

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:** 23 June 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION ADMITTING 10 DOCUMENTS RELATED TO THE DEATH OF  
MUSTAFA AMINE BADREDDINE**

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**Office of the Prosecutor:**

Mr Norman Farrell &amp; Mr Alexander Hugh Milne

**Legal Representatives of  
Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar &amp; Ms Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis &amp; Mr Chad Mair

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothee Le Fraper du Hellen &amp; Mr Jad Youssef Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser Hassan &amp; Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Geoffrey Roberts &amp; Ms Sarah Bafadhel



## INTRODUCTION

1. Former Accused Mr Mustafa Amine Badreddine<sup>1</sup> is named in the amended consolidated indictment as a co-conspirator in regard to the attack in Beirut on 14 February 2005 that targeted the former Lebanese Prime Minister, Mr Rafik Hariri, resulting in his death and that of many others.<sup>2</sup> The Prosecution pleads that Mr Badreddine (and the four Accused) were supporters of Hezbollah, a political and military organization in Lebanon,<sup>3</sup> and that Mr Badreddine used the alias Sami Issa.<sup>4</sup> The Prosecution also attributes various telephone numbers to Mr Badreddine as part of its case.<sup>5</sup>

2. The Prosecution seeks the admission into evidence of 10 documents, under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, relating to Mr Badreddine's death.<sup>6</sup> As a prerequisite to their admission, the Prosecution requests leave to add the documents to its exhibit list. Counsel for Mr Hassan Habib Merhi object to the admission of all 10 documents.<sup>7</sup> Counsel for Mr Hussein Hassan Oneissi take no position on the formal admission of the documents.<sup>8</sup>

## EVIDENCE AND SUBMISSIONS

3. The Prosecution seeks to admit into evidence the following 10 documents:
- a. Four videos from various dates in May 2016 recorded from *Al-Manar* television showing various ceremonies held to commemorate Mr Badreddine's death;

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<sup>1</sup> The proceedings against Mr Badreddine were terminated on 11 July 2016 pursuant to an order of the Appeals Chamber. See STL-11-01/T/AC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra* AR126.11\_F0019, 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. See also STL-11-01/T/TC, *Prosecutor v. Ayyash, 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.

<sup>2</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016 ('Amended consolidated indictment'), paras 3, 48.

<sup>3</sup> Amended consolidated indictment, para. 49.

<sup>4</sup> Amended consolidated indictment, para. 3.

<sup>5</sup> Amended consolidated indictment, paras 16, 18.

<sup>6</sup> F3105, Prosecution Rule 154 Motion for the Admission of 10 Exhibits related to the death of Mustafa Amine Badreddine, 26 April 2017 ('Prosecution motion').

<sup>7</sup> F3134, Merhi Defence Response to "Prosecution Rule 154 Motion for the Admission of 10 Exhibits Related to the Death of Mustafa Amine Badreddine", 11 May 2017 ('Merhi Defence response').

<sup>8</sup> F3135, Oneissi Defence Response to "Prosecution Rule 154 Motion for the Admission of 10 Exhibits Related to the Death of Mustafa Amine Badreddine", 11 May 2017 ('Oneissi Defence response').

- b. Three articles, with photographs, from various dates in May 2016 regarding the ceremonies in relation to Mr Badreddine's death; and
- c. Three extracts from an article, with photographs and a video, from 13 May 2016 containing a biography of Mr Badreddine.

*Prosecution submissions*

*i) General arguments*

4. The Prosecution seeks leave to add the documents to its exhibit list. The addition is with good cause, does not prejudice the Accused's fair trial rights and does not cause undue delay.<sup>9</sup> Eight documents were disclosed to the Defence on 27 May 2016, while the remaining two documents were disclosed on 21 April 2017.<sup>10</sup> Five documents were admitted into evidence during the separate but related proceeding regarding the death of Mr Badreddine, so the Trial Chamber may not deem it necessary to add them to the Prosecution's exhibit list.<sup>11</sup> Three documents are extracts from the same article, and only a single exhibit list number is requested for these.<sup>12</sup>

