



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:** 28 March 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

**DECISION PARTLY GRANTING SABRA DEFENCE APPLICATION FOR  
ADMISSION INTO EVIDENCE OF 19 EXHIBITS MARKED FOR  
IDENTIFICATION AND 50 CALL SEQUENCE TABLES**

**Office of the Prosecutor:**  
Mr Norman Farrell & Mr Nigel Povoas

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Emile Aoun, Mr Thomas Hannis &  
Mr Chad Mair

**Legal Representatives of  
Participating Victims:**  
Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Hassan Habib Merhi:**  
Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Jad Youssef Khalil

**Counsel for Mr Hussein Hassan Oneissi:**  
Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young, Mr Geoffrey Robert  
Ms Sarah Bafadhel



## **INTRODUCTION AND BACKGROUND**

1. The Prosecution case in this trial closed on 7 February 2018. In court on that day, the Trial Chamber dealt with exhibits that were still marked for identification at the end of the Prosecution's case. Of these, 19 had been tendered by the Defence for the Accused, Mr Assad Hassan Sabra, namely exhibits 5D147, 5D151, 5D153, 5D154, 5D155, 5D156, 5D162, 5D180, 5D181, 5D204, 5D206, 5D208, 5D219, 5D255, 5D279, 5D285, 5D290, 5D291 and 5D292. The Prosecution objected to their admission into evidence and the Parties agreed that written submissions were required. The Sabra Defence was to file its submissions by 15 February 2018. The Prosecution was to file its response by 2 March 2018.<sup>1</sup>

2. On 15 February 2018, counsel for Mr Sabra filed an application seeking the admission into evidence of these 19 exhibits marked for identification, five extracts of call sequence tables<sup>2</sup> to accompany one of these exhibits (5D162 MFI) and 45 call sequence tables to supplement some of these exhibits. However, the Sabra Defence requested that exhibits 5D180 MFI, 5D181 MFI and 5D219 MFI be replaced with corrected versions.<sup>3</sup> The Prosecution responded on 2 March 2018, objecting to the admission into evidence of all of these materials.<sup>4</sup> The Sabra Defence filed its reply on 12 March 2018.<sup>5</sup>

## **THE LEGAL PRINCIPLES**

3. Under Rule 154 of the Special Tribunal's Rules of Procedure and Evidence, evidence may be admitted in the form of a document or other record, consistently with Rule 149 (C) and (D). Pursuant to Rule 149 (C) and (D), a Chamber may admit any relevant evidence which it deems to have probative value; but it may exclude evidence if its probative value is

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<sup>1</sup> Two e-mails from the Trial Chamber's Senior Legal Officer to the Parties and the Legal Representatives of Participating Victims, dated 12 and 13 February 2018; STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, transcript of 7 February 2018, pp 55-58, 68-69.

<sup>2</sup> Call sequence tables present chronological sequences of calls relating to particular, or target, telephone numbers over a specified period of time, comprising relevant call data records and cell site information. See STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNIIIC and STL's Prosecution, 6 May 2015, para. 2.

<sup>3</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F3573, Sabra Defence Application for Admission into Evidence of Nineteen Documents Marked for Identification, 15 February 2018 (confidential with confidential annexes A-I) ('Sabra Defence application'), paras 1-2, 28, 32, 40, annexes A and B.

<sup>4</sup> F3590, Prosecution Response to "Sabra Defence Application for Admission into Evidence of Nineteen Documents Marked for Identification", 2 March 2018 (confidential with confidential annex) ('Prosecution response'), paras 1, 33.

<sup>5</sup> F3601, Sabra Defence Reply to Prosecution Response to "Sabra Defence Application for Admission into Evidence of Nineteen Documents Marked for Identification", 12 March 2018 (confidential) ('Sabra Defence reply').

substantially outweighed by the need to ensure a fair trial. For evidence to have some probative value a chamber must be satisfied of its *prima facie* reliability.<sup>6</sup>

4. A document or record can be tendered under Rule 154 either through a witness, or if it is not put to a witness, ‘from the bar table’. Material tendered in either way—like any other evidentiary material—must meet the basic requirements for the admission of evidence in Rule 149 (C) and (D). The evidence must therefore be relevant and probative, and its probative value must not be outweighed by its prejudicial effect. Further, the offering party must be able to demonstrate, with clarity and specificity, where and how each document or record fits into its case. Probative value, in this context, is distinct from the weight ultimately attributed to a document or record by the Chamber. Sufficient indicia of reliability are all that is required.<sup>7</sup>

5. A Party may tender a piece of evidence through a witness who is its author, or who can speak to its origins and or content or make some other positive comments about it. Evidence may also be tendered to challenge the witness’s credibility, even if the witness has no knowledge of the document and has rejected its contents. When a witness cannot comment on a document or say anything meaningful about it, a Chamber may assess that the witness cannot lay the necessary foundation for its admission.<sup>8</sup>

6. Rules 155, 156 and 158 govern the admission of witness statements, or transcripts of testimony, into evidence. Rule 155 allows written statements and transcripts to be admitted in lieu of oral testimony. Rule 156 allows the admission of written statements and transcripts in lieu of examination in chief but the witness must be available for cross-examination. Rule 158 relates to ‘unavailable’ witnesses and permits the admission of written statements, a transcript of a statement, or any other reliable record of what a witness has said.<sup>9</sup> A witness statement

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<sup>6</sup> F3537, Decision Denying Admission into Evidence of Two Call Sequence Tables Tendered by the Oneissi Defence, 26 January 2018, para. 5.

<sup>7</sup> F2793, Reasons for Decision Admitting Prosecution’s Cell Site Evidence, 26 October 2016, para. 60.

<sup>8</sup> F3571, Written Reasons for Admitting into Evidence Twenty Two Documents upon the Sabra Defence Application, 15 February 2018 (‘Decision of 15 February 2018’), para. 10; F3560, Decision Denying Sabra Defence Motions for Reconsideration and Admission of a Witness Statement into Evidence under Rule 154, and for Admission of a Witness Statement into Evidence through Mr Quentin Mugg (Witness PRH555), 7 February 2018, para. 21.

