THE TRIAL CHAMBER

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 March 2018**

Original language: **English**

Classification: **Public**

DECISION ON THE ONEISSI DEFENCE APPLICATION FOR A JUDGMENT OF ACQUITAL UNDER RULE 167 (A)

(Extract from Official Public Transcript of Hearing on 7 March 2018, page 3, line 12 to page 52, line 6)

The Trial Chamber must be satisfied that there is a case against an accused person before the Defence elect whether or not to call a case. The amended consolidated indictment charges Hussein Hassan Oneissi with committing: Under Count 1, a conspiracy aimed at committing a terrorist act with the other three accused, Salim Jamil Ayyash, Hassan Habib Merhi, and Assad Hassan Sabra. The former accused, Mr. Mustafa Amine Badreddine, is named as a co-conspirator; And in Counts 6 to 9 in the indictment as being an accomplice to, in Count 6, committing a terrorist act with an explosive device; Count 7,the intentional

homicide of Mr. Rafik Hariri with premeditation by using explosive materials; under Count 8, intentional homicide of 21 other people with premeditation by using explosive materials; and under Count 9, the attempted intentional homicide of 226 people with premeditation by using explosive materials.

The indictment specifies Mr. Oneissi's role as that prior to the attack on the 14th of February, 2005, in which Mr. Hariri and the others were killed in Beirut, and under the coordination of Mr. Merhi, he participated with Mr. Sabra in identifying a suitable individual, namely, Mr. Abu Adass, who would be used to make a videotaped false claim of responsibility for the attack.

He is also alleged to have participated in the disappearance of Mr. Abu Adass and in disseminating statements falsely attributing responsibility for the attack, ensuring delivery of the video with an attached letter to Al Jazeera and ensuring that it would be broadcast.

The Trial Chamber must be satisfied that it has received sufficient evidence from which it could find Mr. Oneissi's involvement in the crimes alleged. The evidence is circumstantial and is mostly based upon call data records of calls made by a mobile that the Prosecution alleges was his and Mr. Oneissi's contacts with others alleged to be in the conspiracy, namely, Mr. Merhi and Mr. Sabra, and the location of his mobile at key times in the conspiracy alleged.

The Prosecution closed its case against the four accused on the 7th of February, 2018. On 20th and 21st of February, counsel assigned to act for Mr. Oneissi then made an oral application in court for his acquittal under Rule 167(A) of the Special Tribunal's Rules of Procedure and Evidence. The Prosecution responded orally, followed by a reply from the Oneissi Defence. On the Trial Chamber's order, the Prosecution and the Oneissi Defence, on the 27th of February, filed further submissions but written. First, the legal principles which guide this decision. The Trial Chamber recited these in its introductory remarks before the Rule 167 hearing on the 20th of February and are repeating those for the purposes of this decision.

First, "Rule 167(A) and the relevant legal test." Rule 167(A), 'Judgement of Acquittal at the close of the Prosecutor's Case' provides: "At the close of the Prosecutor's case, the Trial Chamber shall, by oral or written decision and after hearing submissions of the Parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction on that count."

This provision is modelled on Rule 98 bis of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, called the ICTY, and the equivalent provisions in the Rules of the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.

The Trial Chamber is required, relevantly, under Rule 3(a) (iii) of this Tribunal's Rules of Procedure and Evidence, in interpreting the Rules, to apply the general principles of international criminal law and procedure.

These international principles have established that the main issue at the close of the Prosecution's case is whether the Trial Chamber has received sufficient evidence upon which it, as a reasonable trier of fact, could - and "could" is underlined and emphasized - convict an accused person of a charge or a count in an indictment.

The ICTY Appeals Chamber in the case of the Prosecutor against Jelisic, in its appeal judgement on the 5th of July 2001 at paragraphs 37 and 55, framed what it termed the "key question" as whether the Prosecution evidence, "if accepted," could sustain a conviction beyond reasonable doubt by a reasonable trier of fact. It held that "the test is not whether the trier of fact would, in fact, arrive at a conviction beyond a reasonable doubt on the Prosecution evidence (if accepted) but whether it could."

The Trial Chamber is required to "assume that the Prosecution's evidence was entitled to credence unless incapable of belief" and to "take the evidence at its highest" rather than "pick and choose among parts of that evidence."

In another ICTY case, that of Radovan Karadzic, in the appeal judgement of the 11th of July, 2013, at paragraph 9, the ICTY Appeals Chamber reiterated that the test is "whether there is evidence (if accepted) upon which a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question, not whether an accused's guilt has been established beyond a reasonable doubt."

The policy reason for this was expressed by the Strugar Trial Chamber at the ICTY as what was termed the "no case to answer" provisions was to protect "the right of the accused not to be called on to answer a charge unless there is credible evidence of his implication in the offence with which he is charged." That comes from the decision on Defence motion requesting judgement of acquittal pursuant to Rule 98 bis of the 21st of June, 2004, at paragraph 13.

Further in that decision at paragraph 11, the Strugar Trial Chamber held: "The issue is shortly stated as NOT being whether, on the evidence as it stands the accused should," that's in italics, "be convicted, but whether the accused," in italics, "could be convicted."

The ICTY Appeals Chamber also considered whether a chamber should consider Defence evidence adduced during the Prosecution case, holding in its Appeals Chamber judgement in the case of Hadzihasanovic on the 22nd of April, 2008, at paragraph 55, that in the "no case to answer" context, Defence evidence admitted during the Prosecution case "must be used to assess whether the Prosecution evidence is incapable of belief" and that it would be an error of law to ignore Defence evidence.

The Appeals Chamber gave a specific example there of the Defence cross-examining a witness to good effect or obtaining evidence in an accused's favour during cross-examination.

The ICTY, ICTR, and SCSL Trial Chambers have each followed the Jelisic test. For example, in the Special Court for Sierra Leone in what's called the Armed Forces Revolutionary Council, the AFRC case, or Brima, the Brima Trial Chamber followed it in "Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98," on the 31st of March, 2006, at paragraph 8.

The International Criminal Court's Rome Statute and its Rules of Procedure and Evidence have no formal equivalent of the Special Tribunal's Rule 167 or the ICTY's equivalent Rule 98 bis. However, in the situation in Kenya in the case of Ruto and Sang, "Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' motions), on 3 June 2014," the Trial Chamber exercised its discretion to hold a "no case to answer" procedure, and that's set out in paragraphs 22 to 32 of that decision.

There, the ICC adopted the ICTY's Rule 98 bis standard, including the test to be applied as "whether there is evidence on which a reasonable Trial Chamber could convict," noting that the determination "does not entail an evaluation of the strength of the evidence presented" but rather, as at the ad hoc tribunals, Trial Chambers are "to take the Prosecution evidence 'at its highest' and to 'assume that the Prosecution's evidence was entitled to credence unless incapable of belief' on any reasonable view."

That Trial Chamber further elaborated that it "will not consider questions of reliability or credibility relating to the evidence, save where the evidence in question is incapable of belief by any reasonable Trial Chamber."

In a separate decision on the same Defence motions for judgements of acquittal, a Trial Chamber Judge expressed his view that the trial should not be prolonged if Prosecution evidence, taken at its highest, is "weak, tenuous or vague" and that the exercise by a trial chamber requires a "correct appraisal of what is left of the case at its remaining highest point." That's in the "Decision on Defence Applications for Judgements of Acquittal," 5th of April, 2016, the reasons of Judge Eboe-Osuji, at paragraph 124.

The Trial Chamber will apply these established principles in deciding whether the Prosecution has led evidence upon which it could convicted Mr. Oneissi on any of the counts charged against him.

The Trial Chamber is required to provide reasoned decisions, but the depth of reasoning may vary according to the type of decision. Here, the Trial Chamber will provide what are necessarily brief reasons as towhether the Prosecution has called sufficient evidence upon which the Trial Chamber "could" - again underlined and highlighted and in italics, convict Mr. Oneissi on any of the counts on the indictment.

