



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:** 7 December 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

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**DECISION ON THE ‘SABRA REQUEST FOR CLARIFICATION OF THE ORDER TO THE SABRA DEFENCE AND THE PROSECUTION REGARDING CALL SEQUENCE TABLES SUBMITTED FOR ADMISSION INTO EVIDENCE’**

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**Office of the Prosecutor:**

Mr Norman Farrell &amp; Mr Alexander Hugh Milne

**Legal Representatives of Participating Victims:**

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

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis &amp; Mr Chad Mair

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothee Le Fraper du Hellen &amp; Mr Jad Youssef Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser Hassan &amp; Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Geoffrey Robert &amp; Ms Sarah Bafadhel



1. Counsel acting for the Accused, Mr Assad Hassan Sabra—following a Trial Chamber order requiring written submissions<sup>1</sup>—filed an application seeking the admission into evidence of 22 documents, including 13 it describes as ‘call sequence tables’.<sup>2</sup> The Prosecution opposed the application.<sup>3</sup> On 27 November 2017, the Trial Chamber—to assist it in deciding the reliability and hence probative value of the 13 documents—ordered the Sabra Defence,

‘to provide, by 1 December 2017, the modified call sequence tables and the statement(s) of their creator(s)’

and

‘the Prosecution, by 4 December 2017, to notify the Trial Chamber whether it objects to their admission into evidence. The Trial Chamber urges the Parties to cooperate so as to reach agreement on the admissibility of the documents’.<sup>4</sup>

2. Defence counsel, however, sought clarification of the order, challenging why they should have to provide statements by querying the Trial Chamber’s legal basis to make the order, and further asking whether the statements should be witness statements for tender under Rule 155 of the Special Tribunal’s Rules of Procedure and Evidence,<sup>5</sup> and whether a formal variation of the sequence for calling evidence under Rule 146 (B) is anticipated.<sup>6</sup>

3. They also raised an issue concerning their obligations under Article 8 (D) of the Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon, 14 December 2012.<sup>7</sup> Annexed to the clarification

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, transcript of 9 November 2017, pp 107-108.

<sup>2</sup> F3414, Sabra Defence Application for Admission into Evidence of Twenty Two Documents Marked for Identification, 16 November 2017 (public with confidential annexes A-H) (‘Sabra Defence application of 16 November 2017’).

<sup>3</sup> F3422, Prosecution Response to ‘Sabra Defence Application for Admission into Evidence pursuant to Rule 149 (C) of Twenty Two Documents Marked for Identification’, 23 November 2017 (confidential with confidential annex A).

<sup>4</sup> F3428, Order to the Sabra Defence and the Prosecution regarding Call Sequence Tables Submitted for Admission into Evidence, 27 November 2017. It also made a similar order to counsel acting for Mr Hassan Hussein Oneissi; see F3427, Order to the Oneissi Defence regarding Two Documents Sought for Admission into Evidence, 24 November 2017.

<sup>5</sup> Rule 155 permits a Chamber to receive a witness statement into evidence without requiring the deponent to attend court for cross-examination.

<sup>6</sup> F3443, Sabra Request for Clarification of “Order to the Sabra Defence and the Prosecution regarding Call Sequence Tables Submitted for Admission into Evidence”, 28 November 2017.

<sup>7</sup> STL/CC/2012/03, Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon, 14 December 2012. Article 8 (D) provides, relevantly, that

application were extracts from two previous Sabra Defence filings, headed ‘Source materials’, ‘Extraction’, ‘Formatting’, and ‘Supplementary information’.<sup>8</sup>

4. The Prosecution—on the Trial Chamber’s invitation<sup>9</sup>—responded to the application, complaining about the Sabra Defence litigating ‘by email’ in correspondence with the Trial Chamber’s legal officers, contesting that any clarification to the order was required, and disputing the content of annex A to the clarification application. The Prosecution also submitted that the Trial Chamber could not determine any possible breaches of the Code of Conduct. It noted, however, that the Sabra Defence had misconstrued the Code<sup>10</sup> which did not prevent counsel or their staff from becoming witnesses *per se*, but rather prohibited them from accepting appointment as assigned counsel if they were aware of any factors that could result in their becoming witnesses of fact, such as a prior involvement with the facts of the case. Finally, the Prosecution complained that counsel for Mr Sabra had erroneously asserted that it wanted to cross-examine Defence counsel.<sup>11</sup>

5. This prompted further—and in the Trial Chamber’s view, unnecessary—submissions from the Sabra Defence,<sup>12</sup> responding to the complaint about ‘litigation by email’, stating that it was not seeking a ruling on the Code of Conduct from the Trial Chamber. Defence counsel also submitted that Prosecution counsel had themselves said in a Trial Chamber case management meeting on 7 November 2017 that they wished to cross-examine whoever made the statements in the same manner in which Prosecution witnesses had been cross-examined about preparing call sequence tables.

