima facie* reliable.⁷⁵ Cell site evidence provided by Alfa and Touch, a precursor to admitting call sequence tables, has also been admitted into evidence.⁷⁶ In admitting this evidence the Trial Chamber also considered the Prosecution evidence on the production of call sequence tables and the design, implementation, maintenance and repair of the SQL database that enables call record analysis.⁷⁷ This is detailed in the Trial Chamber's decision on the admission of call sequence tables related to the Accused and Mr Badreddine.⁷⁸

52. To establish if the standard methodology was followed in the production of edited call sequence tables and reduced SMS call sequence tables, the Trial Chamber has carefully

⁷² Consolidated Prosecution response, paras. 3-5, 15, 17-19, 24-25, 27, 30-31.

⁷³ Witness 705 Decision of 30 September 2016, paras 12-16; Witness 707 Decision of 10 October 2016, paras 12-33.

⁷⁴ 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). See Decision of 6 May 2015, para. 66. See also Decision of 6 May 2015, para. 111; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, ('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.

⁷⁵ Witness 705 Decision of 30 September 2016, paras 19-20; Witness 707 Decision of 10 October 2016, para. 49.

⁷⁶ Cell Site Evidence Decision of 26 October 2016.

⁷⁷ Prosecution analysts Ms Kei Kamei (Witness PRH308), Mr Andrew Donaldson (Witness PRH230), Ms Helena Habraken (PRH371), Mr Lachlan Christie (Witness PRH313) and Mr Christian Carnus (Witness PRH377) testified in court on 20, 21 and 22 of July 2015, respectively, and described the process of creating call sequence tables from the call data records, the method used, the peer review and the correction of errors in the produced call sequence tables. The Prosecution's database administrator, Mr Spartak Mkrtchyan (Witness PRH111) testified on 14 September 2015 regarding the Structured Query Language.

⁷⁸ Call Sequence Tables Decision of 31 October 2016, paras 88-93, 95.

reviewed the statements of Mr Platt and Ms Blanch.⁷⁹ The Trial Chamber has also reviewed Ms Stanford's statement on the methodology in selecting text messages for the second reduced SMS call sequence table.⁸⁰

53. The Trial Chamber finds that these call sequence tables result from the same standardized procedure followed by the Prosecution analysts, as explained in their evidence.⁸¹ This gives the edited call sequence tables and reduced SMS call sequence tables the necessary indicia of reliability for their admission into evidence. For the same reason, Ms Stanford's cross-examination is unnecessary.

54. The Trial Chamber has also carefully reviewed each document referred to in annexes B and C submitted in support of the reliability and authenticity of the tendered call sequence tables, including requests for assistance and responses.

55. Based on the totality of evidence and supporting material—including that referred to in the other relevant decisions—the Trial Chamber is satisfied that the call sequence tables, including roaming call sequence tables, edited call sequence tables and reduced SMS call sequence tables are *prima facie* reliable and hence may have probative value for admission into evidence.

Relevance and probative value of call sequence tables

56. Call sequence tables related to surveillance of Mr Hariri's movements are indisputably relevant to the case if connected to network mobiles pleaded in the amended consolidated indictment.

57. On the Prosecution's application, the Trial Chamber decided to hear evidence relevant to the political situation in Lebanon preceding Mr Hariri's assassination. This included Mr Hariri's personal and political relationships with relevant players in Lebanon and Syria including the Syrian leadership, Syrian intelligence operatives in Lebanon and political

⁷⁹ Witness statement of Mr Gary Platt, 21 August 2015, ERN60311430-60311434, on the production of six edited call sequence tables CST-209, CST-0210, CST-0392, CST-0360, CST-0406 and CST-0408. Witness statement of Ms Nicole Blanch, 20 April 2015, ERN 60305819-60305824, on the production of reduced SMS call sequence table CST-SMS-0140.