Moving to the subheading of "Assessment of the evidence in the Prosecution's case."

In the Prosecution case, the Trial Chamber heard evidence from 300 witnesses; namely, 126 live, and 194 in statement form, and 20 witnesses gave evidence in both oral and written form. It has received 3.048 exhibits into evidence; 2.482 Prosecution and 566 Defence exhibits. 102 of these are from the Oneissi Defence. The transcript is of 88.080 pages in the Tribunal's three official languages, and the exhibits total 142.492 pages. It also heard evidence from six victims and an expert victimoligist and received 24 witness statements into evidence and associated exhibits in a case led by the Legal Representatives of Victims.

The Trial Chamber found that each piece of evidence admitted was relevant and had sufficient reliability to have some probative value for admission into evidence. The Trial Chamber here will examine whether there is evidence on each of the counts of the indictment and whether it could convict Mr. Oneissi on any. The Trial Chamber, as required by Rule 149(G), recorded the reason for receiving each exhibit into evidence during the Prosecution case, whether tendered by the Prosecution, Defence, or Legal Representative of Victims.

In admitting the evidence, the Trial Chamber did not assess the strength of the evidence, nor its weight, and did not assess the credibility of the evidence of any of the witnesses that it heard in court or whose statements are now in evidence.

Assessing the weight and credibility of the evidence occurs when the Chamber is determining whether the Prosecution has proved its case on each count of the indictment beyond reasonable doubt, not in assessing whether at this stage - namely, at the close of the Prosecution case - the Prosecution has adduced evidence upon which the Trial Chamber could convict an accused person. Unless it is incapable of belief, the Trial Chamber will only assess the credibility of evidence at this later stage of the proceedings.

To illustrate with a practical example, If the victim of a robbery identifies an accused person in a police line-up as the perpetrator and then testifies in court about the validity of this identification, the court will have received identification upon which it could convict the alleged perpetrator. But if the witness, in cross-examination, recants and tells the court that they lied, the evidence could be held incapable of belief, and the court could then assess both reliability of the identification and the witness's credibility and find that consequently there was no evidence upon which the court could rely to convict the accused and they could be acquitted at the close of the prosecution case.

After carefully reviewing the evidence, the Trial Chamber is not of the view that it has received any evidence falling into such a category during the Prosecution case.

In this decision, the Trial Chamber will refer generally and sometimes specifically to evidence it has received. This does not necessarily mean, however, that the Trial Chamber will rely upon these pieces of evidence in any final judgement under Rule 168, nor that the Trial Chamber will not refer in detail to other evidence in its judgement.

The next subheading is "The facts."

Turning to the evidence, some of which concerns uncontested facts.

The Trial Chamber has received extensive evidence that the former Lebanese Prime Minister, Mr. Rafik Hariri, was killed in an explosion at approximately 12.55 on Monday, 14th of February, 2005, as his six-vehicle convoy drove past the St. Georges Hotel in the marina area in Beirut. Another 21 people were killed in or as a result of the blast and at least 226 others were injured, some very seriously. Seven members of Mr. Hariri's convoy died, as did Mr. Basil Fuleihan, who was seated in Mr. Hariri's car in the passenger seat. This is uncontested and the Trial Chamber has recorded these agreements between the Prosecution and the Defence on the court record.

The Trial Chamber has heard evidence capable of proving that the explosion was caused by a Mitsubishi Canter - that's an open-top truck vehicle - loaded with approximately 1.800 kilogrammes of RDX explosives, known as cyclotrimethylenetrinitramine, which is the equivalent of almost 2.500 kilogrammes of TNT, driving slowly alongside the convoy and detonating its load as the convoy passed the St. Georges Hotel.

The evidence is also capable of proving that the driver of the Canter was killed in the blast and that his identity is unknown. The Canter was purchased in Tripoli from a used truck dealer in cash for US $11.250 on the 25th of January, 2005. Fragments of its engine block, which included its chassis number, were recovered near the crime scene.

The evidence before the Trial Chamber is of a sophisticated and well-planned operation to assassinate Mr. Hariri, which must have included extensive surveillance in advance of his assassination. The evidence is in part based upon the existence of four closed networks of mobile telephones, each of which is alleged to have had a specific role in the attack.

The next subheading is "The closed mobile networks." The Trial Chamber has received a wealth of evidence of the existence of these interconnected mobile telephone networks which communicated extensively with other mobiles in the networks. It has received expert evidence, based upon the use of anonymous, that is non-subscribed, handsets and SIM cards, the calls being generally only between others in each network, an absence of SMS messages from those mobiles to others, a hierarchy of calls between mobiles and the network, the calling patterns, and the discipline involved, from which it could conclude that these were closed networks typically used by criminal networks to cover their tracks.

The Trial Chamber has received extensive evidence from Lebanese telecommunications companies of the call data records of the mobiles in these networks, including the cells, by which we mean which are more commonly referred to as mobile cell towers, to which the mobiles connected. From this it is possible, in general, to track the approximate location and movement of a mobile telephone through its handset, its SIM card, and the cell it activates or cells it activates when using a call. The evidence is that these records have an accuracy of between 60 and 70 per cent. From these call data records, the Prosecution and Defence extracted data and compiled tables of calls and cells into what are termed call sequence tables. These make the call data records readable.

The next subheading is "The 'Green Network'."

The Trial Chamber has received evidence that the hierarchal pinnacle of the membership of the pleaded conspiracy in Count 1 was a network of these mobiles, termed the "Green Network" controlled by the former accused, Mr. Badreddine. On the word of the Secretary-General of Hezbollah, a Lebanese political and religious organization, which is in the form of a video the Trial Chamber has received into evidence, Mr. Badreddine was a senior Hezbollah military leader from 1992 until 2016. His Green mobile, on the evidence the Trial Chamber has received, communicated only with another Green mobile used by the accused, Mr. Ayyash, and another used by the accused, Mr. Hassan Habib Merhi. On the evidence, Mr. Ayyash's and Mr. Merhi's Green mobiles never communicated with each other.

The Trial Chamber has received evidence capable of establishing that the three were using personal mobile phones that co-located with these three Green Network mobiles. The Trial Chamber received extensive cell site expert evidence explaining how a single user, that is the same person, could be shown to be using more than one mobile based upon examining the mobiles', that is plural, calling patterns, geographical location, and the movements of the mobiles, using company call data records. This is what is known as co-location.

The pattern of call usage provides sufficient evidence that these three were using both the Green mobiles and their own personal mobiles, which in turn provides evidence from which the Trial Chamber could conclude that they were using both their personal and their network mobiles; that is, that the personal and network mobiles were co-locating.

Moreover, Mr. Merhi's Green mobile made its last call, that is, to Mr. Badreddine's Green mobile, on the 7th of February, 2005, and the other two Green mobiles, that is, Mr. Badreddine's and Mr. Ayyash's, had their last call one hour before the explosion on the 14th of February, 2005, thus providing further evidence of both their covert nature and their use in Mr. Hariri's assassination.

The next heading is "The 'Red Network'."

The Trial Chamber has also received extensive evidence about a "Red Network" of mobiles, which was used by what the Prosecution has termed the "assassination team."

This network had eight mobiles. It operated, on the evidence the Trial Chamber received, from the 4th of January, 2005, until two minutes before the attack on the 14th of February, 2005. By "the attack," we mean "the explosion." These mobiles communicated exclusively with each other. They were operating in locations where Mr. Hariri was present between the 14th of January and the 12th of February, 2005. This, on the Prosecution's evidence, provides evidence from which the Trial Chamber could conclude that he was under surveillance. The Red Network handsets were purchased separately at a shop in Tripoli, Lebanon, between the 24th of December, 2004, and the 4th of January, 2005. The SIM cards were topped up in cash in Tripoli on the 2nd of February, 2005.

The next subheading is "The 'Blue Network'."

