



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 SECOND SABRA DEFENCE MOTION
FOR THE ADMISSION OF DOCUMENTS RELATING TO AHMED ABU ADASS –
THE SELECTION OF AHMED ABU ADASS**

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

INTRODUCTION

1. According to the amended consolidated indictment, on 14 February 2005, the former Lebanese Prime Minister, Mr Rafik Hariri, was assassinated in an attack in Beirut that killed 21 others and injured 226 people. Shortly thereafter, Al-Jazeera news network in Beirut received a videocassette featuring Mr Ahmad Abu Adass falsely claiming responsibility for the attack. The Accused, Mr Assad Hassan Sabra and Mr Hussein Hassan Oneissi, participated in identifying and effecting the disappearance of Mr Abu Adass. Mr Sabra and Mr Oneissi ensured the delivery of the videocassette to Al-Jazeera immediately following the attack, including by using the prepaid Telecard 6162569 to call Al-Jazeera and give information on where to find the videocassette.¹

2. Counsel for Mr Sabra have 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 allegedly relevant to the recruitment of Mr Abu Adass and his role in the false claim of responsibility.² On 25 September 2017, the Trial Chamber issued its decision with respect to the first of these motions, admitting 49 documents into evidence and denying the admission into evidence of the remaining 79 documents, including all tendered witness statements and call sequence tables.³

¹ 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 (h) (i), 70 (h) (i).

² 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 (public with confidential annexes) (‘first Sabra Defence bar table motion’); F3057, Motion for the Admission of Documents Relating to the Claim of Responsibility - the Selection of Ahmed Abu Adass, 29 March 2017 (confidential) (‘Sabra Defence motion’); F3109, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass - The Failed Recruitment of Ahmed Abu Adass, 28 April 2017 (confidential); F3165, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass - The Successful Recruitment of Ahmed Abu Adass, 31 May 2017 (confidential); 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); F3251, Motion for the Admission of Documents Relating to the Claim of Responsibility - The Fax, 26 July 2017 (confidential) (‘sixth Sabra Defence bar table motion’).

³ 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’). Call data records ‘are so-called metadata [and] provide information about communications, such as the source and destination phone number, the type of communication (phone call or text message), the date and time of phone calls and text messages, the duration of phone calls, the IMEI number of the hand set relevant to the communications, and the cell sectors engaged at the beginning and end of a call’; see STL-11-01/T/AC/AR126.9, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F0007, Decision on Appeal by Counsel for Mr Oneissi Against the Trial Chamber’s Decision on the Legality of the Transfer of Call Data Records, 28 July 2015, para. 3 (internal footnotes omitted). Call sequence tables render the information contained in call data records legible by presenting ‘chronological sequences of calls relating to a particular, or target, telephone number over a specified period of time’; 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 UNIIIC and STL’s Prosecution, 6 May 2015, para. 2. See also F2799, Decision on the Prosecution Motions for

3. This decision addresses the second Sabra Defence motion and subsequent filings relating to it, which tender 65 documents detailing the alleged religious, family and residential factors on which the perpetrators of the 14 February 2005 attack based their selection of Mr Abu Adass. The Sabra Defence does not contest that Mr Abu Adass appeared in the video falsely attributing responsibility for the attack or that the video was intended to create a false investigative lead, but submits that Mr Sabra was not involved in the selection, recruitment or disappearance of Mr Abu Adass.⁴

4. The tendered documents go to demonstrating that Mr Abu Adass underwent a fast process of radicalisation in jihadist Sunni fundamentalism before the attack. His newfound religious beliefs put him on a ‘collision course’ with the Al-Ahbash organisation,⁵ whose members are ‘enemies’ of followers of the Wahhabi doctrine. Mr Abu Adass had multiple verbal confrontations with Al-Ahbash members and was on bad terms with the organisation. Further, two of Mr Abu Adass’s relatives, including his first cousin, Mr Bassam Ismail, were charged and convicted in the 1990s with alleged involvement in assassinating the former head of Al-Ahbash, Sheikh Nizar Halabi. Al-Ahbash therefore had good reason to want to take revenge on the Abu Adass family and to target Mr Ahmed Abu Adass specifically. Apart from providing a motive for Al-Ahbash, Mr Abu Adass’s radicalisation and association with jihadists gave credence to the allegations that he was responsible for the attack. Immediately after the attack, Al-Ahbash provided the Lebanese investigative authorities with a list of individuals it claimed were associated with Mr Abu Adass, including Mr Ismail, who was subsequently arrested.⁶

5. The tendered documents also go to demonstrating that Mr Mamoun Salameh may have played a role in the disappearance of Mr Abu Adass before the attack. Mr Salameh is married to Mr Abu Adass’s cousin, and at the time of the attack the Salameh and Abu Adass families were embroiled in dispute. Mr Salameh once worked with the Syrian Military Intelligence, and he was in regular contact with both Syrian Military Intelligence officers and

the Admission of the Call Sequence Tables Related to the Five Colour-Coded Mobile Telephone Groups and Networks, 31 October 2016, para. 3.

⁴ Sabra Defence motion, paras 6-7.

⁵ The UNIIC report tendered by the Sabra Defence (Sabra Defence consolidated reply, annex D, item 1) identifies the Al-Ahbash organisation as ‘an Islamic group active in the area of the Palestinian camps where Mr Abu Adass had reportedly lived’ and as ‘a Lebanese group with strong historical ties to the Syrian authorities’; *see* S/2005/662, Letter dated 20 October 2005 from the Secretary-General addressed to the President of the Security Council, transmitting the Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005), pp 35, 59.

⁶ Sabra Defence motion, paras 8, 10-28.