⁸⁰ Witness statement of Ms Nadine Stanford (Witness PRH458), 3 February 2015, ERN 60304121-60304136, on the production of call sequence tables including the reduced SMS call sequence table CST-SMS 0135, tendered under Rule 155 in F2123, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Ayyash, 18 August 2015, confidential, paras 8, 52-54. A public redacted version of the motion was filed on 7 October 2016.

⁸¹ See the testimonies of Ms Kamei, Mr Donaldson, Ms Habraken, Mr Christie and Mr Carnus on 20, 21 and 22 July 2015. See also Call Sequence Tables Decision of 31 October 2016, paras 88-93, 95.

movements and parties such as Hezbollah, the Progressive Socialist Party, and the Future Movement. The Trial Chamber decided that this evidence can provide background and give context to other evidence adduced by the Prosecution, and even by the Defence. It could help to explain the wider circumstances leading to Mr Hariri's assassination, and, in general, could also be used to explain the non-private motives for the commission of any offence that the Trial Chamber could find proven.⁸²

58. Call sequence tables related to Mr Hariri's movements and meetings in the months preceding his assassination are therefore relevant to and probative of the political background surrounding the material facts pleaded in the amended consolidated indictment.

59. The relevant call sequence tables purport to provide information on the existence and nature of Mr Hariri's meetings with Mr Ghazaleh,⁸³ the chronology of events before his assassination, and interactions between Syrian and Hezbollah officials, and Hezbollah officials and Mr Badreddine. The same applies to call sequence tables related to calls between two political figures associated with Hezbollah and Mr Badreddine and Mr Merhi.⁸⁴

60. Because the Defence raised questions as to the significance of Hezbollah's role in the Prosecution's case, the Trial Chamber ordered the Prosecution to file a summary statement of any evidence it wishes to lead in support of its pleading in paragraph 49 of the amended consolidated indictment that the four Accused (and Mr Badreddine) were supporters of Hezbollah.⁸⁵ The Prosecution's submission outlined the main categories of evidence it will tender in relation to this pleaded material fact, which include call sequence tables that allow inferences on contacts between Mr Ayyash, Mr Merhi and Mr Badreddine and certain senior Hezbollah officials. The Prosecution intends to demonstrate the inferences the evidence may offer when it is tendered and during final submissions.⁸⁶

⁸² F1802, Decision on Prosecution's Motion for Admission into Evidence of 485 Documents, Photographs and Witness Statements Relevant to Rafik Hariri's Movements and to Political Events, 30 December 2014, para. 30; F1785 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, 11 December 2014, para. 13; Decision on the scope of Mr Marwan Hamade's evidence, transcript of 17 November 2014, pp. 2-15, in particular pp. 10-11; Decision on adding Mr Walid Jumblatt and Mr Ali Mohammad Hamade to the Prosecution's witness list, transcript of 9 December 2014, pp. 7-13.

⁸³ As noted at para. 12 above, Mr Ghazaleh was a senior Syrian military intelligence official in Lebanon in 2004 and 2005.

⁸⁴ F2713, Decision Amending the Consolidated Indictment, 7 September 2016, ('Decision Amending the Consolidated Indictment').

⁸⁵ F2713, Decision Amending the Consolidated Indictment, 7 September 2016, para. 58 and disposition.

⁸⁶ F2735, Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, confidential, particularly paras 2, 20.

61. The Trial Chamber is satisfied that the Prosecution has demonstrated that the call sequence tables related to the meetings and movements of Mr Hariri, the movements of the Accused and the interaction between Mr Badreddine and Mr Hariri's relative, are relevant to the Prosecution's pleaded case. More specifically, these call sequence tables are relevant to and probative of the preparation of the attack, including the Accused's alleged observation and surveillance activity.⁸⁷

62. Moreover, the Prosecution in its second opening statement, after the joinder of Mr Merhi's case to that of the other then four Accused,⁸⁸ referred to a group of seven 'purple phones' as close associates of the three 'principal purple phones' that the Prosecution alleges were used by Mr Merhi, Mr Oneissi and Mr Sabra.⁸⁹ These allegations, therefore, are not new. It was actually first referred to on 18 June 2014 in the Prosecution's preliminary statement after the joinder of Mr Merhi's case to that of the other four.⁹⁰ The call sequence tables related to the 'associate purple phones' are relevant to the false claim of responsibility for the assassination of Mr Hariri as pleaded in the amended consolidated indictment.⁹¹ The Trial Chamber therefore rejects the Oneissi Defence argument that the motion is pleading new evidence.

