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

DECISION ON THE PROSECUTION MOTIONS FOR THE ADMISSION OF THE CALL SEQUENCE TABLES RELATED TO THE FIVE COLOUR-CODED MOBILE TELEPHONE GROUPS AND NETWORKS

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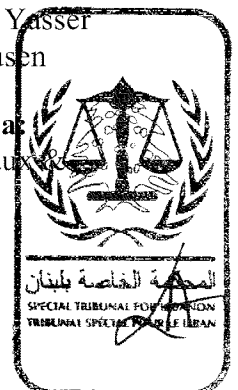
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INTRODUCTION AND BACKGROUND

1.   The Trial Chamber, on 26 October 2016, published reasons for receiving the Prosecution's cell site evidence, thus allowing the admission into evidence of various 'call sequence tables'.[1] The Trial Chamber then issued a general decision admitting into evidence call sequence tables of calls allegedly made by the four Accused and a pleaded co-conspirator, Mr Mustafa Amine Badreddine, involved in the attack on the former Lebanese Prime Minister, Mr Rafik Hariri, and others in Beirut, on 14 February 2005.[2] The present decision admits into evidence the call sequence tables of 'colour-coded' mobile telephone networks and groups.

2.   The amended consolidated indictment pleads that five interconnected mobile telephone groups were involved in Mr Hariri's assassination.[3] For ease of reference, the Prosecution 'colour-coded' each—as the 'red', 'green', 'blue', 'yellow' networks, and a group of 'purple phones'.[4] In five separate motions, the Prosecution has sought the admission into evidence of call sequence tables related to each group, and of witness statements explaining how they were produced.[5]

3.   The Trial Chamber has defined call sequence tables as presenting 'chronological sequences of calls relating to a particular, or target, telephone number over a specified period of time'.[6] This may include text messages (SMSs).[7] Prosecution analysts compiled these

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[1] STL-11-01/T/TC, *The Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2793, Reasons for Decision Admitting Prosecution's Cell Site Evidence, 26 October 2016 ('Cell Site Evidence Decision of 26 October 2016'). This followed a decision delivered in court on 8 September 2016 admitting into evidence the Prosecution's cell site evidence, and relevant evidence from the statements of Witness PRH 705 and PRH707 on the generation, storage and transmission of call data records. The Trial Chamber subsequently rendered written decisions: F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016 ('Witness 705 Decision of 30 September 2016'), F2767, Written Reasons for Admitting Witness PRH707's Statements and Annexes into Evidence, 10 October 2016 ('Witness 707 Decision of 10 October 2016').

[2] 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').

[3] F2720, Amended consolidated indictment, 12 July 2016, para. 14.

[4] Amended consolidated indictment, para. 15. A network is defined as 'a group of telephones with a high frequency of contact between the phones within the group'. *See* amended consolidated indictment, para. 14.

[5] STL-11-01/T/TC, *The Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1831, Prosecution Motion for the Admission of Red Network-Related Call Sequence Tables and Related Statements, 28 January 2015; F1832, Prosecution Motion for the Admission of Green Network Related Call Sequence Tables and Related Statement, 29 January 2015; F1836, Prosecution Motion for the Admission of Purple Phone Related Call Sequence Tables, 30 January 2015; F1837, Prosecution Motion for the Admission of Blue Network-Related Call Sequence Tables and Related Statements, 2 February 2015; F1840, Prosecution Motion for the Admission of Yellow Phone Related Call Sequence Tables and Related Statement, 3 February 2015.

[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 UNIIIC and STL's Prosecution, 6 May 2015 ('Decision of 6 May 2015'), para. 2.

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tables from call data records and cell site information received from the two Lebanese telecommunications service providers, Alfa and Touch.[8] The details provided include the date and time of the call, its duration, the handset (IMEI) used by the target number, as well as the cell tower used by the target number at the start of the call.[9]

4.   The Prosecution's case is that these call sequence tables prove that the mobiles operated either as 'mission telephones' or as a group and they were used in planning and preparing the attack against Mr Hariri. This includes: his surveillance and assassination; making a false claim of responsibility for the attack;[10] and causing the disappearance of Mr Ahmad Abu Adass.[11] Some of these call sequence tables would assist in attributing certain colour-coded mobiles to the four Accused and to the former Accused, Mr Badreddine. Counsel for the four Accused, and counsel then acting for Mr Badreddine,[12] filed consolidated responses to the Prosecution motions.[13] They opposed the motions, requesting the Trial Chamber, among other things, to defer a decision until having received evidence on the reliability of the underlying call and cell site data.

5.   In a decision upheld on appeal, the Trial Chamber found the proposed evidence to be *prima facie* relevant.[14] It found, however, that it had insufficient information to effectively assess the reliability and probative value of the call sequence tables. Accordingly, the Trial

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[7] Short Message Service (SMS) call sequence tables provide the time of the SMS, the recipient number, the direction and content of the SMS.

[8] *See*, similarly, Call Sequence Tables Decision of 31 October 2016, para. 3.

[9] In certain instances, call sequence tables include information on the call sector used at the end of a call. *See* Prosecution motion on the green network, para. 7; Prosecution motion on the purple phones, para. 8; Prosecution motion on the blue network, para. 7; Prosecution motion on the yellow phones, para. 9.

[10] The false claim of responsibility is pleaded at paras 15, 19, 44-47 of the amended consolidated indictment.

[11] The disappearance of Mr Adass is pleaded at paras 3, 5, 23, 27, 28, 29, 43, 44, 48, 64, 66, 68 and 70 of the amended consolidated indictment.