Lebanese security officials. In particular, Mr Salameh was in contact with Mr Nehme Saad Eddine from 14 to 18 May 2004 and with Mr Ahmed Al Hajjar from 21 December 2004 to 16 February 2005. Mr Saad Eddine was present at the crime scene in Beirut immediately before the attack on Mr Hariri and at the time was in contact with other persons of interest to the case. Mr Al Hajjar is a Syrian Military Intelligence operative associated with Mr Shaker Berjawi, who is himself closely connected to the Syrian Military Intelligence. Mr Al Hajjar was in contact with Mr Salameh both the day after Mr Abu Adass's alleged disappearance and two days after the attack. On the day of the attack, Mr Al Hajjar was in contact with Lebanese Internal Security Forces (ISF) officer Mr Khaled Alywan, who had been in the vicinity of the relevant Telecard shop on the day the prepaid card 6162569 was purchased.⁷

6. Finally, the tendered documents go to demonstrating that both Al-Ahbash and the Syrian Military Intelligence were present and operating in Mr Abu Adass's neighbourhood in Beirut at the relevant time, allowing them to closely monitor Mr Abu Adass in the weeks and months leading up the plot to assassinate Mr Hariri, 'thus ensuring his role within it'.⁸

7. Following the 25 September 2017 decision, the Prosecution filed a consolidated response to the five outstanding Sabra Defence motions,⁹ the Sabra Defence filed a consolidated reply,¹⁰ and the Prosecution filed a consolidated sur-reply.¹¹ While these submissions address documents tendered—and legal issues raised—across the five motions, this decision will address only those pertinent to the second Sabra Defence motion.

8. For the reasons elaborated below, the Trial Chamber declines to revisit the admissibility of 20 documents previously tendered by the Sabra Defence, defers its decision on the admissibility of two documents, denies the admission into evidence of 34 documents it finds to be witness statements tendered in a manner inconsistent with the Rules and over the Prosecution's objection, denies the admission into evidence of four other documents, and exercises its discretion to admit five documents into evidence. For those documents admitted into evidence, the Trial Chamber specifies that it admits the ERN ranges identified in the 'Full

⁷ Sabra Defence motion, paras 8, 10, 29-51.

⁸ Sabra Defence motion, paras 8, 10, 52-54.

⁹ F3356, Prosecution Consolidated Response to Sabra Defence Evidential Motions Two to Six Relating to Ahmed Abu Adass, 12 October 2017 (confidential) ('Prosecution consolidated response').

¹⁰ F3374, Reply to "Prosecution Consolidated Response to Sabra Defence Evidential Motions Two to Six Relating to Ahmed Abu Adass", 23 October 2017 (confidential) ('Sabra Defence consolidated reply').

¹¹ 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 consolidated sur-reply').

ERN Range EN’ and ‘Full ERN Range AR’ columns of annex A to the Sabra Defence motion.

THE LEGAL PRINCIPLES

9. The Trial Chamber decided the legal principles relevant to the Sabra Defence tendering documents during the Prosecution case—namely, the principles governed by Rules 55 (C), 92, 130 (B), 146 (B), 149 (C)-(D) and (F), 150 (H) and (J), 154-156, 158, 165 and 167—in the 25 September 2017 decision.¹²

10. In that decision, the Trial Chamber noted that there is no single definition of the term ‘witness statement’ under international criminal law procedural law. This determination must be made 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.¹³ The Trial Chamber has previously adopted the Appeals Chamber’s ‘broad definition’ of a witness statement as ‘an account of a person’s knowledge of a crime, which is recorded through due procedure in the course of an investigation into the crime’, including ‘transcribed trial testimony, radio interviews, unsigned witness declarations and records of questions put to witnesses and answers given’.¹⁴

11. The Trial Chamber also addressed the admission into evidence of witness statements tendered by the Defence during the Prosecution case. It found that tendering witness statements under Rule 154 is improper, as Rules 155, 156 and 158 are *lex specialis*¹⁵ provisions governing the admission of witness statements—in lieu of oral testimony, in lieu of examination-in-chief where the witness is available for cross-examination, and of unavailable persons, respectively. The Defence would be required to request a variance of the Rule 146 (B) sequence for calling evidence to tender witness statements during the Prosecution case.¹⁶

¹² 25 September 2017 decision, paras 16-25, 79-135.

¹³ 25 September 2017 decision, paras 11-12.

¹⁴ See, e.g., *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013, para. 15, relying on CH/AC/2011/01, *In the Matter of El Sayed*, F0005, Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge’s Decision of 12 May 2011, 19 July 2011, para. 89, which in turn relies on SCSL, *Prosecutor v. Norman*, SCSL-04-14-PT, Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004, paras 8-10.

¹⁵ ‘*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.

¹⁶ 25 September 2017 decision, paras 79-85, 97-109.

12. Statements tendered under Rule 155 must—with limited exceptions¹⁷—comply with the Rule 155 Practice Direction,¹⁸ which sets out the criteria for admitting witness statements in lieu of oral testimony and which is aimed at ensuring that witness statements received into evidence without cross-examination have *prima facie* indicia of reliability. The potential admission under Rule 154 of witness statements that do not comply with the Rule 155 Practice Direction is dependent on the witnesses being on a Party’s witness list—or, in the alternative, is dependent on the moving Party seeking to add the witness to its witness list. Rule 150 (H) provides that the Trial Chamber may refuse to hear a witness whose name does not appear on a Party’s witness list, and a Party would have to provide compelling reasons for the Trial Chamber to hear such a witness’s evidence. The Trial Chamber cannot *proprio motu*¹⁹ receive witness statements into evidence under Rule 155, as Rule 155 (C) provides that it must first hear from the parties whether to require the witness to appear for cross-examination.²⁰

13. With respect to the admissibility of documents other than witness statements, the Trial Chamber explained that Rule 146 (B) permits it to vary the sequence of presenting evidence in the interests of justice—including by admitting Defence evidence during the Prosecution case without requiring a formal variation. It may, in principle and in the exercise of its general discretion to admit evidence consistent with Rules 149 (C) and (D), admit into evidence documents tendered by the Defence during the Prosecution case. The Trial Chamber further found that the Prosecution is sufficiently informed of the nature of the Sabra Defence case to assess where evidence related to Mr Abu Adass and the false claim of responsibility would fit into the Sabra Defence case.²¹

TENDERED DOCUMENTS

14. The Sabra Defence tenders 63 documents in its second motion and, in its consolidated reply, seeks to tender two documents that it submits its motion erroneously referred to as having been previously admitted into evidence.²² The tendering of documents in a reply would ordinarily be procedurally improper, as replies are confined to issues arising from the

¹⁷ See F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, paras 22-31.

