

**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:** 1 November 2016

**Original language:** English

**Classification:** Public

**The PROSECUTOR**

v.

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

**DECISION ON PROSECUTION MOTIONS TO ADMIT CALL SEQUENCE  
TABLES AND WITNESS STATEMENTS ON THE PURCHASE  
OF A MITSUBISHI CANTER, THE SALE OF 'RED NETWORK'  
MOBILE HANDSETS AND THE FALSE CLAIM OF RESPONSIBILITY**

**Office of the Prosecutor:**  
Mr Norman Farrell & Mr Alexander Milne

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

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hannis & Mr  
Chad Mair

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

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

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



## INTRODUCTION AND BACKGROUND

1. The Trial Chamber has issued a general decision admitting ‘call sequence tables’ into evidence, setting out the relevant principles of admissibility.<sup>1</sup> The full procedural background, including the Prosecution’s case, the evidence and the procedural history is set out in other decisions.<sup>2</sup>
2. The present decision admits into evidence a total of ten call sequence tables.<sup>3</sup> These relate to (1) the purchase in Tripoli, Lebanon, of a Mitsubishi Canter allegedly packed with explosives and used in the attack against the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005, (2) the sale of ‘red network’ mobile handsets allegedly used in planning and preparing the attack; and (3) making an alleged false claim of responsibility for the attack. The statements of two Prosecution analysts who produced the tables are also admitted into evidence.<sup>4</sup>
3. Counsel for all Accused filed responses to these and other related Prosecution motions, opposing the admission into evidence of the call sequence tables and the underlying evidence—including cell site evidence and that of call data records—necessary to admit the tables into evidence.<sup>5</sup>

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, 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 Four Witness Statements, 31 October 2016 (‘CST Decision of 31 October 2016’), paras 70-72 (and the case law cited in those paragraphs).

<sup>2</sup> See F2750, Reasons for Admitting Witness 705’s Statements and Annexes into Evidence, 30 September 2016 (‘Witness 705 Decision’), paras 1-11; F2767, Written Reasons for Admitting Witness 707’s Statements and Annexes into Evidence, 10 October 2016 (‘Witness 707 Decision’), paras 1-11; F2793, Reasons for Decision Admitting Prosecution’s Cell Site Evidence, 26 October 2016 (‘Cell site Decision of 26 October 2016’), paras 1-10; CST Decision of 31 October 2016, paras 1-14; F2798, Decision on the Admission of Call Sequence Tables Related to the Movements of Mr Rafik Hariri and Related Events, and Four Witness Statements, 31 October 2016, paras 1-9; F2799, Decision on the Prosecution Motions for the Admission of the Call Sequence Tables Related to the Five Colour-Coded Mobile Telephone Groups and Networks, 31 October 2016 (‘Colour-coded CST Decision of 31 October 2016’), paras 1-6.

<sup>3</sup> Three call sequences tables were withdrawn by the Prosecution after the filing of its motions. See F2672, Prosecution Notice of Withdrawal of Requests to Admit Landline Call Sequence Tables, 28 July 2016 (‘Prosecution notice of withdrawal’), para. 1, confidential (a public redacted version of this notice was filed on 15 August 2016).

<sup>4</sup> F2126, Prosecution Motion for the Admission of Call Sequence Tables Related to the False Claim of Responsibility, 18 August 2015 (‘Prosecution false claim motion’), confidential (a public redacted version of this motion was filed on 11 October 2016); 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 (‘Prosecution Mitsubishi motion’), confidential (a public redacted version of this motion was filed on 11 October 2015).

<sup>5</sup> F2157, Ayyash Defence Consolidated Response to Prosecution Motions for the Admission of Call Sequence Tables and Related Witness Statements, 1 September 2015 (‘Ayyash consolidated response’), confidential; F2161, Response to the “Prosecution Motion for the Admission of Call Sequence Tables Related to the False Claim of Responsibility”, 1 September 2015 (‘Oneissi response’), public; F2162, Badreddine Defence

## EVIDENCE AND SUBMISSIONS

### *First motion: call sequence tables related to the purchase of a Mitsubishi Canter and the sale of 'red network' mobile handsets in Tripoli*

#### *Prosecution submissions*

4. The Prosecution requests the admission into evidence under Rule 154 of four call sequence tables, two relating to each purchase.