[12] 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.

[13] F1853, Sabra Consolidated Response to Prosecution Motions for Admission of Call Sequence Tables, 16 February 2015; F1854, Consolidated Response by the Ayyash Defence to Five Prosecution Motions pursuant to Rules 154 and 155 for the Admission of Evidence related to Call Sequence Tables, 16 February 2015; F1855, Consolidated Response from the Merhi Defence to the Motions for the Admission of Call Sequence Tables and Statements relating to the Disputed Networks, 16 February 2015; F1856, Badreddine Consolidated Response to Five Prosecution Motions for Admission of Call Sequence Tables and Related Statements, 16 February 2015; F1857, Oneissi Consolidated Response to the Prosecution Motions for the Admission of Call Sequence Tables, 16 February 2015 (public with confidential annexes A-E).

[14] Decision of 6 May 2015, paras 109-110, 113, 115, 118, 120 and disposition. The Trial Chamber also granted leave to the Prosecution to amend its exhibit list by adding eight witness statements (of Witnesses 313, 230, 308, 371, 377 and 458) related to the production of the call sequence tables, and a corrected call sequence table. It also found that call data records were not illegally transferred to the United Nations International Independent Investigation Commission or to the Special Tribunal Office of the Prosecutor, in breach of either Rule 162 (A) or (B), and that there was no need to admit into evidence all the call data records from which the call sequence tables are derived.

Chamber deferred a decision on their admissibility—and the admissibility of the related statements—until at least a witness had testified about: (i) the provenance of the call data records used to produce the call sequence tables (including the gathering, retrieval and storage of this data); and (ii) the production of the call sequence tables.[15]

6. The Trial Chamber has explained in previous decisions that: Witnesses PRH705 and PRH707, representing Alfa and Touch, testified about call data records;[16] that five Prosecution analysts testified about the methodology in producing call sequence tables,[17] and that further submissions were filed.[18]

THE FIVE MOTIONS

7. The Prosecution seeks the admission into evidence, under Rule 154, of: (i) eight call sequence tables concerning eight prepaid mobile telephones referred to as the 'red network';[19] (ii) sixteen call sequence tables concerning sixteen mobile telephones, which are part of a group of eighteen post-paid mobile telephones referred to as the green mobile telephones; among them three mobiles form the 'green network';[20] (iii) three call sequence tables and two SMS call sequence tables concerning three mobile telephones, referred to as the 'purple telephones';[21] (iv) eighteen call sequence tables concerning eighteen prepaid mobile telephones referred to as the 'blue network';[22] and (v) fourteen call sequence tables concerning fourteen prepaid mobile telephones referred to as the 'yellow phones'.[23] These call

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[15] Decision of 6 May 2015, para. 115.

[16] Witness 705 Decision of 30 September 2016, para. 8; Witness 707 Decision of 10 October 2016, para. 8; Cell Site Evidence Decision of 26 October 2016, para. 16; Call Sequence Tables Decision of 31 October 2016, para. 13. 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; 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.

[17] Ms Helena Habraken (Witness PRH371), Ms Kei Kamei (Witness PRH308), Mr Andrew Donaldson (Witness PRH230), Mr Christian Carnus (Witness PRH377) and Mr Lachlan Christie (Witness PRH313). These witnesses testified on 20-22 of July 2015. On 14 and 15 September 2015, Mr Spartak Mkrtchyan (Witness PRH111), 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.

[18] Witness 705 Decision of 30 September 2016, para. 10; Witness 707 Decision of 10 October 2016, para. 10; Cell Site Evidence Decision of 26 October 2016, para. 18; Call Sequence Tables Decision of 31 October 2016, para. 10.

[19] Prosecution motion on the red network, para. 17.

[20] Prosecution motion on the green network, paras 1-2. The Prosecution submits that no call sequence tables were created for two of the green telephones, as those two had no call data records (no voices calls nor SMS were recorded). *See* Prosecution motion on the green network, fn. 2.

[21] Prosecution motion on the purple phones, para. 2.

[22] Prosecution motion on the blue network, paras 1-2, 12.

[23] Prosecution motion on the yellow phones, paras 1-2, 14. While the Prosecution pleads, in the amended consolidated indictment, that 18 yellow phones formed a network and define them as such, in the motion, the Prosecution does not use the expression network to refer to the yellow telephones. Based on the evidence led

sequence tables are derived from call data records provided by Alfa—for the call sequence tables related to the red and green network telephones, and the purple telephones,[24] and both Alfa and MTC (Touch)—for the blue network and the yellow mobiles.[25] The SMS call sequence tables related to the purple mobiles were produced using Touch records.[26]

8.   The Prosecution anticipated that Mr Gary Platt (Witness PRH147), Mr Edward Philips (PRH435) and Mr Donaldson would testify and analyse these call sequence tables, along with other documentary evidence.[27]

9.   The Parties' relevant submissions, including those referred to in the decision of 6 May 2015, are summarised here to make this decision more explicable. The relevant submissions—following the testimonies of Witnesses 705 and 707—are summarised in four decisions of the Trial Chamber.[28]

The 'red network' motion

Submissions

10.   The Prosecution seeks the admission into evidence of eight call sequence tables and the related statement of Ms Habraken which explains how she produced them.[29]

11.   The Trial Chamber has already decided, generally, on the reliability of the call sequence tables evidence.[30] Specifically, here the Prosecution submits that the call sequence tables are sufficiently reliable as they are reliable extracts of the calls data records provided by the telecommunication service providers Alfa and Touch. The underlying call data records are reliable because they are Alfa and Touch business records, used for billing and management

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after the filing of the motion by the Prosecution (*see* for instance transcript of 6 April 2016, pp 28-56, testimony of Mr Platt on the yellow network), the Trial Chamber appreciates that there is no alteration of the pleadings and Prosecution's case in the qualification of the yellow phones as a 'network'.