¹⁸ 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.

¹⁹ ‘*Proprio motu*’ refers to an action taken on the Trial Chamber’s own initiative.

²⁰ 25 September 2017 decision, paras 86-92.

²¹ 25 September 2017 decision, paras 109-115.

²² Sabra Defence motion, paras 2, 61, annex A; Sabra Defence consolidated reply, paras 3, 19, 23, annex D.

response. However, given the stage of the proceedings and the fact that the Prosecution has addressed the Sabra Defence submissions in its sur-reply,²³ the Trial Chamber finds that it is in the interest of judicial economy to permit the tendering of the documents in the Sabra Defence reply. The Sabra Defence therefore tenders a total of 65 documents.

15. Two of the documents tendered in the motion are extracts of an ISF report dated 27 October 2005,²⁴ and the Sabra Defence has tendered that entire report in a separate motion.²⁵ The Trial Chamber will consider the admission into evidence of the ISF report as a whole in its decision on that motion, and it therefore defers its consideration on the admission into evidence of the extracts of the report.

16. One of the two documents tendered in the reply is the original Arabic version of a document,²⁶ the English translation of which is already in evidence as exhibit 5D259. The Prosecution submits that the Sabra Defence has also tendered this document in two of its six motions,²⁷ but it is not clear that the Sabra Defence has tendered the Arabic version apart from doing so in its reply.²⁸ The Trial Chamber will therefore exercise its discretion to admit the Arabic version into evidence for the completeness of the court record. The Trial Chamber reiterates that it did not admit the English version of the document for the truth of its content,²⁹ and the same applies for the Arabic original.

17. The Sabra Defence previously tendered 20 of the remaining 62 documents in its first motion concerning the recruitment of Mr Abu Adass and his role in the false claim of responsibility,³⁰ and the Trial Chamber denied their admission into evidence.³¹ There has been no change in circumstances that would justify considering them anew, and they should not have been resubmitted in this manner. The Trial Chamber will therefore not revisit the admissibility of these documents and will assess only the 42 newly tendered documents.

²³ Prosecution consolidated sur-reply, paras 17-18.

²⁴ Sabra Defence motion, items 49 and 50; *see* sixth Sabra Defence bar table motion, annex A, item 40.

²⁵ *See* sixth Sabra Defence motion, items 41 and 43.

²⁶ Sabra Defence consolidated reply, annex D, item 2.

²⁷ Prosecution consolidated response, para. 17.

²⁸ *See* Sabra Defence motion, annex A, item 10 (no Arabic ERN range listed); sixth Sabra Defence bar table motion, annex A, item 4 (Arabic ERN range ending at 4001102).

²⁹ *See* transcript of 19 July 2016, p. 69.

³⁰ Sabra Defence motion, annex A, items 1, 11, 13-15, 17, 19-21, 23-25, 28-29, 31, 37-38, 47, 61-62.

³¹ 25 September 2017 decision.

18. The Sabra Defence characterises the 42 newly tendered documents as 31 statements,³² three sets of United Nations International Independent Investigation Commission (UNIIC) investigator's notes,³³ three 'call sequence tables',³⁴ one aide-mémoire,³⁵ one UNIIC memorandum,³⁶ one UNIIC report,³⁷ one ISF investigation record,³⁸ and one 'investigation report' signed by a military court official.³⁹

19. The Prosecution characterises the 42 newly tendered documents as 36 witness statements within the meaning of the Rules (the 31 documents identified by the Sabra Defence as statements, the three sets of UNIIC investigator's notes, the UNIIC memorandum, and the ISF investigation record), one document that contains summaries of witness statements and therefore should be tendered under Rule 155 (the UNIIC report), four documents based on telecommunications data (the three tables and the aide-mémoire), and one military court record.⁴⁰

WITNESS STATEMENTS

Submissions

20. As noted above, the Sabra Defence characterises most of the tendered documents as 'statements'. The Sabra Defence maintains that it is not tendering these statements as 'witness statements' within the meaning of the Rules and the Special Tribunal's case law, so the procedural requirements of Rule 155 are inapplicable.⁴¹ These statements undermine the credibility of the Prosecution case rather than support a positive defence case, and they were given to agencies other than the Special Tribunal. The UNIIC memorandum and the ISF

³² Sabra Defence motion, annex A, items 6-10, 12, 16, 18, 22, 26-27, 30, 34-36, 39-42, 44-46, 53-60, 63. While the 'Type of document' column is blank for item 34, the 'Title of document' is listed as 'Statement of Malek Mahmoud Mohammad'.

³³ Sabra Defence motion, annex A, items 5, 43, 48.

³⁴ Sabra Defence motion, annex A, items 2-4.

³⁵ Sabra Defence motion, annex A, item 51. The Trial Chamber understands an aide-mémoire to be a written summary or outline of important items. As noted by the Sabra Defence and analysed in paragraph 36 below, the Trial Chamber has marked this document for identification as 5D218 MFI.

³⁶ Sabra Defence motion, annex A, item 52. As noted by the Sabra Defence and analysed in paragraph 39 below, the Trial Chamber has marked this document for identification as 5D254 MFI.

³⁷ Sabra Defence consolidated reply, annex D, item 1.

³⁸ Sabra Defence motion, annex A, item 32.