<sup>9</sup> See 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 (‘Decision of 25 September 2017’), paras 18-19.

may be tendered through a witness who is either the author of the statement or otherwise in a position to adopt or confirm its contents.<sup>10</sup>

7. The Trial Chamber has admitted documents, upon the request of the tendering Party, as ‘demonstrative evidence’, visual aids such as charts, graphs and diagrams prepared by one Party to assist the Trial Chamber—and the other Parties—in visualizing, following and hence understanding the evidence, especially in consideration of the length and complexity of the telecommunications evidence presented in this trial.<sup>11</sup> ‘Demonstrative evidence’ is useful for assisting the Trial Chamber, as a finder of fact, in establishing context among the facts presented in a case. It must of course be relevant and have some probative value, which includes *prima facie* reliability.

### **THE EVIDENCE**

8. The items tendered into evidence consist of one Lebanese Internal Security Forces (ISF) report containing statements and documents,<sup>12</sup> two lists of telephone numbers,<sup>13</sup> two charts of timing of video footage,<sup>14</sup> one list of names with descriptions,<sup>15</sup> 13 lists of calls and SMS texts between certain telephone numbers and or people during specific time periods<sup>16</sup> and, finally, 50 call sequence tables (of which five are extracts) tendered in support of some of these exhibits marked for identification.<sup>17</sup>

#### *General submissions*

9. The Prosecution argues that the Sabra Defence application failed to explain and substantiate the legal basis for tendering the 50 new items (call sequence tables or extracts thereof) after the close of the Prosecution case and before the start of the Sabra Defence case. The application did not demonstrate that any of these items were used during the Prosecution case.<sup>18</sup>

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<sup>10</sup> F3441, Decision Denying Ayyash Defence Application to Admit into Evidence Witness Statements Tendered During the Cross-Examination of Prosecution Analyst Andrew Donaldson, 30 November 2017 (‘Decision of 30 November 2017’), para. 26.

<sup>11</sup> Decision of 15 February 2018, para. 51.

<sup>12</sup> Exhibit 5D204 MFI.

<sup>13</sup> Exhibits 5D147 MFI and 5D162 MFI.

<sup>14</sup> Exhibits 5D180 MFI and 5D181 MFI.

<sup>15</sup> Exhibit 5D219 MFI.

<sup>16</sup> Exhibits 5D151, 5D153, 5D154, 5D155, 5D156, 5D206, 5D208, 5D255, 5D279, 5D285, 5D290, 5D291 and 5D292, all marked for identification.

<sup>17</sup> See Sabra Defence application, annex A, item 3, annex B, annex C, para. 1.

<sup>18</sup> Prosecution response, paras 1-2. See also Prosecution response, paras 21, 24, 26-31.

10. The Sabra Defence argues that the Prosecution misunderstands the nature, format and purpose of the 50 tendered call sequence tables or extracts of call sequence tables. Exhibit 5D162 MFI was shown to Witness PRH007, an employee of Al-Jazeera. The five extracts tendered to accompany this exhibit were not, but they provide the actual details of the contacts between his mobile and the numbers listed in the exhibit. Therefore, it is permissible for them to be tendered through this witness. The 45 call sequence tables supplement the ones that were shown to or discussed with witnesses during the Prosecution case. Though newly created, they contain the same information as was used with Prosecution witnesses. It is simply displayed in a different format which more easily allows the Trial Chamber and the Prosecution to verify their accuracy and comprehend their contents. These call sequence tables belong in the Prosecution case, as an inextricable part of the cross-examination of Prosecution witnesses under Rule 150 (I) and as they relate exclusively to the thoroughness and effectiveness of the Prosecution investigation or the reliability of Prosecution evidence.<sup>19</sup>

#### *Discussion and decision*

11. On 2 February 2018, the Trial Chamber issued a scheduling order informing the Parties that it would sit on 7 February 2018 to receive any evidence remaining in the Prosecution case, to deliver any outstanding decisions and to allow the Prosecution to formally close its case against the four Accused. The Trial Chamber's intention in issuing that order was to receive any evidence that it had already decided to admit in written decisions, that was awaiting formal admission into evidence, and exhibits already marked for identification during the Prosecution case. The order was not intended to invite counsel to start submitting new material or new evidence, namely, items not already considered by the Trial Chamber or clearly incapable of consideration in terms of volume or complexity, before the Prosecution case closed. The Prosecution formally closed its case on 7 February 2018. The Trial Chamber held that the Sabra Defence application related to documents marked for identification during the Prosecution case and was therefore properly filed.<sup>20</sup>

12. However, within the Sabra Defence application, filed on 15 February 2018, the 50 call sequence tables or extracts of call sequence tables were not exhibits marked for identification

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<sup>19</sup> Sabra Defence reply, paras 3-8. *See also* Sabra Defence application, paras 35-38; Sabra Defence reply, paras 19-20.

<sup>20</sup> Decision Dismissing Four Sabra Defence Motions, Filings F3559, F3561, F3591 and F3595, and Orders to the Sabra Defence; transcript of 8 March 2018, pp 9-15, referring to F3549, Scheduling Order regarding Close of Prosecution Case and Defence Submissions under Rule 167, 2 February 2018.

during the Prosecution case. In the Sabra Defence's own submission, the five extracts of call sequence tables tendered to accompany exhibit 5D162 MFI were not shown to Witness 007. Counsel for Mr Sabra further claim that the 45 call sequence tables supplement those that were shown to or discussed with witnesses and contain the same information as was used with the witnesses. However, they do not identify when they put to any witnesses these 45 call sequence tables or the information they contain. The 50 tendered call sequence tables are therefore new evidence, improperly filed after the scheduling order to close the Prosecution case. Consequently, the Trial Chamber will not admit any of the 50 call sequence tables into evidence.

*a) ISF report containing statements and documents*

*Amended consolidated indictment and relevant court proceedings*

13. The Prosecution case is that five interconnected mobile telephone groups—four of which operated as networks—were involved in the attack on the former Lebanese Prime Minister, Mr Rafik Hariri, in Beirut on 14 February 2005. One of these networks was labelled the 'red network'. It consisted of eight mobiles used from 4 January to 14 February 2005, including one attributed to the Accused, Mr Salim Jamil Ayyash. On a day between 24 December 2004 and 4 January 2005 the mobiles were purchased separately from a shop in Tripoli—chosen to divert attention away from the perpetrators, who were not from that area. All eight were used to observe Mr Hariri or locations connected with him, and six—including that attributed to Mr Ayyash—were used for carrying out the attack. Mr Sabra and Mr Ayyash are jointly charged with participating in a conspiracy to commit a terrorist act by means of an explosive device in order to assassinate Mr Hariri.<sup>21</sup>

14. Exhibit 5D204 MFI is a 173-page report prepared by the ISF on 12 September 2005 regarding telephone numbers suspected of involvement in the assassination of Mr Hariri. Counsel for Mr Sabra discussed portions of the ISF report with Mr Saadeddine El-Ajouz (Witness PRH032), the owner and general manager of Power Group, the Lebanese mobile telephone distributor<sup>22</sup> that distributed the red network SIM cards. He testified that he had

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<sup>21</sup> F2720, Amended consolidated indictment, 12 July 2016 (confidential) ('Amended consolidated indictment'), paras 14, 15(a), 48, 51, 53-54; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1077, Annex A, Prosecution's Updated Pre-Trial Brief, dated 23 August 2013, 23 August 2013 (confidential), para. 71.