5. As a general matter, the 10 documents are relevant and probative because they help to identify Mr Badreddine as a senior military commander in Hezbollah. They further assist in: establishing that, as a senior Hezbollah commander with an operational history, Mr Badreddine had the experience and technical ability to orchestrate a complex covert operation like the 14 February 2005 attack; identifying family members and Hezbollah officials, which is relevant to the attribution of telephone numbers to Mr Badreddine; demonstrating Mr Badreddine used the alias Sami Issa; and demonstrating that Mr Hassan Nasrallah discussed Mr Badreddine's life in a 20 May 2016 speech.<sup>13</sup>

6. The 10 documents are reliable because they were obtained from original 'open source' (i.e. publicly available) television broadcasts or websites. Various Prosecution analysts downloaded or recorded these materials.<sup>14</sup>

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<sup>9</sup> Prosecution motion, para. 16.

<sup>10</sup> Prosecution motion, para. 16, fn. 26; annex C.

<sup>11</sup> Prosecution motion, para. 16, citing Exhibits P834 MB, P842 MB, P846 MB, P852 MB, P862 MB.

<sup>12</sup> Prosecution motion, para. 16, referring to annex A, Items 2-4.

<sup>13</sup> Prosecution motion, paras 1, 6.

<sup>14</sup> Prosecution motion, paras 13-14; annex B.

7. The probative value of all the documents is not outweighed by their prejudicial effect. The Defence is not prejudiced because counsel had the chance to review the documents at an earlier stage in the case. Admitting the 10 documents serves the interests of justice and of a fair and expeditious trial, and would lead to an efficient use of the Trial Chamber's time.<sup>15</sup>

ii) *Specific arguments for categories of documents*

a) *Videos of ceremonies commemorating the death of Mr Badreddine*

8. The first set of documents consists of four videos from May 2016 that were broadcast on *Al-Manar TV*. Two videos record a condolence ceremony on 13 May 2016 in which various senior Hezbollah officials paid condolences to Mr Badreddine's family.<sup>16</sup> Another video shows footage of Mr Badreddine's funeral procession on 13 May 2016, including a coffin draped with a Hezbollah flag and his brothers Adnan and Mohammed following behind.<sup>17</sup> The last video shows a commemoration ceremony on 20 May 2016, including speeches by Mr Nasrallah and by Mr Badreddine's brother Mohammed.<sup>18</sup>

9. These videos are relevant and probative to demonstrate the nature and extent of the funeral ceremonies for Mr Badreddine, including the presence of senior persons. They are also relevant to the attribution of various telephone numbers to Mr Badreddine, because several people in the videos, including Hezbollah officials and Mr Badreddine's brothers, have numbers attributed to them that were in contact with personal mobile phone ('PMP') 354, PMP 663 and sequential mobile phone ('SMP') 944, during the time frames that these mobiles were attributed to Mr Badreddine.<sup>19</sup> The video of Mr Nasrallah's speech is further relevant because he described Mr Badreddine's operational military activity since at least 1982. Mr Nasrallah also referred to Mr Badreddine as 'Al Sayyed Zou Al Fiqar', which is relevant to Mr Badreddine's use of aliases.<sup>20</sup>

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<sup>15</sup> Prosecution motion, para. 15.

<sup>16</sup> Prosecution motion, para. 7; annex A, Items 5-6. The Hezbollah officials are Hezbollah Member of Parliament ('MP') Hussein Hajj Hassan (former Minister of Agriculture), Hezbollah MP Hasan Fadlallah, Hezbollah former MP Amine Sherri, Deputy Secretary General Naim Qassem, Head of Hezbollah Council Executive Sayyed Hashem Safieddine, Hezbollah official Wafik Safa, and Hezbollah MP Ali Ammar. The family members are Mr Badreddine's brothers, Adnan and Hassan. Annex A, Items 5-6.

<sup>17</sup> Prosecution motion, para. 7; annex A, item 7.

<sup>18</sup> Prosecution motion, para. 7; annex A, item 8.

<sup>19</sup> As pleaded in the amended consolidated indictment, para. 18.

<sup>20</sup> Prosecution motion, paras 7-8.

