



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: 29 November 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ALLOWING SABRA DEFENCE'S SUPPLEMENT
TO ITS SIX EVIDENTIARY MOTIONS**

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 Tasser
Hassan & Ms Natalie von Wistinghausen**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Geoffrey Robert
Ms Sarah Bafadhel

BACKGROUND

1. The Defence, according to the Special Tribunal's Rules of Procedure and Evidence, must file a pre-trial brief 'addressing factual and legal issues', including 'in general terms, the nature of the accused's defence' and matters in dispute in the Prosecution pre-trial brief and the reason why the accused disputes it.¹

2. The Defence of the Accused, Mr Assad Hassan Sabra, on 5 September 2013, and pursuant to the Pre-Trial Judge's orders, filed an updated pre-trial brief.² The brief detailed some factual and legal areas of dispute with the Prosecutor's pre-trial brief, but did not, as required, set out in general terms 'the nature of the accused's defence'. Thus when Trial Chamber received jurisdiction in the case upon the Pre-Trial Judge's referral, under Rule 95, on 25 October 2013³ the Trial Chamber was unaware of the nature of the Mr Sabra's defence to the charges in the amended indictment.

3. During the course of the trial, however, counsel for Mr Sabra have mounted not just a strong factual defence to the charges in the amended consolidated indictment but have also put forward a positive alternative case to the Prosecution's. And most particularly in relation to the alleged recruitment of Mr Ahmed Abu Adass and making a false claim of responsibility, for the attack against the former Lebanese Prime Minister, Mr Rafik Hariri, as pleaded in the amended consolidated indictment.⁴

4. In a decision in April 2016, the Trial Chamber decided to allow the Parties to make mid-trial thematic summaries of the evidence to better assist it and the other Parties to understand the Prosecution's voluminous, complex and technical evidence.⁵ The summaries, the Trial Chamber's decision held, should be explanatory rather than argumentative and should not assess the quality of the evidence. Moreover, a summary is not a procedural avenue for a Party to argue its case. It is not a 'closing' brief nor a 'mid-trial submission'

¹ Rule 91(I) provides that, after the submission by the Prosecutor of the items mentioned in paragraph (G), the Pre-Trial Judge shall order the Defence, within a set time-limit and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing factual and legal issues, and including: (i) in general terms, the nature of the accused's defence; (ii) the matters which the accused disputes in the Prosecutor's pre-trial brief; and (iii) in the case of each matter set out pursuant to paragraph (ii), the reason why the accused disputes it.

² STL-11-01/PT/PTJ, *Prosecutor v. Ayyash, Badreddine, Oneissi, Sabra*, F1092, Updated Sabra Pre-Trial Brief, 5 September 2013. The Sabra Defence filed a public redacted version of the pre-trial brief on 29 October 2013.

³ F1787, Order Transmitting a Motion to the Trial Chamber, 11 December 2014, para. 3.

⁴ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016 (confidential), paras 3 (b), 3 (d), 4-5, 23, 44, 48 (c) (i), 64 (f) (i), 66 (f) (i), 68 (f) (i), 70 (h) (i).

⁵ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, Sabra*, F2541, Decision on In-Court Summaries of Evidence, 7 April 2016 ('Decision of 7 April 2016'), para. 38.

requesting the Trial Chamber to draw factual conclusions.⁶ The Sabra Defence has since made at least four in-court mid-trial summaries.⁷

5. As part of its positive case that neither Mr Sabra or the Accused, Mr Hussein Hassan Oneissi, were involved in anything connected with Mr Abu Adass, the Sabra Defence—between March and July 2017—filed six motions requesting the Trial Chamber to admit into evidence numerous witness statements (169 statements) and hundreds of documents related to Mr Abu Adass’s recruitment and the false claim of responsibility.⁸

6. As a supplement to these six motions the Sabra Defence filed a supporting document summarising the facts underlying the motions and sought the Trial Chamber’s leave to file what it termed a thematic summary of the evidence that it ‘is seeking or will seek’ to tender into evidence.⁹

SUBMISSIONS

7. The Sabra Defence submits that the summary of evidence attached to its motion will assist the Trial Chamber in determining the relevance and probative value of the evidence proposed for admission in the six motions.¹⁰

8. The Prosecution opposes the motion arguing that the proposed summary does not meet the criteria in the Trial Chamber’s decision of 7 April 2016. Whether the Sabra Defence is authorised under Rule 146 (B)¹¹ to present evidence for its case during the Prosecution’s case

⁶ Decision of 7 April 2016, paras 3, 14-16, 18, 23-24, 38.