On the evidence received, the Trial Chamber has heard that a Blue Network of 18 mobiles operated between the 18th of October 2004 and the 1st of October, 2005. Fifteen of these mobiles communicated almost exclusively with each other and were used for the surveillance of Mr. Hariri between the 18th of October, 2004 and the 14th of February, 2005. Six were also used by the assassination team who also used the Red Network mobiles. This evidence is also capable of establishing that there was a Blue Network operating in tandem with the Red Network.

The next subheading is "The 'Yellow Network'."

Another network, which has been termed the "Yellow" network, of 18 mobiles operated between 1999 and the 7th of January, 2005. Relevantly, the Trial Chamber has heard evidence capable of establishing that 13 were used between the 1st of September, 2004, and the 7th of January, 2005. The Trial Chamber has heard evidence from which it could find that four were used by Mr. Ayyash and three other members of the assassination team, who also used Red mobiles, and that only 22 per cent of their communications were not with other Yellow Network mobiles.

The Trial Chamber has heard expert evidence that could prove that the users of the Green mobile network - in other words, Mr. Badreddine through Mr. Merhi and Mr. Ayyash - controlled the other networks, including the Red assassination network team. The expert evidence was that the "communications between the three Green mobiles form an open triangle and, when viewed from a call-flow perspective, forms a calling hierarchy with Green 023 at the top." This was Mr. Badreddine's Green mobile and that evidence comes from the report of Prosecution expert Mr. John Edwards Philips.

The next subheading is "The 'Purple' group of mobiles."

Another group of mobiles, termed the "Purple Group," is alleged to have been involved in making a false claim of responsibility for the attack. These mobiles are alleged to be the personal mobiles of Mr. Merhi, Mr. Oneissi, and Mr. Sabra, and were allegedly used to communicate with each other for the purpose of coordinating the false claim of responsibility made shortly after the attack on the 14th of February, 2005.

The Trial Chamber has heard evidence from which it could – and again we underline "could" - conclude that these three numbers were the personal numbers of the three men; Purple 231 being Mr. Merhi's, Purple 095 being Mr. Oneissi's, and Purple 018 being Mr. Sabra's. The shorthand 231, 095, and 018 is of the last three numbers in each of those three mobiles. The significance of the ownership of these three mobiles is analysed later in this decision.

The next subheading is "Surveillance of Mr. Rafik Hariri before the attack" on 14th of February, 2005.

The Trial Chamber has received evidence of activity by those using the network mobiles that could prove that they were watching Mr. Hariri and his movements closely. For example, there was surveillance of the route he took between his home in Beirut, at Quraitem Palace, and his holiday villa in Faqra to the north of the capital, on the 25th and 31st of December, 2004; and again from Faqra to Quraitem Palace on the 27th, 30th, and 31st of December, 2004, and on the 1st of January 2005. And also on trips from Beirut airport on the 11th of November, 2004, and on 7th of January and again on 4th and 7th of February, 2005.

The Trial Chamber has also heard evidence of surveillance of his movements by the Red Network when Mr. Hariri visited the Higher Shiite Council on the 31st of January, 2005, when he went to the St. Georges marina on the 3rd of February, 2005, and visited the Sacre Coeur church on the 12th of February, 2005.

The Trial Chamber has also received evidence of activity by the Blue Network around Mr. Hariri's known movements on the 20th to 22nd of October, 2004; 1st to the 5th, 8th to 11th, 23rd to 26th, and 29th of November that year; and in December 2004, on the 4th, the 17th, and between the 21st and 31st. And following that, in January 2005, on the following days: 1st, 7th, 8th and 27th, and thereafter on the 1st, 2nd, 4th, 7th, and 8th of February, 2005.

Further, the Trial Chamber has also received evidence of the movement of Red Network mobiles, communicating with the Green command network - that is, the network from which the Trial Chamber could conclude that Mr. Badreddine was the overall controller – operating between the Parliament area in Beirut and along the route between there and Mr. Hariri's home at Quraitem Palace which Mr. Hariri's convoy took on Monday, the 14th of February, 2005, including, most significantly, in the vicinity of the St. Georges Hotel. This occurred on the 8th of February, 2005.

This evidence could prove that the assassination team wasrehearsing the attack that was to occur six days later. Mr. Oneissi is not alleged to have been part of the assassination team or involved in this surveillance.

The next subheading is the "False claim of responsibility for the attack."

Almost immediately after the explosion, those connected with the conspiracy contacted Reuters and Al Jazeera in Beirut to disseminate a false claim of responsibility for the attack. This particular piece of evidence appears to be uncontested. It is the identity of those who made the calls and provided the video to Al Jazeera, which it subsequently broadcast, which is disputed, not that this occurred; that is, that calls were made to Al Jazeera, nor that it broadcast the video.

The Trial Chamber has heard evidence that a video of Mr. Abu Adass claiming, falsely, responsibility for the attack was collected from a tree near the Al Jazeera headquarters at around 5.00 p.m. on the 14th of February. There is no evidence capable of proving, that the Chamber has heard, that Mr. Ahmad Abu Adass was the driver of the Canter that was involved, on the evidence the Chamber has heard, in the explosion or was in any way involved in the assassination. His DNA was not found near the crime scene and the Trial Chamber has received evidence that he could not drive.

The next subheading is "Disappearance of Mr. Ahmed Abu Adass."

The Trial Chamber has received evidence that Mr. Abu Adass was last seen by his family on the 16th of January, 2005, when he left his home, next to the Arab University Mosque in Beirut, around 7.00 a.m. in the morning. The following day, his family received a telephone call informing them that he was in Tripoli, and a second call thereafter that he was leaving for jihad in Iraq and he would not be coming home. Mr. Oneissi's pleaded role is of participating in Mr. Abu Adass's abduction and in the false claim of responsibility made on the 14th of February, 2005.

The next subheading is "Attributing Purple Mobile 095 to Mr. Oneissi."

In relation to the three so-called "Purple" mobiles, the mobile termed "Purple 095" was an Alfa pre-paid mobile number subscribed in the name Imad Ibrahim, which was also the name listed for Purple 231 which is attributed to Mr. Merhi. This could be used to show a connection between the two accused, that is, Mr. Merhi and Mr. Oneissi.

The Trial Chamber has heard evidence of Purple 095's attribution to Mr. Oneissi from at least the 9th of January, 2003, to the 16th of February, 2005, in that he was its user. The number was deactivated one month after the explosion on the 17th of March, 2005. It was not used from the 16th of February, 2005, until its deactivation by Alfa just over a month later, Alfa being the relevant Lebanese telecommunications company.

The Trial Chamber received evidence that Mr. Oneissi, who was known as Hassan Hussein Issa until 2004, was using the mobile in the relevant period. This evidence comes from a combination of personal service providers, bank applications, motor vehicle registration and sale records, and Lebanese court records show that Mr. Oneissi legally "corrected" or, in other words, changed his family name from Issa in 2004 to Oneissi.

More specifically, one text message received by Purple 095 was addressed to "Hussein." Numerous calls were made between this mobile and those belonging to Mr. Oneissi's family members. The Trial Chamber also received evidence of the geographical profile of this mobile providing evidence of its user's pattern of use, showing that almost half of the cells it was using, that is, connecting to or activating, were in the vicinity of Oneissi's residence in South Beirut. This mobile also activated relevant cells at the same time he had appointments with service providers in 2003 and 2004, meaning cells adjacent to where the service providers were located.

From this, the Trial Chamber has received sufficient evidence from which it could conclude that Mr. Oneissi was using Purple 095 during the indictment period.

The next subheading is "Contacts between the three Purple mobiles."

Of the top 30 contacts of Purple 095 between 9th of January, 2003, and 16th of February, 2005, there were 195 contacts with Mr. Merhi's Purple number, Purple Mobile 231, which was number 11 on that list, and 82 contacts with Purple 018, which is attributed to the co-accused Mr. Sabra.