*b) Articles on the commemoration ceremonies for Mr Badreddine*

10. The next set of documents consists of three articles reporting on the commemoration ceremonies for Mr Badreddine. The first article is from 13 May 2016 from the *Al-Manar* website and records that Hezbollah announced the death of Mr Badreddine and was accepting condolences at the Al-Mujtaba compound in Beirut. The article also contains a photograph of Mr Badreddine in military fatigues.<sup>21</sup> The second article is from 18 May 2016 from the *Tasnim News* website and records, with photographs, a commemoration ceremony in Damascus from that same date.<sup>22</sup> The third article is from 27 May 2016 from the *Tasnim News* website and records, with photographs, a meeting between Mr Badreddine's family and the Ayatollah Khamenei in Tehran on that same date.<sup>23</sup>

11. The three articles are relevant and probative because the ceremonies for Mr Badreddine in different countries indicate his senior position within Hezbollah. The photograph in the first article of Mr Badreddine in military fatigues is also relevant because it assists in establishing Mr Badreddine used the alias 'Sami Issa'. This photograph was shown to eight witnesses, who all identified the person in this photograph as Mr Issa.<sup>24</sup>

*c) An article on the life of Mr Badreddine*

12. The last set of documents contains three extracts from a 13 May 2016 article from the *Al-Ahed News* website on the life of Mr Badreddine. The first extract is the news article itself, the second extract is enlarged versions of the photographs of Mr Badreddine from this article, and the third extract is the video of Mr Badreddine from this article. The photographs and video show Mr Badreddine in military fatigues and, among other things, engaged in military operations.<sup>25</sup>

13. The three documents are relevant and probative because they assist in establishing Mr Badreddine's high military rank within Hezbollah. The video and some of the photographs are also relevant because they were shown to eight witnesses, all of whom identified the person in the video and the photographs as Mr Issa.<sup>26</sup>

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<sup>21</sup> Prosecution motion, para. 9; annex A, Item 1.

<sup>22</sup> Prosecution motion, para. 9; annex A, Item 9.

<sup>23</sup> Prosecution motion, para. 9; annex A, Item 10.

<sup>24</sup> Prosecution motion, paras 9-10; annex A, Item 1. The witnesses are PRH264, PRH306, PRH338, PRH369, PRH416, PRH423, PRH470 and PRH605.

<sup>25</sup> Prosecution motion, para. 11; annex A, Items 2-4.

<sup>26</sup> Prosecution motion, paras 11-12; annex A, Items 3-4.

*Defence submissions*

14. Counsel for Mr Merhi object under Rule 149 (D) to the admission of the documents, and to their addition to the Prosecution's exhibit list. The addition is counter to the interests of justice, the prejudice to the Defence outweighs the relevance and significance of the documents to the Prosecution, and the motion was filed late without justification.<sup>27</sup>

15. The documents are irrelevant in the context of the case. Mr Badreddine's reputation within Hezbollah or in Syria and Iran, and the guests present at his funeral, are of no use in proving the charges in the amended consolidated indictment. To the extent the documents are to be used to demonstrate that Hezbollah, Syria or another entity was involved in the 14 February 2005 attack, this goes beyond the allegations in the amended consolidated indictment and would be material facts that have not been pleaded, and are inadmissible at this stage of the trial.<sup>28</sup>

16. The documents cannot be used to prove Mr Badreddine had extensive experience with complex covert operations because this would amount to the Prosecution trying to establish a consistent 'pattern of conduct.' However, the Prosecution stated that it would not rely on pattern of conduct evidence in a notice filed in 2013.<sup>29</sup> Furthermore, the Trial Chamber questioned the appropriateness of pattern of conduct evidence during the testimony of Prosecution witness Mr Gary Platt (Witness PRH147).<sup>30</sup> The Trial Chamber should not allow the Prosecution to introduce pattern of conduct evidence, especially at the end of the Prosecution's case.<sup>31</sup>

17. With regard to the photographs and video of Mr Badreddine, the identifications by the eight witnesses have no probative value because of the conditions in which they identified Mr Badreddine as Sami Issa. The photographs and videos were widely disseminated in the media, so there is a risk the witnesses' identifications were unduly and unconsciously influenced.<sup>32</sup> Witness PRH470 admitted seeing the photographs in the media before the Prosecution asked

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<sup>27</sup> Merhi Defence response, paras 22-23.