[24] Prosecution motion on the red network, para. 17; Prosecution motion on the green network, paras 12, 23; Prosecution motion on the purple phones, para. 2.

[25] Prosecution motion on the blue network, paras 12, 23; Prosecution motion on the yellow phones, para. 24.

[26] Prosecution motion on the purple phones, para. 26. Ms Kamei testified that the SMS content have been provided only by Touch. *See* transcript of 20 July 2015, p. 45.

[27] In particular, Mr Donaldon's evidence concerning attribution is anticipated to rely on these call sequence tables with regard to aspects such as contact profile, geographic profile and co-location. The Prosecution submits that Witness PRH356 also relies on these call sequence tables. *See* Prosecution motion on the red network, para. 25; Prosecution motion on the green network, paras 19-21; Prosecution motion on the blue network, paras 17, 21; Prosecution motion on the yellow phones, para. 22.

[28] Witness 705 Decision of 30 September 2016, para. 8; Witness 707 Decision of 10 October 2016, para. 8; Cell Site Evidence Decision of 26 October 2016, para. 16; Call Sequence Tables Decision of 31 October 2016, para 13.

[29] Prosecution motion on the red network, paras 1-10.

[30] Call Sequence Tables Decision of 31 October 2016, paras 74-95.

functions.[31] They were provided to the United Nations International Investigation Commission (UNIIIC) and the Special Tribunal's Prosecutor, in electronic format, on DVDs and hard drives.[32]

12. As to the production of the call sequence tables, it was a standardized and mechanical process: Prosecution analysts produced them by copying, sorting, and formatting the relevant data, using Microsoft Excel.[33] The cell site information used in the production of the call sequence tables comprises a list of numerical cell tower ID codes and their corresponding short-form alphanumeric names; a Microsoft Excel function was used to populate the cell name field in the call sequence tables with more easily recognizable alphanumeric names. The reliability of the call sequence tables as representations of the underlying material can be tested by comparing the call sequence tables with the underlying material, which was disclosed to the Defence.[34]

13. The Prosecution has undertaken a number of audits where it has multiple sources reflecting the same call data. Specifically, it has compared call sequence tables produced using separately received data sources to ensure consistency between data sources.[35]

14. The Prosecution submits that the call sequence tables concerning eight mobiles referred to as the red network provide evidence of the movements of the mobiles in relation to Mr Hariri at particular times, such as in the final day of their use and in the minutes before the explosion,[36] and show that six of the eight red network mobiles were last used on 14 February 2005, minutes before the attack. On this basis, the call sequence tables assist in establishing that the red mobiles were used by the Accused and other co-conspirators in the planning, preparation and execution of the attack on 14 February 2005.[37] The analysis of the calls among these telephones show that they operated as 'mission phones' in the month preceding the attack. In addition, one call sequence table (CST-306) helps to attribute one of the red mobiles ('Red 741') to Mr Ayyash.

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[31] Prosecution motion on the red network, para. 26.
[32] Either via the Lebanese Prosecutor General and the Ministry of Telecommunications or directly from Alfa. *See* Prosecution motion on the red network, para. 28.
[33] Prosecution motion on the red network, paras 30, 32.
[34] Prosecution motion on the red network, paras 26, 30, 32, 35.
[35] Prosecution motion on the red network, para. 29.
[36] Prosecution motion on the red network, paras 18-19. The Prosecution submits that reading the call sequence tables in conjunction with Alfa and Touch cell site data provides an indication of the approximate location where the target phone was used for each call. *See* Prosecution motion on the red network, para. 12.
[37] Prosecution motion on the red network, paras 7, 18.

15.   In their consolidated responses to the Prosecution motions, counsel for the Accused, and for the then Accused Mr Badreddine, submitted that the motions were premature. Counsel for Mr Ayyash, Mr Sabra, and Mr Badreddine requested the Trial Chamber to defer a decision on the five motions until the Prosecution had received the underlying call data records into evidence and or received evidence as to the collection, retrieval and storage of these call data records. As noted, the Trial Chamber, on 6 May 2015, deferred a decision on their admissibility until having heard oral testimony on the provenance of the call data records and the production of call sequence tables.[38] It also found that there was no need to admit into evidence all the call data records from which the call sequence tables are derived.

16.   With regard to the process of creation of the call sequence tables, counsel for Mr Ayyash submitted that it involves a transformation process, rendering the call sequence tables into a piece of demonstrative evidence distinct from the call data records, and that call sequence tables include information not found in the call data records, such as the name of the cell towers derived from other sources.[39] Similarly, counsel for Mr Sabra argued that call sequence tables are not extracts of business records, as they amalgamate and organise underlying data from different sources into one documents, and that the Trial Chamber can satisfy itself that they constitute an accurate and reliable reflection of call data records only if it is granted comprehensive access to them.[40] Counsel for Mr Oneissi submitted that call sequence tables are far removed from the original call data records and can only be seen as the Prosecution's work product.[41]

17.   The Defence generally submitted—after the testimony of Witnesses 705 and 707—that the Prosecution had failed to establish the provenance and reliability of the underlying call data records. No specific objections relate to the probative value of the call sequence tables.