<sup>22</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 24.

spoken with an employee of Power Group about the highlighting she had applied, on a list dated 19 January 2005 that was seized from Power Group,<sup>23</sup> to the numbers corresponding to the red network SIM cards. According to Mr El-Ajouz, the ISF confiscated documents from the Power Group offices on 13 or 14 September 2005, approximately one or two months after military intelligence officers had taken the same documents from Power Group and questioned Power Group employees. Counsel for Mr Sabra noted that the English version of page 130 of the report misidentifies a statement that is in fact of Mr El-Ajouz.<sup>24</sup>

### *Submissions*

15. The Sabra Defence tenders the ISF report not for the truth of its contents but to challenge the Prosecution's investigations into the red network SIM cards and the credibility of Mr El-Ajouz's testimony. The report contains statements relating to investigations into the list of numbers dated 19 January 2005, which was seized from Power Group.

16. According to a statement of the employee of Power Group, she highlighted at the request of her supervisor Mr Majed Akhras the numbers on this list corresponding to the red network SIM cards. Although Mr Akhras denied this, she stuck by her story in all interviews contained within the ISF report. However, she later retracted it, thereby distancing Mr Akhras, a member of Ahabash,<sup>25</sup> from the distribution of the red network SIM cards. Mr El-Ajouz, who commented on significant parts of the report, conceded in his testimony that he discussed the highlighted numbers with her.

17. The Prosecution should have diligently investigated any leads as to who was involved in the supply of these SIM cards. It should have considered the reasonable possibility that Mr El-Ajouz had pressured the employee of Power Group to change her evidence. The relevant statements within the ISF report, in particular the statements discussed with Mr El-Ajouz during cross-examination, are therefore relevant to determining the extent of the investigation. The report bears sufficient indicia of reliability, as it is dated and contains signed statements taken by ISF members from interviewees who provided them voluntarily, gave their

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<sup>23</sup> Exhibit 5D203.

<sup>24</sup> Transcript of 3 September 2015, pp 5-8, 12-18, 23-28, 33-42.

<sup>25</sup> The United Nations International Independent Investigation Commission (UNIIC) identifies the Al-Ahabash organisation as 'an Islamic group active in the area of the Palestinian camps where Mr. Abu Adass had reportedly lived' and as 'a Lebanese group with strong historical ties to the Syrian authorities'; see exhibit 5D490, pp 35, 59.

identifying details, had the statements read to them in a language they understood and confirmed the truth of their contents.

18. When statements are being tendered for a purpose other than the truth of their contents, the strict requirements of Rules 155, 156 or 158 do not apply. Only by admitting into evidence the full ISF report can the Trial Chamber properly assess what information was in the possession of the Prosecution relevant to its investigation and the credibility of Mr El-Ajouz's account. Although parts of the report were read onto the record, the Trial Chamber must receive 'the Report in full as it provides the context and the exact words of the interviewees' accounts in full'.<sup>26</sup>

19. The Prosecution submits that Mr El-Ajouz was asked in cross-examination about 19 out of 173 pages of the ISF report. It contains 42 witness statements and 24 documents, some of which are already in evidence as exhibit P404. The Sabra Defence application identified eight witness statements in the report, but does not properly tender any of them under Rule 155. Five of these statements were used during Mr El-Ajouz's cross-examination and suffer from deficiencies affecting their reliability. The Sabra Defence fails to properly address the admissibility requirements for the report, which prejudices the Prosecution's ability to respond. Admission into evidence in these circumstances, with the Prosecution lacking sufficient notice of the Sabra Defence case, would prevent the Prosecution from determining whether rebuttal evidence is necessary and, if so, which rebuttal evidence to present.

20. One of the statements used during Mr El-Ajouz's cross-examination is purportedly his own. The Sabra Defence application fails to demonstrate that the statement has the requisite reliability. Co-counsel for Mr Sabra read portions of the statement onto the record and asked the witness about them, so there is no need to admit these portions. Co-counsel did not ask Mr El-Ajouz to comment upon other parts of the statement or to attest to its accuracy and truth. Further, the Sabra Defence did not tender a new translation despite identifying a 'typo' in the English translation. The other four statements used in cross-examination cannot be tendered through Mr El-Ajouz because he is not their author and could neither adopt nor confirm their contents. The Sabra Defence application does not lay the necessary foundation for the admission of these statements. It fails to address the individual relevance and *prima facie* reliability and probative value of the remaining three witness statements not used in cross-examination. One of these statements is from Mr El-Ajouz, but the Sabra Defence application

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<sup>26</sup> Sabra Defence application, paras 5-17, annex A, item 1. See Sabra Defence reply, paras 10, 12-13.



does not explain why co-counsel for Mr Sabra did not raise it with the witness in cross-examination.

21. The relevance and *prima facie* probative value of the eight statements depend on the allegation that the Prosecution failed to fulfil a purported and unsubstantiated legal obligation to investigate ‘leads’, without demonstrating an actual failure to investigate. There is no need to admit the statements into evidence to assess what was in the possession of the Prosecution, since it is not disputed that the Prosecution was aware of the statements. The Sabra Defence application does not explain how or why this affects the admitted evidence against Mr Sabra.