<sup>28</sup> Merhi Defence response, paras 8-11.

<sup>29</sup> Merhi Defence response, para. 13, citing F1246, Prosecution Notice Regarding Pattern of Conduct Evidence, 29 November 2013 ('Prosecution Notice').

<sup>30</sup> Merhi Defence response, para. 14, citing transcript of 15 February 2017, pp 17-18.

<sup>31</sup> Merhi Defence response, para. 15.

<sup>32</sup> Merhi Defence response, paras 4-5, 7.

him to identify Mr Issa.<sup>33</sup> As a result, the prejudicial effect of the documents outweighs their probative value.

18. The Prosecution also fails to show good cause to add the documents to its exhibit list. Eight documents were disclosed in May 2016, which does not demonstrate good cause. Two of the documents were disclosed on 21 April 2017, only a few days before the Prosecution filed its motion. The short time period between disclosure to the Defence of these two documents and the motion does not justify their late addition to the exhibit list. Moreover, the Prosecution offers no justification for the lateness of its motion. It is not acceptable for the Prosecution to be requesting additions to its exhibit list, given the advanced stages of the proceedings. Granting the motion would be tantamount to rendering the time limits in Rule 91 meaningless. The cumulative effective of this motion and other recent Prosecution motions to add documents to its exhibit list shows the Prosecution's negligence and prejudices the Defence.<sup>34</sup>

19. Counsel for Mr Oneissi do not object to the admission of the documents. Counsel note that the Prosecution is presenting inculpatory evidence against Mr Badreddine, the Trial Chamber should examine this evidence in an independent and impartial manner, and it is not for the Oneissi Defence to present a proxy defence on behalf of someone who is deceased.<sup>35</sup>

#### *Prosecution reply*

20. Contrary to the Merhi Defence's submissions, the Prosecution is not arguing that Hezbollah, Syria or another entity was involved in the 14 February 2005 attack. Also, the Prosecution is not relying on the documents to establish a pattern of conduct by Mr Badreddine. The Prosecution submits that Mr Badreddine was a senior Hezbollah military commander and that his senior position would entail military operational capacity. The Merhi Defence's reliance on the Prosecution notice on pattern of conduct evidence is misplaced and has no bearing on whether the documents, which came into existence only in May 2016, are admissible.<sup>36</sup>

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<sup>33</sup> Merhi Defence response, para. 6, citing transcript of 6 December 2016, pp 15-16.

<sup>34</sup> Merhi Defence response, paras 17-21.

<sup>35</sup> Oneissi Defence response, paras 2-4.

<sup>36</sup> F3144, Prosecution Reply to the Merhi Defence Response to the Prosecution Rule 154 Motion for the Admission of 10 Exhibits Related to the Death of Mustafa Amine Badreddine, 16 May 2017 ('Prosecution reply'), paras 2-4.

## DISCUSSION

21. The Trial Chamber has previously recognised the general principles and rules of international criminal law procedural 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, and those governing the amendment of a party’s exhibit list.<sup>37</sup> These principles are applicable here.

22. The Trial Chamber has carefully reviewed these documents, and every other document in the annexes to the Prosecution motion, and the submissions. It is satisfied that the 10 documents are relevant to the allegations pleaded in the amended consolidated indictment that Mr Badreddine was a supporter of Hezbollah, that he used the alias ‘Sami Issa’, and for the attribution to him of various mobile numbers.