   Mr Platt's evidence

18.   The Trial Chamber declared Mr Platt qualified to give an expert opinion on matters connected with (i) the surveillance of criminal networks, and (ii) the identification and organization of covert communication networks.[42] Mr Platt's testimony so far related to the second area of his expertise and concerned groups of mobiles identified as networks. Mr Platt relied on the call data records converted into call sequence tables as one of the sources used in

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[38] Decision of 6 May 2015, para. 115.
[39] Ayyash consolidated response, para. 31.
[40] Sabra consolidated response, paras 12, 15.
[41] Oneissi consolidated response, para. 43.
[42] *See* transcript of 6 April 2016, p. 2.

his analysis.[43] The others were; subscriber details, purchase history, and financial records. As an aide-memoire to his evidence, the 'Network Analysis Presentation' was used in court.[44] The Trial Chamber noted that, to give his expert opinion in the area of identification and organization of covert communications network, the relevant analysis required Mr Platt to review call data records. In some instances, this required him to provide a basic analysis of what he observed on call data records—like the calculation of the percentage of calls among mobiles belonging to the network, or identifying the direction of a call—and not providing expert opinion on them.[45]

19.   Mr Platt testified about characteristics common to the red, yellow, blue and green networks: namely a level of organization within each group and covertness.[46] These features were demonstrated, in his opinion, among other things, by the call activity and SMS activity: namely the discipline of use in the telephones—limited use or lack of SMS—and by the high volume of calls between the network mobiles.[47]

20.   With regard to the red network, Mr Platt testified that it was activated on 4 January 2005 until 14 February 2005; but was active only on 13 of those 42 days.[48] In his opinion, the red mobiles were used in a cohesive pattern; they were only used for a certain purpose to protect the users from being identified.[49] The red network was involved in 448 calls; however 396 of those were between the red mobiles. Mr Platt explained that 47 calls were made to Alfa for service purposes and five calls were most likely misdials.[50]

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[43] *See* transcript of 6 April 2016, p. 18. The Prosecution recognised that the call sequence tables underpin the analysis conducted by Mr Platt and submitted that 'the underlying evidence upon which an expert relies and the Court's consideration of it must always wait until the end of the case, and there is really absolutely nothing wrong in a large case like this with Mr. Platt or any other expert relying on prospective evidence as we've done to date.' *See* Transcript of 4 April 2016, pp 103-104; *see also* transcript of 14 April 2016, pp 48-49, 58-59 (the Prosecution reiterated that 'it is common practise for an expert witness to rely upon evidence which he or she expects to be admitted in the future').

[44] Exhibit P795. *See* transcript of 6 April 2016, pp 31-32. Furthermore, Mr Platt's report 'Network Analysis Report: Red, Green, Blue, and Yellow Phones, prepared by Gary Platt, investigator' updated on 11 April 2016 has been marked for identification as exhibit P796. *See* transcript of 14 April 2016, p. 15.

[45] *See* transcript of 14 April 2016, pp 25-26.

[46] *See* transcript of 6 April 2016, pp 19-21.

[47] *See* transcript of 6 April 2016, pp 19-20 *generally*, 37, 54 (with regard to the yellow mobiles). The covert nature of the phones also resulted from the adoption of measures avoiding identification (like providing false subscriber details or the financing through payment in cash) *see* transcript of 14 April 2016, pp 18-19. The organisation resulted from the initialisation and purchase of the phones, the method of payments. *See* transcript of 14 April 2016, pp 71-75.

[48] Transcript 26 July 2016, p. 7.

[49] Transcript 26 July 2016, pp 7-8.

[50] Transcript 26 July 2016, pp 8-9.

21. According to this witness, the red network was clearly a closed network for an operational purpose because; the majority of the calls were made from red mobile to red mobile, the network was only used for a short period of time, there were no SMSs sent by the red mobiles, and after 14 February 2005, the handsets and the SIM cards were never used again.[51] Additionally, these pre-paid mobiles were purchased without providing subscriber details, leaving no financial trail. Mr Platt testified that 83 percent of the red network's activity was in the Western Central Beirut area.[52] Around 50 percent of the red network's activity was concentrated near the crime scene, Quaritem palace, and the Parliament area.[53] When the red mobiles were terminated, about $500 worth of credit remained on the phones, the users did not try to reclaim their money back or transfer the credit, indicating its covert nature and criminal purpose.[54]

The 'green network' motion

Submissions

22. The Prosecution seeks the admission into evidence of 16 call sequence tables and the related statement of Mr Andrew Donaldson who produced them, along with Ms Habraken.[55] It reiterates its arguments, with regard to the indicia of reliability, as summarised above for the call sequence tables motion related to the red network.

23. The Prosecution submits that (i) the sixteen call sequence tables proposed for admission assist in establishing that the green mobiles operated as a group; (ii) the call sequence tables of three green numbers, 'Green 300', 'Green 071' and 'Green 023', demonstrate that these formed a close network between 13 October 2004 and 14 February 2005—referred to as the 'green network'; (iii) each of these three call sequence tables also assist in attributing the relevant mobiles to, respectively, the Accused, Mr Ayyash and Mr Merhi, and to Mr Badreddine.[56]

24. The Defence challenges, in their consolidated responses, are summarised above.

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[51] Transcript 26 July 2016, p. 9.
[52] Transcript 26 July 2016, pp 33-34.
[53] Transcript 26 July 2016, p. 27.
[54] Transcript 26 July 2016, pp 70-71.
[55] Prosecution motion on the green network, paras 5, 36.
[56] Prosecution motion on the green network, paras 13-22.

