



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: 30 November 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION PARTLY GRANTING FIFTH SABRA DEFENCE MOTION FOR THE
ADMISSION OF DOCUMENTS RELATING TO MR AHMED ABU ADASS –
THE FALSE CLAIM OF RESPONSIBILITY**

Office of the Prosecutor:

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INTRODUCTION

1. The amended consolidated indictment alleges that the Accused, Mr Hussein Hassan Oneissi, introduced himself to Mr Ahmed Abu Adass as ‘Mohammed’ at the beginning of January 2005 at the Arab University Mosque of Beirut, also known as ‘the Al-Houry Mosque’, and asked to teach him how to pray. Mr Abu Adass disappeared and later reappeared—at the behest of the Accused—in a video broadcast on Al-Jazeera that falsely claimed responsibility for the attack of 14 February 2005 that killed the former Lebanese Prime Minister, Mr Rafik Hariri, and 21 others and injured 226.¹

2. Counsel for the Accused, Mr Assad Hassan Sabra, filed six separate motions tendering—under Rule 154 of the Special Tribunal’s Rules of Procedure and Evidence or, in the alternative, under Rules 92 or 165—documents submitted as relevant to Mr Abu Adass. On 25 September 2017, the Trial Chamber issued its decision on the first motion, admitting 49 documents into evidence and denying the admission into evidence of the remaining 79 documents, including all witness statements and call sequence tables.²

3. This decision addresses the fifth motion in which the Sabra Defence seeks the admission into evidence of 50 documents related to the video and accompanying letter which claimed responsibility for the attack and those the Sabra Defence suspects of involvement in the video’s production.³ The Prosecution opposed all six motions in a consolidated response.⁴ The Sabra Defence replied, seeking the admission of two further documents, and the Prosecution sur-replied.⁵ The submissions address documents tendered in the five motions; this decision relates to the fifth Sabra Defence motion.

4. For the reasons below, the Trial Chamber will admit six relevant and probative documents into evidence, but will not receive any witness statements at this stage.

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016, paras 3 (b)-(d), 5, 23, 28, 44, 48 (c), 64 (f), 66 (f), 68 (h), 70 (h).

² 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 (‘25 September 2017 decision’).

³ F3205, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass – The Video and the Letter: The False Claim of Responsibility, 30 June 2017 (confidential) (‘Sabra motion’);

⁴ F3356, Prosecution Consolidated Response to Sabra Defence Evidential Motions Two to Six Relating to Ahmed Abu Adass, 12 October 2017 (confidential) (‘Prosecution consolidated response’).

⁵ F3374, Reply to “Prosecution Consolidated Response to Sabra Defence Evidential Motions Two to Six Relating to Ahmed Abu Adass”, 23 October 2017 (confidential) (‘Sabra reply’); F3402, Prosecution Sur-Reply to Sabra Defence Reply to Prosecution Consolidated Response to Sabra Defence Evidential Motions Two to Six Relating to Ahmed Abu Adass, 3 November 2017 (confidential) (‘Prosecution sur-reply’).

THE EVIDENCE

Sabra Defence submissions

5. The Sabra Defence disputes the Prosecution's case concerning Mr Abu Adass, particularly the way in which he was identified and selected to claim responsibility for the attack and that he was tricked or coerced into appearing in the video. Mr Abu Adass' participation in the video was not critically investigated by the Prosecution and the tendered evidence provides for a full and coherent account of this aspect of the case. The Prosecution has no theory on who prepared the video, or when or in what circumstances.⁶

6. The evidence—contained in annex A of the motion—is divided into three categories. First, is evidence concerning the video. In it, Mr Abu Adass had lost weight and his beard had grown significantly, which suggests that it was shot at some point after 16 January 2005—when he last left his home. His demeanour in the video was the subject of contradictory opinions from witnesses, but some thought to be associated with the assassination claimed that it matched that of a real suicide bomber in order to give credence to this theory and point investigations in that direction. The shawl and turban Mr Abu Adass wore in the video were not his own as he had never worn such clothes and did not usually wear anything on his head. The clothing Mr Abu Adass wore was intentionally selected so that the video's viewers would believe that he was linked to those who, in turn, could be credibly associated with jihadist violence. And, in turn who could be linked to him through common attendance at a mosque and through a fax sent immediately after the attack. This link assists in identifying those who the perpetrators wished to be blamed for the attack, particularly people associated with the Imam Ali mosque in Beirut. The Al-Ahbash group⁷ was strongly opposed to the leadership of this mosque and thus had a clear motive to give this impression.⁸

7. The style and wording of Mr Abu Adass' speech in the video supports the view that members of Al-Ahbash might have authored it and wanted to create the appearance that Sunni jihadists linked to the Imam Ali mosque in Beirut carried out the attack. The words used mirror those of Mr Nizar Al-Halabi—a former Al-Ahbash sheikh assassinated by

⁶ Sabra motion, paras 7-10.

⁷ The Al-Ahbash group is the alternative name for the Association of Islamic Philanthropic Projects (Jam'iyyat al-Mashari' al-Khairiyya al-Islamiyya) and are the followers of Sheikh Abdullah Ibn Muhammad Ibn Yusuf al-Hirari al-Shibi al-Abdari. Their main headquarters is in Beirut, but have branches worldwide. See generally exhibit 5D254 MFI.

⁸ Sabra motion, paras 11-17.

Wahabis—in his speeches attacking Mr Hariri and resembled the Al-Ahbash school of thought. If it was accepted that genuine Islamist extremists were not involved in writing the text spoken by Mr Abu Adass, then that would explain its poor religious quality. The video was intended to give the impression that the Salafists perpetrated the crime. Further, the language used in the letter suggests that it was prepared by someone who was not properly aware of Islamic religious law or terms. This supports the suggestion that members of Al-Ahbash or that a misled Mr Abu Adass or his associates had a hand in authoring the speech.⁹

8. Second, is evidence relating to the relationship between the video and its accompanying letter. The letter contained information which the video could not without Mr Abu Adass realizing that he was being duped. This is critical to understanding his recruitment and those behind it. Further, the Prosecution has not presented a case to explain the letter or its content, including noticeable discrepancies between the text used in the letter and the words spoken in the video. The letter provides Mr Abu Adass' name, while in the video Mr Abu Adass does not take personal responsibility for the attack as a suicide bomber and does not mention his own name. The letter was intended to point the finger towards those who the real perpetrators wanted to blame and to steer the investigation in that direction. Had Mr Abu Adass been coerced in the video, the perpetrators would have had no difficulty in making him say his name. The video also does not provide a date for the operation, while the letter does and also indicates that it was a suicide bombing. This suggests that it was drafted at the last minute once the date had been set and that Mr Abu Adass was unaware as to what exactly was being planned or that he was taking responsibility for an attack he was supposedly going to carry out. Had he been coerced, he could have easily been made to take personal responsibility for the attack.¹⁰