### *Mr Badreddine was a supporter of Hezbollah*

23. First, several of the documents are relevant to the material fact pleaded in the amended consolidated indictment that Mr Badreddine was a supporter of Hezbollah.<sup>38</sup> Three documents state that Mr Badreddine was a prominent Hezbollah military commander and describe his military operational activities on its behalf.<sup>39</sup> The Trial Chamber has already held that evidence that Mr Badreddine was a prominent Hezbollah military commander could corroborate the Prosecution’s pleading that he was a Hezbollah supporter.<sup>40</sup>

24. Four other documents report that senior Hezbollah officials were present at the condolence ceremonies for Mr Badreddine, that Mr Nasrallah—the Secretary-General of Hezbollah—gave a speech at one of these ceremonies, and that Mr Badreddine’s coffin was draped with a Hezbollah flag for the funeral procession.<sup>41</sup> All of this can demonstrate Hezbollah’s recognition of Mr Badreddine as a Hezbollah member and his importance in the organisation. Indeed, in the same decision just noted, the Trial Chamber also held that an

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<sup>37</sup> 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 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, paras 66, 111; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1350, Decision on Prosecution’s Motion to Admit in Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, paras 5-7.

<sup>38</sup> Amended consolidated indictment, para. 49.

<sup>39</sup> Annex A, Items 1-2, 8. *Above* paras 8, 10, 12, footnotes 18, 21, 25.

<sup>40</sup> F3104, Decision Admitting 12 Documents and a Witness’ Statements Related to Hezbollah, its Officials and Telephone Numbers, 26 April 2017 (‘Decision of 26 April 2017’), para. 40.

<sup>41</sup> Annex A, Items 5-8. *Above* para. 8, footnotes 16-18. See also Prosecution motion, para. 6 (d).



article reporting that senior Hezbollah officials were present at the memorial for the brother of the Accused Mr Assad Hassan Sabra was relevant to demonstrating that Mr Sabra is a Hezbollah supporter.<sup>42</sup> The same is true with respect to Mr Badreddine.

25. Two documents refer to ceremonies held in relation to Mr Badreddine's death in Syria and Iran.<sup>43</sup> The Trial Chamber agrees with the Prosecution that these documents are relevant because the ceremonies are indicative of the senior rank Mr Badreddine held and that Mr Badreddine was recognised in Syria and Iran as being of high rank.<sup>44</sup>

26. The Trial Chamber does not accept the Merhi Defence's argument that evidence regarding Mr Badreddine's reputation and those who attended his funeral ceremonies is irrelevant to the case.<sup>45</sup> As for the Defence's assertion that the Prosecution offered these documents to establish that Hezbollah or another entity was involved in the 14 February 2005 attack, the Prosecution has confirmed that this is not correct.<sup>46</sup>

27. The Merhi Defence's complaint that these documents amount to impermissible pattern of conduct evidence is also misplaced.<sup>47</sup> Pattern of conduct evidence entails the specific and deliberate acts of an accused that can demonstrate a systematic course of conduct.<sup>48</sup> This is different to the evidence at issue here, of Mr Badreddine's position as a senior Hezbollah military commander and his military operational history, which the Prosecution claims can support the inference that he had the ability to orchestrate an operation like the 14 February 2005 attack.<sup>49</sup>

28. The scope of the Prosecution's notice that it would not tender pattern of conduct evidence is also narrower than the Defence suggests.<sup>50</sup> In this filing, the Prosecution submitted that it would not seek to admit as pattern of conduct evidence any evidence regarding specific attacks, i.e. the attacks in the connected cases over which the Special

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<sup>42</sup> Decision of 26 April 2017, para. 39.

<sup>43</sup> Annex A, Items 9-10. *Above* para. 10, footnotes 22-23.

<sup>44</sup> Prosecution motion, paras 6(a), 9.

<sup>45</sup> Merhi Defence response, para. 9.

<sup>46</sup> Prosecution reply, para. 2. *Compare* Merhi Defence response, para. 10.

<sup>47</sup> Merhi Defence response, paras 13-15.

<sup>48</sup> See ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, para. 321; ICTR, *Nahimana et al. v Prosecutor*, ICTR-99-52-A, Appeal Judgement, 28 November 2007, para. 315, fn. 759; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003, paras. 11-14; *Ngeze and Nahimana v. Prosecutor*, ICTR-97-27-AR72 and ICTR-96-11-AR72, Decision on the Interlocutory Appeals, 5 September 2000, Separate Opinion of Judge Shahabuddeen, para. 20.

<sup>49</sup> Prosecution motion, para. 6. *See also* Prosecution reply, para. 3.

<sup>50</sup> Merhi Defence response, para. 13.