³⁹ Sabra Defence motion, annex A, item 33.

⁴⁰ Prosecution consolidated response, para. 11, annex B; Prosecution consolidated sur-reply, para. 18.

⁴¹ Rule 155 (B) provides: 'As a general rule, the statement must have been signed by the person who records and conducts the questioning and by the person who is questioned and his counsel, if present, as well as, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during, the questioning. If, in exceptional circumstances, the person has not signed the record, reasons shall be noted.'

investigation record are not witness statements but rather summaries of information provided in documents created outside the course of the proceedings. The Prosecution disclosed these documents, and the author of the UNIIC memorandum is Mr Alasdair Macleod (Witness PRH486), a Prosecution investigator who has testified in these proceedings. A party's tendering of a statement does not automatically make that person a witness of the tendering party; to suggest otherwise ignores Rule 128⁴² and the fact that the Sabra Defence has already tendered statements of Mr Ziad Mohammad Medhat Ramadan and Mr Taysir Abdel-Wahab Abu Adass (Witnesses PRH103 and PRH636, respectively), who are not considered Sabra Defence witnesses.

21. The Sabra Defence argues that the Prosecution's inability to cross-examine the information providers goes to the weight the Trial Chamber will give to the tendered documents and is not a bar to their admissibility under Rule 154. Should the Trial Chamber decline to admit the tendered documents under Rule 154, it should do so under Rule 92 in accordance with Rule 130, which allow the Trial Chamber to gather evidence that the requesting party demonstrates it is not in a position to collect, or under Rule 165, which empowers the Trial Chamber to produce additional evidence.⁴³

22. The Prosecution submits that the documents identified by the Sabra Defence as 'statements', as well as the three sets of UNIIC investigator's notes, the UNIIC memorandum, the UNIIC report, and the ISF investigation record, are all 'witness statements' under the Rules—or documents containing summaries of such statements—and should be tendered under Rule 155. The witnesses are Sabra Defence witnesses because the Sabra Defence has conveyed its clear intention to rely on their statements for the truth of their content. Rule 128 is irrelevant to this determination, as this Rule serves to provide notice to the Prosecution regarding which witnesses the Defence will call rather than to define who is a Defence witness. The Sabra Defence's tendering of statements of Mr Ramadan and Mr Taysir Abu Adass is likewise irrelevant to this determination, as the Prosecution called these witnesses and they are therefore Prosecution witnesses.

23. The Prosecution further submits that it is irrelevant that the statements were given to agencies other than the Special Tribunal and or created outside the course of the proceedings.

⁴² Rule 128 provides that, after the close of the Prosecution case and upon a Defence election to present its case, the Trial Chamber shall order the Defence to file a list of witnesses the Defence intends to call and a list of exhibits the Defence intends to offer in its case.

⁴³ Sabra Defence motion, para. 5; Sabra Defence consolidated reply, paras 14-18, annex C, p. 1.

As the Sabra Defence has not adhered to the Rules governing the admission of witness statements, the Trial Chamber cannot consider them for admission at this stage of the proceedings. The tendered documents do not comply with Rule 155 and the Rule 155 Practice Direction governing the admission of witness statements. The Sabra Defence has neither made submissions under Rule 155 nor provided any justification to vary the Rule 146 (B) sequence of evidence presentation, as would be required to admit defence witness statements during the Prosecution case. The Prosecution expresses the preliminary view that it would need to cross-examine the witnesses whose statements the Sabra Defence has tendered, and the lack of cross-examination goes to the weight of the evidence only after there have been genuine attempts to afford the responding party an opportunity to conduct such examination. It is irrelevant that the Prosecution disclosed the statements, and Prosecution employees who summarised or included witness statements in reports are not the providers of the information contained in those statements.⁴⁴

Discussion and decision

24. The Parties differ as to whether these documents are witness statements under the Rules.⁴⁵ While the Sabra Defence maintains that the 31 newly tendered documents it characterises as ‘statements’ are not tendered as witness statements, the documents are all statements taken by UNIIC investigators or Lebanese Government authorities and recorded through due procedure in the course of investigations.⁴⁶ With respect to the UNIIC investigators’ notes, two of the three sets of notes⁴⁷ comprise transcriptions of witness interviews conducted by UNIIC investigators and recorded through due procedure in the course of an investigation and are therefore witness statements. The third set of notes⁴⁸ is a detailed summary of the words of a witness in such an interview and is therefore effectively a witness statement. The Trial Chamber considers that these 34 documents are statements taken and recorded by investigative authorities in the normal course of investigations, and therefore finds them to be ‘witness statements’ under the Rules for the purposes of this decision.

25. The Parties also differ as to whether the witnesses who gave these tendered statements are Sabra Defence witnesses. The Sabra Defence notes that its tendering of Mr Ramadan and

⁴⁴ Prosecution consolidated response, paras 12-19, annex A; Prosecution consolidated sur-reply, paras 3-10, 16.

⁴⁵ See paragraph 10 above regarding the legal principles relevant to determining whether a document is a witness statement.

⁴⁶ See Sabra Defence motion, annex A, column titled ‘Indicia of reliability’.

⁴⁷ Sabra Defence motion, annex A, items 5, 43.

⁴⁸ Sabra Defence motion, annex A, item 48.

Mr Taysir Abu Adass's statements did not make them Defence witnesses, but it was the Prosecution that first tendered statements from those witnesses. The Sabra Defence subsequently tendered further statements to allow the Trial Chamber to assess the reliability and probative value of the evidence led by the Prosecution.⁴⁹ The matter at hand is distinguishable, as the Sabra Defence is the moving party and has tendered witness statements for the truth of their content.