22. Witness statements that are not tendered for the truth of their contents still need to be tendered under Rules 155, 156 or 158. Moreover, the Sabra Defence is in fact relying on the statements for the truth of their contents, by challenging Mr El-Ajouz’s credibility, inferring that he had pressured the employee of Power Group who highlighted the numbers, and inviting the Trial Chamber to assess the content of the ISF report. The Prosecution’s preliminary view is that it may likely seek to cross-examine those—other than Mr El-Ajouz—who provided the statements, as well as the employee of Power Group. The Prosecution can form a definitive view once the Sabra Defence has disclosed its case under Rules 112 and 128.<sup>27</sup>

23. The Sabra Defence replies that the Prosecution’s objections go only to the weight that the Trial Chamber ultimately assigns to the ISF report. There is no requirement that a witness statement be raised with the witness or that he formerly adopt it under Rule 155 for it to be admitted into evidence. Otherwise, prior inconsistent statements could only be admitted if the witness concerned adopted them. The Prosecution’s argument that the Sabra Defence application does not demonstrate an actual failure to investigate is an issue for final submissions.<sup>28</sup>

#### *Discussion and decision*

24. The ISF report is dated and signed. In the absence of any reason to doubt its authenticity or its status as an official Lebanese Government document, the Trial Chamber finds that it bears sufficient indicia of reliability. The report contains a series of witness

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<sup>27</sup> Prosecution response, paras 3-12, annex A.

<sup>28</sup> Sabra Defence reply, paras 9, 11, 13.

statements.<sup>29</sup> A witness statement may be tendered through a witness who is either the author of the statement or otherwise in a position to adopt or confirm its contents.<sup>30</sup> However, witness statements that are part of a broader document may be admitted into evidence as part of that document, for purposes other than the truth of their contents.<sup>31</sup>

25. The report contains information relating to the employee of Power Group highlighting the numbers corresponding to the red network mobiles.<sup>32</sup> Mr El-Ajouz confirmed in his testimony that he had discussed this with her.<sup>33</sup> The Trial Chamber is satisfied that the Sabra Defence has established the relevance of this information. While the Prosecution does not contest that it was aware of this information at the time, admitting the report into evidence also serves the purpose of clarifying the transcript. The Trial Chamber therefore exercises its discretion to admit the report into evidence not for the truth of its contents but for the limited purpose of showing what information (whether true or false) was available to the investigators at the time. The Trial Chamber may consider the impact, if any, on the credibility of witnesses of the availability of this information when assessing it in light of the totality of the evidence.

26. Since counsel for Mr Sabra pointed to an alleged misidentification in the ISF report, resulting in a misattribution of a statement of Mr El-Ajouz, the Trial Chamber orders the Sabra Defence to seek from the Special Tribunal's Language Services Section a verification of the relevant portion of the ISF report's translation.

*b) Lists of telephone numbers*

*Amended consolidated indictment*

27. The Prosecution case is that the attack on Mr Hariri was carried out by a suicide bomber detonating a large quantity of explosives concealed in a Mitsubishi Canter (a light truck), which was purchased in cash in Tripoli on 25 January 2005. Shortly after the attack, Mr Sabra and the Accused, Mr Hussein Hassan Oneissi, acted together in disseminating statements falsely attributing responsibility for the attack to a fictional fundamentalist group. This included ensuring that a video on which Mr Ahmed Abu Adass claimed to be the suicide

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<sup>29</sup> See, similarly, F3445, Decision Partly Granting Sixth Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – The Fax, 30 November 2017 ('Decision on sixth Sabra bar table motion'), para. 35. See also Decision of 15 February 2018, paras 84, 86.

<sup>30</sup> See above, para. 6.

<sup>31</sup> Decision on sixth Sabra bar table motion, paras 34-35.

<sup>32</sup> See, e.g., exhibit 5D204 MF1, pp 38-40, 63-67, 82-85.

<sup>33</sup> See above, para. 14.

bomber was delivered to the Beirut office of the Al-Jazeera news network and ensuring that Al-Jazeera broadcast the video.<sup>34</sup> The Trial Chamber has heard evidence in this respect.<sup>35</sup>

### *Submissions*

28. The Sabra Defence tenders two lists of telephone numbers—exhibits 5D147 MFI and 5D162 MFI—for demonstrative purposes. It showed exhibit 5D147 MFI to Witness PRH063, who allegedly sold the Mitsubishi Canter, and exhibit 5D162 MFI to Witness 007, an employee of Al-Jazeera. The purpose of showing them the exhibits was to see if they recognised the numbers they contacted. Their reaction is relevant to and probative of their credibility. Without admitting the exhibits, it is impossible to understand the evidence of the witnesses. The numbers listed in exhibit 5D162 MFI are *prima facie* attributed to various individuals who would have had an apparent motive to contact Al-Jazeera to steer the investigations concerning the assassination of Mr Hariri.<sup>36</sup>

29. The Prosecution argues that the Sabra Defence application fails to demonstrate the relevance, reliability and *prima facie* probative value of exhibits 5D147 MFI and 5D162 MFI by failing to support the attribution of the numbers or explain why the alleged attribution is relevant to the case. The Sabra Defence also does not explain how the exhibits could affect the witnesses' credibility. The generic argument that they are relevant to understanding the transcript does not address the admissibility requirements. Finally, the Sabra Defence application does not demonstrate how or why a list of numbers affects the admitted evidence against Mr Sabra.<sup>37</sup>

### *Discussion and decision*

30. The Sabra Defence tenders the two lists of telephone numbers as demonstrative evidence, a characterisation which the Prosecution does not contest. Counsel for Mr Sabra showed exhibit 5D147 MFI—a list of four numbers—to Witness 063, who recognised the first number as one he used in 2005 but did not recognise the remaining numbers. It is not apparent from the transcript alone which precise number the witness used in 2005.<sup>38</sup>

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<sup>34</sup> Amended consolidated indictment, paras 4, 13, 32, 41, 44.

<sup>35</sup> See Decision on the Oneissi Defence Application for a Judgment of Acquittal under Rule 167(A); transcript of 7 March 2018, pp 3-52.

<sup>36</sup> Sabra Defence application, paras 18-23, annex A, items 2-3.

<sup>37</sup> Prosecution response, paras 1, 13-14.

<sup>38</sup> Transcript of 5 June 2015, pp 34-36.