9. The letter attributes responsibility for the attack to the 'Nusra and Jihad Group in Greater Syria', but the video fails to mention this group.¹¹ If Mr Abu Adass had been required to say the name of a group to which he did not belong, he would have realized he was being duped. This undermines the notion that he was forcibly kidnapped. The video also implies the existence of multiple attacks, suggesting that Mr Abu Adass believed that he was participating in a group that would carry out multiple operations, while the letter makes no such claim. The letter was similar in nature to another letter that had been previously sent to the media after a

⁹ Sabra motion, paras 18-24.

¹⁰ Sabra motion, paras 25-30.

¹¹ The letter attributes the attack of 14 February 2005 to the 'Nusra and Jihad Group in Greater Syria', a then unheard of organisation. *See* exhibit P500.

rocket attack on Mr Hariri's Future TV Lebanese television station in June 2003 and was intended to reinforce the appearance that the group claiming responsibility was a genuine terrorist group. Thus, Mr Abu Adass was led to believe that his involvement would be ongoing and not stop at the Hariri attack, which would be consistent with him not claiming to be a suicide bomber in the video. If he had been kidnapped or coerced, there would have been no need for the letter or to provide details identifying the target of the attack, the name of the group allegedly responsible, the existence of a suicide bomber or about Mr Abu Adass' role. Instead, together this shows that Mr Abu Adass was persuaded to take a voluntary (although not entirely informed) part in the video by people he knew and trusted.¹²

10. Third, is evidence about the shooting of the video. The Prosecution has no position on who filmed the video and there is no suggestion that any of the Accused had any part in it or that there is any connection between the Accused and whoever shot it. In these circumstances, the Prosecution does not explain how Mr Oneissi was Mr Abu Adass' recruiter. The Defence evidence suggests that Mr Fouad Al-Masri was behind the video. He is a member of Al-Ahbash who operated within the Sunni Jihadist movement and was an acquaintance of Mr Hussam Mohsen, who was in turn Mr Abu Adass' religious instructor.¹³

11. Mr Mohsen was a central figure in Mr Abu Adass' recruitment and was in contact with Mr Al-Masri on 1 and 11 January 2005, immediately before Mr Abu Adass' departure. Mr Al-Masri was also acquainted with Mr Khaled Taha—with whom Mr Abu Adass left home on 16 January 2005—and had contacts with the 'Al Qaeda 13', including Mr Khodr Nabaa, Mr Ihab Banna and Mr Hani Al Shanti. Mr Nabaa put the United Nations International Independent Investigation Commission (UNIIC) on the trail of 'Mohammed'.¹⁴

12. Most importantly, Mr Al-Masri is linked to a video camera that was seized from his residence and, based on credible circumstantial evidence, may have been used to shoot the video. The case investigation record reveals that this camera was suspected to have been used for this purpose, a theory that was not excluded. Mr Al-Masri's involvement in shooting the video is effectively unopposed by any alternative account from the Prosecution.¹⁵

13. The evidence tendered by the Sabra Defence comprises interrogation records and reports from Lebanese investigative authorities; witness statements, investigator notes and

¹² Sabra motion, paras 31-33.

¹³ Sabra motion, paras 34-37.

¹⁴ Sabra motion, paras 37-38.

¹⁵ Sabra motion, paras 39-41.

UNIIC forensic reports; call sequence tables; and correspondence from the Special Tribunal's Office of the Prosecutor.¹⁶

14. However, the Sabra Defence has tendered multiple documents whose admission the Trial Chamber has previously considered. The Parties also disagree on the correct characterization of some of the documents.

Previously tendered documents

15. Annex A of the Sabra Defence's motion—and annex E of the Prosecution's response—confirm that 19 documents were previously tendered for admission in previous motions filed by the Sabra Defence for the admission of evidence relating to Mr Abu Adass.¹⁷ The Trial Chamber has previously considered these documents.¹⁸ Additionally, as the Prosecution notes, in other (unrelated) decisions the Trial Chamber has already decided to admit another three documents into evidence.¹⁹ The Trial Chamber has also admitted into evidence the two additional documents tendered in the Defence's reply.²⁰ The Trial Chamber continues to be disappointed by the Sabra Defence's practice of filing the same documents for admission in multiple overlapping motions and its disregard of basic litigation practice by not checking the status of evidence before tendering them for admission. The Trial Chamber will therefore not consider the admission of these 24 documents and will assess only the remaining 28 documents.

Characterization of the evidence: witness statements

16. According to the Defence—and disregarding the 24 documents rejected above in paragraph 15—the tendered documents are:

¹⁶ Sabra motion, para. 46; annex A.

¹⁷ Sabra motion, annex A, items 1-2, 11, 17-18, 21-22, 24, 26-27, 29-31, 35-36, 40-41, 43; Prosecution consolidated response, annex E, item 20.

¹⁸ See 25 September 2017 decision, disposition; F3439, Decision Partly Granting Second Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – The Selection of Ahmed Abu Adass, 30 November 2017 ('Decision on second Sabra Defence motion'), disposition; F3442, Decision Partly Granting Third Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – The Failed Recruitment of Mr Ahmed Abu Adass, 30 November 2017 ('Decision on third Sabra Defence motion'), disposition; F3443, Decision Partly Granting Fourth Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – The Successful Recruitment of Mr Ahmed Abu Adass, 30 November 2017 ('Decision on Fourth Sabra Defence motion'), disposition.

¹⁹ These include Sabra motion, annex A, items 13-14, 19 (see Prosecution consolidated response, annex E, items 13-14, 19).

²⁰ See Decision on second Sabra Defence motion, disposition.