26. The Sabra Defence's reliance on Rule 128 is misplaced, as that Rule—titled 'Functions that May Be Exercised after Close of the Prosecutor's Case'—is applicable only upon the close of the Prosecution case and in no way suggests any guidance as to which witnesses shall be considered to have been called by which Party. The Sabra Defence does not explain the significance of the distinction it draws between material tendered to undermine the credibility of the Prosecution case as opposed to that tendered in support of a positive defence case. Nor does it explain why material apparently intended to support a narrative implicating Al-Ahbash and others rather than Mr Sabra would fall into the former category. The Sabra Defence has tendered the 34 witness statements for the truth of their content and in support of its case, and therefore the witnesses who provided the information contained in the statements are witnesses who more appropriately belong in a Defence case.

27. As with the witness statements at issue in the 25 September 2017 decision,⁵⁰ the Sabra Defence has improperly tendered these 34 witness statements under Rule 154. The Trial Chamber cannot *proprio motu* receive the witness statements into evidence under Rule 155 (see paragraph 12 above), and regardless it is apparent that most of the tendered statements fail to comply with the Rule 155 Practice Direction⁵¹ and are from people who are not on a Party's witness list.⁵²

⁴⁹ See F2621, Sabra Defence Response to "Prosecution Motion to Admit Two Statements and an Interview Transcript of PRH103", 9 June 2016 (confidential), para. 36; F1877, Public Redacted Version of "Sabra Defence Response to Prosecution Rule 158 Application", 13 March 2015, paras 1, 15-16.

⁵⁰ See paragraph 11 above regarding the legal principles relevant to the admission into evidence of witness statements tendered by the Defence during the Prosecution case.

⁵¹ See Prosecution consolidated response, annex B.

⁵² Mr Salim Abdel-Rahim Diab (Witness PRH031) appeared on the Prosecution witness list (F1444/A03, Consolidated Witness List, 7 March 2014 (confidential)) and testified in January and February 2015. See transcripts of 22-23 January and 3 February 2015. The Sabra Defence tenders Mr Diab's witness statement (Sabra Defence motion, annex A, item 18), but counsel for Mr Sabra chose not to question Mr Diab on the contents of this statement when he testified. The Sabra Defence is free to request that Mr Diab be recalled should it wish to now wish to question him regarding his statement. On 7 October 2016, counsel for Mr Sabra cross-examined Prosecution Witness PRH101 and presented him with Mr Diab's statement (see transcript of 7 October 2016, p. 100) but did not seek its admission into evidence.

28. The Sabra Defence has not requested a variation of the Rule 146 (B) sequence for calling evidence, as would be required to permit it to tender contested witness statements during the Prosecution case in circumstances in which it is not putting the content of the statements to a witness who is testifying. Receiving the evidence of the witnesses who made these 34 statements during the Prosecution case would significantly delay the proceedings—in particular, the Prosecution case—and the Trial Chamber will decline to exercise its discretion to vary the Rule 146 (B) sequence. The Prosecution objects to the admission of the tendered witness statements and has expressed the preliminary view that it would seek to cross-examine the witnesses, distinguishing this instance from any circumstance in which statements were admitted into evidence under Rule 154.

29. The Trial Chamber, in these circumstances, is unconvinced that it would be appropriate or in the interests of justice either to gather evidence on its own volition under Rule 92 or to exercise its discretion to order the production of additional evidence under Rule 165. The Sabra Defence has not presented any argument as to the exceptional nature of the circumstances that merit its application, as would be required by Rule 92. 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).

30. The Trial Chamber will therefore deny the admission into evidence of the 34 newly tendered witness statements. Eight documents remain for consideration.

DOCUMENTS OTHER THAN WITNESS STATEMENTS

Call sequence tables

Submissions

31. The Sabra Defence tenders three tables of calls—which it describes as ‘call sequence tables’—purporting to show ‘contacts of interest’ of, respectively, Mr Salameh, Mr Saad Eddine, and Mr Al Hajjar (see paragraph 5 above). It created these documents by extracting call data from the Prosecution’s SQL database,⁵³ analysing the call data internally, selecting records of interest, identifying fields of relevance, and conducting checks.⁵⁴

⁵³ SQL (Structured Query Language) is a special programming language for databases. The Prosecution’s SQL database enables call data record analysis.

32. The Sabra Defence submits that the tables are probative of and relevant to demonstrating the connections Mr Salameh, Mr Saad Eddine, and Mr Al Hajjar had with persons of interest to the case, demonstrating their roles in the disappearance of Mr Abu Adass. This provides circumstantial evidence as to how and why the perpetrators selected Mr Abu Adass to make the false claim of responsibility. The tables are reliable because the Sabra Defence created them based on call data records obtained by the Prosecution from Lebanese telecommunications companies Alfa and MTC Touch. The Sabra Defence selected the calls listed in the tables to demonstrate contacts between individuals or to demonstrate the presence of one individual in a certain area on a particular date, and whether the selected calls are anomalous to the general pattern of usage has no bearing on the *prima facie* reliability of the tables. While the tables include columns titled ‘A_Number’, ‘B_Number’, and ‘Call_Type’ with no explanation, the Trial Chamber heard evidence on the meaning of the relevant terms from Prosecution witnesses in 2015.⁵⁵ The Sabra Defence has attributed the relevant mobile numbers to specific individuals on the basis of information contained in other tendered documents, primarily in the tendered witness statements.⁵⁶

33. The Prosecution submits that the tables are inadmissible. The documents are not comprehensive call sequence tables—that is, tables comprising all calls for a particular mobile number over a particular period of time—but rather tables of calls manually selected by the Sabra Defence to advance its case. They include duplicated data, formatting inconsistencies, and headers that are not self-explanatory, all of which could lead to misinterpretation of the data. Duplicating data is a serious flaw that has the potential to mislead the reader as it appears to double the call count. Formatting inconsistencies could result in incorrect call counts. While the Trial Chamber has heard evidence on the Prosecution call sequence tables’ headers, Prosecution witnesses cannot verify the Sabra Defence’s correct use of terms and headers. Further, the Sabra Defence’s attribution of specific mobile numbers to specific individuals by referring to other tendered documents is insufficient, as it does not include the specific, relevant time period of attribution or indicate whether the person identified was the primary or sole user of that number. Even if the numbers could be reliably attributed to specific people, the Sabra Defence has failed to demonstrate that any contacts were ‘regular’. Finally, the Sabra Defence’s explanation of its methodology in creating the tables is

⁵⁴ Sabra Defence motion, annex A, items 2-4; Sabra Defence consolidated reply, annex B, paras 1-16.