Mr Platt's evidence

25. Mr Platt testified, relevantly, that from 13 October 2004 to 14 February 2005, there were only calls between the three mobiles forming the green network and no SMS was sent between those mobiles or from these to any other parties, and that one of these three mobiles made its final call on 7 February 2005, and the other two on 14 February.[57] He testified that the scale of covertness was quite high, as almost 100 percent of the activity, apart from service SMS, were green to green calls.[58] In his reading of the call sequence tables, Mr Platt testified that there were no calls between two of the three green network mobiles.[59] He testified that this suggests some sort of organizational structure identifying one number as the focal point of all communications.[60] He also analysed the short duration of the calls (95 per cent lasted less than two minutes); the areas of activity and top cell towers activated, depicting them on a map—through ArcGIS mapping—where locations such as Quraitem Palace, the crime scene and the Parliament were identified.[61]

The 'purple telephones' motion

Submissions

26. The Prosecution seeks the admission into evidence of three call sequence tables and two SMS call sequence tables and the related statement of Ms Kamei and Mr Carnus who produced the SMS call sequence tables.[62] The Prosecution submits that these call sequence tables, as relied upon by Mr Platt—who is expected to testify about it—show: (i) the call activity (and relevant cell site activity) of the purple mobiles against concurrent events including: an alleged meeting of Mr Abu Adass with a young man who called himself 'Mohammed' at the Arab University Mosque, in Beirut; the disappearance of Mr Adass on 16 January 2005; four calls made to Reuters and Al-Jazeera on 14 February 2005; (ii) that the use

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[57] *See* transcript of 6 April 2016, p. 80.
[58] *See* transcript of 14 April 2016, pp 20-21, 27-28.
[59] *See* transcript of 14 April 2016, pp 34-36.
[60] *See* transcript of 14 April 2016, p. 34.
[61] *See* transcript of 14 April 2016, pp 47-50. Also, the two cell towers activated by the two green telephones, making and receiving, the last green network call on 14 February 2005, at 11:58 were depicted on the map where locations such as Quraitem Palace, the crime scene and the Parliament were identified. *See* transcript of 14 April 2016, p. 70.
[62] Prosecution motion on the purple phones, paras 1, 6. Mr Andrew Donaldson produced the call sequence tables related to the purple phones. The admission into evidence of his statement is sought with the Prosecution motion related to the green network. *See* above, para. 22.

of the purple mobiles was discontinued after the attack against Mr Hariri, and the false claim of responsibility.[63]

27. The Prosecution submits that the call sequence table and SMS call sequence tables are capable of supporting an inference, when read in conjunction with other evidence, that the purple mobiles functioned as a group involved in the planning and carrying out of the false claim of responsibility and assist in establishing that Mr Merhi, Mr Oneissi and Mr Sabra were, respectively, the users of 'Purple 231', 'Purple 095' and 'Purple 018'.[64]

28. The Prosecution also anticipates that Mr Platt will rely upon these call sequence tables to establish patterns of conduct among the purple mobiles between October 2004 and February 2005. The Prosecution reiterates its general arguments with regard to the indicia of reliability, as summarised above for the call sequence tables motion related to the red network.

29. The Defence challenges, in their consolidated responses, are summarised above with regard to the red network motion. Counsel for Mr Oneissi specifically pointed to discrepancies between one call sequence table (CST-0388) concerning 'Purple 095' and the information regarding this number in GC-SQL, therefore raising doubts about the reliability of call sequence tables and of the underlying data.[65] In their submissions following the testimony of Witnesses 705 and 707, counsel for Mr Oneissi, joined by counsel for Mr Merhi, specifically objected to the admission into evidence of these call sequence tables and SMS call sequence tables, submitting that the evidence of Witness 707 has failed to establish their provenance or probative value.[66] They mainly challenge the reliability of the cell site evidence and, through this, the probative value of the call sequence tables as to the location of the mobiles' users at the time of a given call.[67]

30. 'Purple 095' is one of the three mobiles which were allegedly used to coordinate the false claim of responsibility. It is allegedly attributed to Mr Oneissi.[68] The Prosecution replied

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[63] Prosecution motion on the purple phones, paras 16-20.

[64] Prosecution motion on the purple phones, paras 3-4, 16, 21-25. In particular, the SMS call sequence tables present the content of text messages sent by Touch mobiles to 'Purple 095' and 'Purple 018'.

[65] Oneissi consolidated response, para. 51.

[66] Oneissi supplemental submissions of 29 July 2016, para. 4. With arguments not dissimilar from those general of other Defence counsel, they submit that Witness 707 cannot provide direct evidence as to the provenance of the call sequence tables. The witness did not work at Alfa at the relevant times and therefore could not speak to his own personal knowledge and the information he provided was obtained through other employees, who themselves did not work at Alfa at the material times.

[67] Oneissi supplemental submissions of 29 July 2016, paras 19, 37-68. *See also* Oneissi reply of 28 August 2016, paras 4-7.