63. The Trial Chamber reiterates that the totality of the case against these Accused is contained in the amended consolidated indictment, the Prosecution's pre-trial brief, the evidence disclosed to their counsel, and the evidence to be presented at trial. These documents must be viewed as a 'package' providing an Accused person with the material necessary to mount a proper defence; the indictment itself only needs to plead material facts.⁹²

64. The Trial Chamber also finds that the call sequence tables of the three unattributed numbers are relevant to the movements and activities of Mr Ayyash before and after the

⁸⁷ Amended Consolidated Indictment, para. 22.

⁸⁸ Decision joining the case of *Prosecutor v. Hassan Habib Merhi* to the case of *Prosecutor v. Samil Jamil Ayyash and others*, transcript of 11 February 2014, pp 91-96; and F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014.

⁸⁹ Transcript, 'Prosecution Opening Statement', 18 June 2014, p. 39. As alleged by the Prosecution, a group of three phones—purple phones—were used from at least 1 January 2003 and 16 February 2005 to coordinate the false claim of responsibility. *See*, Amended Consolidated Indictment, para. 15 (e).

⁹⁰ Transcript of 18 June 2014, pp. 26-30, 38-69.

⁹¹ The Prosecution alleges that the Accused used Mr Abu Addas to make a false claim of responsibility, on a video, for the attack against the former Prime Minister Mr Hariri. Following the attack, the Accused allegedly delivered the video tape to a location where it was retrieved by an employee of Al-Jazeera news agency, and broadcasted later on television by Al-Jazeera. Amended Consolidated Indictment, paras 23, 27-28, 44.

⁹² F1105, Decision on Alleged Defects in the Form of the Amended Indictment of 21 June 2013, 13 September 2013, para. 50; and F1465, Decision on Alleged Defects in the Form of the Indictment against Hassan Habib Merhi, 28 March 2014, para. 45.

attack on Mr Hariri. What further inferences may be drawn from these alleged calls is for the Trial Chamber's later assessment.

65. The relevance of three edited call sequence tables are explained in different Prosecution motions.⁹³ The Trial Chamber addressed the relevance of these call sequence tables in the corresponding decisions. The Trial Chamber is satisfied that the edited call sequence tables and the reduced SMS call sequence tables are capable of facilitating the presentation of evidence; therefore, these may be admitted. These are listed in the table at the end of this decision.

AMENDING THE EXHIBIT LIST

66. The Prosecution also requested the addition of seventeen call sequence tables to its Rule 91 exhibit list, as a prerequisite of their admission into evidence. These comprise eleven call sequence tables presenting records of telephones the Prosecution alleges were used by staff members of the former Prime Minister or political figures who travelled or met with Mr Hariri, and six edited call sequence tables. As to their reliability, the Prosecution refers to the details of annexes B and C of its motion.⁹⁴

67. Only counsel for the former Accused, Mr Badreddine, objected stating that the Prosecution disclosed four call sequence tables and five edited call sequence tables between 18 and 24 August 2015, only days before requesting their admission, without showing good cause. This unjustifiably late disclosure is prejudicial to the Defence.⁹⁵ Without taking a position, counsel for Mr Sabra note that the Prosecution did not provide any explanation as to why the amendment of the Prosecution's exhibit list would be in the interest of justice.⁹⁶

68. The Trial Chamber may, in the interest of justice, allow a party to amend its witness and exhibit list. In doing so, it must balance the Prosecution's interest in presenting any available evidence against the rights of an Accused person to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider, among other factors, (i) whether the Prosecution has shown good

⁹³ F2127, Prosecution Motion for the Admission of Call Sequence Tables Relevant to the Purchase of the Mitsubishi Canter and the Sale of Red Network Handsets, 18 August 2015, paras 11-16; and F2137, Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Badreddine and Related Statements, 21 August 2015, para. 38 (g).