#### *Mitsubishi Canter*

5. The amended consolidated indictment pleads that a Mitsubishi Canter (a light commercial vehicle) packed with explosives was used by a suicide bomber to murder Mr Hariri and others.<sup>6</sup> The Trial Chamber has received evidence that it was purchased in cash in Tripoli on 25 January 2005.<sup>7</sup> The first two call sequence tables contain call data records related to two mobiles used by Witnesses PRH063 and PRH075 who testified about their involvement in its sale.<sup>8</sup>

6. Witness 075 testified that he imported it from the United Arab Emirates in December 2004 and, a month later, placed it in Witness 063's vehicle showroom in Tripoli. Witness 063 then sold it for cash. The two witnesses contacted each other several times on 25 January 2005, the day the vehicle was sold.<sup>9</sup> The Prosecution submits that, read in conjunction with other evidence, these tables demonstrate that the Mitsubishi Canter was sold on that date.<sup>10</sup>

#### *Sale of 'red network' mobile handsets*

7. The Trial Chamber has also heard evidence that 'red network' mobile handsets were purchased by a customer at a shop in Tripoli on 30 December 2004. The two relevant tables provide evidence that two mobiles were used by Witnesses PRH686 and PRH249 who were involved in the sale of five handsets which were then used with 'red network' SIM cards.

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Consolidated Response to Six Prosecution Motions for Admission of Call Sequence Tables and Related Statements, 1 September 2015 ('Badreddine consolidated response'), confidential; F2164, Merhi Defence Consolidated Response to the Prosecution's Six Motions for the Admission of Call Sequence Tables, 1 September 2015 ('Merhi consolidated response'), confidential; F2166, Consolidated Response to Four Prosecution Motions for the Admission of Call Sequence Tables (F2126 & F2127), 2 September 2015 ('Sabra consolidated response'), confidential.

<sup>6</sup> F2720, Amended consolidated indictment, dated 12 July 2016 (signed 15 September 2016), paras 4, 13.

<sup>7</sup> Counsel for Mr Ayyash dispute this, stating that the most likely purchase date was 17 January 2005, and further that Mr Ayyash was most likely not in Lebanon between either of those dates in January 2005, *see* provisional transcript of 1 November 2016.

<sup>8</sup> Transcript of 4 June 2015, pp 55, 68-69, 72-104; transcript of 10 June 2015, pp 3-28; transcript of 15 June 2015, pp 4-29, 34-80.

<sup>9</sup> Transcript of 4 June 2015, p. 84; transcript of 5 June 2015, pp 16-18; transcript of 15 June 2015, pp 40, 69.

<sup>10</sup> Prosecution Mitsubishi motion, para. 3.

8. On 8 December 2004, Witness 686, who was working at Kettaneh, a Tripoli based supplier of handsets to local dealers (including to Witness 249) tested the handsets with her own SIM card to ensure that they were working properly. On 30 December 2004, Witness 249, working at the Echo Cell Shop in Tripoli, sold four new Alcatel handsets and one used Siemens handset to a customer. The customer returned on 5 January 2005 to have a handset repaired. The witness used his own SIM card to test the handset. These tables demonstrate the timing of the sale.<sup>11</sup>

9. According to the Prosecution, the four call sequence tables are admissible under Rule 154 as they are probative, are sufficiently reliable and their admission does not prejudice the fair trial rights of the four Accused. The call data records and the four call sequence tables are reliable. Prosecution analyst, Andrew Donaldson (Witness PRH230), explained in his statement (exhibit P525) how he produced the four call sequence tables in a standardized and mechanical manner by copying and pasting the relevant data from the underlying material.<sup>12</sup>

10. Annex B to the motion refers to the relevant call data records and cell site information of the Lebanese telecommunications providers, Touch and Alfa. The Trial Chamber has already received this into evidence and was satisfied of its *prima facie* reliability.<sup>13</sup>

11. When it filed the motion, the Prosecution submitted that it intended to lead evidence on the creation, storage, and retrieval of the underlying material, including the call data records, at a later time.<sup>14</sup> It has now done so with the evidence of Witnesses PRH705 and PRH707 who testified, respectively, about the cell site and call data records of Touch and Alfa. These submissions are therefore superseded.<sup>15</sup>

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<sup>11</sup> Prosecution Mitsubishi motion, paras 3, 19; exhibit P561. *See* transcript of 27 August 2015, pp 22-24.