- 12 statements;²¹
- five call sequence tables;²³
- four reports;²⁵
- a photograph of a cover containing a video camera and a letter (labelled ‘electronic medias’);²⁷ and
- two investigators notes;²²
- a video transcript;²⁴
- a correspondence letter;²⁶
- a request for assistance and a response.²⁸

17. On the other hand, according to the Prosecution, the documents are:

- 18 statements (including two expert reports);²⁹
- five call sequence tables;³¹
- a correspondence letter;³³
- a photograph of a cover containing a video camera and a letter (labelled ‘electronic medias’);³⁵
- a request for assistance;³⁰
- a report;³²
- a video transcript;³⁴ and

18. Clearly, the Parties differ as to whether six documents are witness statements.³⁶ The Defence submits that they are not statements as they are either responses to official requests for assistance, documents relating to domestic judicial proceedings or are summaries of information provided in official investigator reports, investigators notes or internal memoranda. Further, the documents were disclosed by the Prosecution; some of the

²¹ Sabra motion, annex A, items 4-7, 23, 25, 28, 32-34, 38, 49.

²² Sabra motion, annex A, items 37, 48.

²³ Sabra motion, annex A, items 9-10, 46-47, 50.

²⁴ Sabra motion, annex A, item 45.

²⁵ Sabra motion, annex A, items 15-16, 42, 44.

²⁶ Sabra motion, annex A, item 8.

²⁷ Sabra motion, annex A, item 39.

²⁸ Sabra motion, annex A, items 3, 12.

²⁹ Prosecution consolidated response, annex E, Sabra motion five, items 3-7, 15-16, 23, 25, 28, 32-34, 37-38, 44, 48-49. As outlined in the Prosecution response, annex E, some of the statements tendered by the Sabra Defence contain statements from more than one witness. The Trial Chamber, however, will only consider those statements on which the Defence specifically relies, as outlined in the ‘Extract of text relied upon’ column in the Sabra motion, annex A.

³⁰ Prosecution consolidated response, annex A, Sabra motion five, item 12.

³¹ Prosecution consolidated response, annex A, Sabra motion five, items 9-10, 46-47, 50.

³² Prosecution consolidated response, annex A, Sabra motion five, item 42.

³³ Prosecution consolidated response, annex A, Sabra motion five, item 8.

³⁴ Prosecution consolidated response, annex A, Sabra motion five, item 45.

³⁵ Prosecution consolidated response, annex A, Sabra motion five, item 39.

³⁶ These six documents are at Sabra motion, annex A, items 3, 15-16, 37, 44, 48.

information providers are either current or former Prosecution employees, or are on in its witness list; and the Prosecution's inability to cross-examine the information provider merely relates to the weight the Trial Chamber should give to a document.³⁷

19. The Prosecution argues that responses to requests for assistance cannot be excluded as being witness statements as such. This must be determined on a case-by-case basis. Documents relating to domestic judicial proceedings contain witness statements relied upon by domestic courts. Further, investigator reports and investigators notes may contain information from interviewees, even if recorded by someone different. The Prosecution's disclosure of the statements is irrelevant and the lack of cross-examination is only considered as part of the weight after the responding Party has had a genuine opportunity to cross-examine the witness.³⁸

20. The Trial Chamber, after carefully reviewing international criminal law procedural case law, including that of the Special Tribunal, has held that 'there is no single definition as to the term "witness statement". More than one definition exists'.³⁹ Thus, whether a document is a witness statement is to be determined 'on a case-by-case basis, according to the type of testimony the witness will give, the character of the witness, and the content, use, function and source of the document or material itself'.⁴⁰

21. Having reviewed the material in accordance with these principles and considering the extracts on which the Defence relies, the Trial Chamber finds that the Sabra Defence has proposed 16 witness statements for admission into evidence. The Trial Chamber therefore disagrees with the Defence's characterization of four documents and finds that, for the purposes of this decision, they are witness statements—rather than investigators' notes or reports—on the basis of their content, the relevant witness' character and the source and

³⁷ Sabra reply, paras 14-15; annex C.

³⁸ Prosecution sur-reply, paras 3-4.

³⁹ F3171, Decision on Merhi Defence Request for Disclosure of Documents Concerning Witness PRH230, 2 June 2017 ('Witness 230 Decision'), para. 47. *See also* 25 September 2017 Decision, para. 11.

⁴⁰ Witness 230 Decision, para. 48; 25 September 2017 Decision, para. 12.

function of the material.⁴¹ Similarly, it disagrees with the Prosecution's characterization of two documents as witness statements.⁴²

Evidence to be considered for admission

22. Therefore, of the 52 items tendered by the Sabra Defence, 16 witness statements⁴³ and 12 other documents⁴⁴ remain for consideration.

THE LEGAL PRINCIPLES

23. In its motion, the Sabra Defence relies—by reference—on the legal arguments previously submitted in its first Abu Adass-related motion.⁴⁵ These arguments were summarized and exhaustively considered in the Trial Chamber's 25 September 2017 decision.⁴⁶ The additional legal submissions made in the Prosecution's consolidated response, the Sabra Defence's reply and the Prosecution's sur-reply have been similarly summarized and considered in the Trial Chamber's decision on the second Sabra Defence motion.⁴⁷

24. The following principles are applicable to the admission of the Sabra Defence's tendered statements and documents relating to Mr Abu Adass:⁴⁸

- statements taken by investigative authorities and recorded through due procedure in the course of investigations are 'witness statements';
- Rules 155, 156 and 158 are *lex specialis*⁴⁹ provisions governing the admission of witness statements;

⁴¹ Two documents are reports which the Sabra Defence has not sought to admit as expert reports, despite the documents themselves containing such a designation: Sabra motion, annex A, items 15-16. The two remaining documents are records of interviews conducted by the UNHCR and the Special Tribunal's Office of the Prosecutor with two witnesses contained in two investigators notes: Sabra motion, annex A, items 37, 48.

⁴² These two documents are at Sabra motion, item 3 (which is a list of seized items by the Lebanese Internal Security Forces from detainees affiliated with Al Qaeda), item 44 (which is an extract concerning Mr Rafik Hariri's movements on 20 January 2005 from a Special Tribunal Office of the Prosecutor report).

⁴³ These witness statements are at Sabra motion, annex A, items 4-7, 15-16, 23, 25, 28, 32-34, 37-38, 48-49.

⁴⁴ These other documents are at Sabra motion, annex A, items 3, 8-10, 12, 39, 42, 44-47, 50.

⁴⁵ Sabra motion, para. 6 (citing to, and relying upon, 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, paras 5-27).

⁴⁶ See 25 September 2017 decision, paras 41-51, 79-116.

⁴⁷ See Decision on second Sabra Defence motion, paras 20-26.