Tribunal has jurisdiction, as well as a series of terrorist attacks in Kuwait on 12 December 1983, including a suicide bombing in a truck against the U.S. embassy, for which Mr Badreddine, under the alias ‘Elias Fouad Saab’, was convicted on 27 March 1984 by the State Security Court of Kuwait.<sup>51</sup> The documents here therefore fall outside the scope of this filing.

29. The Merhi Defence is also wrong in claiming that the Trial Chamber questioned the appropriateness of pattern of conduct evidence regarding Mr Badreddine during the testimony of Prosecution witness Mr Platt.<sup>52</sup> Instead, the Trial Chamber sought to identify the factual basis for Mr Platt’s opinion that Mr Badreddine had experience with covert operations.<sup>53</sup>

#### *Identification of Mr Badreddine as Sami Issa*

30. Four of the documents are also relevant to the identification of Mr Badreddine as ‘Sami Issa’, in particular those containing the six photographs and one video of Mr Badreddine.<sup>54</sup> These images were shown to eight witnesses, who all identified the person in the photographs and video as Mr Issa.<sup>55</sup> The documents may therefore assist in proving that Mr Badreddine used this alias. Moreover, these photographs and video were admitted as part of the witnesses’ statements,<sup>56</sup> so the documents are cumulative in this respect.

31. Counsel for Mr Merhi argues that the witnesses’ identifications are flawed and unreliable because the photographs and video were widely disseminated in the media following Mr Badreddine’s death, and consequently the images themselves should not be admitted.<sup>57</sup> The Trial Chamber previously rejected this same argument when admitting the eight witnesses’ statements. The Trial Chamber held that the witnesses’ identifications were reliable despite the Prosecution’s use of these media images, because the witnesses already knew Mr Badreddine as Sami Issa before they identified him.<sup>58</sup> Given the statements were

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<sup>51</sup> Prosecution Notice. *See also* Transcript of 13 November 2014, p. 85; ST-11-01/PT/TC, F1191, Orders for Trial Preparation Following the Pre-Trial Conference of 29 October 2013, 31 October 2013, paras 4-5; F774, Decision on Defence Motion to Strike Out Part of the Prosecutor’s Pre-Trial Brief, 8 March 2013, paras 25-27; ST-11-01/PT/PTJ, F534, Prosecution’s Submission Pursuant to Rule 91, 15 November 2012 (public redacted version), annex A: Prosecution Pre-Trial Brief Pursuant to Rule 91, paras 157-175.

<sup>52</sup> Merhi Defence response, para. 14.

<sup>53</sup> Transcript of 15 February 2017, pp 17-24.

<sup>54</sup> Annex A, Items 1-4. *Above* paras 10, 12, footnotes 21, 25.

<sup>55</sup> Exhibits P1414, P1658-P1664; Prosecution motion, para. 10.

<sup>56</sup> *See* pp 6-12 of Exhibits P1414, P1658-P1662, P1664 and pp 5-11 of P1663.

<sup>57</sup> Merhi Defence response, paras 5-7.

<sup>58</sup> F2831, Decision under Rule 155 Admitting Statements of Witnesses PRH338, PRH369, PRH423, PRH470 and PRH605 Identifying Sami Issa, 11 November 2016, paras 10-12; F2829, Decision on Rule 155 Statements of Witnesses PRH264, PRH306 and PRH416 Identifying Sami Issa as Mustafa Amine Badreddine, 11 November 2016, paras 7-11.

admitted, along with the same photographs and video, the Trial Chamber finds that the documents from which the photographs and video originated are also admissible.

32. As the Prosecution suggests, Mr Nasrallah's speech is also relevant to the allegation that Mr Badreddine used an alias, here Sami Issa, because in his speech Mr Nasrallah referred to another alias of Mr Badreddine: 'Al Sayyed Zou Al Fiqar'.<sup>59</sup>

*Attribution of mobile numbers to Mr Badreddine*

33. Finally, the Trial Chamber is satisfied that four of the documents are also relevant to attributing mobile numbers (PMP 354, PMP 663 and SMP 944) to Mr Badreddine, including identifying Mr Badreddine's contacts with his family and Hezbollah officials.<sup>60</sup> None of the Defence contests this.