The Trial Chamber has likewise received evidence from which it could conclude that Mr. Sabra was using Purple 018, which was an Alfa active line which was deactivated on the 8th of March, 2005, three weeks after its last use on the 16th of February, 2005. This evidence includes SMS messages to a person referred to as "Assad," numerous contacts with Mr. Sabra's family members, a witness statement that he was using the number, and the geographical profile of the use of that mobile.

Additionally, evidence was received that he was using two other personal mobiles with numbers ending in 546 and 657, which included relevant SMS content, witness statements, and their use with service providers and that they were on legal documents. The Trial Chamber received evidence of the co-location of these three mobiles from which it could conclude that Mr. Sabra was using them.

It has also received evidence, based upon Purple 231's co-location with other mobiles and its geographical profile, from which it could conclude that Mr. Merhi was using that particular mobile.

Turning to the subheading "The disappearance of Mr. Abu Adass."

The Trial Chamber has received evidence from which it could conclude - and again the word "could" is stressed - that the abduction of Mr. Abu Adass was an integral part of the plot to kill Mr. Hariri and on evidence it has received to plunge Lebanon into political chaos.

The Trial Chamber also has received evidence that Mr. Abu Adass was a devout Muslim who lived with his family and over a period in 2004 became increasingly religious, growing his beard and changing his clothing, as an illustration.

The personal mobiles of Mr. Oneissi and Mr. Sabra in the two months before the explosion connected with cells in the vicinity of the Arab University Mosque in Beirut. This mosque is directly next door to Mr. Abu Adass's home, where he prayed every day.

Mr. Oneissi and Mr. Sabra, according to the evidence received, used cells there first on the 22nd of December, 2004, and then on nine out of ten days between the 29th of December, 2004, and the 7th of January, 2005. These connected to cells in a cell sector called "COLA." These mobiles contacted each other every day, sharing some 37 calls.

The Trial Chamber has also received evidence that someone resembling Mr. Oneissi, calling himself "Mohammed," was approaching worshippers in the mosque, seeking instructions on how to pray during the relevant period. Mr. Abu Adass disappeared on the morning of the 16th of January, 2005, after meeting this "Mohammed." The Trial Chamber has also received evidence that Mr. Abu Adass last saw "Mr. Mohammed" in the mosque on the 7th of January, 2005.

The Trial Chamber, thus, has some evidence on which it could find - and the Trial Chamber here stresses that this is only a "could" as it is using here the relevant test under 167 - that Mohammed and Mr. Oneissi are or were the same person.

Further, on five of the six days between the 22nd of December, 2004, and 7th of January, 2005, that Mr. Oneissi's mobile used cells near the university mosque, this mobile had contact with Mr. Merhi's or Mr. Sabra's either shortly before, during, or shortly after using these cells. Mr. Sabra's personal mobile also had contact with Mr. Merhi's and Mr. Oneissi's at these times on the eight days he used the cells in the same vicinity.

The Trial Chamber has heard evidence that this coincided with the exchanges of calls between Mr. Badreddine and Mr. Merhi using their Green closed network mobiles. The Green Network contact between Mr. Badreddine and Mr. Merhi was concentrated in the four days before Mr. Abu Adass's disappearance; namely, between the 12th and 16th of January, 2005. In that period, there were three of what the Prosecution has described as "call cascades" from Mr. Badreddine through Mr. Merhi to Mr. Sabra and Oneissi, including one on the 14th of January, 2005, to Mr. Oneissi.

From all of this, the Trial Chamber has received sufficient evidence on which it could - and again we stress "could" - conclude that the conspirators, through Mr. Badreddine and Mr. Merhi, were using Mr. Oneissi and Mr. Sabra to find or locate Mr. Abu Adass and to lure him away for the purposes of making the videoed false claim of responsibility for the attack on the 14th of February, 2005.

The next subheading is "The false claim of responsibility on 14 February 2005."

Turning to what happened after the attack, the Trial Chamber has received evidence that starting from around 75 minutes after the attack, which occurred at 12.55, four calls were made from four different pay phones using the same anonymous pre-paid telecard to the offices of Al Jazeera and Reuters in Beirut falsely claiming responsibility for the attack in the name of a hitherto unknown fundamentalist group called "Victory and Jihad in Greater Syria," that is Nasra and Jihad.

Between 3 past 2.00, or 1403, and 1724 that day, there were 12 calls between Mr. Oneissi and Mr. Sabra and Mr. Merhi's mobiles. The significance of this is between the 26th of January and 1403 on the 14th of February, 2005, there had been only one other "inter-Purple" call between these three mobiles.

Further, in the morning and early afternoon of Monday, the 14th of February, 2005, that is, between 1039 and 1346, Mr. Oneissi's and Mr. Sabra's mobiles were connecting to the same cells in Dahyieh in Beirut but not to each other's mobiles. But their mobiles then moved towards the four pay phones.

Now, going into more detail, because this is the crux of the case against Mr. Oneissi and Mr. Sabra, at 1403 Mr. Merhi, using Purple 231, called Mr. Sabra. This is approximately one hour and eight minutes after the blast.

Eight minutes later, at 1411, the first call claiming responsibility for the assassination was made to Reuters from Payphone 1, which was located several kilometres south of the Al Jazeera offices in Beirut. The Trial Chamber has heard evidence that the travel of the mobiles of Mr. Sabra and Mr. Oneissi from Dahyieh in Beirut, the southern part, is consistent with them moving to the cell where the first pay phone was situated that was used to call Reuters at 1411. That was around when Mr. Merhi called Mr. Sabra.

Mr. Sabra's mobile was then connecting to a cell which was around 300 to 900 metres from Payphone 1, that is, on what is called the predicted cell server coverage on cell server coverage maps provided by the telecommunications providers Alfa and MTC Touch, meaning the area covered by a particular cell.

Then, eight minutes later, at 1418, a similar call was made to Al Jazeera, another which was a different news outlet, but from a different pay phone about 330 metres away from the first pay phone. Around 18 minutes later, at 1437, Mr. Merhi's mobile called Mr. Sabra; Mr. Sabra's and Mr. Oneissi's mobiles were then activating cells in the same cell sector. This was approximately 1 to 1.25 kilometres south of the two pay phones. Again, it's based upon the predicted cell server coverage maps. The call to Al-Jazeera from the second pay phone, on the evidence, occurred at least 10 minutes after Mr. Hariri's death had been officially announced. The significance of this means that those who were calling Al Jazeera waited until there was an official announcement of Mr. Hariri's death.

Fifty minutes later, at 1527, Al Jazeera received a call from a third pay phone located several kilometres north-west of the first two pay phones but almost a kilometre from the Al Jazeera office, instructing the Al Jazeera staff that a video cassette was in a nearby tree. The significance of this is that Mr. Oneissi's mobile was then using a cell close to the tree. Al Jazeera staff, on the evidence, tentatively then approached the tree, with one staff member texting another at 1548 that he "daren't go and get it."

Five minutes later an Al Jazeera staff member texted that he had collected the video from the tree, saying in the text: "I got it, a VHS tape." That was at 1553.

A few seconds later, significantly on the evidence, also at 1553, Mr. Merhi called Mr. Sabra for six seconds. Mr. Sabra's mobile was then using a cell near the third pay phone which had made the second call to Al Jazeera. A minute later, at 1554, Mr. Sabra called Mr. Oneissi in a 49-second call. Mr. Oneissi's mobile 095 was connecting to a cell near the tree. That was about one minute after the Al Jazeera staff member had texted back to his office that he had retrieved the VHS tape. Now, a minute after the call from Mr. Sabra to Mr. Oneissi, that was at 1555, Mr. Sabra called Mr. Merhi in a call lasting 162 seconds.

An Al Jazeera presenter, Mr. Ghassan Ben-Jeddo, testified before the Trial Chamber that he heard the voice of the person making each of the three calls, and they were different. The first caller also read a claim of responsibility which was similar in substance to what Mr. Abu Adass was saying in the video. The significance of that is the Trial Chamber could find that the caller had knowledge of the content of the video based upon the content of what the caller said in the first call.