6. The Trial Chamber repeats its ruling on a comparable application for clarification of a similar order directed to the Oneissi Defence, that,

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assigned Defence counsel must consider ‘the effect of any action he takes on the position of the accused in the current or future proceedings and may undertake any other action in the perceived best interests of the accused’.

<sup>8</sup> F3374, Reply to “Prosecution Consolidated Response To Sabra Defence Evidential Motions Two to Six relating to Ahmed Abu Adass”, 23 October 2017 (confidential), annex B (confidential), paras 1-18; Sabra Defence application of 16 November 2017, paras 64-65 and 77-78, although referred to in the annex as ‘F3428, paras 64 and 65’ and ‘F3428, paras 77 and 78’.

<sup>9</sup> By email from the Trial Chamber’s legal officer to the Parties, 30 November 2017.

<sup>10</sup> Referring to Article 7 (C) (iii) which specifies that counsel cannot accept an assignment if they believe that they or members of their Office (meaning where counsel work before taking the assignment) could be called to appear as a witness, unless it relates to an issue connected with the ‘nature and value of legal services’, or an issue ‘which Counsel honestly and reasonably believes will not be contested by either party’.

<sup>11</sup> F3449, Prosecution Observations upon the Sabra Defence ‘Request for Clarification’ of a Trial Chamber Order, 1 December 2017 (confidential) (a public redacted version was filed on 4 December 2017).

<sup>12</sup> F3455, Sabra Submissions on the Prosecution Observations upon the Sabra Defence ‘Request for Clarification’, 4 December 2017.

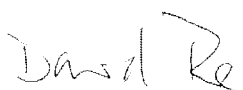
The Party tendering a document bears the evidentiary onus of establishing its relevance and probative value under Rule 149 of the Special Tribunal's Rules of Procedure and Evidence. The Trial Chamber may request verification of the authenticity of evidence obtained out of court, under Rule 149 (E).<sup>13</sup>

7. The order is in this respect clear and no clarification is required. The Trial Chamber will, in the circumstances, however, extend the deadline for providing the statement to **Friday 8 December 2017**.

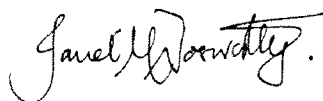
8. Finally, the Trial Chamber sees no relevant issue relating to the Code of Conduct, and in this respect notes that a lawyer of the Merhi Defence team provided a statement concerning the preparation of call sequence tables, and that counsel for the Accused, Mr Salim Jamil Ayyash, provided an 'internal memorandum' prepared and initialled by a lawyer working on the case, in both cases seemingly without encountering any ethical difficulties in representing the Accused.<sup>14</sup> The same holds for counsel acting for the remaining Accused.

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

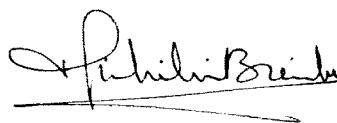
Leidschendam,  
The Netherlands  
7 December 2017



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

<sup>13</sup> F3440, Decision on the Oneissi Defence's Application for Clarification of an Order regarding Two Documents Marked for Identification, 30 November 2017, para. 3.

<sup>14</sup> See F3463, Decision Admitting into Evidence Call Sequence Tables Tendered by the Ayyash and Merhi Defence – Exhibits 1D453, 3D431, 3D433, 3D436 and 3D437 Marked for Identification, 7 December 2017; F3377, *Addendum aux « Soumissions additionnelles de la défense de Merhi conformément à l'ordonnance de la Chambre pour l'admission formelle de quatre tableaux séquentiels d'appels »*, 2 November 2017 (public with public annex A and confidential annex B); and F3457, Ayyash Defence Provision of Updated Exhibit 1D453 Marked for Identification and Memorandum Supporting Reliability in Compliance with Trial Chamber Order of 24 November 2017, 5 December 2017 (public with public annexes A-B).