⁴⁸ See 25 September 2017 decision, paras 83-84, 87-89, 91-92, 97-100, 102-104, 109; Decision on second Sabra Defence motion, paras 24-26. See also Decision on third Sabra Defence motion, paras 12-14; Decision on fourth Sabra Defence motion, paras 11-13.

⁴⁹ '*Lex specialis*' refers to a law that governs a specific subject matter which, generally, excludes or modifies the application of a general rule on the same matter.

- witness statements cannot be tendered into evidence under Rule 154, particularly where the Prosecution objects or seeks to cross-examine the witness;
- a variation in the sequence for the presentation of evidence under Rule 146 (B) should be requested to tender witness statements during the opposing Party's case where the opposing Party seeks to cross-examine the witnesses;
- witness statements tendered under Rule 155 must, in most cases, comply with the Rule 155 Practice Directions⁵⁰;
- the admission of witness statements that do not comply with the Rule 155 Practice Directions and are tendered unopposed under Rule 154 is dependent on the witness being on the tendering Party's witness list or its seeking to add the witness to its witness list;
- the Trial Chamber may refuse to hear a witness whose name does not appear on the witness list of either Party and a Party seeking to adduce live evidence from such a witness would need to provide compelling reasons for the Trial Chamber to permit it;
- the Trial Chamber cannot, on its volition, receive witness statements into evidence under Rule 155 as Rule 155 (C) requires it to hear from the Parties as to whether the witness is required to appear for cross-examination;
- where a Party tenders witness statements for the truth of their content and in support of its case, that witness more appropriately belongs in that Party's case; and
- in principle the Trial Chamber, in the exercise of its discretion, may admit into evidence documents other than witness statements during an opposing Party's case—where that Party is sufficiently informed of the tendering Party's case—without a formal variation under Rule 146 (B).

WITNESS STATEMENTS

25. The Sabra Defence tendered 16 statements for admission.⁵¹ Of these, 12 statements were taken by various investigative authorities—including the Lebanese Internal Security

⁵⁰ 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.

⁵¹ Sabra motion, annex A, items 4-7, 15-16, 23, 25, 28, 32-34, 37-38, 48-49.

Forces (ISF),⁵² the UNIIC,⁵³ and the Special Tribunal's Office of the Prosecutor⁵⁴—and were recorded in the course of the investigation. Another two statements—in the form of investigators notes—record two interviews conducted during the UNIIC's investigations.⁵⁵ Nothing turns on their form as 'investigators notes' rather than having the format of a witness statement. The remaining two statements are reports produced by experts of the French National Gendarmerie who recorded their analysis, following relevant standard procedures, of various items, including, most relevantly, two video cassettes and a video camera in a camera case, for the purposes of the UNIIC's investigations.⁵⁶

26. The Trial Chamber finds that all 16 statements are 'witness statements' for the purposes of admission. The Sabra Defence has tendered them for the truth of their content and relies on them to support its alternative theory concerning Mr Abu Adass. Therefore, the witnesses who provided the information contained in the statements are witnesses who more appropriately belong in the Defence case.

27. The Sabra Defence has tendered these witness statements under Rule 154,⁵⁷ and none of the witnesses appear on a Party's witness list. The Prosecution objects to their admission and seeks to cross-examine the witnesses,⁵⁸ while the Sabra Defence has not made an application to formally vary the presentation of evidence under Rule 146 (B). In these circumstances, and consistent with the principles and previous decisions cited above at paragraph 2424, the Trial Chamber will not admit the witness statements into evidence under Rule 154.

28. In the alternative, the Sabra Defence seeks their admission under Rules 92 (in conjunction with Rule 130 (B)) or 165. In this respect, the Trial Chamber held in its 25 September 2017 decision that it was:

unconvinced, in the exercise of its discretion, that using its powers under Rule 92 or Rule 165 to order the production of additional evidence or exceptionally gather evidence on its own volition is appropriate in the circumstances, or would be in the interests of justice. Regarding Rule 92, the Sabra Defence has not presented any

⁵² Sabra motion, annex A, items 4-6, 49.

⁵³ Sabra motion, annex A, items 7, 23, 25, 28, 32-34,

⁵⁴ Sabra motion, annex A, item 38.

⁵⁵ Sabra motion, annex A, items 37, 48.

⁵⁶ Sabra motion, annex A, items 15-16.

⁵⁷ Sabra motion, paras 1, 56.

⁵⁸ Prosecution consolidated response, paras 13-14, 19, 26.

arguments on the exceptional nature of the circumstances that merit its application, as required by the Rule. Concerning Rule 165, given that the Prosecution has yet to complete its case, and that the Defence may potentially present its own case, the Trial Chamber sees no compelling reason to vary the usual sequence of presentation of evidence under Rule 146 (B).⁵⁹

This also applies here. Therefore, the Trial Chamber will not, in this case, exercise its powers under Rules 92 or 165.

29. Consequently, the Trial Chamber will only consider the admissibility of the remaining 12 documents that are not witness statements.

NON-WITNESS STATEMENT DOCUMENTS

30. The Sabra Defence tendered 12 non-witness statement documents⁶⁰ for admission during the Prosecution's case under Rule 154. The Prosecution does not, in principle, object to the Defence tendering the documents during its case, but addresses each document on its own merits.⁶¹ In these circumstances, and consistent with the principles and decisions cited above at paragraph 2424, the Trial Chamber will consider the admissibility of these documents. In the interests of justice, the Trial Chamber will admit into evidence only the ERN range of the relevant document—as identified in the 'Full ERN Range EN/AR' columns of annex A of the Sabra motion—unless otherwise specified.

31. In this respect, the Trial Chamber has also previously outlined the legal principles applicable to the admission of documents from the 'bar table' under Rule 154. The documents must be relevant and probative, and its probative value must not be outweighed by the need to ensure a fair trial.⁶² *Prima facie* reliability is sufficient.⁶³ In addition, how and where each

⁵⁹ 25 September 2017 decision, para. 93.

⁶⁰ Sabra motion, annex A, items 3, 8-10, 12, 39, 42, 44-47, 50.

⁶¹ Prosecution consolidated response, paras 1, 11; annex A.

⁶² 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 UNHCR and STL's Prosecution, 6 May 2015 ('CST decision'), paras 66, 111; F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015 ('Mobile documents decision'), 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.