⁹⁴ Prosecution motion, paras 4-5; Rule 91 additions are listed in annex E.

⁹⁵ Badreddine response, paras 17, 23.

⁹⁶ Sabra response, para. 29.

cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.⁹⁷

69. The eleven call sequence tables and six edited call sequence tables the Prosecution seeks to add to its Rule 91 exhibit list are *prima facie* relevant and probative. Good cause exists for the Prosecution not having sought earlier to add the exhibits to its list as those were only produced shortly before the Prosecution motion. Four edited call sequence tables have been produced from call sequence tables already on the Prosecution's exhibit list. The Prosecution's case presented at the trial relies heavily on telecommunications data. Mr Platt will testify on movements of mobiles relevant to the Prosecution's case. To facilitate the presentation of his evidence the witness produced edited call sequence tables. Call sequence tables are a form of demonstrative evidence that anyone with access to the SQL call data records database can produce, or reproduce.

70. The Prosecution provided the documents to the Defence in August 2015 and by now the Defence has had ample time for their trial preparations. Adding these documents to the exhibit list, therefore, will not cause any delay or prejudice.

PROSECUTION WITNESS STATEMENTS UNDER RULE 155

71. Ms Kamei's, Ms Habraken's, Mr Platt's and Ms Blanch's statements, according to the Prosecution, are relevant to and probative of the reliability of call sequence tables, reduced SMS call sequence tables and edited call sequence tables, respectively, and contain evidence cumulative to that of the Prosecution analysts about producing call sequence tables. The statements do not concern the acts and conduct of the Accused but rather are limited to establishing the reliability of the tables. Admitting them would be in the interests of justice and would contribute to an expeditious trial without infringing upon the rights of the Accused.⁹⁸

72. Counsel for Mr Ayyash objected arguing that the edited call sequence tables are not relevant, so neither is Mr Platt's statement on their production.⁹⁹ Counsel for Mr Ayyash, Mr Merhi and Mr Badreddine objected that the Prosecution should have first sought to have

⁹⁷ F1228, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4; F2648, Decision on Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon, 14 July 2016, para. 13.

⁹⁸ Prosecution motion, paras 8, 60-64 and 67.

⁹⁹ Ayyash response, para. 16.

added these to the Prosecution's exhibit list.¹⁰⁰ The Trial Chamber has previously rejected this argument and does so again.¹⁰¹ According to counsel for Mr Sabra, Ms Blanch should first be added to the Prosecution's Rule 91 witness list before the admission of her statement.¹⁰²

73. The Trial Chamber has in previous decisions outlined the procedural safeguards for admitting written statements into evidence under Rule 155 in lieu of live in-court testimony.¹⁰³

74. Ms Kamei,¹⁰⁴ Ms Habraken¹⁰⁵ and Mr Platt¹⁰⁶ have been on the Prosecution's witness list since its initial submission under Rule 91 on 15 November 2012. Ms Blanch¹⁰⁷ was added to the Prosecution's witness list in October 2015.¹⁰⁸ Annex A to the Prosecution's motion for the amendment of the witness list enclosed the witness's statement and explicitly states that Ms Blanch reviewed the SMS content of a telephone number, for which she produced the reduced SMS call sequence table.¹⁰⁹ The Defence is aware of her evidence. The Trial

¹⁰⁰ Ayyash response, para. 24; Badreddine response, para. 6; Merhi response, para. 3.