<sup>12</sup> Prosecution Mitsubishi motion, para. 6. The Trial Chamber, in its decision of 6 May 2015, held Mr Donaldson's statement admissible under Rule 155 (C) or Rule 156. *See* 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 ('CST Decision of 6 May 2015'), paras 116-118. On 21 July 2015, during his testimony, the Trial Chamber marked his statement of 19 January 2015 as exhibit P525 MFI. It has since been admitted into evidence. *See* Colour-coded CST Decision of 31 October 2016, para. 48, disposition.

<sup>13</sup> These are business records, provided to the Lebanese Prosecutor-General and the Lebanese Ministry of Telecommunications in electronic format, and then to the Special Tribunal's Prosecutor, pursuant to requests for assistance. The Prosecutor also obtained some data directly from Alfa and Touch. *See* Cell site Decision of 26 October 2016, paras 26-32.

<sup>14</sup> Prosecution Mitsubishi motion, paras 21-22.

<sup>15</sup> Witness 705 Decision, para. 128, disposition; Witness 707 Decision, paras 198-199, disposition.

12. The probative value of the four call sequence tables is not substantially outweighed by the need to ensure a fair trial under Rule 149 (D).<sup>16</sup> The proposed call sequence tables present relevant portions of call data records in an intelligible format and exclude irrelevant data, in compliance with the requirement of relevance imposed by Rule 149 (C).<sup>17</sup> Moreover, the Defence cross-examined Mr Donaldson, who produced the tables.<sup>18</sup>

***Second motion: call sequence tables related to the false claim of responsibility***

13. The Trial Chamber has also heard evidence, as pleaded in the amended consolidated indictment,<sup>19</sup> that on 14 February 2005, a false claim of responsibility was made for the attack shortly after it occurred, in a video featuring Mr Ahmed Abu Adass, which was then broadcast on Al-Jazeera.

14. At the time, three employees of Al-Jazeera's Beirut agency—Witnesses PRH115, PRH430 and PRH006—used mobiles to make calls and send and receive texts relating to the video and its retrieval from a tree outside the agency.<sup>20</sup> Three call sequence tables and three SMS call sequence tables assist in establishing their movements on 14 February 2005 between 12:00 and 23:59. This is probative of the timing of the calls claiming responsibility, and the timing of the retrieval of the video tape containing the false claim.<sup>21</sup>

15. The Prosecution seeks the admission, under Rule 154, of these tables, and, under Rule 155, the statements of Mr Donaldson,<sup>22</sup> and Mr Lachlan Christie (Witness PRH313).

16. The Prosecution submits that the six call sequence tables are admissible under Rule 154 as they have probative value, bear sufficient indicia of reliability and their admission does not prejudice the fair trial rights of the four Accused.<sup>23</sup> Annex B to this second motion likewise refers to the relevant call data records and cell site evidence, which as noted at paragraph 10 above, has already been dealt with.

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<sup>16</sup> Rule 149 (D): 'A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules.'

<sup>17</sup> Rule 149 (C): 'A Chamber may admit any relevant evidence which it deems to have probative value.'

<sup>18</sup> Prosecution Mitsubishi motion, paras 27-29.

<sup>19</sup> Amended consolidated indictment, paras 3, 15, 23, 44, 64, 68, 70.

<sup>20</sup> Witness PRH115 testified on 7 July 2015; Witness PRH430 testified on 13 July 2015; Witness PRH006 testified on 23-24 June 2015.