31. Counsel for Mr Sabra showed exhibit 5D162 MFI—a list of eight numbers—to Witness 007, who did not recognise any of the numbers. According to counsel, the fourth number was regularly in contact with the witness’s producer and had been in contact with the witness often in the weeks preceding the attack on Mr Hariri. The fifth number called the witness on 5 January 2005 from a cell tower that, according to the Prosecution, was in the vicinity of the Arab University Mosque and Mr Abu Adass’s home. The sixth number called the witness on 5 and 6 January 2005 from the same cell tower. The seventh number is attributed to Mr Awwab El-Masri, a lawyer and the son of the Islamist leader Mr Ibrahim El-Masri, which exchanged two calls with the witness on 5 January 2005. Counsel appeared to suggest that the eighth number, which was in contact with the witness on 12 December 2004, was linked to Mr Jihad Moaz in Tripoli, whom the United Nations International Independent Investigation Commission (UNIIC) previously implicated in Mr Hariri’s assassination. The witness testified that it was possible that he spoke with people from religious organisations in Tripoli in that time period.<sup>39</sup>

32. Counsel also asked Witness 007 about Mr Nasser Kandil and Mr Othman Majzoub in apparent suggestion that other numbers on the exhibit 5D162 MFI list were attributed to them. The witness knew Mr Kandil, a pro-Syrian Lebanese politician. While he did not specifically recall speaking to Mr Kandil on 18 February 2005, he testified that he may have spoken with him following the attack on Mr Hariri as part of the coverage of events. The witness did not know or recall speaking with Mr Majzoub, whom he testified may have been the bodyguard of the former pro-Syrian Prime Minister, Mr Omar Karami, following the attack on Mr Hariri.<sup>40</sup>

33. Exhibit 5D147 MFI is relevant, notably, to show which number Witness 063 used in 2005. The relevance of the eight numbers contained in exhibit 5D162 MFI is not clear from the transcript, although in its application the Sabra Defence submits that they are ‘*prima facie* attributed to various individuals who would have had an apparent motive to contact Al-Jazeera employees and to steer the investigations concerning the assassination of Mr Hariri’.<sup>41</sup>

34. The basis of the Prosecution’s challenge to the reliability of the two exhibits is unclear, although it appears to be linked to the attribution of the numbers they contain. The Trial Chamber has found that the admission into evidence of call sequence tables in which

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<sup>39</sup> Transcript of 24 June 2015, pp 69-77.

<sup>40</sup> Transcript of 24 June 2015, pp 66-69.

<sup>41</sup> Sabra Defence application, para. 23.

numbers are attributed to persons requires evidence of the attribution to establish *prima facie* reliability.<sup>42</sup> However, here the exhibits are merely lists of telephone numbers, tendered for demonstrative purposes. Admitting them into evidence assists in understanding the witnesses' testimony and may assist in linking it to other evidence about the numbers in question. The Trial Chamber therefore exercises its discretion to admit into evidence exhibit 5D147 MFI as demonstrative evidence. Regarding exhibit 5D162 MFI, the Sabra Defence could have made greater efforts to carry the burden of proof of the tendering Party. Nevertheless, the Trial Chamber will also exercise its discretion to admit exhibit 5D162 MFI into evidence, for demonstrative purposes only, to provide context necessary to fully understand the testimony of Witness 007.

*c) Charts of timing of video footage*

*Amended consolidated indictment*

35. The Prosecution alleges that, in disseminating statements falsely attributing responsibility for the attack on Mr Hariri to a fictional fundamentalist group (see paragraph 27, above), Mr Sabra or Mr Oneissi made several calls to Al-Jazeera's Beirut office at specific times, using a Telecard pre-paid telephone card in different public telephone booths. In between these calls, Mr Sabra was in contact with alleged co-conspirators through his personal mobile number, which the amended consolidated indictment describes as Purple 018.<sup>43</sup>

*Submissions*

36. The Sabra Defence tenders—for demonstrative purposes only—exhibits 5D180 MFI and 5D181 MFI, which list the timing of Al-Jazeera video footage of Mr Ghassan Taher Ben Jeddo's (Witness PRH020) live report of Mr Hariri's death on 14 February 2005. They were

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<sup>42</sup> F3548, Decision on Sabra Defence Motion to Admit into Evidence Exhibits 5D171, 5D284 and 5D286 Marked for Identification, 2 February 2018, paras 21-22; F3444, Decision Partly Granting Fifth Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – The False Claim of Responsibility, 30 November 2017, paras 38-39; F3443, Decision Partly Granting Fourth Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – The Successful Recruitment of Mr Ahmed Abu Adass, 30 November 2017, paras 39-40; 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, para. 46; 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, para. 34; Decision of 25 September 2017, para. 131.

<sup>43</sup> Amended consolidated indictment, para. 44. *See also* Decision on the Oneissi Defence Application for a Judgment of Acquittal under Rule 167(A); transcript of 7 March 2018, pp 3-52.

shown to Prosecution analyst Mr Matthew Barrington (Witness PRH424) and allow the Trial Chamber to understand his evidence. The documents provide an alternative hypothesis as to the timing of the calls to Al-Jazeera claiming responsibility for the attack on Mr Hariri, which is relevant to undermining the Prosecution's case that the timing of the calls regarding the false claim of responsibility made to Al-Jazeera correspond with those made by the Telecard and implicate the user of Purple 018. Exhibits 5D180 MFI and 5D181 MFI have been amended to correct typographical errors of timing identified by the Prosecution.<sup>44</sup>

37. The Prosecution submits that amended exhibits 5D180 MFI and 5D181 MFI are not relevant and lack *prima facie* probative value. Being 'working hypotheses', they amount to unsubstantiated submissions rather than demonstrative evidence. Moreover, the amended versions cannot assist in understanding Mr Barrington's evidence as they were created after he testified. The two exhibits are not *prima facie* reliable, as there is no admitted evidence to support them. Further, the amended versions do not address all of the errors that the Prosecution previously identified and seem to include new errors.<sup>45</sup>

38. The Sabra Defence replies that the fact that a witness does not confirm an aide-memoire or that it reflects the tendering Party's position does not render it inadmissible. The Sabra Defence has corrected the errors in exhibits 5D180 MFI and 5D181 MFI and has disclosed revised versions to the Parties and the Trial Chamber.<sup>46</sup>

#### *Discussion and decision*

39. Counsel for Mr Sabra showed exhibits 5D180 MFI and 5D181 MFI to Mr Barrington and referred to them as demonstrating two distinct 'working hypotheses'. Those hypotheses are that the Al-Jazeera broadcast was a live broadcast and began at 13:47 on 14 February 2005, and alternatively that the Al-Jazeera broadcast contained a five-minute buffer and therefore began at 13:52. Under the first scenario, that the Al-Jazeera broadcast was live, Mr Ben Jeddo's appearance in the footage would have begun at 14:09.<sup>47</sup>

40. The Trial Chamber considers these charts to be submissions intended to assist its understanding of the Al-Jazeera broadcast of the assassination of Mr Hariri. The charts are

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<sup>44</sup> Sabra Defence application, paras 24-28, annex A, items 4-5.