⁵⁵ See transcript of 20 July 2015, p. 40; transcript of 14 September 2015 pp 14-15, 23, 49, 73-74.

⁵⁶ Sabra Defence motion, annex A, items 2-4; Sabra Defence consolidated reply, paras 6-10, 13, annex A, ‘Sabra Motion Two’ items 2-4, annex B, paras 1-19, 23-35.

insufficient. The Trial Chamber cannot properly verify the tables' reliability absent a witness statement from the creator and the possibility of cross-examination of the creator.⁵⁷

Discussion and decision

34. In the 25 September 2017 decision, the Trial Chamber denied the admission into evidence of similar tables tendered by the Sabra Defence. The Sabra Defence had submitted no evidence concerning how it had attributed numbers to specific people, and the Trial Chamber therefore found that the tables did not meet the reliability standard required for admission—but stated that it was prepared to revisit the matter should the Sabra Defence properly address it.⁵⁸ While the Sabra Defence has addressed its attribution process, the proffered explanation is insufficient. 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. For these reasons, the Trial Chamber will deny the admission into evidence of the three tables. However, should the Sabra Defence properly address this issue, the Trial Chamber will revisit the matter.

Aide-mémoire

Submissions

35. The Sabra Defence tenders what it describes as an aide-mémoire consisting of 18 call sequence tables, submitting that its reliance on this document is limited to one of the 18 tables. It relies on this document only as an aide-mémoire and does not present it as a call sequence table. The aide-mémoire is probative of and relevant to establishing that Mr Alywan (see paragraph 5 above) was in the vicinity of the relevant Telecard shop on 9 February 2005 and is implicated in preparing the false claim of responsibility. The aide-mémoire is reliable as it was prepared in the context of the cross-examination of Prosecution analyst Ms Kei

⁵⁷ Prosecution consolidated response, para. 11, annex A, 'Sabra Motion Two' items 2-4; Prosecution consolidated sur-reply, paras 19-31, 33-37, annex A, 'Sabra Motion Two' items 2-4.

⁵⁸ 25 September 2017 decision, paras 125-135, disposition.

Kamei (Witness PRH308), who described the production of call sequence tables, and as it was disclosed to the Prosecution.⁵⁹

36. The Prosecution submits that the aide-mémoire is a call sequence table and therefore inadmissible for the same reasons provided for call sequence tables (see paragraph 33 above). The Prosecution also argues that the Sabra Defence submission that Mr Alywan was in the vicinity of that shop is ‘tenuous’, as the relevant Telecard shop is incorrectly plotted, and that the relevance of the aide-mémoire is limited as there were hundreds of telephone numbers that activated the relevant cell towers on the day in question.⁶⁰

Discussion and decision

37. The Sabra Defence first introduced the aide-mémoire in its cross-examination of Ms Kamei, and the Trial Chamber marked it for identification as exhibit 5D218 MFI. At that time, counsel for Mr Sabra said that the document presents ‘a scenario of who could have bought the Telecard and made some of the calls that are relevant to the Prosecution case’.⁶¹ Unlike the call sequence tables discussed above, the Trial Chamber therefore considers the aide-mémoire demonstrative evidence intended to assist its understanding of the Sabra Defence case. It is therefore tantamount to a submission, and the Trial Chamber will exercise its discretion to admit it into evidence for this limited purpose.

UNIIC memorandum

Submissions

38. The Sabra Defence tenders an undated UNIIC memorandum authored by Mr Macleod (see paragraph 20 above) concerning Al-Ahbash. The memorandum is probative of and relevant to establishing that Mr Abu Adass and Al-Ahbash were on bad terms and that Al-Ahbash was willing to take revenge on people linked to the assassination or Sheikh Halabi (see paragraph 4 above). The memorandum is reliable as it is a UNIIC document disclosed by the Prosecution.⁶²

⁵⁹ Sabra Defence motion, annex A, item 51; Sabra Defence consolidated reply, para. 5 (footnote 5), annex A, ‘Sabra Motion Two’ item 51, annex B, paras 36-39.

⁶⁰ Prosecution consolidated response, para. 11, annex A, ‘Sabra Motion Two’ item 51; Prosecution consolidated sur-reply, paras 19-31, 33-37, annex A, ‘Sabra Motion Two’ item 51.

⁶¹ Transcript of 18 November 2015, pp 35, 73-74.

⁶² Sabra Defence motion, annex A, item 52.

39. The Prosecution submits that the UNIIC memorandum is itself a witness statement, as it contains multiple witness statements. Alternatively, it submits that the information on which the Sabra Defence relies comes from the statements of several witnesses, including some who are not identified. The memorandum is therefore inadmissible for the same reasons it provided for witness statements (see paragraphs 22-23 above).⁶³

Discussion and decision

40. The UNIIC memorandum analyses information from witness statements, public open-source material, and reports from various Lebanese security agencies. The Sabra Defence first introduced it in cross-examination of Mr Macleod. The Trial Chamber marked the document for identification as exhibit 5D254 MFI and said that it would admit it into evidence for the ‘very limited’ purpose of assessing the quality of the UNIIC investigation but not for the truth of its content.⁶⁴ The memorandum bears sufficient indicia of reliability as a United Nations document. It is relevant to assessing the quality of the UNIIC investigation and has some probative value in that regard. The Trial Chamber will therefore exercise its discretion to admit the UNIIC memorandum into evidence for this limited purpose and not for the truth of the content of the underlying materials upon which it relies.