⁶³ F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 ('Visuals decision'), para. 8; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014 ('Victims decision'), para. 7; Mobile documents decision, para. 33; CST decision, para. 111.

document or record fits into the tendering party's case must be clearly explained.⁶⁴ The ultimate weight given to the material by the Trial Chamber is separate and distinct from its probative value. These principles apply here.

Call sequences tables

Submissions

32. These documents consist of five call sequence tables produced by the Sabra Defence from the Prosecution's call data records. They show telephone contacts between Mr Al-Masri and Mr Saadeddine El Ajouz (in March-April 2005);⁶⁵ Mr Hussam Mohsen (in October 2004 and January and October 2005);⁶⁶ Mr Khodr Nabaa (in December 2004 to February 2005);⁶⁷ Mr Ihab Banna and Mr Hani Al Shanti (in March 2005 and May to December 2006);⁶⁸ and Mr Khaled Taha (in September 2004).⁶⁹ They are based, according to the Sabra Defence, on call data records provided by the Lebanese Alfa, Touch and OGERO telecommunications companies to the UNIIC and the Special Tribunal's Office of the Prosecutor and have been previously deemed *prima facie* reliable by the Trial Chamber.⁷⁰

33. When viewed in context, the call sequences tables are relevant to show Mr Al-Masri's involvement with Sunni fundamentalists in Mr Hariri's assassination. They shows a link between Mr Al-Masri and Al-Ahbash and is critical to understanding how various unnamed groups operated together and through whom. In context, they also show that there was coordination between the persons involved in the recruitment and disappearance of Mr Abu Adass and others of interest, such as Mr El Ajouz, for different aspects of the conspiracy.⁷¹ For the relevance and probative value of three call sequence tables, the Defence refers to two

⁶⁴ CST decision, para. 111; Mobile documents decision, para. 33; Victims decision, para. 7; Visuals decision, para. 6.

⁶⁵ Sabra motion, annex A, item 9.

⁶⁶ Sabra motion, annex A, item 10.

⁶⁷ Sabra motion, annex A, item 46.

⁶⁸ Sabra motion, annex A, item 47.

⁶⁹ Sabra motion, annex A, item 50.

⁷⁰ Sabra motion, para. 50, annex A, items 9-10. Sabra reply, annex B.

⁷¹ Sabra motion, annex A, items 9-10 (also citing to 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 (public with confidential annex A), annex A ('Defence thematic summary'), para. 34). The Trial Chamber allowed this thematic summary of evidence as a supplement to the Sabra Defence's six evidentiary motions. See F3436, Decision Allowing Sabra Defence's Supplement to Its Six Evidentiary Motions, 29 November 2017.

paragraphs of its thematic summary submitted as an annex to another of its filings—unrelated to its six Abu Adass-related motions—but without further analysis or explanation.⁷²

34. The Prosecution responds that the Sabra Defence failed to address its methodology for producing the call sequence tables from the Prosecution’s call data records, the formatting of its call sequences tables, and accuracy verification details. Accordingly, the Trial Chamber cannot apply the same criteria it applied to the Prosecution to assess their *prima facie* reliability, and therefore their probative value. They are not comprehensive call sequence tables but instead depict manually selected calls for which no selection criteria was provided. They also contain anomalies, errors and formatting issues. The Defence neither produced evidence for the attribution of numbers to specific persons during relevant periods nor explained why such attribution was *prima facie* reliable. Even if it had, the tables only demonstrate that particular numbers were in contact. Further, the Prosecution objects to the Defence relying on its thematic summary for the relevance and probative value of the call sequences tables. On this basis, and in light of the 25 September 2017 decision, they are inadmissible.⁷³

35. The Sabra Defence replies that the Trial Chamber and the Prosecution understand the process of extraction from the Prosecution’s call data records, but nonetheless provides further details on its methodology in annex B to its reply. The selection of calls was intentionally non-exhaustive and has no bearing on their reliability; the selection criteria was self-evident from the title of the call sequence tables and the Defence’s submissions on relevance and probative value; and the Prosecution’s ability to verify their accuracy was not impaired given its possession of the relevant software and raw data. While the Defence acknowledges some errors and stylistic differences between its call sequence tables and those of the Prosecution, it submits that they are irrelevant to, and do not impair, their *prima facie* reliability or the Trial Chamber’s ability to correctly interpret them. Attribution evidence was included in different motions and compiled this information in annex A to the reply.⁷⁴

36. The Prosecution’s sur-reply argues that the Defence call sequences tables are inadmissible because they are tables of selected calls that present a subjective theory rather than all the calls—relevant or otherwise—for a given time period. They are also unreliable

⁷² Sabra motion, annex A, items 46-47, 50 (citing to Defence thematic summary, paras 32, 34).

⁷³ Prosecution consolidated response, para. 11; Prosecution consolidated response, annex A, Sabra motion five, items 9-10, 46-47, 50.

⁷⁴ Sabra reply, paras 6-13; Sabra reply, annex A, Sabra motion five, items 9-10, 46-47, 50; Sabra reply, annex B.

because they contain duplications and contain formatting inconsistencies, non-self-explanatory headers and terms, as well as names of persons, which are prone to misinterpretation and are not sufficiently addressed in annexes A to B of the Sabra reply. For admission into evidence, the call sequence tables must be re-made and re-tendered, accompanied with a witness statement of whoever created them to allow for their accuracy to be tested as the information in annex B of the Sabra Defence's reply is insufficient. The Defence demanded similar witness statements from the Prosecution and then cross-examined the relevant witnesses to verify the Prosecution's call sequences tables. The same standard should be applied to the Defence.⁷⁵

Decision

37. The Sabra Defence has previously tendered call sequence tables it produced from the call data records of the Prosecution. In its 25 September 2017 decision, the Trial Chamber considered the admissibility of similar tables and rejected them on the basis of concerns for their reliability and relevance, in particular, the methodology used to produce them, their formatting, accuracy verification, and the lack of evidence on the attribution of numbers to specific persons. It held, however, that it would be prepared to revisit the matter if the identified issues were addressed.⁷⁶

38. In its reply, the Sabra Defence attempted to rectify these shortcomings. But, as the Trial Chamber held in its decisions on the second, third and fourth Sabra Defence motions, these efforts fall short. In the decision on the second Sabra Defence motion, the Trial Chamber held, on the basis of the same submissions at issue here, that:

The Sabra Defence identifies portions of tendered witness statements—which have not been admitted into evidence or deemed admissible—and offers no precision in explaining why it considers that certain numbers are attributable to specific individuals or for what time period. Separately, the Sabra Defence's explanation of its methodology for creating the tables is insufficient, as it does not allow the Trial Chamber or the Prosecution to test the reliability of the tables by questioning the creator(s) of the tables.⁷⁷

This also applies here.