Several minutes later and also during the next half hour, Mr. Merhi was in contact three times with Mr. Sabra, and Mr. Sabra in turn was in contact five times with Mr. Oneissi on Purple 095.

In more detail, at 1558 Mr. Oneissi called Mr. Sabra. At 4.00, Mr. Sabra called Mr. Oneissi for 8 seconds. At 4.00, Mr. Merhi called Mr. Sabra for 34 seconds. One minute later, at one past 4.00, Mr. Oneissi called Mr. Sabra. And a minute later, at 1602, Mr. Oneissi called Mr. Sabra again. Five calls were exchanged between these three Purple mobiles over that four-minute period. And, on the evidence, during this time Mr. Sabra's mobile moved towards Mr. Oneissi's, which was using a mobile near the tree near the Al Jazeera office. Their mobiles were in the same cell for the last two calls.

Thirty minutes later, at 1632, Mr. Oneissi's mobile returned to where it was in the morning in South Beirut, in the same cells as Mr. Sabra's. But by 1655, Mr. Sabra's mobile was in south-west Beirut, just north of the airport.

At 1704, Al Jazeera, having not yet broadcast the video, received another call from a fourth pay phone located in South Beirut but demanding that it broadcast the video. The same pre-paid card was made to use this fourth call. Shortly before this, Mr. Sabra's and Mr. Oneissi's mobiles were using cells close to each other south of the fourth pay phone. About ten minutes later, Mr. Sabra's mobile then called Mr. Merhi's at 1715, activating a cell near this fourth pay phone. After receiving this call, this third call from this fourth pay phone, Al Jazeera then broadcast the video featuring Mr. Abu Adass, it appears, shortly after 1715. About ten minutes after this, that is at 1724, Mr. Merhi called Mr. Sabra's mobile. This was the last time these three Purple mobiles contacted each other.

So to summarize, Al Jazeera finally broadcast the tape some three hours after the first call was made to Reuters.

To summarize this evidence, there were eight consecutive calls between the three Purple mobiles used by Mr. Merhi, Mr. Oneissi, and Mr. Sabra in the nine minutes surrounding the collection of the video from the tree. From the totality of this evidence, the Trial Chamber could conclude - again "could" is emphasized - that Mr. Oneissi was in the vicinity of the tree watching, Mr. Sabra was near the third pay phone, and that Mr. Merhi was awaiting information from the two.

This is consistent, on the evidence, with Mr. Sabra making the second call to Al Jazeera from the third pay phone, while Mr. Oneissi observed the tree to see if the Al Jazeera staff were going to retrieve the video.

They did. But, as just outlined, Al Jazeera did not immediately broadcast the video. A further call was required to achieve this.

The Trial Chamber could conclude from this that the callers to the four pay phones were acting as part of the conspiracy to target and kill Mr. Hariri, but the Trial Chamber again emphasizes and stresses that this is a finding which is made only for the purposes of its decision under Rule 167, namely, on the sufficiency of evidence on which it could convict, not on whether it is satisfied beyond reasonable doubt that Mr. Oneissi or Mr. Sabra were acting as part of the conspiracy to kill Mr. Hariri with an explosive device in a public location, or whether they were involved as accomplices to the crimes charged in Counts 6 to 9 of the indictment.

The case against the four accused, including Mr. Oneissi, is circumstantial. For a chamber to convict an accused person on circumstantial evidence, it must be convinced beyond a reasonable doubt that it is the only reasonable conclusion available. The legal test for this is set out in the ICTY Appeals Chamber judgement in the case of Prosecutor v. Delalic on the 20th of February, 2001, at paragraph 458. However, when assessing whether there is sufficient evidence to convict at the close of a Prosecution case, a chamber need only be satisfied that there is evidence on which it could - again, the word "could" is stressed - reasonably conclude such an inference and hence convict. Thus, the Chamber need not now consider alternative conclusions that may be inconsistent with guilt. The Trial Chamber will therefore not assess whether competing possibilities, consistent with innocence, are available.

From the combination of this evidence relating to Mr. Abu Adass's disappearance combined with the circumstances of Al Jazeera's broadcast of the video, the Trial Chamber has heard sufficient evidence from which it could find that those involved in the latter, that is, the broadcast, were also involved in the former, that is, Mr. Abu Adass's disappearance.

Moving to the next portion, which is "The specific charges against Mr. Oneissi - conspiracy under count 1."

Turning to the elements of the crime of conspiracy to commit a terrorist act, the four accused are charged under the combination of Articles 188, 212, 213, 270, and 314 of the Lebanese Criminal Code, Articles 6 and 7 of the Lebanese Law of the 11th of January, 1958, on "Increasing the penalties for sedition, civil war, and interfaith struggle" and Article 3(1)(a) of the Statute of the Special Tribunal for Lebanon.

The accused are also charged under Article 2 of the Statute of the Special Tribunal which provides jurisdiction in relation to the Lebanese substantive criminal law.

Under Article 270 of the Lebanese Criminal Code, conspiracy is an intentional crime, an agreement between two or more people to commit a felony by specific means. "Intent" under Article 188 "consists of the will to commit an offence as defined by the law."

Article 314 of the Lebanese Criminal Code, "Terrorism," specifies that "terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents."

Article 212 defines a perpetrator as "anyone who brings into being the constituent elements of an offence or who participates directly in its commission," while Article 213 states that each co-perpetrator is liable for the prescribed penalty, with a heavier penalty applicable to the organizer of the participation in the offence or the person who directs the actions of the participants.

Articles 6 and 7 of the 1958 law prescribes the penalties for participating in an act of terrorism or a conspiracy to commit an act of terrorism.

The Appeals Chamber, in its "Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging," on 16 February 2011, at paragraph 202, summarizes relevantly the elements of conspiracy aimed at committing a terrorist act as including two or more people concluding or joining an agreement "aimed at committing crimes against State Security." Here, it is a terrorist act, an agreement on the means to commit the crime, and the existence of criminal intent.

The next subheading is "The facts of the conspiracy."

The Trial Chamber has received evidence on which it could find the existence of the conspiracy and convict whoever the conspirators were who agreed to commit a terrorist act by an explosive device. Exploding the equivalent of several tonnes of TNT in downtown Beirut in the middle of the day on a weekday is undoubtedly a "terrorist act" within the definition in the Lebanese legislation. The damage to life and property is such that the Trial Chamber could be satisfied that it was a deliberate act designed to cause terror.

The Trial Chamber is thus satisfied that the elements of the offence of conspiracy are supported by evidence; namely, Mr. Hariri was a prominent political figure, the attack occurred in a busy urban area, many bystanders were either killed or injured, explosives were used, and commercial and residential buildings were damaged or destroyed.

The evidence shows that the assassination of Mr. Hariri was obviously a carefully planned and rehearsed event requiring much skill, coordination, and military precision. The place chosen to detonate the explosives was carefully selected, it appears, to maximize the impact. It was obviously intended not just to murder Mr. Hariri and whoever was with him in his convoy but whoever was in the vicinity - on the street, in buildings, or even in the port. Numerous people must have been involved in its planning and implementation. It didn't just happen. It occurred over an extended period. The crime could not have occurred without an agreement between its perpetrators to commit it.

The plan, pursuant to the agreement to assassinate Mr. Hariri in a public place with a large explosive device, occurred in many stages.

These include establishing disciplined closed mobile networks, training their users, purchasing mobile handsets and SIM cards, conducting extensive surveillance of Mr. Hariri and his convoy and his military grade explosives, purchasing the Canter, secreting the explosives on the vehicle, identifying and training the suicide driver, planning the false claim of responsibility, finding someone suitable for making the claim - namely, Mr. Abu Adass - filming the video for the false claim of responsibility, getting it to the media outlets in Beirut - namely, Reuters and Al Jazeera - and pressuring them to broadcast it, and then closing down the closed communication networks.