<sup>21</sup> Prosecution false claim motion, paras 22-24. The Prosecution withdrew three related landline call sequence tables. *See* Prosecution notice of withdrawal, para. 1.

<sup>22</sup> Annex D to the Prosecution false claim motion identifies two statements of Mr Donaldson: ERN 60303452-60303460 and ERN 60303130-60303166, but the Prosecution only seeks the admission of the former. The latter is exhibit P525. *See* Colour-coded CST Decision of 31 October 2016, para. 28, disposition.

<sup>23</sup> Prosecution false claim motion, para. 38.

17. With regard to the indicia of reliability and potential prejudice to the fair trial rights of the Accused, the Prosecution makes the same arguments as described for its first motion above. The underlying material is annexed to the motion and has been disclosed to the Defence.<sup>24</sup>

18. The Prosecution submits that the evidence in Mr Donaldson's and Mr Christie's statements is standardised and mechanical in nature, does not concern the acts and conduct of the Accused, and complies with Rule 155 and its Practice Direction.<sup>25</sup> These statements are also cumulative to statements of other Prosecution analysts, namely Ms Kei Kamei (Witness PRH308), Ms Helena Habraken (PRH371), Ms Nadine Stanford (Witness PRH458) and Mr Christian Carnus (Witness PRH377) whose evidence the Trial Chamber has already received and heard, with the exception of Ms Stanford who did not testify. Their statements, with respect to these and other call sequence tables, have already been admitted into evidence.<sup>26</sup>

#### *Defence responses*

19. In their responses, counsel for Mr Ayyash, Mr Merhi, Mr Badreddine, Mr Sabra and Mr Oneissi argued that the motions and the related witness statements were premature and contravened the Trial Chamber's decision of 6 May 2015.<sup>27</sup> The information provided by the Prosecution in its motions was insufficient to assess the reliability and probative value of the call data records used to produce the call sequence tables. The Defence requested the Trial Chamber to defer deciding the two motions until the Prosecution had led evidence as to the provenance and reliability of the underlying call data records. Further, the related witness statements should be first added to the Prosecution's list of exhibits.<sup>28</sup>

20. These arguments are now moot as the Trial Chamber has heard the evidence of the relevant Prosecution analysts and other witnesses.<sup>29</sup> In addition, the statements are already on the Prosecution's exhibit list and thus the Defence's arguments in this respect are rejected.

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<sup>24</sup> Prosecution false claim motion, paras 28-37.

<sup>25</sup> 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.

<sup>26</sup> See transcripts of 20-21 July, 16-19 November 2015 (Ms Kamei); 22 July 2015 (Mr Carnus); 22 July, 27 September 2015 (Ms Habraken). They were cross-examined by Defence counsel. Ms Kamei's statement on the production of call sequence tables is exhibit P516, Mr. Carnus's statement is exhibit P530, Ms Stanford's is exhibit P531 and Ms Habraken's is exhibit P528. See transcript, 23 July 2015, pp 4, 19-21; Colour-coded CST Decision of 31 October 2016, para. 48, disposition.

<sup>27</sup> Ayyash consolidated response, paras 2, 10, 12-13, 16-17; Badreddine consolidated response, paras 3, 8-10; Merhi consolidated response, paras 6-8; Sabra consolidated response, paras 6-9; Oneissi response, para. 5.

<sup>28</sup> Ayyash consolidated response, paras 1-2, 11, 13, 22-24; Badreddine consolidated response, paras 3, 9, 12; Sabra consolidated response, paras 2, 5, 10, 16; Oneissi response, para. 5.

<sup>29</sup> CST Decision of 31 October 2016, para. 75.