⁷⁵ Prosecution sur-reply, paras 19-37.

⁷⁶ 25 September 2017 decision, paras 131, 134-135.

⁷⁷ Decision on second Sabra Defence motion, para. 34.

39. In its attribution submissions, the Sabra Defence overwhelmingly relies on witness statements that have not been admitted into evidence or held admissible by the Trial Chamber. No explanation is offered as to why the Defence considers the numbers attributable to those it identifies or for what periods of time. In one instance, this is somewhat alleviated by the Sabra Defence relying on the live testimony of a Prosecution witness in attributing a number to him.⁷⁸ However, this is only one of two numbers the Sabra Defence attributes in the call sequence table, and, in any event, the methodology deficiencies remain.

40. Consequently, the reliability and relevance issues first identified in the Trial Chamber's 25 September 2017 decision remain. Therefore, the admission into evidence of the five Sabra Defence call sequence tables is denied. The Trial Chamber will revisit this if rectified in accordance with this decision.

Reports

Submissions

41. The first report, according to the Defence, is a decision of an investigating judge of the Lebanese Military Court listing a number of defendants who are connected to Mr Abu Adass or Mr Taha, particularly Mr Al-Masri. This report was sent by the Lebanese Ministry of Civil Defence to the Office of the Public Prosecutor at the Lebanese Court of Cassation and is stamped and signed by the Public Prosecutor and the Government Commissioner at the Military Court. The second report is in the form of an investigator's note and details the movements of Mr Hariri from October 2004 until 14 February 2005. Mr Matthew Barrington (Witness PRH424), an investigator of the Special Tribunal's Office of the Prosecutor, produced and signed this report. The extract relied upon by the Sabra Defence details Mr Hariri's movements on 20 January 2005 at the Imam Ali mosque in Beirut. For the relevance and probative value of the two reports, the Sabra Defence cites only to two paragraphs of a thematic summary it submitted as an annex to an unrelated filing—which was then awaiting a decision from the Trial Chamber—without elaborating any further.⁷⁹

42. Concerning the first report, the Prosecution takes no position concerning its reliability for admission but contests its relevance and probative value. It submits that the document contains solely unproven allegations—the Sabra Defence did not provide the outcome of any

⁷⁸ Sabra motion, annex A, item 9.

⁷⁹ Sabra motion, annex A, items 42, 44 (citing only to Defence thematic summary, paras 31, 34).

trial or appeal—and cannot assist in demonstrating the Sabra Defence’s claims. Further, the Sabra Defence failed to make any submissions regarding relevance and probative value, save for referring to its thematic summary. Even if the Trial Chamber considered the reference provided, it does not explain or substantiate the relevance and probative value of the document. As for the second document, the Sabra Defence incorrectly identified it as a report rather than as a statement from multiple witnesses. Mr Barrington testified on 15-16 July 2015 and 6 and 9 September 2016, which included cross-examination from the Sabra Defence. The Defence did not explain why it did not put the document to him at that time. Further, the Prosecution has withdrawn the document from its exhibit list. The extract relied on by the Sabra Defence refers to source items which the Sabra Defence could have tendered and, in any event, evidence has already been admitted that shows that Mr Hariri attended the Imam Ali mosque in Beirut.⁸⁰

43. In its reply, the Sabra Defence submits that its reference to the specific paragraphs of its thematic summary gives the Prosecution ‘ample evidence’ of the relevance of this and other documents for which it had made relevance and probative value submissions in the same way. Nevertheless, to further assist, the Defence filed further submissions in annex A of its reply. There, it submits that the first report is relevant to establishing that Mr Al-Masri was involved in the purchase of a ‘telecom material’ used in terrorist operations. In context, the information provides further evidence of Mr Al-Masri’s and Sunni fundamentalist involvement in the Hariri assassination. It shows Mr Al-Masri’s linkage with ‘certain’ jihadists and Al-Ahbash.⁸¹

Decision

44. The first report is an official Lebanese Government document and this is sufficient to render it *prima facie* reliable. This is not in dispute. In relation to the Sabra Defence’s practice of citing solely to its thematic summary for its relevance and probative value submissions, the Trial Chamber reiterated its strong disapproval of the Sabra Defence’s practice:

It is procedurally improper, when seeking the admission of a document, to simply refer the Trial Chamber to an unrelated filing—which does not address or analyse any specific document—and expect it to discern the tendered document’s relevance and probative value. In adversarial proceedings—like the Special Tribunal’s—the parties

⁸⁰ Prosecution consolidated response, annex A, Sabra motion five, item 42; Prosecution consolidated response, annex E, Sabra motion five, item 44 (citing to exhibits P91, P111, P299, P303 and P408).

⁸¹ Sabra reply, annex A, Sabra motion five, item 42.

bear the evidentiary onus of establishing the relevance and probative value of any document they seek to tender into evidence. [...] Such submissions must be tailored to every document. The Trial Chamber should not have to guess or work out for itself the relevance of a document to a Defence case. This is fundamental to good litigation. The Sabra Defence should not have left it to annex A of its reply before making its submissions on the relevance and probative value of the tendered documents. On this basis alone, the Trial Chamber could refuse to admit any document tendered in this fashion. However, in the circumstances and given the stage of the proceedings, the Trial Chamber will exceptionally consider the additional submissions in this and other places where the Sabra Defence has referred to its thematic summary.⁸²

This applies here and in other instances where the Sabra Defence has departed from basic litigation practice.

45. The Trial Chamber understands the document to be relevant to the jihadist leanings of Mr Al-Masri,⁸³ who the Sabra Defence suspects made the video. The document is *prima facie* reliable, relevant and therefore has some probative value. In the exercise of its discretion, the Trial Chamber will admit the document into evidence. Its assessment will be a matter of weight.

