

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:** 10 October 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION ADMITTING SIX PHOTOGRAPHS INTO EVIDENCE**

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

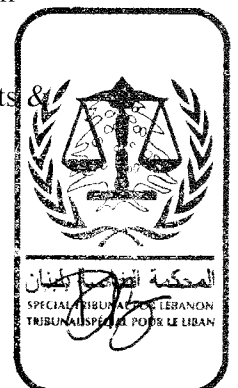
**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair

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

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Youssef 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 Geoffrey Roberts &  
Ms Sarah Bafadhel



1. On 25 September 2017, the Trial Chamber issued its ‘Decision Granting, in Part, Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – Character, Religious Beliefs and Associates’<sup>1</sup> which considered the admissibility of numerous items tendered by counsel for the Accused Mr Assad Hassan Sabra. One of these was a Lebanese Internal Security Forces (ISF) investigation summary which lists reports and items seized by the ISF during a search of Mr Abu Adass’ home relevant to the attack of 14 February 2005 which killed former Lebanese Prime Minister Mr Rafik Hariri and 21 others, and injured 226 other persons.<sup>2</sup> This document stated that, among other items, six ‘photographs’ of buildings similar to those at the scene of the attack were extracted from Mr Abu Adass’ computer after a search of deleted files.<sup>3</sup>

2. The Trial Chamber held that this document was admissible, pursuant to Rule 154 of the Special Tribunal’s Rules of Procedure and Evidence. It also stated that the Sabra Defence had access to the contents of the computer seized during the investigation. Consequently, the Defence ‘should have sought the admission of the photographs rather than an annex that merely mentions their existence’, but this was a matter that goes to the weight the Trial Chamber should give the evidence and not its admissibility. The Trial Chamber, however, stated that it ‘would consider favourably the admission of the photographs, should they be tendered.’<sup>4</sup>

3. The Prosecution now tenders for admission, under Rule 154, the six ‘photographs’.<sup>5</sup> However, the Prosecution explains that they are actually graphic designs of a single building—and not, in fact, photographs of buildings—and that the building depicted ‘is markedly different from any of those at the scene of the explosion’ of 14 February 2005.<sup>6</sup> Counsel for Mr Sabra informed the Trial Chamber that they would not respond to the Prosecution, and counsel for the Accused Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3337, Decision Granting, in Part, Sabra Defence Motion for the Admission of Documents relating to Mr Ahmed Abu Adass - Character, Religious Beliefs and Associates, 25 September 2017 (‘Decision of 25 September 2017’).

<sup>2</sup> Decision of 25 September 2017, paras 1, 3: ‘The Prosecution alleges that Mr Abu Adass, at the behest of the Accused, appeared in a video that falsely claimed responsibility for the attack and which was broadcast shortly after the attack on 14 February 2005 on Al-Jazeera.’

<sup>3</sup> Decision of 25 September 2017, para. 141; F3024, Motion for the Admission of Documents Relating to the Claim of Responsibility – Character, religious beliefs and associates of Ahmed Abu Adass with updated annexes, Annex A, item 40.

<sup>4</sup> Decision of 25 September 2017, para. 147.

<sup>5</sup> F3347, Prosecution Provision of Photographs at the Invitation of the Trial Chamber, 3 October 2017 (‘Prosecution motion’), Annex A.

<sup>6</sup> Prosecution motion, paras. 7, 8.

and Mr Hussein Hassan Oneissi stated that they would not object to, or take a position on, the Prosecution's motion.<sup>7</sup>

4. Rule 154 provides that the Trial Chamber 'may admit evidence in the form of a document or other record'. The Trial Chamber has previously identified the applicable principles and procedural safeguards concerning the admission of documents under this Rule.<sup>8</sup> They apply here. The Trial Chamber notes the lack of opposition from the Defence and that it has already considered the admissibility of the document which refers to the six 'photographs' extracted from Mr Abu Adass' computer in its 25 September 2017 decision. It finds, for the reasons provided in that decision,<sup>9</sup> that the items proposed for admission by the Prosecution are admissible under Rule 154.

5. The Prosecution filed its motion publicly, but then reclassified it to confidential. This was justified on account of the pending matter 'of the status of a related filing', presumably the Trial Chamber's 25 September 2017 decision.<sup>10</sup> The Prosecution's motion should not have been reclassified. None of the outstanding matters in the decision touch upon the photographs/graphic designs. The Trial Chamber therefore orders the Prosecution's motion to be reclassified from confidential to public.

### **DISPOSITION**

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

**DECLARES** admissible, under Rule 154, the six items in Annex A of the Prosecution's motion and decides it will, at a suitable stage in the proceedings, formally admit them into evidence and assign them exhibit numbers; and

**ORDERS** the Prosecution's motion to be reclassified from confidential to public.

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<sup>7</sup> Sabra Defence e-mail to Trial Chamber's Senior Legal Officer, 6 October 2017; provisional transcript of 6 October 2017, p. 62.

<sup>8</sup> See e.g. F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, para. 7; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; Decision of 25 September 2017, para. 17.

<sup>9</sup> See Decision of 25 September 2017, para. 147.

<sup>10</sup> F3349, Notice of Change of Classification on Filing, 3 October 2017, para. 1.

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

Leidschendam,  
The Netherlands  
10 October 2017

*David Re*

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Judge David Re, Presiding

*Janet Nosworthy*

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

*Micheline Braidy*

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Judge Micheline Braidy