UNIIC report

Submissions

41. The Sabra Defence tenders the October 2005 UNIIC report, which details the investigation’s progress and sets out preliminary conclusions. The report is probative of and relevant to establishing the connection between Mr Abu Adass and Al-Ahbash and explaining how the Abu Adass family came to be associated with the assassination of Sheikh Halabi (see paragraph 4 above), as well as additional matters covered by the Sabra Defence’s other motions tendering documents allegedly relevant to the recruitment of Mr Abu Adass and his role in the false claim of responsibility. The report is reliable as it is a UNIIC document disclosed by the Prosecution.⁶⁵

42. The Prosecution submits that the UNIIC report is inadmissible as it has no probative value independent of the statements and documents upon which the report relies. Even were

⁶³ Prosecution consolidated response, annex B, item 52.

⁶⁴ Transcript of 15 July 2016, p. 80-81; transcript of 19 July 2016, pp 63-66.

⁶⁵ Sabra Defence consolidated reply, annex D, item 1.

the report to have probative value, it would be substantially outweighed by the need to ensure a fair trial. The report's conclusions on disputed issues cannot usurp the Trial Chamber's judicial fact-finding function. Alternatively, the report is inadmissible as it contains summaries of various witness statements and therefore should have been tendered under Rule 155.⁶⁶

Discussion and decision

43. While the UNIIC report summarises and relies on witness statements, it has independent value in that it provides some contextual information regarding the UNIIC investigation itself. It is relevant to assessing the quality of the UNIIC investigation and has some probative value in that regard. The report bears sufficient indicia of reliability as an official United Nations document. The Trial Chamber will therefore exercise its discretion to admit the UNIIC report into evidence for this limited purpose and not for the truth of the content of the witness statements upon which it relies. By admitting this report into evidence, the Trial Chamber is not accepting the UNIIC's conclusions or in any way abrogating its judicial fact-finding function.

Military court record

Submissions

44. The Sabra Defence tenders a Lebanese military court record dated 7 March 2006, which appears to be an application by a Lebanese military prosecutor for terrorism charges against named individuals, including Mr Shaker Berjawi. The Sabra Defence submits that the record is relevant and probative as it shows that Mr Berjawi and Mr Al Hajjar (see paragraph 5 above) were closely connected, is useful to establish that Mr Berjawi is connected to the Syrian Military Intelligence, and assists in demonstrating the roles that Mr Al Hajjar and others played in the disappearance of Mr Abu Adass. It is reliable as it is dated and signed by a military court official, and as it was disclosed by the Prosecution.⁶⁷

45. The Prosecution objects to the admission of the military court record, submitting that it consists of unproven allegations and that it cannot have probative value because it cannot

⁶⁶ Prosecution consolidated sur-reply, para. 18.

⁶⁷ Sabra Defence motion, annex A, item 33; Sabra Defence consolidated reply, annex A, 'Sabra Motion Two' item 33.

assist in demonstrating the Sabra Defence's claims. The Sabra Defence has failed to provide the outcome of the request for charges and any subsequent judicial decisions.⁶⁸

Discussion and decision

46. The military court record is dated and signed by a court official. In the absence of any reason to doubt its authenticity or its status as an official Lebanese Government document, the Trial Chamber finds that it bears sufficient indicia of reliability. It is relevant to demonstrating that the people alleged to have been involved in the disappearance of Mr Abu Adass were connected to the Syrian Military Intelligence, and is probative of that allegation. The unproven nature of the allegations does not preclude the document's admissibility under Rule 154 and rather goes to the weight the Trial Chamber may give the document. The Trial Chamber will therefore exercise its discretion to admit this document into evidence.

ISF investigation report

Submissions

47. The Sabra Defence tenders an ISF investigation report dated 21 June 2005 and signed by an ISF commander. The report details the investigation into the explosion that killed Mr George Hawi, the former Secretary General of the Lebanese Communist Party, on 21 June 2005. The report is probative of and relevant to linking Mr Salameh (see paragraph 5 above) to the assassination of Mr Hawi, which in turn is allegedly connected to the assassination of Mr Hariri. Mr Salameh's association to the circumstances surrounding Mr Abu Adass's disappearance suggests the possibility of a link between the two incidents and of the 'possible involvements'. The report is reliable as it is a signed ISF record and was disclosed by the Prosecution.⁶⁹

48. The Prosecution submits that the ISF investigation report is a witness statement of the investigator who authored it. The report is therefore inadmissible for the same reasons it provided for witness statements (see paragraphs 22-23 above).⁷⁰

⁶⁸ Prosecution consolidated response, annex A, 'Sabra Motion Two' item 33.

⁶⁹ Sabra Defence motion, annex A, item 32.

⁷⁰ Prosecution consolidated response, annex B, item 52.

Discussion and decision

49. The ISF investigation report makes no mention of Mr Salameh, and the Sabra Defence has provided no explanation as to why it is relevant to the assassination of Mr Hariri. The Trial Chamber finds that the ISF investigation report lacks relevance and will therefore deny its admission into evidence.

EXHIBIT P806

50. In its motion, the Sabra Defence refers to exhibit P806, which is an ISF inventory of items seized from the Abu Adass family home.⁷¹ The Prosecution notes that the Arabic version of this exhibit spans the ERN range L0016382-L0016491, although it intended to tender only Arabic ERN L0016441-L0016491, which corresponds with the English ERN range in evidence. The Prosecution requests that the Trial Chamber correct the record to reflect the correct Arabic ERN range for this exhibit.⁷² The Sabra Defence did not reply to this submission.

51. The Trial Chamber clarifies that it intended to admit into evidence the document bearing ERN L0016441-L0016491 as exhibit P806,⁷³ and it will instruct the Registry to correct the Arabic version of this exhibit to reflect this ERN range.