46. The Trial Chamber rejects the admission of the second report.⁸⁴ The Sabra Defence's reference to its thematic summary merely mentions that Mr Abu Adass wore headgear similar to those worn at the Imam Ali mosque in Beirut in the false claim of responsibility video in order to direct suspicion towards himself and those that frequented that mosque.⁸⁵ No additional submissions were included in annex A of the reply. This bears no relation to the extract of the report relied upon by the Sabra Defence. In any event, the Defence appears to rely on it solely to show that Mr Hariri attended the Imam Ali mosque, and not that he attended the mosque on a particular day or time.⁸⁶ As the Prosecution submits, there is sufficient evidence on the record to show this and the Sabra Defence has not explained why admitted evidence cannot be used for the same purpose.

⁸² Decision on fourth Sabra Defence motion, paras 28-30.

⁸³ Sabra motion, para. 36, fns 38, 40.

⁸⁴ Sabra motion, annex A, item 44.

⁸⁵ Defence thematic summary, para. 31.

⁸⁶ Sabra motion, para. 17, fn. 23.

*'Electronic medias' document**Submissions*

47. The Sabra Defence submits that this document is a photograph of a letter in Arabic together with a plastic cover containing a video camera that the Lebanese investigating authorities seized from Mr Al-Masri's residence. To note the seizure, the letter is signed by Mr Al-Masri and members of the Lebanese army. It also includes a UNIIC reference note, a UNIIC item and reference number and is signed by a UNIIC investigator. As regards its relevance and probative value, the Sabra Defence cites to a paragraph of its thematic summary.⁸⁷

48. The Prosecution takes no position with respect to the item's reliability. However, it argues that the Defence made no submissions concerning its relevance and probative value except to cite to its thematic summary, which neither explains nor substantiate the document.⁸⁸

49. The Sabra Defence replies that the extract is relevant to establish that the video camera which may have been used by Mr Al-Masri to shoot the video was found in his residence. In context, it shows that he and Sunni fundamentalists were involved in the attack and the linkage between certain jihadists and members of Al-Ahbash, including Mr Al-Masri.⁸⁹

Decision

50. The Sabra Defence submits that Mr Al-Masri was responsible for shooting the video and played a major role in claiming responsibility for the attack. The document supports the Defence's position in this respect. The Trial Chamber therefore finds that the photograph is relevant and—as its *prima facie* reliability is unchallenged—possesses some probative value. The Trial Chamber will accordingly, and in the exercise of its discretion, admit the photograph into evidence.

⁸⁷ Sabra motion, annex A, item 39 (citing only to Defence thematic summary, para. 34).

⁸⁸ Prosecution consolidated response, annex A, Sabra motion five, item 39.

⁸⁹ Sabra reply, annex A, Sabra motion five, item 39.

Video transcript

Submissions

51. According to the Sabra Defence, this document is a transcript of footage from the Future TV television network showing Mr Hariri attending the Imam Ali mosque in Beirut on 20 January 2005 for Eid prayers. The Lebanese Prosecutor General provided it to the UNIIIC in response to a request for assistance. The Defence relies on a single paragraph of its thematic summary for its relevance and probative value.⁹⁰

52. The Prosecution takes no position on the document's reliability. However, it objects to its admission on the basis that the Defence failed to make any submissions regarding its relevance and probative value other than referring to its thematic report. The reference to that thematic report does not explain or substantiate the document's relevance or probative value.⁹¹

53. The Sabra Defence, in its reply, submits that the document is relevant to demonstrate that Mr Hariri occasionally visited the Imam Ali mosque and, when viewed in context, is one of five 'reasons' which emphasizes the mosque's central role in the selection of Mr Abu Adass and the subsequent allegation concerning the 'Mohammed story'.⁹²

Decision

54. Although the document's *prima facie* reliability is uncontested, at least five admitted exhibits appear to demonstrate Mr Hariri's presence at the mosque.⁹³ The Sabra Defence seeks only to demonstrate that Mr Hariri, on occasion, visited that mosque, without placing any emphasis on the specific date or time of his visits and, in context, its role in Mr Abu Adass' selection.⁹⁴ This is relevant to the Sabra Defence's theory concerning Mr Abu Adass. While the document's admission may be somewhat duplicative of admitted exhibits, the Trial Chamber will nonetheless exercise of its discretion and admit it into evidence.

⁹⁰ Sabra motion, annex A, item 45 (citing only to Defence thematic summary, para. 31).

⁹¹ Prosecution consolidated response, annex A, Sabra motion five, item 45.

⁹² Sabra reply, annex A, Sabra motion five, item 45.

⁹³ See exhibits P91, P111, P299, P303 and P408.

⁹⁴ See Sabra motion, para. 17, fn. 23.

Request for assistance and response

Submissions

55. The Sabra Defence seeks the admission into evidence of both a UNIIC request for assistance and a Lebanese Government response to a separate UNIIC request for assistance. The request for assistance, dated March 2006, was sent from the UNIIC to the Prosecutor General of Lebanon through the UNIIC's liaison officer, and is signed by a UNIIC investigator. The request seeks access to arrest warrants, investigative documents, information and seized material from suspects, including Mr Al Shanti, who had been arrested in connection with the investigation into Mr Hariri's murder. The response, in March 2006, is from the Directorate General of the ISF to a different UNIIC request for assistance. The response bears the Directorate General's seal. It is also signed by the Head of the Information Branch and the Attorney General of the Supreme Court of Lebanon. The document lists seized items belonging to 13 Al Qaeda-affiliated suspects then in Lebanese custody. The Defence relies on a paragraph of its thematic summary to explain its relevance and probative value.⁹⁵

56. By relying solely on its thematic summary, the Sabra Defence—according to the Prosecution—failed to make any submissions on the request of assistance's relevance and probative value. And the cited paragraph neither explained nor substantiated the document. However, the Prosecution takes no issue with its reliability. As for the Lebanese Government's response to the UNIIC request for assistance, the Prosecution argues that it is a witness statement that does not conform to the Rule 155 Practice Direction.⁹⁶

57. Concerning the request for assistance, the Defence replies that it is relevant to establish that the video camera and matching video cassettes—which Mr Al-Masri may have used to shoot the video—were seized at the UNIIC's request. In context, the document goes to demonstrating that Mr Al-Masri and Sunni fundamentalists were involved in the killing of Mr Rafik Hariri. It also shows links between jihadists and members of Al-Ahbash, including Mr Al-Masri.⁹⁷

⁹⁵ Sabra motion, annex A, items 3, 12 (citing only to Defence thematic summary, para. 34).

⁹⁶ Prosecution consolidated response, annex A, item 12; Prosecution consolidated response, annex E, item 3.

⁹⁷ Sabra reply, annex A, item 12.