¹⁰¹ F2648, Decision on Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon, 14 July 2016, para. 19; F2224, Corrected Version of 'Decision on Prosecution Motion for the Admission of the Statements of Witnesses PRH056 and PRH087' of 29 September 2015, 5 October 2015, para. 18; F2282, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH575 and PRH703, 21 October 2015, para. 17.

¹⁰² Sabra response, para. 17.

¹⁰³ 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.' *See also*, 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; F2644, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH024, PRH063, PRH106 and PRH051 Pursuant to Rule 155, 12 July 2016, para. 25.

¹⁰⁴ Ms Kamei (Witness PRH308) is a Prosecution analyst. Her witness statement (at ERN 60311256-60311262) describes the production of eight call sequence tables and two SMS call sequence tables, including seven call sequence tables tendered under the Prosecution motion. Her statement is an addendum to her previous statements of 14 January and 15 May 2015. The statement was disclosed on 21 August 2015.

¹⁰⁵ Ms Habraken (Witness PRH371) is a Prosecution analyst. Her statement (at ERN 60310254-60310258) details the production of a call sequence table tendered in the Prosecution motion to correct a mistake in a previous version. Her statement is an addendum to her previous statement of 18 December 2014, which is marked for identification under P528 MFI. The statement was disclosed on 10 July 2015.

¹⁰⁶ Mr Platt (Witness PRH147) is a Prosecution investigator. His statement (at ERN 60311430-60311434) details the production of edited call sequence tables. His statement was disclosed on 24 August 2015.

¹⁰⁷ Ms Blanch (Witness PRH698) is a Prosecution analyst. Her statement (at ERN 60305819-60305824) describes the production of a reduced SMS call sequence table tendered in the Prosecution motion. Her statement was disclosed on 27 March 2015.

¹⁰⁸ F2263, Corrected Version of 'Decision on Prosecution Request to Admit its Witness and Exhibit Lists' of 13 October 2015, 19 October 2015, para. 29 and disposition.

¹⁰⁹ F2133, Prosecution Request to Amend its Witness and Exhibit Lists, 21 August 2015, annex A, item 5.

Chamber thus considers that the Defence has had sufficient notice for the admission of these statements into evidence.

75. Having reviewed the content of and the annexes to these statements, the Trial Chamber finds those relevant to and probative of the reliability of the respective call sequence tables produced by the witnesses. Ms Kamei's and Ms Habraken's statements are addenda to their previous statements. Mr Platt's statement is limited to the production of six edited call sequence tables he intends to use for presentation purposes in his testimony. Ms Blanch's statement will assist to attribute a telephone number to a relative of Mr Hariri and the user's relationship with Mr Hariri's security detail and identify specific locations of interest and activities on 15 January 2005. The relative has already testified as to his mobile number in 2004 and 2005.

76. The proposed statements also have sufficient indicia of reliability under both Rule 155 and the relevant Practice Direction.¹¹⁰ The witness statements contain evidence cumulative to the evidence of Prosecution analysts who testified on the production of call sequence tables, and do not concern the acts and conduct of the Accused.

77. The statements were disclosed to the Defence shortly after their production. Notwithstanding that Ms Habraken and Mr Platt remain on the Prosecution's witness list,¹¹¹ their statements are admissible under Rule 149 (C), and can be admitted into evidence under Rule 155. Ms Habraken has now completed her testimony, and Mr Platt will return for further oral testimony.

EXCEEDING THE WORD LIMIT

78. The Prosecution requests the Trial Chamber's authorisation to exceed the permissible 6,000 word limit by 2341 words. Counsel for Mr Badreddine took no position but expressed discontent by referring to Article 5 (3) of the Practice Direction¹¹² and to an earlier decision of

¹¹⁰ 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.

¹¹¹ F2626, Annex A—List of Remaining Witnesses as at 20 June 2016—to the Prosecution Notice of Updated Revised Witness List, 20 June 2016.