<sup>45</sup> Prosecution response, paras 1, 15-16. The Prosecution provides as an example of a new error that, in the 'New TV footage broadcast live' column, the times jump backward between tape times 0:11 and 1:00. See Prosecution response, para. 16.

<sup>46</sup> Sabra Defence reply, paras 14-16, 18.

<sup>47</sup> Transcript of 16 July 2015, pp 108-115.

relevant to the Prosecution's case that the timing of the calls to Al-Jazeera falsely claiming responsibility correspond with those made by the Telecard. The Trial Chamber will exercise its discretion to admit them, as corrected, into evidence for the limited purpose of better understanding the Defence case. The Sabra Defence should make further submissions in its final trial brief if the Trial Chamber is to fully understand how the argument regarding the timing of the broadcast would undermine the Prosecution's case with respect to the Telecard and the mobile Purple 018.

*d) List of 35 names*

*Submissions*

41. The Sabra Defence tenders exhibit 5D219 MFI, which includes the names and basic biographical information of 35 Lebanese and Syrian individuals, for demonstrative purposes. It was circulated in court during the testimony of Prosecution analyst Ms Kei Kamei (Witness PRH308) to clarify her references to the listed individuals, which implicate those who were potentially involved in purchasing the 'red network' SIM cards (see paragraph 13, above). The Sabra Defence amended the exhibit based on objections from the Prosecution in an attempt to achieve agreement on its admission into evidence. This failed, however, as the Prosecution considered that the Defence had to provide support for the biographical information. It is unreasonable to require full references to be provided in support of the relatively uncontentious common-knowledge characterisations set out in exhibit 5D219 MFI. The admission of a demonstrative aide-memoire, which is tantamount to a submission of a Party, does not require that the underlying material has been admitted in to evidence.<sup>48</sup>

42. The Prosecution contends that the Sabra Defence application fails to demonstrate the admissibility of exhibit 5D219 MFI. The argument that it is relevant to understand Ms Kamei's testimony as she referenced the listed individuals does not meet the requirements of relevance and *prima facie* probative value. The Sabra Defence provides no submissions on the *prima facie* reliability of the exhibit, instead arguing that it was 'unreasonable to require full references'. This ignores that the tendering Party bears the evidentiary onus of establishing admissibility. The Sabra Defence also fails to specifically and clearly explain how and where the exhibit fits into its case. Since Ms Kamei was never asked about the exhibit, it is a mere submission that cannot constitute admissible evidence. Admitting it

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<sup>48</sup> Sabra Defence application, paras 29-34, annex A, item 6.

without the requisite admissibility submissions unduly prejudices the Prosecution, as explained in paragraph 19 above. Contrary to the submission that exhibit 5D219 MFI is uncontentious and based on common knowledge, the Prosecution contests the description of at least one person in it.<sup>49</sup>

43. The Sabra Defence replies that the fact that the Prosecution disputes an aide-memoire or that it was not put to a witness does not render it inadmissible. Exhibit 5D219 MFI may be admitted through Ms Kamei even though it was not shown to her because the information in the exhibit was discussed with her. If the Prosecution had raised in a timely manner its disagreement with how the exhibit describes one person, then the Sabra Defence could have accommodated the Prosecution's concern.<sup>50</sup>

#### *Discussion and decision*

44. In court on 18 November 2015, the Sabra Defence circulated exhibit 5D219 MFI, describing various individuals and providing their positions in February 2005. The Presiding Judge described it as a helpful aide-memoire containing the Defence's description of these people.<sup>51</sup> However, counsel for Mr Sabra never put the document to Ms Kamei. As such, the Sabra Defence failed to lay the necessary foundation for its admission into evidence at this stage.<sup>52</sup> The Trial Chamber therefore declines to admit exhibit 5D219 MFI into evidence.

#### *e) Lists of telephone calls and SMS texts*

#### *Submissions and relevant court proceedings*

45. The Sabra Defence tenders exhibits 5D151, 5D153, 5D154, 5D155, 5D156, 5D206, 5D208, 5D255, 5D279, 5D285, 5D290, 5D291 and 5D292, all marked for identification, for demonstrative purposes only.<sup>53</sup>

46. Witness PRH075 is the former owner of the Mitsubishi Canter (see paragraph 27, above). He was shown and commented on exhibits 5D151 MFI, 5D153 MFI, 5D154 MFI, 5D155 MFI and 5D156 MFI, which contain records of telephone contacts between him and certain people who are of interest to the Sabra Defence. When shown exhibit 5D151 MFI,

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<sup>49</sup> Prosecution response, paras 17-20.

<sup>50</sup> Sabra Defence reply, paras 14, 16-17.

<sup>51</sup> Transcript of 18 November 2015, pp 35-37.

<sup>52</sup> See above, para. 5.

<sup>53</sup> Sabra Defence application, para. 35, annex A, items 7-19.



Witness 075 confirmed that one of the numbers was his own, but did not remember or recognize any other number or name in exhibits 5D153 MFI, 5D154 MFI, 5D155 MFI and 5D156 MFI. The Sabra Defence submits that these contacts show that these individuals were in contact with persons from whom key equipment for Mr Hariri's assassination was acquired and, when taken in context, they therefore show the individuals' involvement in the attack.<sup>54</sup>

47. Witness PRH553 co-owned the shop in Tripoli from which the red network SIM cards (see paragraph 13, above) were purchased. He was shown and commented on exhibit 5D208 MFI, which contains records of telephone contacts between him and his colleague, Witness PRH568, around the time when the red network SIM cards were sold by Power Group to the shop he co-owned. When showing the exhibit to the witness, counsel for Mr Sabra suggested that two calls between Witness 568 and the Power Group salesperson in Tripoli and a subsequent call from Witness 568 to the manager of Power Group in Beirut were consistent with Witness 568 calling Power Group in Tripoli to 'see how much lines there were there, and when he can't get enough he would be in touch with the manager in Beirut to get the amount he wanted'. Counsel suggested that a call from the Power Group salesperson in Tripoli to Witness 568 was consistent with Power Group informing Witness 568 that the lines had arrived. The witness testified that Power Group Tripoli would generally call when lines had arrived. The Sabra Defence submits that the exhibit shows that Mr El-Ajouz was continuously monitoring the distribution of the SIM cards in question and, when considered in the context of the latter's involvement with Al-Ahbash, this abnormal behaviour therefore shows Al-Ahbash's involvement in the preparation of Mr Hariri's assassination.<sup>55</sup>