Decision

58. The Sabra Defence submits Mr Al-Masri may have shot the video. The tendered documents are relevant to support this theory. The Prosecution does not question the authenticity of the documents. Indeed, the request for assistance originated from the UNIIIC, the predecessor to the Special Tribunal's Office of the Prosecutor, while the response is an official Lebanese Government document. This is sufficient to render both documents *prima facie* reliable. Accordingly, the documents have some probative value and the Trial Chamber will, in the exercise of its discretion, admit them into evidence under Rule 154. The Trial Chamber will determine the weight of this evidence at a later stage.

*Correspondence**Submissions*

59. The Sabra Defence submits that this document is a January 2013 letter signed by a former Prosecution senior legal officer addressed to counsel for Mr Sabra. It confirms that the Lebanese investigating authorities seized a video camera and video cassettes at Mr Al-Masri's residence. For its relevance and probative value, the Defences cites to a paragraph of its thematic summary without elaborating further.⁹⁸

60. The Prosecution responds that the letter describes certain ISF documents related to a seized video camera and video cassettes. The letter has no *prima facie* reliability independent of the source documents described in the letter, which may themselves contain the requisite reliability for admission. Since the source documents were disclosed to the Defence, the Prosecution objects to the admission of a letter which merely refers to them and submits that it cannot determine relevance until the correct documents are tendered. Further, the relevance and probative value of the extract relied upon is unclear and the Defence failed to demonstrate that the search described resulted in the seizure of the items, even if it can be implied. Further, the Prosecution objects to the Sabra Defence's practice of citing only to its thematic summary to make submissions on the document's relevance and probative value.⁹⁹

61. The Sabra Defence replies that the document is relevant to establish that Mr Al-Masri possessed a video camera and video cassettes which may have been used to shoot the video. Taken in context, the document demonstrates the involvement of Sunni fundamentalists and

⁹⁸ Sabra motion, annex A, item 8 (citing only to Defence thematic summary, para. 34).

⁹⁹ Prosecution consolidated response, annex A, Sabra motion five, item 8.

Mr Al-Masri in Mr Hariri's assassination. It also shows links between jihadists and members of Al-Ahbash, including Mr Al-Masri.¹⁰⁰

Decision

62. The Prosecution does not dispute the letter's authenticity. It originated from the Prosecution itself and is therefore *prima facie* reliable. The Trial Chamber agrees with the Prosecution's position that the Sabra Defence should ideally seek the admission of the documents cited in the letter rather than the letter itself which merely mentions their existence. Here, the Defence has sought the admission into evidence of the underlying documents, two of which the Trial Chamber is admitting into evidence in this decision.¹⁰¹ The remaining two documents cited in the letter, however, are witness statements and the Trial Chamber has therefore denied their admission.¹⁰² Regardless, this goes to the weight the Trial Chamber should give to the evidence rather than the document's admissibility. The document goes to proving the Sabra Defence's theory that Mr Al-Masri filmed the video. It is therefore relevant and has some probative value. In the exercise of its discretion and for these reasons, the Trial Chamber will admit the letter into evidence. Its later assessment will be a matter of weight.

CONFIDENTIALITY

63. The Trial Chamber has already decided on the confidentiality of the Prosecution's consolidated response and its annexes, the Sabra Defence's reply and its annexes and the Prosecution's sur-reply and its annex in its decision on the second Sabra Defence motion.¹⁰³ Only the Sabra Defence's motion and its annexes remain to be considered.

64. The Sabra Defence submits that its motion should be made public and explains that it was filed confidentially in light of the Trial Chamber's directions—given upon the Prosecution's request—regarding the naming of individuals alleged to be implicated in the death of Mr Hariri. It requests the Trial Chamber to reclassify its motion subject to any requests for redactions from the Prosecution. The annexes to its motion should remain

¹⁰⁰ Sabra reply, annex A, Sabra motion five, item 8.

¹⁰¹ See Sabra motion, annex A, item 3 (see above at paragraphs 55); item 39 (see above at paragraphs 47).

¹⁰² See Sabra motion, annex A, items 5, 6 (see above at paragraphs 25).

¹⁰³ See Decision on second Sabra Defence motion, paras 54-56, disposition.

confidential on account of them listing the witness statements and numbers attributed to named individuals.¹⁰⁴

65. The Prosecution argues that the Sabra motion and its annexes contain identifying information of persons whose witness statements have been tendered or will be tendered in future Sabra motions. They also contain such information for persons whom the Sabra Defence alleges were involved in serious criminal conduct. Redactions are necessary to ensure the security and privacy of Defence witnesses until it is confirmed that they do not seek protective measures. Publicizing their names or identifying information before they are asked about protective measures may result in their refusal to attend court, ignores their potential concerns and may prejudice the Prosecution's right to cross-examine them.¹⁰⁵

66. Proceedings before the Special Tribunal are public by nature; confidentiality is the exception, not the rule. Therefore, documents should, wherever possible, be filed publicly. This decision is rendered publicly and incorporates information from the Parties' confidential submissions as necessary to determine the admissibility of the tendered documents. In light of the Prosecution's submissions, the Trial Chamber orders the Sabra Defence to file a public redacted version of its motion or to have it reclassified as public, and urges the Parties to cooperate in this regard. However, for the reasons given by the Defence, the annexes to its motion should remain confidential.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES admissible, under Rule 154, the following items from annex A of the Sabra Defence motion which it will admit into evidence at a suitable time in the proceedings:

- **items 3 and 12:** a UNIIC request for assistance and a Lebanese Government response to a separate UNIIC request for assistance;
- **item 8:** a letter from Prosecution counsel to the Sabra Defence;
- **item 39:** a photograph of a cover containing a video camera and a letter in Arabic;

¹⁰⁴ Sabra motion, paras 54-55.

¹⁰⁵ Prosecution consolidated response, paras 22-25.

- **item 42:** a March 2007 report/decision of an investigating judge of the Lebanese Military Court; and
- **item 45:** a transcript of a Future TV television station broadcast;

DENIES the Sabra Defence motion in all other respects, including the admission of witness statements and the Trial Chamber's exercise of its powers under Rules 92 and 165;

ORDERS the Sabra Defence—with the cooperation of the Prosecution—to file a public redacted version of its motion or to have it reclassified as public; and

ORDERS annexes A and B of the Sabra Defence motion to remain confidential.

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

Leidschendam,
The Netherlands
30 November 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