¹¹² STL/PD/2010/01/Rev. 2, Practice Direction on Filing of Documents Before the Special Tribunal for Lebanon, 14 June 2013, Article 5 (3): 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*.

the Trial Chamber.¹¹³ The Trial Chamber reiterates that advance authorisation is required with an explanation of the exceptional circumstances justifying the extension. The Trial Chamber discourages including a request to exceed the word limit in the substantive motion itself, but nonetheless it allows the extension of the word limits.

CONFIDENTIALITY

79. Because they contain confidential information, the Prosecution sought to maintain the confidentiality of the motion and its annexes 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. The Prosecution subsequently, on 10 October 2016, filed a public redacted version of its motion. The Prosecution classified the corrigendum to its motion as confidential. Counsel for Mr Ayyash and Mr Merhi, and counsel for Mr Badreddine classified their responses as confidential; counsel for Mr Ayyash submitted a confidential annex A to the response.

80. The Trial Chamber reiterates the principle of the public nature of proceedings before the Special Tribunal, and that documents should, wherever possible, be filed publicly. Therefore, the Trial Chamber orders the Prosecution to file public redacted version of the corrigendum to the motion. The Trial Chamber will maintain the confidentiality of the annexes of the Prosecution's motion until it decides otherwise. The Trial Chamber also orders counsel for the Accused Mr Ayyash and Mr Merhi to file public redacted version of their motions and annex, where applicable, or have them reclassified as public. The Trial Chamber orders the Head of the Defence Office to file a public redacted version of the response filed by the counsel for Mr Badreddine or have it reclassified as public.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

ALLOWS the Prosecution to exceed the word limit;

¹¹³ Badreddine response, para. 5, referring to STL-11-01/PT/TC, F0235, Decision on extension of word limits for the filing of preliminary motions challenging jurisdiction, 8 May 2012, para. 11.

GRANTS the Prosecution's request to amend its Rule 91 exhibit list to add eleven call sequence tables and six edited call sequence tables listed in annex E of the Prosecution motion, and referred to below;

DECLARES admissible, under Rule 154, call sequence tables, roaming call sequence tables, reduced SMS call sequence tables and edited call sequence tables listed in the corrected version of annex A of the Prosecution motion with the exception of one landline call sequence table withdrawn by the Prosecution (CST-0401). These are listed below;

DECLARES admissible, under Rule 155, the statements of Ms Kei Kamei (Witness PRH308), Ms Helena Habraken (Witness PRH371), Ms Nicole Blanch (Witness PRH698) and Mr Gary Platt (Witness PRH147), submitted in annex D of the Prosecution motion;

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

ORDERS the admission into evidence of exhibits P520 MFI, P521 MFI, P709.3 MFI and P709.4 MFI;

ORDERS the Prosecution to file public redacted version of the corrigendum to the motion;

MAINTAINS the confidentiality of the annexes of the Prosecution motion until it decides otherwise;

ORDERS counsel for the Accused, Mr Ayyash and Mr Merhi, to file public redacted version of their responses and annex, if any, or have them reclassified as public; and

ORDERS the Head of the Defence Office to file a public redacted version of 'F2191, Badreddine Defence Response to the "Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events", 10 September 2015', or have it reclassified as public.

LIST OF CALL SEQUENCE TABLES

CST-0353	CST-0379	CST-0369	CST-0370	CST-0359	CST-0367
CST-0368	CST-0361	CST-0402	CST-0365	CST-0366	CST-0355
CST-0287	CST-0289	CST-0363	CST-0364	CST-0391	CST-0393
CST-0395	CST-0410	CST-0392	CST-0392A	CST-0081	CST-0293
CST-0371	CST-0408	CST-0408A	CST-0406	CST-0406A	CST-0412
CST-0413	CST-0414	CST-0415	CST-0416	CST-0417	CST-0411
CST-0295	CST-0294	CST-0297	CST-0298	CST-0299	CST-0209A
CST-0210A	CST-0360A				
CST-SMS 0135	CST-SMS 0140				

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

Leidschendam,
The Netherlands
31 October 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