48. A person well-known as an informant for Syrian military intelligence arranged the arrest of Mr Abu Adass's (see paragraph 27, above) cousin, Mr Bassam Ismail, who was suspected of being involved in the assassination of the leader of Al-Ahbash (see footnote 25, above). Prosecution analyst Mr Alasdair Macleod (Witness PRH486) was shown and commented on exhibit 5D255 MFI, which contains records of telephone contacts, on the day of this arrest, between the person well-known as an informant for Syrian military intelligence and an estranged relative of Mr Abu Adass. When shown the exhibit, the witness recognised most of the listed names, including that of a person whom he recalled interviewing. The Sabra Defence submits that this exhibit shows that Al-Ahbash had a motive for selecting and recruiting Mr Abu Adass for a mission costing his life (as retaliation against his cousin), and

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<sup>54</sup> Sabra Defence application, annex A, items 7-11; transcript of 16 June 2015, pp 75-100.

<sup>55</sup> Sabra Defence application, annex A, item 12; transcript of 8 September 2015, pp 93-96.

that the Syrian intelligence apparatus allowed retaliation. When taken in context, this therefore shows the role of Al-Ahbash and the Syrian intelligence apparatus in Mr Abu Adass's selection and disappearance.<sup>56</sup>

49. On 2 February 2005, near the residence of the Mousalli family, Mr Hariri's security officers confronted members of the ISF information branch who were monitoring them. Witness PRH009 was shown and commented on exhibit 5D285 MFI, which is an extract from an aide-memoire regarding this incident. It contains records of mobile contacts, on that day, between a person whom Mr Hariri's security officer identified as one of the confronted individuals and his supervisor. The exhibit shows that, in the evening of 2 February 2005, the confronted individual's mobile activated cells predicted to cover an area near the incident's location (corroborating his identification by Mr Hariri's security officer) and contacted his supervisor (corroborating Mr Hariri's security officers' observation that the confronted individuals called their supervisors at the time of the confrontation). The Sabra Defence submits that, when taken in context, this can show the role played by another person and his associates in Mr Hariri's surveillance, as part of preparations for his assassination.<sup>57</sup>

50. The calls relevant to the claim of responsibility were made from four telephone booths (see paragraphs 27 and 35, above). Mr Glenn Williams (Witness PRH583), a former Prosecution investigator, was shown and commented on exhibits 5D290 MFI, 5D291 MFI and 5D292 MFI. These contain, respectively, records of activity involving numbers which were in contact, before the 14 February 2005 attack, with some of the four telephone booths; records of telephone calls showing that various persons of interest were near the second telephone booth that could have supervised the telephone call from that booth to another individual on 8 January 2005; and records of telephone calls between various individuals, including Al-Ahbash members and persons connected with Mr Abu Adass's disappearance.<sup>58</sup>

51. When shown exhibit 5D290 MFI, Mr Williams was not aware of any of those calls, and he was familiar with only one person to whom numbers were attributed. He was not aware of anyone in 'his office' having looked through these telephone booths' call records for the days before the attack.

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<sup>56</sup> Sabra Defence application, annex A, item 13; transcript of 18 July 2016, pp 9-12.

<sup>57</sup> Sabra Defence application, annex A, item 14; see transcript of 12 October 2016, pp 43-46.

<sup>58</sup> Sabra Defence application, annex A, items 15, 17-18, annex B, items 8, 20, 30.

52. When shown exhibit 5D291 MFI, Mr Williams was not aware of any of those calls. Defence counsel for Mr Sabra suggested that, on 8 January 2005, someone called a person counsel described as Mr Abu Adass's 'religious guru' from the telephone booth that would later be used to make the first call<sup>59</sup> to Al-Jazeera regarding the claim of responsibility. The witness was also not familiar with any of the persons of interest who, according to the Alfa and MTC theoretical cell coverage maps which are also part of this exhibit, were in the vicinity of that telephone booth at the relevant time.

53. When showing exhibit 5D292 MFI to Mr Williams, counsel for Mr Sabra described two of the persons named therein as one being linked to the Al-Ahbash owner of Power Group, and the other as having been interrogated due to his connection with the suspects in the attempted assassination of Lebanese Defence Minister Mr Michel Murr. The witness had questioned these two persons, but could not recall why this line of questioning had been pursued.<sup>60</sup>

54. The Sabra Defence submits that, taken in context, exhibit 5D290 MFI supports the hypothesis that use of the telephone booths for the claim of responsibility was rehearsed before the attack and shows Al-Ahbash's involvement in preparing the assassination. Exhibit 5D291 MFI supports the hypothesis that Mr Abu Adass's disappearance was planned as part of the preparation for the assassination by those he thought were his friends. Finally, exhibit 5D292 MFI shows the involvement of various individuals in preparing and or disseminating the claim of responsibility.<sup>61</sup>

55. Witness PRH101, Mr Hariri's civilian bodyguard, was in direct or indirect contact with various individuals of interest, including prominent Al-Ahbash figures (see footnote 25, above), a person suspected of having provided 'the Red lines' (see paragraph 13, above), and a neighbour of Mr Abu Adass (see paragraph 27, above). He was shown and commented on exhibit 5D279 MFI, which contains records of these contacts. The exhibit includes a list of calls between the witness and a number self-attributed to someone whom counsel described as having conducted the ISF surveillance of Mr Hariri during the weeks and months before his assassination. The witness testified that he had not known this person in 2005, although the exhibit records a number of calls between them from December 2005 to December 2006. The

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<sup>59</sup> Three calls were made. See Decision on the Oneissi Defence Application for a Judgment of Acquittal under Rule 167(A); transcript of 7 March 2018, pp 3-52.

<sup>60</sup> Transcript of 29 November 2016, pp 56, 77, 81-94; transcript of 30 November 2016, pp 19-39.

<sup>61</sup> Sabra Defence application, annex A, items 15, 17-18, annex B, items 8, 20, 30.

witness explained that he had not known him personally at the time, but that his supervisor, Witness PRH277, had instructed him to contact this individual to ask for protection or ‘for things related to work following the assassination of Prime Minister Hariri’.