34. The Trial Chamber has admitted into evidence documents identifying the mobile numbers of the following Hezbollah members—Ali Ammar, Amine Sherri and Wafik Safa—present at the condolence ceremony for Mr Badreddine,<sup>61</sup> along with documents identifying the numbers of Mr Badreddine's brothers Adnan, Hassan and Mohammed.<sup>62</sup> The documents at issue are therefore cumulative and of assistance in analysing third party contacts of the mobiles attributed to Mr Badreddine.

35. Turning to the documents' reliability, the Trial Chamber previously found that five documents were sufficiently reliable to be admitted in the separate proceeding concerning Mr Badreddine's death,<sup>63</sup> and one document (the *Al-Ahed News* video)<sup>64</sup> was sufficiently reliable that an excerpt from this video was admitted as exhibit P1415.<sup>65</sup> As for the remaining documents,<sup>66</sup> the various notes of Prosecution staff members recorded the sources of these materials, the steps taken to record or download the materials, and the verification of the

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<sup>59</sup> See Prosecution motion, para. 7; annex A, p. 10.

<sup>60</sup> Annex A, Items 5-8. *Above* para. 8, footnotes 16-18.

<sup>61</sup> Exhibits P1392 and P1393, extracts from Mr Jamil El-Sayyed's handwritten telephone notebooks; Exhibits P1425 and P1450, subscriber notes from the Lebanese telecommunications service providers MTC Touch. See also Decision of 26 April 2017, paras 45, 47, pp 21-22.

<sup>62</sup> Exhibits P920-P921, P1599. See also Prosecution motion, para. 8.

<sup>63</sup> Transcript of 31 May 2016, pp 16, 27, 29, 39, 48. Items 1 and 5-8 from annex A are respectively P834 MB, P846 MB, P842 MB, P852 MB and P862 MB. See also annex B, Items 1, 3 (setting out how Prosecution staff downloaded and recorded these documents).

<sup>64</sup> Annex A, Item 4.

<sup>65</sup> Transcript of 1 December 2016, p. 35. See also annex B, Item 2; Investigator Notes of Prosecution analyst, Ms Nicole Blanch (Witness PRH698), dated 27 May 2016, setting out how Prosecution staff downloaded this document.

<sup>66</sup> Annex A, Items 2-3, 9-10.

contents of the documents.<sup>67</sup> The Trial Chamber considers that this is sufficient to establish their *prima facie* reliability and hence probative value under Rule 149 (C).

36. The Trial Chamber further finds that the probative value of these documents is not substantially outweighed by any prejudicial effect under Rule 149 (D). The Merhi Defence has not shown that the documents must be excluded to ensure a fair trial. Nevertheless, the Trial Chamber notes the hearsay nature of some of this evidence, like Mr Nasrallah's speech.<sup>68</sup> As the Prosecution states, 'it is not possible to independently corroborate the content of the speech of Mr Nasrallah [...]'.<sup>69</sup> This necessarily affects the weight to be afforded such evidence. What further inferences may be drawn from these exhibits in light of the totality of evidence are matters for the Trial Chamber to decide at a later stage.

37. Finally, the Trial Chamber finds that, for the five documents<sup>70</sup> previously admitted during the separate proceeding regarding Mr Badreddine's death, there is no need for the Prosecution to add these documents to its exhibit list. An exhibit list is primarily an instrument of notice,<sup>71</sup> and such notice has already been sufficiently provided with respect to these documents.

38. As for the remaining documents,<sup>72</sup> the Trial Chamber finds that adding these documents to the Prosecution's exhibit list is in the interests of justice, despite the advanced stage of the trial proceedings. The Merhi Defence's claim that it would be prejudiced by such an addition lacks specificity and is unsubstantiated.<sup>73</sup> Rather, the Defence received notice of most of the documents' content in a timely manner, i.e. almost one year before the Prosecution filed its motion.<sup>74</sup> It further received notice five months ago that the Prosecution planned to seek admission of materials relating to Mr Badreddine's death.<sup>75</sup> The Merhi Defence's argument that items 9 and 10 (articles reporting on ceremonies held in Syria and

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<sup>67</sup> Annex B, Items 2, 5.