[68] Amended consolidated indictment, paras 15 (e), 18.

to the Oneissi Defence that since CST-0388 concerns 'Purple 095'—issued by Alfa—this call sequence table was produced on the basis of the Alfa call data records for this number, which were in text file format.[69] According to the Prosecution, the Oneissi Defence complaints are based instead on a query of bulk Touch and Alfa call data records in SQL. Further, the Oneissi Defence incorrectly states that 273 numbers are missing from CST-0388. They are originating numbers of calls to 'Purple 095' which do not appear in the raw Alfa call data records and CST-0388 merely reflects that.[70]

The 'blue network' motion

Submissions

31. The Prosecution seeks the admission into evidence of eighteen call sequence tables and the related statements of Ms Kamei and Ms Nadine Stanford (Witness PRH458), explaining how they produced them.[71]

32. The Prosecution submits that these call sequence tables provide evidence of the movements of the mobiles' users in relation to those of Mr Hariri.[72] The call sequence tables assist in establishing, when read in conjunction with other evidence, that: (i) the mobiles operated as 'mission telephones' in the months preceding the attack; (ii) a core group of six of these mobiles were used between 21 December 2004 and 14 February 2005 for planning the attack; and (iii) that 'Blue 233' was used by Mr Ayyash.[73]

33. The Defence challenges, in their consolidated responses, are summarised above with regard to the red network motion.

Mr Platt's evidence

34. Mr Platt testified that the blue network came into existence on 18 October 2004, with only three mobiles in exclusive contact with each other, with no SMS sent between them. Then, on 23 December 2004, it expanded to six, as three other mobiles joined the original

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[69] The Prosecution submits that there are no call data records for Alfa phone numbers, prior to September 2004, in bulk format. Prosecution consolidated reply of 26 February 2015, para. 43, fn. 52.

[70] Prosecution consolidated reply of 26 February 2015, para. 45.

[71] Prosecution motion on the blue network, paras 1, 39. Mr Donaldson also produced some of the call sequence tables related to the blue mobiles. The admission into evidence of his statement is sought with the Prosecution motion related to the green network. *See* above, para. 22.

[72] Prosecution motion on the blue network, para. 13.

[73] With regard to the attribution of this telephone number to Mr Ayyash, the Prosecution relies on the call sequence table for 'Blue 233'. *See* Prosecution motion on the red network, paras 3, 13, 17-21.

network, after being contacted by one of the original three mobiles in the network.[74] Between 7 January and 14 January 2005, nine additional mobiles were added to the network. The three last joined after 14 February 2005. The first six mobiles in the network made seventy-three percent of all blue to blue calls. While the red and green networks—which were the most covert and most active on 14 February 2005—ceased to be used on that day, the blue mobiles continued to be used until October 2005.[75] He also testified that the shutdown of 17 of the 18 mobiles which occurred approximately between 21 September and 1 October 2005—over a couple of weeks—demonstrates an organized process.[76]

The 'yellow network' motion

Submissions

35.   The Prosecution seeks the admission into evidence of fourteen call sequence tables and the related statement of Mr Christie.[77]

36.   The Prosecution submits that the call sequence tables can establish that: (i) the mobiles operated as a group; and that (ii) a subset of the mobiles operated in areas near Mr Hariri's residence in Beirut and his residence in the Faraya area between 21 and 31 December 2004, and were in contact with the yellow mobile attributed to Mr Ayyash during this period. In addition some three call sequence tables, when read with other evidence, can prove that several co-conspirators simultaneously held blue and yellow mobiles until nearly January 2005, and blue and red telephones from 14 January to 14 February 2005.[78] The Prosecution reiterates its general arguments, with regard to the indicia of reliability. Like the Defence challenges—focusing on reliability— they are summarised earlier, in relation to the red network motion.

Mr Platt's evidence

37.   With regard to the yellow mobiles, specifically, Mr Platt testified that 18 mobiles were used in the network from 2002 through January 2005. However, by 18 October 2004, five had ceased to be part of the network and therefore there were only 13 yellow mobiles within the

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[74] *See* transcript of 14 April 2016, pp 88-89.
[75] *See* transcript of 14 April 2016, p. 92.
[76] *See* transcript of 15 April 2016, pp 24-25.
[77] Prosecution motion on the yellow phones, paras 1, 39. Ms Kamei, Mr Donaldson and Ms Habraken also produced the call sequence tables related to the yellow phones. The admission into evidence of their statements is sought with the Prosecution motions related, respectively, to the blue, green and red networks. *See* above, paras 10, 22, 31.
[78] Prosecution motion on the yellow phones, paras 3, 15-16.

network. His testimony focused on the period from 18 October 2004 to 7 January 2005, a period which coincided with the evolution of the blue network, which also commenced on 18 October 2004.[79] One of the factors suggesting an organization of the network was that their cessation, or shut down, was done in a phased manner. Yellow mobiles started to cease to be used and be part of the network from 3 December 2004 onwards, the last call between yellow mobiles was on 7 January 2005.[80] He also illustrated the areas of activity where they operated, highlighting the most popular cells activated, and the fact that, in specifically identified limited periods, they operated in Tripoli and in the Faraya area—near Mr Hariri's residence.[81]

DISCUSSION

38.   For admission into evidence, material tendered 'from the bar table' must be relevant and probative, and its probative value must not be outweighed by the need to ensure a fair trial.[82] Only *prima facie*—rather than definite—reliability and probative value is required at this stage.[83] 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.[84]

Relevance of the call sequence tables

39.   In its decision of 6 May 2015, the Trial Chamber found these call sequence tables to be *prima facie* relevant. Specifically, it concluded that the Prosecution had *prima facie* demonstrated that they show the existence of groups of mobile telephones operating as networks and a group of mobiles allegedly involved in planning and carrying out the attack against Mr Hariri and making a false claim of responsibility for the attack.[85]

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[79] *See* transcript of 6 April 2016, pp 28-29.

[80] *See* transcript of 6 April 2016, p. 34.

[81] *See* transcript of 6 April 2016, pp 48-55.