ANNEX B TO THE DEFENCE MOTION*Submissions*

52. The Sabra Defence makes submissions relying on both the documents it tenders and on documents the Trial Chamber has admitted into evidence or found to be admissible. In annex B to its motion, the Sabra Defence lists those documents falling into the latter category.⁷⁴ The Prosecution submits that this annex contains erroneous representations and expresses concern that such representations, if permitted to go unchecked, will find their way into the Parties' final trial briefs.⁷⁵ Specifically, the Sabra Defence incorrectly relies on: (i) the content of what is allegedly a section of a fax sent by an Al-Ahbash leader to the Lebanese

⁷¹ Sabra Defence motion, para. 14, annex B, item 3; *see* exhibit P806.

⁷² Prosecution consolidated response, paras 21, 26.

⁷³ *See* transcript of 22 April 2016, pp 69-70.

⁷⁴ Sabra Defence motion, para. 2, annex B. The Sabra Defence did likewise in its first motion tendering documents (*see* first Sabra Defence bar table motion, annex B (confidential)), and this decision also addresses the Prosecution observations with respect to that annex.

⁷⁵ Prosecution consolidated response, para. 20.

investigative authorities shortly after the assassination of Mr Hariri,⁷⁶ although the Trial Chamber did not admit this exhibit into evidence for the truth of its content;⁷⁷ (ii) a page from a statement of Mr Hisam Aly Muhsin,⁷⁸ which the Trial Chamber has not admitted into evidence;⁷⁹ and (iii) paragraphs of the October 2005 UNIIC report⁸⁰ other than those of which the Trial Chamber has taken judicial notice.⁸¹ The Sabra Defence did not reply to this submission.

Discussion and decision

53. The Sabra Defence has relied on material not in evidence and on evidence admitted other than for the truth of its content. The Trial Chamber instructs counsel for Mr Sabra not to do this in any future submissions or briefs.

CONFIDENTIALITY

54. The Sabra Defence filed its motion confidentially, but requests the Trial Chamber to file its decision as public and reclassify its motion and reply as public, subject to any Prosecution requests for redactions.⁸² The Prosecution filed its response and sur-reply confidentially and submits that, as the Sabra Defence has not informed the Trial Chamber whether any of the witnesses seek protective measures, any public version of the motion must be redacted to protect the security and privacy of those witnesses and to avoid prejudicing the Prosecution's right of cross-examination by discouraging the witnesses from appearing before the Special Tribunal. The Prosecution also notes that the motion identifies people whom the Sabra Defence alleges were involved in criminal conduct, and encourages the Trial Chamber to be mindful of the negative impact of making such allegations public.⁸³ The Sabra Defence has not replied regarding protective measures and has rather stated that it does not consider the individuals whose statements it tendered to be Defence witnesses.

⁷⁶ Exhibit 5D259.

⁷⁷ Prosecution consolidated response, annex G, pp 1-3.

⁷⁸ ERN 50011233.

⁷⁹ Prosecution consolidated response, annex G, p. 1.

⁸⁰ S/2005/662, Letter dated 20 October 2005 from the Secretary-General addressed to the President of the Security Council, transmitting the Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005), paras 5, 214.

⁸¹ Prosecution consolidated response, para. 20, annex G, p. 2. F2665, Decision on Sabra Defence Motion Seeking Judicial Notice of United Nations Fact-Finding Mission and UNIIC Reports, 26 July 2016, taking judicial notice of a number of facts, not including those upon which the Sabra Defence relies in its motion.

⁸² Sabra Defence motion, para. 58; Sabra Defence consolidated reply, paras 21-22.

⁸³ Prosecution consolidated response, paras 22-25; Prosecution consolidated sur-reply, para. 38.

55. The Trial Chamber reiterates the principle of the public nature of proceedings before the Special Tribunal, and that documents should, wherever possible, be filed publicly. The Trial Chamber issues this decision publicly and incorporates information from the Parties' confidential submissions as necessary for the determination of the admissibility of the documents. It orders the Parties to file public redacted versions of their filings or have them reclassified as public, and urges the Parties to cooperate in this regard.

56. The Sabra Defence has filed the annexes to its motion confidentially because they attribute witness statements and mobile numbers to named individuals.⁸⁴ The Parties filed the annexes to their subsequent filings, which refer to these attributions, confidentially. The Trial Chamber finds that these annexes should remain confidential.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ORDERS the admission into evidence of exhibits 5D218 MFI, 5D254 MFI, and the Arabic version of exhibit 5D259;

DECLARES admissible, under Rule 154 and in accordance with paragraphs 43 and 46 of this decision, the following items, which it will admit into evidence at a suitable time in the proceedings:

- the October 2005 UNIIC report; and
- the Lebanese military court record dated 7 March 2006;

DEFERS its decision on the admission into evidence of **items 49 and 50** of annex A to the Sabra Defence motion, namely extracts of the ISF report dated 27 October 2005, in accordance with paragraph 15 of this decision;

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

INSTRUCTS the Registry to correct the Arabic version of exhibit P806 to ERN range L0016441-L0016491;

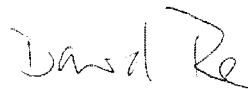
⁸⁴ Sabra Defence motion, para. 59.

ORDERS the Prosecution and counsel for Mr Sabra to file public redacted versions of their filings; and

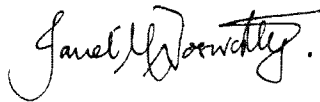
ORDERS the annexes to the Sabra Defence motion, the Prosecution consolidated response, the Sabra Defence consolidated reply, and the Prosecution consolidated sur-reply to remain confidential.

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

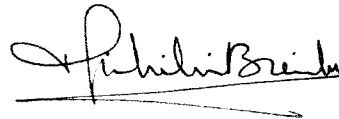
Leidschendam,
The Netherlands
30 November 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

