



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:** 15 December 2017

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH**  
**HASSAN HABIB MERHI**  
**HUSSEIN HASSAN ONEISSI**  
**ASSAD HASSAN SABRA**

**DECISION ON THE ‘PROSECUTION REQUEST FOR CLARIFICATION OF THE  
DECISION OF 6 DECEMBER 2017’**

**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 Roberts  
Ms Sarah Bafadhel

1. The Trial Chamber, on 6 December 2017,<sup>1</sup> dismissed a Prosecution application to reconsider its ‘Decision Granting, In Part, Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – Character, Religious Beliefs and Associates’, and clarified paragraph 148 of the decision relating to the admission into evidence of exhibit 5D251 marked for identification (MFI).<sup>2</sup>

2. This document, which was tendered by counsel for the Accused, Mr Assad Hassan Sabra, is dated 24 September 2005, and has thirteen pages—five in Arabic and eight in English (a translation from Arabic). It was compiled by unnamed officials of the Lebanese Internal Security Forces (ISF), and is entitled ‘Summary of Information, Subject: Information about a suspect who was acquainted with Ahmad Abu Adass’.

3. The Prosecution now seeks clarification of the decision of 6 December 2017, specifically asking clarification of the following two issues,

- (i) Did the Trial Chamber render a decision on the alternative requested relief of an order for the information providers for 5D251 MFI to attend for cross-examination by the Prosecution before 5D251 MFI can be admitted, under Rules 126(B) and 165? If the alternative relief was denied, what was the reasoned opinion for denying it?
- (ii) Whilst 5D251 MFI is being “admitted into evidence for the purpose of providing context to the two paragraphs relied upon by the Sabra Defence”, what is the purpose for admitting the two paragraphs? In particular, are the two paragraphs being admitted for the truth of their contents?<sup>3</sup>

4. The Trial Chamber provides the following clarification. In respect of issue (i), the Trial Chamber did not order the unidentified ISF officials to attend court for cross-examination under Rule 156,<sup>4</sup> or Rule 165. The relevant portion of the document is an analytical summary of investigative information which contains a mixture of fact and opinion.

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<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3459, Decision Clarifying Decision of 25 September 2017 Admitting Exhibit 5D251 MFI (Relevant to Mr Ahmed Abu Adass) and Denying Prosecution Application for Reconsideration, 6 December 2017.

<sup>2</sup> 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>3</sup> F3475, Prosecution Request for Clarification of the Decision of 6 December 2017, 11 December 2017, para. 1 (internal footnote omitted). Rule 126 (B) provides that motions for relief shall be submitted orally by Parties unless the Trial Chamber decides otherwise. Rule 165 authorises the Trial Chamber *proprio motu* or at a Party’s request to order a Party or participating victim to produce additional evidence, or after hearing the Parties, *proprio motu* to summon witnesses and order their attendance.

<sup>4</sup> Rule 156 permits a Chamber to receive evidence in the form of a statement or transcript if the deponent attends court and attests to its accuracy, and is available for questioning.

For the purposes of assessing this material in light of the line of defence by counsel for Mr Sabra (as revealed to date) it is unnecessary to hear oral evidence on this discrete issue. The Trial Chamber is not receiving this analytical summary, which is a form of opinion evidence, for the truth of its contents.

5. Regarding issue (ii), the two relevant paragraphs are admitted in support of the Sabra Defence case in relation to its alternative theory concerning alleged links between Mr Khaled Midhat Taha and Mr Abu Adass. The document has *prima facie* reliability and hence some probative value by virtue of its origin as an ISF analytical investigatory summary, in a manner similar to comparable United Nations International Independent Investigation Commission (UNIIC) documents that have been or will be admitted into evidence, or portions of official UNIIC documents, of which the Trial Chamber has taken judicial notice.<sup>5</sup>

6. The Trial Chamber will carefully scrutinise this evidence in deciding whether to attribute it any weight.

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

Leidschendam,  
The Netherlands  
15 December 2017

*David Re*

Judge David Re, Presiding

*Janet Nosworthy*

Judge Janet Nosworthy

*Micheline Braidy*

Judge Micheline Braidy

<sup>5</sup> See F3445, Decision Partly Granting Sixth Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – The Fax, 30 November 2017, disposition (deciding to admit into evidence a UNIIC memorandum from 27 September 2005); 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, disposition (deciding to admit into evidence a UNIIC memorandum of 1 August 2006); 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, disposition (deciding to admit into evidence a UNIIC report from October 2005); F2665, Decision on Sabra Defence Motion Seeking Judicial Notice of United Nations Fact-Finding Mission and UNIIC Reports, 26 July 2016, disposition (deciding to admit into evidence a UNIIC report from 27 September 2005).