[82] 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; F1781, Corrected Version of "Decision on Prosecution Motion to Admit into Evidence Geographic Documents" of 8 December 2014, 10 December 2014, para. 4.

[83] 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 ('Decision of 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 ('Decision of 13 January 2014'), para. 8.

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

[85] Decision of 6 May 2015, para. 114.

Prima facie **reliability of the call sequence tables**

40.   The Trial Chamber has already found, after having carefully considered the evidence of Witnesses 705 and 707, that the call data records provided by Alfa and Touch are *prima facie* reliable. It has also concluded that the process of creation of call sequence tables by the Prosecution did not alter the underlying call data records.[86] Accordingly, the Trial Chamber is satisfied of the *prima facie* reliability of the call sequence tables here proposed for admission into evidence.

41.   The Trial Chamber notes the initial submissions from counsel for Mr Oneissi concerning discrepancies existing between the information provided in CST-0388 and the information that are available in the GC-SQL on the same target number. The Trial Chamber does not have access to the SQL or GC-SQL database. The Prosecution, however, appears to acknowledge the existence of the discrepancies noted in annexes C and D to the Oneissi Defence response (namely, when compared to the data available in GC-SQL, in the call sequence table there are 63 calls missing and 10 more calls), explaining them as a result of the different sources for the information compared: for CST-0388, the text file format provided by Alfa for the telephone number it issued and, for GC-SQL, the bulk data from both Alfa— after September 2004—and Touch.[87]

42.   According to the Prosecution, the discrepancies relate to differences between the business records of the two companies, Alfa and Touch, or the records of different numbers

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[86] Call Sequence Tables Decision of 31 October 2016, paras 72-92, as referring to Witness 705 Decision of 30 September 2016; Witness 707 Decision of 10 October 2016, and Cell Site Evidence Decision of 26 October 2016.

[87] Ms Kamei testified that two types of source materials were used to produce the call sequence tables, namely: (i) individual text files for individual phone numbers, as received by 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 by the Prosecution in response to requests for all telephone calls made in Lebanon for a certain date range. The bulk data were provided in big files, divided per day and not per number. They were then imported into a database called Structured Query Language (SQL) database, where analysts can make searches by number. Efforts were made to use case individual text files, whenever available, as less steps were involved in the process and there is less possibility of an error or discrepancy. Transcript of 20 July 2015, pp 11, 17, 29-30, 33-35, 38-39, 42. Ms Kamei also testified that there are two SQLs: one is termed OTP SQL and the other Golden Copy SQL (GC-SQL). They are physically separate databases. The OTP-SQL was created first, for investigatory purposes of the UNIIIC and the OTP, and is accessible from the OTP analysts' computers, whereas the GC-SQL was created later, for court use, and it is accessible from two computers in the Prosecution's office from where analysts can download data. Transcript of 20 July 2015, pp 80, 96. *See also* transcript of 22 July 2015, pp 13, 26 (Ms Habraken's cross-examination). Witness Spartak Mkrtchyan (PRH111) testified that the Alfa data contained in both databases originate from the same source while part of the Touch data uploaded in the two databases is different because from 1 September 2004 till 31 May 2010 the Touch data come from different sources: MTC 2004-2010 data, received around 2010, is a more accurate data, was uploaded in the GC-SQL; transcript of 14 September 2015, pp 12-13, 86.

issued by the same company. The Trial Chamber agrees with the Prosecution that this matter may be relevant, at a later stage, when the Trial Chamber will assess the weight to be given to the evidence but does not detract from the *prima facie* reliability of the call sequence tables. Similarly, the Oneissi response pointed to 'missing' numbers in the same CST-0388, in annex E. However, this does not impinge on the *prima facie* reliability of the call sequence tables or the underlying Alfa call data records, to the extent that—as claimed by the Prosecution—the relevant originating numbers of calls do not appear in the underlying Alfa call data records.

Probative value of the call sequence tables

43.   Being satisfied of their *prima facie* reliability, the Trial Chamber finds the call sequence tables proposed for admission probative of information on the calls made and received—during a relevant period of time—by mobiles which are pleaded to belong to the colour-coded telephone groups allegedly involved in the attack of 14 February 2005. Such information includes the time, duration, the other number involved in the call—either making or receiving it—and cell tower activated by the target telephone number. The Trial Chamber has previously found *prima facie* reliable, and consequently admitted into evidence, cell site information provided by Alfa and Touch. It accordingly finds that these call sequence tables are also probative, when read in conjunction with cell site information, of the geographic location and movement of the target mobile telephones.

44.   Furthermore, the Prosecution has satisfactorily demonstrated how the evidence fits into its case. This evidence—probative of the activity between the mobiles allegedly belonging to a group and of the relevant times, including the date of their last calls—is relied upon by expert witnesses or witnesses, (i) to demonstrate the organization and covertness of the colour-coded telephone networks; (ii) to compare the call activity with the occurrence of concurring relevant events pleaded in the indictment; and (iii) to attribute some of the color-coded telephone numbers, when considered along other evidence, to one of the Accused or Mr Badreddine.

Admitting the witness statements into evidence

45.   The Prosecution also seeks the admission into evidence, under Rule 155, of seven statements, as described above.

46.   In all statements, the Prosecution analysts explain that they followed the same standard procedure when extracting the data from the call data records. The differences between the statements are limited to the specific call sequence tables produced and some of the underlying material. In the 6 May 2015 decision, the Trial Chamber found the analysts' statements *prima facie* relevant. It concluded that—if the Trial Chamber were to find the call sequence tables admissible, after hearing the evidence on their reliability—the statements would be declared admissible as integral associated exhibits. The Trial Chamber decided that, if satisfied from the live evidence of at least one witness on the provenance of the underlying call data records and the production of the call sequence tables, would have declared them admissible under Rule 155 (C) or Rule 156, and ordered the Prosecution to make them available for cross-examination.

