



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:** 6 December 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION CLARIFYING DECISION OF 25 SEPTEMBER 2017 ADMITTING  
EXHIBIT 5D251 MFI (RELEVANT TO MR AHMED ABU ADASS) AND DENYING  
PROSECUTION APPLICATION FOR RECONSIDERATION**

**Office of the Prosecutor:**

Mr Norman Farrell & Mr Alexander Hugh  
Milne

**Legal Representatives of  
Participating Victims:**

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

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair

**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 Robert  
Ms Sarah Bafadhel



## **BACKGROUND**

1. The Trial Chamber, in a decision on 25 September 2017,<sup>1</sup> partly granted an application by counsel for the Accused, Mr Assad Hassan Sabra, to admit into evidence certain documents relating to the character, religious beliefs and associates of Mr Ahmed Abu Adass. The consolidated amended indictment pleads that Mr Abu Adass appeared at the behest of the Accused in a video that falsely claimed responsibility for the attack on the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005.<sup>2</sup> The decision admitted into evidence 49 documents tendered by the Sabra Defence, including one exhibit that had been marked for identification as exhibit 5D251 MFI.

2. The Prosecution seeks reconsideration of the decision to admit exhibit 5D251 MFI into evidence. The document has 13 pages—five in the Arabic original and eight in the English translation, was compiled by unnamed officials of the Lebanese Internal Security Force (ISF) on 24 September 2005, and is entitled ‘Summary of Information, Subject: Information about a suspect who was acquainted with Ahmad Abu Adass’.<sup>3</sup>

3. The document contains a mixture of investigative information relating to a named suspect, Mr Khaled Midhat Taha, including his personal details and travel into and out of Lebanon, details from interviews with three other people, and four pages analysing this information. On 26 September 2005, General Ashraf Rifi, who was then the ISF’s Director General, provided it to the Commissioner of the United Nations International Independent Investigation Commission.

4. The Sabra Defence relied upon only the first two paragraphs under the heading ‘In the Analysis’ but sought the admission into evidence of a much larger document ‘in order for the Chamber to understand the full context of this evidence’.<sup>4</sup> The Trial Chamber decision, however, specifies that 13 pages of the document were admitted, finding at paragraph 148 that

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3337, Decision Granting, in Part, Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – Character, Religious Beliefs and Associates, 25 September 2017.

<sup>2</sup> F2720, Amended Consolidated Indictment, 12 July 2016, paras 3 (b)-(d), 5, 23, 28-29, 44, 48 (c), 64 (f), 66 (f), 68 (h), 70 (h).

<sup>3</sup> F3416, Prosecution Motion for Partial Reconsideration of the Decision of 25 September 2017, and in the Alternative, Cross-examination of the Information Providers for Exhibit 5D-251 MFI, 17 November 2017, confidential.

<sup>4</sup> 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, para. 81, annex A, item 125.

the document has ‘*prima facie* reliability and has some probative value concerning the links between Mr Taha and Mr Abu Adass and Mr Abu Adass’ ideology and beliefs’.

### **SUBMISSIONS**

5. The Prosecution argues that the Trial Chamber erred in law in admitting the document into evidence as it was a ‘witness statement’ tendered over the Prosecution’s objection. Under Rule 140 of the Special Tribunal’s Rules of Procedure and Evidence, the Trial Chamber should therefore reconsider its decision, declare exhibit 5D251 MFI a ‘witness statement’ subject to Rule 155,<sup>5</sup> and order the Sabra Defence to make the author(s) of the ‘witness statement’, i.e. the ‘information provider(s)’, available for cross-examination. Alternatively, if the Trial Chamber declines to reconsider the decision, it should order—under Rules 126 (B) and 165—the author(s) of the ‘witness statement’, i.e. the ‘information provider(s)’, to attend court for cross-examination. Rule 165 permits the Trial Chamber after hearing from the Parties to summon witnesses *proprio motu*.

6. The Prosecution, in an annex, directs the Trial Chamber’s attention to a number of translation errors in exhibit 5D251 MFI, and asks it to order the Sabra Defence to obtain and submit an official revised English translation of the document.

7. The Sabra Defence responds<sup>6</sup> that the Prosecution’s application should be summarily dismissed for failing to follow the procedure in Rule 140, namely, of first seeking the leave of the Presiding Judge to refer an application for reconsideration to the Trial Chamber. The Rule, however, was amended on 8 March 2016 to remove this requirement. The Trial Chamber will therefore disregard this submission and refer counsel for Mr Sabra to the current version of the Special Tribunal’s Rules of Procedure and Evidence for future reference. Defence counsel also argue that the Prosecution failed to point to any injustice, as is required by Rule 140 and failed to show an error of law. They also oppose the Prosecution’s alternative relief.