21. Counsel for Mr Ayyash and Mr Badreddine also submitted that the Prosecution cannot rely on the decision of the Appeals Chamber of 28 July 2015 (of the Trial Chamber's decision of 6 May 2015) to decide on the admissibility of the call sequence tables as the Appeals Chamber's decision did not deal with the admissibility of the underlying data addressed in the decision of 6 May 2015.<sup>30</sup>

## DISCUSSION

22. The Trial Chamber has heard evidence on the sale of the 'red network' mobile handsets, the Mitsubishi Canter and of the circumstances of the alleged false claim of responsibility. There is no contest to its relevance to the case, and it is clearly relevant. The call sequence tables corroborate the existing evidence on these factual issues. They too are relevant. More specifically, these call sequence tables are relevant to, and probative of, the preparation of the attack, including the alleged observation and surveillance activity of the Accused in using the 'red network' mobiles, the purchase of the Mitsubishi Canter in the Al-Beddaoui area of Tripoli on 25 January 2005, the sale of the 'red network' handsets, and the retrieval of the video tape containing the false claim of responsibility for the attack of 14 February 2005.<sup>31</sup>

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

24. The *prima facie* reliability of the tables is addressed in the evidence of the Prosecution's analysts. In other decisions, the Trial Chamber has dealt with the general Defence challenges to the reliability of the Prosecution's cell site evidence, call data records and call sequence tables generally.<sup>32</sup> It must therefore only be satisfied that these particular tables are *prima facie* reliable. Mr Donaldson's and Mr Christie's statements describe how they produced the relevant tables, and Mr Christie also describes conducting a negative search of SMS content for 'red network' numbers.

25. The statements are relevant to, and probative of, the reliability of the call sequence tables produced by the witnesses. The statements also have sufficient indicia of reliability

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<sup>30</sup> Ayyash consolidated response, paras 15-17; Badreddine consolidated response, para. 9.

<sup>31</sup> Amended consolidated indictment, paras 22, 32 (c), 44.

<sup>32</sup> See Witness 705 Decision, paras 18-28; Witness 707 Decision, paras 62-74; Cell site Decision of 26 October 2016, paras 62-96; CST Decision of 31 October 2016, paras 74-95.

under both Rule 155 and the relevant Practice Direction. These statements are cumulative to the evidence of Prosecution analysts who have already testified on the production of call sequence tables and whose statements have already been admitted into evidence, and do not concern the acts and conduct of the Accused. The statements were disclosed to the Defence shortly after their production.

26. The statements are admissible under Rule 149 (C), and may be admitted into evidence under Rule 155. The Trial Chamber has previously determined the procedural safeguards for admitting written statements into evidence under Rule 155 in lieu of live court testimony.<sup>33</sup> These principles are applicable here.

27. Based on the totality of the evidence—including these statements and the supporting material—the Trial Chamber is satisfied that these call sequence tables are *prima facie* reliable and have sufficient probative value to be admitted into evidence under a combination of Rules 154, Rule 155 and Rule 156.

### **CONFIDENTIALITY**

28. The Trial Chamber reiterates the public nature of proceedings before the Special Tribunal, and that filings should wherever possible be public. Because they contain confidential information, the Prosecution seeks to maintain the confidentiality of its two motions and their 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. The Prosecution has since filed public redacted versions of its two motions, but not their annexes.

29. The Trial Chamber will maintain the confidentiality of the annexes of the Prosecution's motions until it decides otherwise. The Trial Chamber also orders Defence counsel to file public redacted versions of their motions or to have them reclassified as public.

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<sup>33</sup> 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.' For example, 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, 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. 3.



**DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber,

**DECLARES** admissible, under Rule 154, the seven call sequence tables and three SMS call sequence tables listed in annex A to the Prosecution motions, namely, CST/0210, CST/0209, CST-0220, CST-0221, ECT-CST-0089, CST-SMS 0002, CST-0223, SMS CST 0141, CST-0372 and SMS CST 0142;

**DECLARES** admissible, under Rule 155, the statements of Mr Lachlan Christie (Witness PRH313) and Mr Andrew Donaldson (Witness PRH230), submitted in annex D of 'F2126, Prosecution motion for the admission of call sequence tables related to the false claim of responsibility, 18 August 2015';

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

**MAINTAINS** the confidentiality of the annexes to the Prosecution motions until otherwise decided; and

**ORDERS** Defence counsel to file public redacted versions of their responses or to have them reclassified as public.

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

Leidschendam,  
The Netherlands  
1 November 2016

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

\_\_\_\_\_  
Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