⁷ See, e.g., transcript of 9 September 2016, pp 27-32. Also see document entitled ‘Aide Memoire on the Crime Scene and Related Matters’ attached an email sent by the Sabra Defence to the Legal Officer of the Trial Chamber on 3 November 2016.

⁸ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, 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, 7 March 2017; F3057, Motion for the Admission of Documents Relating to the Claim of Responsibility - The Selection of Ahmed Abu Adass, 29 March 2017; F3109, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass - The Failed Recruitment of Ahmed Abu Adass, 28 April 2017; F3165, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass - The Successful Recruitment of Ahmed Abu Adass, 31 May 2017; F3205, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass - The Video and Letter: The False Claim of Responsibility, 30 June 2017; F3251, Motion for the Admission of Documents Relating to the Claim of Responsibility - The Fax, 26 July 2017.

⁹ F3108, Request for Leave to File Defence Thematic Summary of Information Relevant to the Chamber in Relation to the False Claim of Responsibility, 28 April 2017 (‘Sabra Defence motion’), para. 1.

¹⁰ Sabra Defence motion, para. 2.

¹¹ Rule 146 (B) provides that, unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence: (i) evidence for the Prosecutor; (ii) evidence called by the Trial Chamber at the request of victims participating in the proceedings; (iii) evidence for the defence; (iv) Prosecutor’s evidence in rebuttal; (v) rebuttal evidence called at the request of victims participating in the proceedings; (vi) defence evidence in rejoinder.

remains pending before the Trial Chamber. The Trial Chamber held that the Sabra Defence's previous thematic summaries had been 'more of an explanation of what the Defence case was in relation to particular points of the Prosecution's case than a mid-trial thematic summary of evidence'. The Trial Chamber should not re-characterise the summary of evidence as 'the Sabra Defence pre-trial brief, an opening statement, or part of a final trial brief'. Re-characterising the summary of evidence would (i) allow the Sabra Defence to circumvent the pending contentious litigation under Rule 146 (B); and (ii) authorise the Defence to present part of its case during the Prosecution's case without complying with the relevant rules.¹²

DECISION

9. The information in the proposed thematic summary is very helpful to the Trial Chamber's understanding of the Sabra Defence's case.

10. It should, however, have been part of the Sabra Defence's pre-trial brief, filed when the Pre-Trial Judge had exclusive jurisdiction over preparatory matters, rather than in a summary filed towards the end of the Prosecution's case almost four years later. It is regrettable that this information has been provided to the Trial Chamber and the Parties so late in the trial. The information in the summaries could also have been divided into six and inserted into each of the Defence motions.

11. In the Trial Chamber's view, the information is supplementary to that in the six motions and is not really a mid-trial thematic summary. The Trial Chamber will therefore not receive it as a mid-trial thematic summary, but rather will receive it and view it as a supplement containing a factual overview of the material sourced in the six motions relating to Mr Abu Adass.

CONFIDENTIALITY

12. The Sabra Defence requests the Trial Chamber to reclassify as public the summary of evidence contained in the confidential annex A to its motion.¹³ The Prosecution responded that the summary of evidence should not be reclassified as public before the individuals who have been mentioned or whose identity could be revealed in the summary have been asked whether they require protective measures. If making the evidence summary public, the Trial

¹² F3143, Prosecution Response to Sabra Defence "Request for Leave to File Defence Thematic Summary of Information Relevant to the Chamber in Relation to the False Claim of Responsibility", 15 May 2017 ('Prosecution response'), paras 2-11.

¹³ Sabra Defence motion, para. 6.

Chamber must be mindful of the negative, potentially harmful impact that public allegations could have on the specific individuals (and their families) named in the summary as having committed serious crimes.¹⁴ The Trial Chamber will instruct the Registry to reclassify as public the summary of evidence contained in the confidential annex A, subject to an agreement between the Sabra Defence and the Prosecution on any necessary redactions to the summary.

DISPOSITION

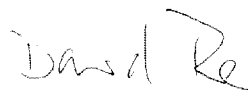
FOR THESE REASONS, the Trial Chamber:

ALLOWS the Sabra Defence's summary of evidence as a supplement to its six evidentiary motions: filings F3024, F3057, F3109, F3165, F3205 and F3251; and

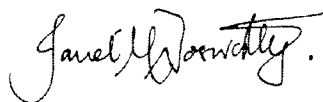
INSTRUCTS the Registry to reclassify as public annex A to the Sabra Defence motion after the Sabra Defence and the Prosecution agree on any necessary redactions.

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

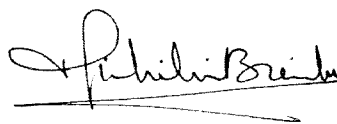
Leidschendam,
The Netherlands
29 November 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

¹⁴ Prosecution response, paras 12-15.