56. Exhibit 5D279 MFI also includes a list of calls between Witness 101 and numbers attributed to two members of Al-Ahbash, including on 16 days between 18 February and 29 July 2005. The witness explained that these two were attempting to get closer to Mr Rafik Hariri and then to Mr Saad Hariri. The Sabra Defence submits that, when taken in context, the exhibit shows the possible coordination between members of Mr Hariri’s security detail and those involved in the planning and preparation of the attack and attempts to mislead the subsequent investigation, as well as Al-Ahbash’s involvement in efforts to mislead the investigation.<sup>62</sup>

57. Mr El-Ajouz is the owner and general manager of Power Group, the distributor of the red network SIM cards (see paragraphs 13-14, above). He was shown and commented on exhibit 5D206 MFI, which shows contacts between a variety of individuals, including the witness, individuals potentially implicated in the assassination, and individuals involved in the distribution and sale of the red network SIM cards during the period when the latter were pre-activated, distributed, sold and activated. When shown the exhibit, the witness could not recall what was said in the calls to which he was a party, denied knowing several of the people of interest, and denied the existence of the operation suggested by Defence counsel. The Sabra Defence submits that, taken in context, it can be used to show the involvement of Al-Ahbash members and pro-Syrian politicians in the preparation of the assassination and subsequent investigation, in particular regarding the acquisition of the red network SIM cards in an effort to mislead the investigation into the attack.<sup>63</sup>

58. The Prosecution argues that these exhibits are inadmissible due to a lack of relevance and *prima facie* reliability and probative value. Many of them are inadmissible because they contain unsourced, alleged attributions. All of the Sabra Defence’s arguments on relevance and probative value are speculative. The fact that the exhibits were shown to witnesses in

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<sup>62</sup> Sabra Defence application, annex A, item 16, annex B, items 17, 28, 32-35; transcript of 7 October 2016, pp 63-65, 74-79, 83-89.

<sup>63</sup> Sabra Defence application, annex A, item 19, annex B, items 2-4, 6-7, 15, 17-18, 23-24, 36-37; transcript of 3 September 2015, pp 57, 62, 66-82.

cross-examination does not suffice to make them relevant, particularly where the witnesses' comments on them indicate that they lack probative value.<sup>64</sup>

### *Discussion and decision*

59. The Trial Chamber considers the 13 aide-memoires demonstrative evidence intended to assist its understanding of the Sabra Defence case. They may also assist the Trial Chamber in understanding the transcript, including by linking them to other evidence and to assessing the weight to be given to the testimony of the witnesses who were shown and commented on them. The Trial Chamber will therefore exercise its discretion to admit them into evidence for these limited purposes.

60. The Trial Chamber has rejected the Sabra Defence's application to admit into evidence the call sequence tables on which it relied for the aide-memoires' relevance and probative value.<sup>65</sup> However, this does not bar the aide-memoires from being admitted into evidence, as documents that support the admissibility of the tendered evidence need not themselves be admitted into evidence.<sup>66</sup> Similarly, the admission of the aide-memoires does not depend on the attribution of the various telephone numbers they contain. Of course, admitted evidence would need to be sufficiently reliable without the supporting documents also being in evidence. Here, the aide-memoires are admitted into evidence for the limited purposes noted above and not as evidence of the actual telephone attributions or telephone contacts they contain.

## **CONFIDENTIALITY**

### *Submissions*

61. The Sabra Defence filed the application and its annexes confidentially as they include reference to the identity of third party individuals as well as complete telephone numbers. The Sabra Defence will file public redacted versions in due course.<sup>67</sup> The Sabra Defence also filed its reply confidentially.

62. The Prosecution filed the response and its annex confidentially because they refer to telephone numbers and identifying information of witnesses and third parties. The

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<sup>64</sup> Prosecution response, paras 21-23, 25.

<sup>65</sup> See above, paras 11-12.

<sup>66</sup> Decision of 15 February 2018, para. 35.

<sup>67</sup> Sabra Defence application, para. 39.

Prosecution will file a public redacted version of the response in due course. It requests that the Trial Chamber maintain the confidentiality of the annex to the response until it decides otherwise, either upon motion of the Prosecution or after having given the Prosecution the opportunity to be heard on the issue.<sup>68</sup>

### *Discussion and decision*

63. The proceedings are in principle public. The Sabra Defence should file public redacted versions of its application and its annexes (F3573) and its reply (F3601). The Prosecution should file a public redacted version of its response to the Sabra Defence application (F3590).

64. Annex A to the Prosecution's response contains the names of witnesses and third parties. It is not clear to the Trial Chamber why the Prosecution would not be ready at present to file a public redacted version of this annex. However, the Prosecution's response adequately summarises the contents of annex A.<sup>69</sup> So long as these portions of the response are available in the public redacted version to be filed, the Trial Chamber is satisfied that annex A may remain confidential until further notice.

## **DISPOSITION**

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

**ORDERS** the admission into evidence under Rule 154 of the exhibits marked for identification as 5D147, 5D151, 5D153, 5D154, 5D155, 5D156, 5D162, 5D180, 5D181, 5D204, 5D206, 5D208, 5D255, 5D279, 5D285, 5D290, 5D291 and 5D292;

**DENIES** the Sabra Defence application in all other respects, including the admission into evidence of the 50 call sequence tables and of exhibit 5D219 MFI; and

**ADDITIONALLY**,

**ORDERS** the Sabra Defence to obtain, from the Special Tribunal's Language Services Section, a revised English translation of exhibit 5D204 and disclose it to the Parties and the Trial Chamber;

**ORDERS** the Sabra Defence to file public redacted versions of filing F3573, 'Sabra Defence Application for Admission into Evidence of Nineteen Documents Marked for Identification',

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<sup>68</sup> Prosecution response, para. 32.

<sup>69</sup> See Prosecution response, paras 3-4.

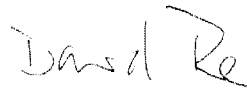
including its annexes, and filing F3601, ‘Sabra Defence Reply to Prosecution Response to “Sabra Defence Application for Admission into Evidence of Nineteen Documents Marked for Identification”’;

**ORDERS** the Prosecution to file a public redacted version of filing F3590, ‘Prosecution Response to “Sabra Defence Application for Admission into Evidence of Nineteen Documents Marked for Identification”’; and

**MAINTAINS** the confidentiality of the annex to the Prosecution response.

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

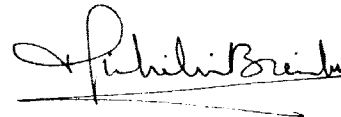
Leidschendam,  
The Netherlands  
28 March 2018



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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