Only carefully selected and trusted individuals could have been permitted to participate in the operation, each with their own specific roles. The Trial Chamber has received evidence that the four accused, and the former accused Mr. Badreddine, were supporters of Hezbollah, and Mr. Badreddine was for many years a senior military leader in that organization. In 2011 Hezbollah's secretary-general described Mr. Ayyash, Mr. Oneissi, Mr. Sabra, and the then accused, Mr. Badreddine, as "honourable resistance men." That statement is in evidence. Their support or membership of the Hezbollah provides a link between the five at times material to the indictment. The Trial Chamber emphasizes that Hezbollah, of course, is not charged with criminal complicity in the indictment.

The Trial Chamber thus has sufficient evidence upon which it could find that the murder of Mr. Hariri and 21 others and the injuring of 226 additional people was "a terrorist act" within Articles 2 and 3(1) (a) of the Statute of the Special Tribunal and Articles 270 and 314 of the Lebanese Criminal Code.

Under Count 1, the four accused are charged with participating in a conspiracy with Mr. Badreddine and others aimed at committing a terrorist act to assassinate Mr. Hariri. Mr. Oneissi and Mr. Sabra are alleged to have joined the conspiracy between the 22nd of December, 2004, and the morning of the 14th of February, 2005, before the attack.

The Trial Chamber is satisfied that making the false claim of responsibility could be an important part of the conspiracy to commit a terrorist act in that it was intended to divert responsibility from the attackers to this unknown group. Conspiracies of this type require multiple actors with different roles.

There is evidence from which the Trial Chamber could conclude that Mr. Oneissi was using Purple 095, that its user was involved in the recruitment and abduction of Mr. Abu Adass - in coordination with the users of Purple 231 and Purple 018, Mr. Merhi and Mr. Sabra, that its user was involved in making the calls to Al Jazeera and Reuters in exhorting Al Jazeera to broadcast the video of Mr. Abu Adass falsely claiming responsibility for committing the attack.

The Trial Chamber is satisfied that the acts are so closely linked and the contact with Mr. Merhi so coincidental with each action that it could conclude that they could not occur by chance. The number of coincidental actions is such that the Trial Chamber has sufficient evidence from which it could convict Mr. Oneissi of his involvement in the attack on Mr. Hariri under Count 1.

The Trial Chamber stresses that it is applying the test under Rule 167 of a sufficiency of evidence for a conviction, here on circumstantial evidence, and it is not applying the test of whether the guilt of an accused has been established beyond reasonable doubt.

Specifically, in relation to Count 1, conspiracy to commit a terrorist act, the Trial Chamber has heard sufficient evidence from which it could find that Mr. Oneissi, by virtue of his actions in participating in the recruitment of Mr. Abu Adassin combination with the placing of the video in the tree and the demand that Al Jazeera broadcast it - immediately after the attack, that there is a reasonable inference available that he participated in the conspiracy knowing that it concerned the attack on Mr. Hariri - a terrorist act committed with explosives.

The reasonable inferences available that after the explosion he had to have had knowledge that he was participating in attributing a false claim of responsibility for the attack, and had to have had this knowledge before the explosion at 12.55 on the 14th of February, 2005. The evidence supporting these inferences is referred to later in this decision.

The Trial Chamber has heard evidence from which it could find that Mr. Badreddine, Mr. Ayyash, and Mr. Merhi used certain mobiles that co-located over a significant period with the three Green mobiles. This evidence is sufficient to conclude that the three were using the Green Network mobiles. The Trial Chamber has heard evidence that the Green mobiles communicated only with each other and in an apex with Mr. Badreddine at its peak communicating only with Mr. Merhi and Mr. Ayyash, but without Mr. Merhi and Mr. Ayyash communicating with each other on those mobiles. This is sufficient to establish a command structure with Mr. Badreddine at the summit. The Trial Chamber has received sufficient evidence upon which it could conclude that this was a closed criminal network.

The day following the attack, that is the 15th of February, 2005, Mr. Merhi's personal mobile Purple 231 ceased its use. One day after - on Wednesday, 16th of February, 2005, Mr. Oneissi's Purple 095 and Sabra's Purple 018 also stopped being used.

The Trial Chamber is therefore satisfied that the combination of calls and other evidence could establish that Mr. Oneissi and Mr. Sabra were involved in making the false claim of responsibility.

We turn now to "Counts 6 to 9 - accomplice to committing a terrorist act with an explosive device, intentional homicide and attempted intentional homicide with premeditation."

Mr. Oneissi is also charged - together with Mr. Merhi and Mr. Sabra - as an accomplice to the felony of committing a terrorist act by means of an explosive device (Count 6) and an accomplice to the felony of intentional homicide of Mr. Hariri with premeditation by using explosive materials (Count 7), an accomplice to the felony of intentional homicide of 21 others with premeditation by using explosive materials (Count 8) and as an accomplice to the felony of attempted intentional homicide of 226 additional people with premeditation by using explosive materials (Count 9).

The same evidence supports each count. For each count, each accused is alleged to have known that the others, as co-perpetrators, intended to on the 14th of February, 2005, and then did commit with premeditation by using explosive materials the intentional homicide of Mr. Hariri.

This Trial Chamber has received evidence from which it could conclude that the attack was premeditated, involved an explosive device, and was intended to kill Mr. Hariri and anyone else who was in the vicinity. Alternatively, it could find that those involved in the attack were aware that in exploding the device in the manner and location of its detonation that they foresaw and accepted the risk and proceeded knowing that others would also be killed.

Count 6 - which pleads the same material facts as Counts 7, 8, and 9 - of being an accomplice to the felony of committing a terrorist act by means of an explosive device - specifies that Mr. Oneissi (acting with Mr. Abu and Mr. Merhi);

(a) Between the 22nd of December 2004 and the 14th of February 2005;

(b) Knowing that others, as co-perpetrators, intended to and on the 14th of February 2005 did;

(c) Commit a terrorist act intended to cause a state of terror by means liable to create a public danger, namely by means of a large explosive device in a public place;

(d) Knowing the intent of these co-perpetrators to commit this terrorist act;

(e) Together with shared intent;

(i) each bearing individual criminal responsibility and participating as an accomplice to the terrorist act, and;

(ii) each aiding and abetting the co-perpetrators of the felony;

(f) agreed with the co-perpetrators to perform, and then performed, acts preparatory to the offence, and acts to shield the co-perpetrators and themselves from justice, which would falsely blame others in a fictional fundamentalist group - namely, participating in identifying Mr. Abu Adass and ensuring the video and attached letter of false responsibility would be broadcast.

Mr. Oneissi is charged as an accomplice under Article 219(4) and (5) of the Lebanese Criminal Code in relation to Counts 6 to 9.

An important legal issue is the knowledge that an accomplice must have of the crime to which they're accused of having accessorial liability. The question raised during the submissions is what an accomplice must know - under Lebanese law - before they can be found guilty as an accomplice. In practical terms here, it boils down to the detail of the knowledge that an accomplice must have, namely, whether they knew that the conspiracy involved killing Mr. Hariri and in what manner, whether they are legally required to know that it was to be in an explosive attack, and if so, how. In other words, what did Mr. Oneissi have to know to be an accomplice to the counts charged in the indictment. To answer this, the Trial Chamber has examined the Lebanese Criminal Code, relevant Lebanese judicial decisions, and the Appeals Chamber's interlocutory decision on the applicable law.

Article 219 of the Lebanese Code, "Accomplices and Concealers," that is in inverted commas, "Accomplishes and Concealers," specifies that the following shall be deemed to be accomplices to a felony or misdemeanour - namely, anyone who (4) "aids or abets the perpetrator in acts that are preparatory to the offence," or (5) "anyone who, having so agreed with the perpetrator or an accomplice before commission of the offence, helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice."

The Appeals Chamber, in its interlocutory decision on the applicable law at paragraphs 218 to 228, considered this issue.