### **RECONSIDERATION – THE LEGAL PRINCIPLES**

8. A Chamber may, under Rule 140, ‘*proprio motu* or at the request of a Party, reconsider a decision, other than a judgement or sentence, if necessary to avoid injustice’. Reconsideration is exceptional, and the Rule must not be used to redress ‘imperfections in a

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<sup>5</sup> Under Rule 155, the Trial Chamber may, in lieu of oral testimony, admit the evidence of a witness in the form of a written statement.

<sup>6</sup> F3451, Sabra Response to Prosecution Motion for Reconsideration of Admission of 5D-251 MFI, 1 December 2017, confidential.

decision or to circumvent the unfavourable consequences of a ruling'. The party seeking reconsideration must demonstrate on specific grounds an injustice that involves prejudice.<sup>7</sup> If a Party shows such an injustice, the Trial Chamber may grant reconsideration on grounds that include an error of law, abuse of discretion, or the existence of new facts or a material change in the circumstances.<sup>8</sup>

### **DISCUSSION AND DECISION**

9. The Trial Chamber does not regard this 'Summary of Information' as a witness statement. Rather, the document is an analytical investigative summary containing a mixture of material derived from interviews with three potential witnesses and, it appears, from a number of other sources. Around half of the document is an analysis of the information received.

10. The decision, however, should have more explicitly described precisely what in this document was being admitted into evidence. The Trial Chamber will therefore clarify paragraph 148 of the decision to specify that exhibit 5D251 MFI will be admitted into evidence for the purpose of providing context to the two paragraphs relied upon by the Sabra Defence, namely the first two paragraphs under the heading 'In the Analysis'.<sup>9</sup>

11. The Prosecution has not demonstrated any injustice sufficient to reconsider the decision in the manner sought, namely, either to deny the admission into evidence of the document, or alternatively, to attempt to locate its author(s) and to order their attendance for cross-examination.

12. The specified portion of the document has some relevance to the Defence case and some probative value concerning the links between Mr Taha and Mr Abu Adass and Mr Abu Adass' ideology and beliefs. In considering the document as a whole—for the purpose of understanding its context—the Trial Chamber will carefully assess the weight that it can give to the relevant portion.

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<sup>7</sup> STL-11-01/PT/AC/R176bis, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F0327, Decision on Defence Requests for Reconsideration of the Appeals Chamber's Decision of 16 February 2011, 18 July 2012, paras 22-26.

<sup>8</sup> F2719, Decision on Ayyash Defence Motion for 'Reissuance' and Oneissi Defence Motion for Reconsideration of the Trial Chamber's Decision of 29 July 2016, 14 September 2016, para. 10.

<sup>9</sup> Specifically, ERN 308323 in the range 308319-308326 in English, and ERN 308329 in the range 308327-308331 in Arabic.

### **TRANSLATION ISSUES**

13. The Trial Chamber agrees with the Prosecution that the tendering party is responsible for ensuring that documents tendered for admission into evidence are accurately translated. The Sabra Defence does not oppose the request for an official translation of exhibit 5D251 MFI. The Sabra Defence is therefore ordered to obtain and submit an official revised English translation of exhibit 5D251 MFI.

### **CONFIDENTIALITY**

14. The Prosecution and the Defence filed their submissions confidentially, with the Prosecution arguing that the Trial Chamber's decision was not yet public as a result of it naming several people who may require protective measures. As the Trial Chamber has instructed the Registry to restore public access to that decision, the Trial Chamber orders the Prosecution to file a public redacted version of its motion and instructs the Registry to reclassify the Defence response as public. The Trial Chamber will maintain the confidentiality of the annex to the Prosecution motion.

### **DISPOSITION**

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

**DISMISSES** the Prosecution's application under Rule 140 for reconsideration;

**CLARIFIES** paragraph 148 of 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, to specify—as set out in paragraph 10 above—‘that exhibit 5D251 MFI will be admitted into evidence for the purpose of providing context to the two paragraphs relied upon by the Sabra Defence, namely the first two paragraphs under the heading “In the Analysis”’;<sup>10</sup>

**ORDERS** the Sabra Defence to obtain and submit an official revised English translation of exhibit 5D251 MFI;

**ORDERS** the Prosecution to file a public redacted version of its motion;

**MAINTAINS** the confidentiality of the annex to the Prosecution motion; and

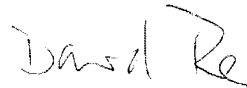
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<sup>10</sup> Specifically, ERN 308323 in the range 308319-308326 in English, and ERN 308329 in the range 308327-308331 in Arabic.

**INSTRUCTS** the Registry to reclassify the Defence response as public.


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

Leidschendam,  
The Netherlands  
6 December 2017



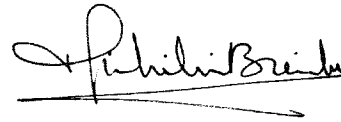
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