<sup>68</sup> *Above* para. 8, fn. 18.

<sup>69</sup> Annex A, p. 12.

<sup>70</sup> *Above* fn. 63.

<sup>71</sup> See ICTY, *Prosecutor v. Perišić*, IT-04-81-T, Trial Chamber's Ruling on Defence Motion to Clarify Whether the Prosecution Must Request Leave to Amend its Rule 65 *ter* Exhibit List, 17 November 2008, para. 13; ICTR, *Prosecutor v. Simba*, ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28, 31 January 2005, para. 13.

<sup>72</sup> Annex A, Items 2-4, 9-10.

<sup>73</sup> Merhi Defence response, paras 21-22.

<sup>74</sup> *Above* para. 4.

<sup>75</sup> F2948, Notice Concerning an Updated Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 20 January 2017 (confidential), annex A, para. 9.

Iran following Mr Badreddine's death)<sup>76</sup> were disclosed too late—only a few days before the Prosecution's motion<sup>77</sup>—ignores that these two articles are similar to the other articles that reported on commemoration ceremonies in Lebanon for Mr Badreddine and that were disclosed almost a year ago. Admitting these documents into evidence therefore will not adversely affect the Defence's ability to prepare its case or cause undue delay in the trial proceedings. The Trial Chamber agrees with the Prosecution that only a single Rule 91 exhibit number is required for items two through four of annex A of the Prosecution motion, since they are all extracts from the same article (on Mr Badreddine's life).<sup>78</sup>

### **CONFIDENTIALITY**

39. The Prosecution requested the Trial Chamber to maintain the confidentiality of the motion and its annexes as they contain confidential information regarding the telephone numbers and identity of third parties, until the Trial Chamber decides otherwise, either upon the motion of the Prosecution or after having given the Prosecution the opportunity to be heard on this issue.<sup>79</sup> However, the motion was filed publicly, and only the annexes were filed confidentially. So the Prosecution's request to maintain the confidentiality of the motion is moot. As for the annexes, the Prosecution subsequently confirmed that they could be filed publicly.<sup>80</sup> The Trial Chamber then issued an order instructing the Registry to reclassify the annexes from confidential to public.<sup>81</sup>

### **DISPOSITION**

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

**GRANTS** the Prosecution's request to amend its Rule 91 exhibit list to add the following items listed in annex C to the Prosecution motion:

- Item 2: 13 May 2016 *Al-Ahed News* article with biography of Mustafa Amine Badreddine;
- Item 7: 18 May 2016 *Tasnim News* article on a ceremony in Syria;
- Item 8: 26 May 2016 *Tasnim News* article on a ceremony in Iran;

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<sup>76</sup> Above para. 10, footnotes 22-23.

<sup>77</sup> Merhi Defence response, para. 18.

<sup>78</sup> Above para. 12, fn. 25.

<sup>79</sup> Prosecution motion, para. 17.

<sup>80</sup> Provisional confidential transcript of 20 June 2017, p. 74.

<sup>81</sup> Provisional confidential transcript of 20 June 2017, p. 104.

**DECLARES** admissible, under Rule 154, the following documents listed in Annex A to the Prosecution motion:

- Item 1: 13 May 2016 *Al-Manar* article announcing the death of Mr Badreddine;
- Items 2-4: Extracts from the 13 May 2016 *Al-Ahed News* article with biography of Mr Badreddine;
- Items 5-6: Extracts from the 13 May 2016 *Al-Manar* video broadcast of a condolence ceremony;
- Item 7: Extract from the 13 May 2016 *Al-Manar* video broadcast of a funeral procession;
- Item 8: 20 May 2016 *Al-Manar* video broadcast of a commemoration ceremony;
- Item 9: 18 May 2016 *Tasnim News* article on a ceremony in Syria;
- Item 10: 26 May 2016 *Tasnim News* article on a ceremony in Iran; and

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

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

Leidschendam,  
The Netherlands  
23 June 2017

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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Judge Janet Nosworthy

*Micheline Braidy*

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Judge Micheline Braidy