The decision was made pursuant to Rule 176 bis after the Pre-Trial Judge had submitted preliminary questions of law under Rule 68(G) considered necessary to rule on confirming the indictment. At that time, no indictments against any accused had been confirmed and the Prosecutor and the head of Defence Office - and some amici curiae – made legal submissions. Their submissions diverged and the Appeals Chambers took a "mid-way" position.

For this reason, on 27 July 2017, the Trial Chamber sought any additional legal submissions from the parties. The parties – Prosecution and Defence - filed submissions on the 8th of September, 2017, in effect agreeing that the Appeals Chamber's decision set out the correct legal principles. The Prosecution helpfully filed an annex setting out its understanding of the principles of accomplice liability under Lebanese law.

However, in their legal submissions, under Rule 167, the Oneissi Defence and the Prosecution disagreed on the ambit of the Appeals Chamber's interpretation of Article 219 of the Lebanese Code. The Trial Chamber regrets that the Oneissi Defence did not file a response to the Prosecution's submissions in September of 2017 setting out any area of disagreement and has waited until the Rule 167 submissions before making these arguments.

In its interlocutory decision, the Appeals Chamber found, at paragraph 220, that under Lebanese law the subjective elements of complicity include "knowledge of the intent of the perpetrator to commit a crime." It then compared complicity under Lebanese criminal law with aiding and abetting under international criminal law, and determined that Lebanese law should be applied as it is more protective of the rights of the accused. But while it first referred to knowledge of "a crime," it then noted at paragraph 228 that a Lebanese law "generally requires an accomplice to know of the crime to be committed." The Appeals Chamber referred, especially in a number of footnotes, to Lebanese judicial decisions in support of these findings. The legal question is, therefore, whether there is an ambiguity between paragraphs 220 and 228 requiring interpretation. The Oneissi Defence submitted, orally in court on 20 and 21 February 2018 and in its written submissions (F3586, dated 27 February 2018, paragraphs 23 to 28) that the requirement is that an accomplice must have full, precise knowledge of the specific crime to be committed. For example, an accomplice would be required to know the means to be used in the execution of the crime. The Trial Chamber takes that to mean, because Defence counsel would not elaborate, that the accomplice must have known that Mr. Hariri was to be killed in a vehicular bombing.

According to the Oneissi Defence, Lebanese case law supports this position. Defence counsel relied particularly on a case in which the Lebanese Judicial Council determined that an accused who observed the booby-trapping of the car later used in an attempt to assassinate the Lebanese Defence minister, Mr. Michel Murr, in 1991 did not have the requisite knowledge as an accomplice because it could not be established that he knew the car would be used for this purpose. See case file 3/95, judgement 2/97, dated 9 May 1997.

The Prosecution disagreed and submitted, orally in court on 21 February 2018 and in its written submission (F3587, dated 27 February 2018, paragraphs 3 to 6) that the knowledge required of an accomplice is only that he or she knew that a crime was to be committed.

That is, an accomplice is not required to have full knowledge of the specific factual details of the crime to be committed. Rather, an accomplice would need to know only the nature of the crime to be committed, for example, knowledge that the perpetrator intended to commit homicide.

According to the Prosecution, the Lebanese case law cited by the Appeals Chamber establishes that an accomplice is required to know how he or she will assist the crime. The Appeals Chamber's reference to knowledge of "the crime to be committed" in paragraph 228 of its decision should not be read as to heighten the requirement for knowledge, as (i) it does not expressly state that an accomplice must know the specific factual details of the crime; (ii), the fact that the mens rea (the accomplish's intention) of complicity is compatible with the legal requirements for dolus eventualis (namely, foreseeing a risk and taking it) which makes clear that the accomplice need not know the exact factual details of the intended crime; and (iii) the Appeals Chamber's reference to knowledge of "the crime" merely summarizes its earlier assessment of Lebanese law and should not prevail.

On 21 February 2018, in court, counsel for the other accused reserved their right to make submissions on the matter.

The Trial Chamber does not consider itself necessarily bound by this interlocutory Appeals Chamber decision. The decision was made before an indictment was confirmed and before Defence counsel had been assigned to act for the indicted accused persons.

And, additionally, the Appeals Chamber was issuing what is effectively an advisory opinion to assist the Pre-Trial Judge in deciding whether to confirm the indictment against the suspects and on what charges. Nevertheless, the Trial Chamber considers that it should follow this decision unless there are persuasive reasons not to, for example, if the Appeals Chamber patently erred in law or if Lebanese law had changed between February 2011 and now.

Given the divergence of views between the Defence and Prosecution as to what is meant by paragraphs 220 and 228 of the decision and that there may be a possible ambiguity in the decision, the Trial Chamber must therefore interpret the decision for itself and, if necessary, examine the authorities relied upon by the Appeals Chamber.

The Appeals Chambers referred to knowledge of the perpetrator's intent to commit "a crime," but in that same sentence it referred to the accomplice's intent to assist the perpetrator's commission of "the crime," suggesting that the accomplice must have known of a particular crime.

It therefore appears that the Appeals Chamber found that an accomplice must have known that the perpetrator intended to commit a particular crime.

This is supported by the Appeals Chamber's finding that an accomplice may be guilty of a crime more serious than that for which they intended to give assistance in only one limited circumstance: where that more serious crime was foreseeable and where the accomplice knowingly took the risk of its commission. This is what is legally known as dolus eventualis. Dolus eventualis is set out in Article 189 of the Lebanese Criminal Code, "Mental elements of offences - intent," which provides that "an offence shall be deemed to be intentional, even if the criminal consequence of the act or omission exceeds the intent of the perpetrator, if he had foreseen its occurrence and thus accepted the risk."

Apart from this explicit exception, the Appeals Chamber appears to have found that a person cannot be an accomplice to a crime more serious than that they knowingly intended to assist. In all other situations, it appears that an accused must have had knowledge of the particular crime intended by the perpetrator, coupled with the intention to assist in that particular crime.

However, it appears to the Trial Chamber, as the Appeals Chamber did not examine this particular important issue, that while an accomplice must have known of the perpetrator's intent to commit a particular crime, this does not mean that an accomplice must have known the precise factual details of the crime or its minutiae.

This position appears to be supported by some Lebanese case law cited by the Appeals Chamber. (The Trial Chamber, however, has been unable to locate some of the cases sourced in the footnotes). Further, the Trial Chamber has examined some of the cases cited by the Appeals Chamber and they do not seem to support the conclusions for which they are footnoted. The Trial Chamber has therefore attempted to examine the Lebanese case law in an attempt to find a common thread of legal reasoning.

There may be some support in the decision of the Lebanese Court of Cassation's 7th Chamber's decision of 11 January 2000 in the case of Public Prosecution and Akiki/Zgheib, which held - but in a case on civil liability - that complicity requires foreknowledge of the perpetrator's criminal act, namely, that "the accomplice must be aware of the nature of the means that he provides" and must have had "a prior agreement" with the perpetrator of the crime or other accomplices. This is a French translation of the Arabic original, which the Trial Chamber is having it rechecked for accuracy.

In that case, the accused had murdered the victim with a Kalashnikov and a 9-millimetre military handgun. The brother of the accused was apparently nearby also wielding a Kalashnikov but the evidence conflicted as to whether he had participated in the murder.

The brother was not criminally charged and the court, in determining a civil claim against him, found that "complicity implies prior knowledge of the criminal activity of the perpetrator of the crime, in other words, that the accomplice must be aware of the nature of the means that he provides with a view to the commission of the crime or the facilitation thereof on the basis of a prior agreement with the perpetrator of the crime or with the other accomplices." The court was not satisfied that the two brothers had a prior agreement on the commission of the crime or that the non-accused brother had done anything to assist the crime. The brother was held not to be liable civilly for damages.

The same Court's 3rd Chamber's decision, number 457 of the 27th of November, 2002, found that "the element of complicity to the offence requires prior agreement or intent between the perpetrator and the accomplice."

The same Court's decision, number 171 of the 2nd of July, 2003 (corrected as 2008 in the footnote 331), found that complicity requires that "a prior agreement be concluded before the actual crime is committed."