47.   The Prosecution led evidence on the production of call sequence tables from Ms Kamei, who produced numerous call sequence tables and supervises the production of call sequence tables within the Prosecution.[88] Her testimony on the production of call sequence tables is summarised in the Trial Chamber's decision of 31 October 2016. Although the Prosecution elected to call Ms Kamei to testify, it submitted that her two statements can assist the Trial Chamber and provide it with a more complete record, in consideration of the specific details they contain.[89]

48.   The statements of Ms Kamei, Mr Donaldson, Ms Habraken, Mr Christie, Mr Carnus, and Ms Stanford were marked for identification, as exhibits P516 MFI, P525 MFI, P528 MFI, P529 MFI, P530 MFI, and P531 MFI. These witnesses, with the exception of Ms Stanford, appeared for cross-examination.[90] They will now be received into evidence. During their testimony, the following call sequence tables were also marked for identification; blue CST-0154 (exhibit P515 MFI), blue CST-0362 (exhibit P524 MFI), yellow CST-0324 (exhibit P517 MFI), purple CST-SMS 0001 (exhibit P523 MFI), and purple CST-0305 (exhibit P527 MFI).[91]

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[88] Transcript of 20 July 2015, p. 3.
[89] Transcript of 20 July 2015, pp 3-6, 85; transcript of 21 July 2015, pp 30-33.
[90] Transcript of 21 July 2015, pp 76-80, 90-98; transcript of 22 July 2015, pp 2, 5-6; pp 17-42, 49-51, 56-68, 76-79, 81-84 (the Defence agreed that no cross-examination of Ms Stanford was needed). Ms Habraken's statement has been marked for identification as exhibit P528 MFI, along with another statement authored by her and dated 13 April 2015. In this second statement—proposed as an addendum to the previous one—Ms Habraken describes having corrected two errors identified in CST-0336 for 'Green 050'. In annex 1 to the second statement, a corrected newly produced call sequence table is listed, with number CST-0405. The Trial Chamber will admit into evidence the corrected call sequence table CST-0405, in place of CST-0336.
[91] Transcript of 20 July 2015, pp 62, 91; transcript of 21 July 2015, pp 24-25, 82-83.

CONFIDENTIALITY

49.   In compliance with the Trial Chamber's decision of 6 May 2015, the Prosecution filed public redacted versions of the annexes to the five Prosecution motions. The Trial Chamber notes that, in several annexes, the names of the Prosecution analysts who have produced the call sequence tables are redacted. All of these witnesses have now testified in open session, except one whose statement was admitted into evidence with no cross-examination, with no protective measures. The Trial Chamber—reiterating the public nature of the proceedings— orders the Prosecution to either file a new public redacted version of the annexes and make such information public or have reclassified as public those annexes which do not contain confidential information.

DISPOSITION
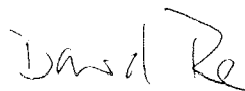
FOR THESE REASONS, the Trial Chamber,

ADMITS formally into evidence, under Rule 154, the call sequence tables listed below;

ORDERS the allocation of exhibit numbers to the call sequence tables and the SMS call sequence tables that have not previously been marked for identification; and
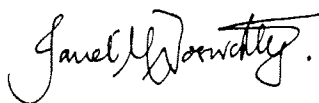
ORDERS the admission into evidence of exhibits P515 MFI, P516 MFI, P517 MFI, P523 MFI, P524 MFI, P525 MFI, P527 MFI, P528 MFI, P529 MFI, P530 MFI and P531 MFI—as referred to in paragraph 48.

Done in Arabic, English, and French, the English version being authoritative.
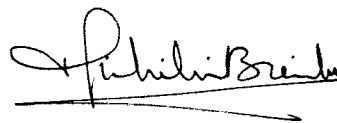
Leidschendam,
The Netherlands
31 October 2016

Judge David Re, Presiding

Judge Janet Nosworthy

Judge Micheline Braidy

LIST OF CALL SEQUENCE TABLES

Call sequence tables related to the 'red network'

CST-0306	CST-0307	CST-0308	CST-0309	CST-0310
CST-0311	CST-0312	CST-0313		

Call sequence tables related to the 'green network'

ECT-CST-0044	CST-0175	CST0314	CST0315	CST-0316
CST-0380	CST-0334	CST-0333	CST-0381	CST-0382
CST-0405	CST-0337	CST-0383	CST-0335	CST-0384
CST-0385				

Call sequence tables and SMS call sequence tables related to the 'purple phones'

PCST-0303	CST-0305	CST0388	CST-SMS 0001	ECT-SMS-0113

Call sequence tables related to the 'blue network'

CST-0350	CST-0153	CST-0151	CST-0152	CST-0182
CST-0150	CST-0352	CST-0362	CST-0330	CST-0329
CST-0331	CST-0326	CST-0327	CST-0328	CST-0332
CST-0146	CST-0145	CST-0154		

Call sequence tables related to the 'yellow network'

CST-0324	CST-0319	CST-0320	CST-0325	CST-0323
CST-0322	CST-0349	CST-0168	CST-0351	CST-0160
CST-0170	CST-0161	CST-0171	CST-0172	