A Mount Lebanon Indictment Chamber, decision number 304 of 21 October 1993 (mistakenly cited in the Appeals Chamber decision as from 1995), found that an accessory must be aware of "his act, its consequences [and] the criminal intent of the perpetrator."

The Court of Cassation's 3rd Chamber decision number 135 of 28 June 1995 found that there was no complicity where the perpetrator hid his criminal intent from the alleged accomplice. The Lebanese Judicial Council judgement number 4, dated the 13th of July, 1996, found an accomplice liable where he had a "full awareness of the perpetrators' intent."

Two other cases referenced by the Oneissi Defence, firstly, the attempted assassination of Defence Minister Mr. Murr, referred to earlier, and the Lebanese Judicial Council judgement number 5, dated the 24th of June, 1995, involve situations in which an alleged accomplice had no knowledge of the perpetrator's criminal intent. They therefore do not assist in determining the required level of knowledge for accomplice liability.

The other case referenced by the Prosecution, again of the Court of Cassation's 3rd Chamber, in decision number 30 of 29 January 2003, found that complicity "requires an agreement with the perpetrator prior to the commission of the crime but does not require knowledge of the crime." The Trial Chamber has not had access to the full decision, only to an extract, and has some difficulty in reconciling this with the other cases cited.

To summarize, the Lebanese case law, these cases do not seem to delineate with any clarity or precision the knowledge requirement for accomplice liability under Article 219 of the Lebanese Criminal Code. The Trial Chamber, however, considers that the Appeals Chamber's interpretation, that an accomplice must have known that the perpetrator intended to commit a particular crime to prove their knowledge, is reasonable.

The Trial Chamber, therefore, follows this apparent interpretation of Article 219, while stressing that this does not mean that an accomplice must have known the precise factual details of the crime, such as that a suicide bomber would drive a vehicle loaded with a particular type of explosive into a convoy at a particular location.

The Trial Chamber is making this determination for the purposes of its decision under Rule 167. If necessary, it can revisit the issue and receive fuller submissions from the parties in their final trial briefs and submissions. The Trial Chamber does not believe that this will cause any prejudice to the Defence or Prosecution as it will involve only a legal submission rather than calling evidence.

The Trial Chamber, therefore, finds, for the purposes of its decision under Rule 167, that to participate in a conspiracy to kill Mr. Hariri - namely, to enter into an agreement to kill him (it is pleaded that he "concluded or joined an agreement"), Mr. Oneissi, as an indicted co-conspirator, did not have to know of the specific details of the crime.

It was sufficient that he and Mr. Sabra and Mr. Merhi were aware that they were acting pursuant to a plan to commit a terrorist act, namely, to assassinate Mr. Hariri by means of a large explosive device in a public place, thereby causing terror, and further that in so doing they were aware that others would die and be injured. They did not need to know details such as where it would be detonated, the precise location or time, or the manner of detonating it, such as on a moving or a parked vehicle.

The same holds for accomplice liability in committing a terrorist act by means of an explosive device.

Common evidence supports Counts 6 through 9, of being an accomplice to the felony of intentional homicide of Mr. Rafik Hariri with premeditation by using explosive materials, being an accomplice to the felony of intentional homicide of 21 others with premeditation by using explosive materials, and being an accomplice to the felony of attempted intentional homicide of 226 people with premeditation by using explosive materials.

In addition to the provisions of the Lebanese Criminal Code already referred to, Counts 7, 8, and 9 on the indictment refer to Articles 547 and 549(1) and (7) - intentional homicide and its increased penalty if committed in specified aggravated circumstances. Article 549 (1) refers to premeditation and Article 549(7) to "using explosive materials." Count 9 refers to Articles 200 and 201 which define "attempt" under Lebanese law. Counts 8 and 9 also refer to Article 189 "intent," which deems an offence intentional "even if the criminal consequences of the act or omission exceeds the intent of the perpetrator if he had foreseen its occurrence and thus accepted the risk," that is, dolus eventualis.

The Trial Chamber has received sufficient evidence upon which it could conclude that these acts were committed with premeditation and by using explosives and that the use of explosives meant that the perpetrators either intended or foresaw and accepted the risk that this act would kill or attempt to kill others in the vicinity of the explosion. Thus, the Trial Chamber could conclude that all elements of each offence are satisfied in respect of the perpetration of each of the crimes charged. We underline the words "in respect of the perpetration." But whether the accused would be found guilty beyond reasonable doubt of any of the counts charged is a different, and later, consideration.

Counsel for Mr. Oneissi argued that there was no direct evidence that Mr. Oneissi was part of any network, that he knew that Mr. Abu Adass was going to be used in a false claim of responsibility, or that he knew of the contents of the video, or that he had participated in its making, or that he participated in drafting the text that Mr. Abu Adass read.

They argued that even if Mr. Oneissi and Mohammed are the same person, and even if Mr. Oneissi called the Abu Adass home, and even if the two left Mr. Abu Adass's home together on the 16th of January, 2005, there is no evidence that Mr. Oneissi knew at the time why he had allegedly been asked to act in that manner.

They further submitted that the Prosecution had brought no evidence of how Mr. Oneissi and Mr. Sabra had entered into the agreement with Mr. Badreddine, Mr. Ayyash, and Mr. Merhi.

Further, there was no evidence of how Mr. Oneissi was aware of why Mr. Abu Adass was being used.

The Prosecution's response was that the evidence showed that the success of the false claim of responsibility, which was a crucial part of the plot to assassinate Mr. Hariri, could only have been realized by "knowing and intentional actions of its core accomplices, including Mr. Oneissi, in advance of the explosion." Their role, the Prosecution submitted, necessarily required "inherent and deep trust that they would perform it successfully without risk of dissemination or leak to others who may undermine its objective." It therefore follows that Mr. Oneissi must have been trusted with the ultimate objective. Mr. Oneissi and the others charged with delivering the false claim must have needed time to prepare the coordination of their movements, the timing, sequence and location of calls, et cetera, including how to react if they were questioned.

The Trial Chamber accepts these submissions for the purposes of its determination under Rule 167. Evidence of Mr. Oneissi's knowledge as an accomplice could be inferred from the totality of the circumstances. There is, thus, sufficient evidence from which the Trial Chamber couldconclude that Mr. Oneissi and Mr. Sabra and Mr. Merhi must have been aware in advance of the 14th of February, 2005, of the nature of the plot to assassinate Mr. Hariri; namely, by using an explosive device in a public place. That being the case, there is evidence on each of the elements on each of the counts charged on which the Trial Chamber could convict Mr. Oneissi.

However, whether this is the only reasonable conclusion available on the totality of the evidence, and hence whether the Trial Chamber would be satisfied of guilt beyond reasonable doubt on any of the counts charged, at the end of the case, is a different matter. The Trial Chamber could still acquit Mr. Oneissi at the end of the trial even if the Defence adduces no further evidence.

As the ICTY Jelisic Appeals Chamber judgement found at paragraph 37, and this is a direct quote:

"At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond reasonable doubt."

That also holds here. Such matters go to the strength of the evidence rather than its existence and are to be weighed in the final deliberations at the end of the case in light of the entirety of the evidence presented by the parties.

The Trial Chamber therefore finds, under Rule 167 of the Rules of Procedure and Evidence for the Special Tribunal for Lebanon, that the Prosecution has: Provided a sufficiency of evidence upon which it could convict Mr. Oneissi under Count 1 of conspiracy aimed at committing a terrorist act with the other three accused; and Counts 6 to 9, being an accomplice to, in Count 6, committing a terrorist act with an explosive device; in Count 7, intentional homicide of Mr. Rafik Hariri with premeditation by using explosive materials; in Count 8, of intentional homicide of 21 others, again with premeditation by using explosive materials; and in Count 9 of attempted intentional homicide of 226 people with premeditation, also by using explosive materials.

To conclude, counsel for Mr. Oneissi's application for his acquittal under Rule 167(A) is therefore dismissed.