



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**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:** 22 June 2018

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

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

---

**DECISION ALLOWING THE ONEISSI DEFENCE TO ADD  
26 DOCUMENTS RELATING TO AHMED ABU ADASS  
TO ITS EXHIBIT LIST AND TO ADMIT THEM INTO EVIDENCE**

---

**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 Dorothee 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 amended consolidated indictment pleads that, on 14 February 2005, shortly after the attack that killed former Lebanese Prime Minister Mr Rafik Hariri, the Al-Jazeera news network in Beirut received a video in which Mr Ahmed Abu Adass falsely claimed responsibility for the attack on behalf of a fictional fundamentalist group called ‘Victory and Jihad in Greater Syria’. Attached to the video was a letter stating that Mr Abu Adass was the suicide bomber, but forensic examination has established that the remains of the suicide bomber recovered at the scene were not of Mr Abu Adass. The Prosecution alleges that the Accused, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, participated in identifying Mr Abu Adass as a suitable individual for the video and in his disappearance. In particular, Mr Oneissi introduced himself to Mr Abu Adass as ‘Mohammed’ at the beginning of January 2005, at the Arab University Mosque of Beirut, and asked to teach him how to pray.<sup>1</sup>

2. Counsel for Mr Oneissi now seek the Trial Chamber’s leave to amend their exhibit list, filed under Rule 128<sup>2</sup> of the Special Tribunal’s Rules of Procedure and Evidence—which they have already twice amended—by adding 28 documents related to Mr Abu Adass. These are listed in annex A to their motion as items 1-28. They also seek the admission of the documents into evidence, under Rule 154, to assist the Trial Chamber in understanding Mr Abu Adass’s social and religious background and environment. The Prosecution opposes the application. After the Oneissi Defence replied, at the Trial Chamber’s request, the Prosecution filed supplementary submissions and the Oneissi Defence clarified specific issues. The Oneissi Defence then responded to the Prosecution’s supplementary submissions and the Prosecution responded to the Oneissi Defence clarification.<sup>3</sup>

---

<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720/A01, Amended Consolidated Indictment, 12 July 2016 (confidential), paras 3 (b)-(c), 4-5, 23, 43-48 (c) (i), 64 (f) (i), 66 (f) (i), 68 (h) (i), 70 (h) (i); F1077/A01, Prosecution’s Updated Pre-Trial Brief, dated 23 August 2013, 23 August 2013 (confidential), para. 122.

<sup>2</sup> Rule 128 (ii) requires the Defence to file a list of exhibits it intends to offer in its case.

<sup>3</sup> F3659, Rule 154 Motion for the Amendment of the Rule 128 Exhibit List and for the Admission of Documents related to Mr Ahmed Abu Adass, 11 May 2018 (confidential with confidential annex A); F3673, Prosecution Response to the Oneissi Defence “Rule 154 Motion for the Amendment of the Rule 128 Exhibit List and for the Admission of Documents related to Mr Ahmed Abu Adass”, 28 May 2018 (confidential); F3678, Reply to the Prosecution’s Response to the Oneissi Defence “Rule 154 Motion for the Amendment of the Rule 128 Exhibit List and for the Admission of Documents related to Mr Ahmed Abu Adass”, 4 June 2018 (confidential); F3682, Prosecution Supplementary Submissions to “Prosecution Response to the Oneissi Defence ‘Rule 154 Motion for the Amendment of the Rule 128 Exhibit List and for the Admission of Documents related to Mr Ahmed Abu Adass’”, 7 June 2018 (confidential). *See also* emails from a Trial Chamber legal officer to the Prosecution, copying the counsel for the Defence and the Legal Representatives of Victims, 1 and 6 June 2018; transcript of 7 June 2018, pp 38-40; F3683, Oneissi Defence Clarifications further to Trial Chamber Oral Request of 7 June 2018, 8 June 2018; F3684, Oneissi Defence Response to Prosecution Supplementary Submissions of

3. Most of the documents are photographs of items seized from Mr Abu Adass's family house, on 14 February 2005, by the Lebanese Army or the Lebanese Internal Security Forces (ISF) or files extracted from the hard drive of the computer seized there. The Trial Chamber has previously admitted into evidence the Prosecution's list of 2,109 items seized at that residence.<sup>4</sup>

4. The Trial Chamber has also admitted into evidence a number of documents relating to Mr Abu Adass, including several items seized from his house.<sup>5</sup> The Oneissi Defence, however, also seeks the introduction into evidence of an expert report analysing the computer's hard drive (item 8). The report was authored by an assistant at the Computer Science and Electronics Department of the French Criminal Research Institute of the National Gendarmerie and prepared following a request for assistance from the Special Tribunal's Prosecutor to the Deputy Prosecutor of the Tribunal of First Instance in Paris on 19 November 2012.<sup>6</sup> The Prosecution disclosed the report to the Defence on 14 July 2014.<sup>7</sup> However, the Oneissi Defence has not sought to tender it under Rule 161, which governs expert reports, or to add its author to its witness list.

### **AMENDING THE ONEISSI DEFENCE EXHIBIT LIST**

#### *Submissions*

5. According to the Oneissi Defence, the 28 items are relevant and probative to the Defence case. There is good cause for seeking the amendment of its exhibit list at this stage of the proceedings, as the presentation of the Oneissi Defence evidence had not started when the Defence made its application and granting it would therefore not result in undue delay. Further, the Prosecution has already analysed most of the material, which was extracted from its holdings and listed in its inventory. The remaining material was collected from open sources.<sup>8</sup>

---

7 June 2018, 8 June 2018 (confidential); F3688, Prosecution Further Supplementary Submissions regarding "Oneissi Defence Clarifications further to Trial Chamber Oral Request of 7 June 2018", 14 June 2018.

<sup>4</sup> Exhibit P805.

<sup>5</sup> See, e.g., 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 118-123.

<sup>6</sup> Oneissi Defence motion, para. 18; Prosecution response, paras 5-6, 11.

<sup>7</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F1626, Decision on Supplementary Submissions on Documents relating to Ahmed Abu Adass Computer Hard Drive (Oneissi Defence), 23 July 2014, para. 6.

<sup>8</sup> Oneissi Defence motion, paras 3-7.

6. The Prosecution responds that the Oneissi Defence expands its case, which focused—when electing to present it—on material related to the matters of identification and to the political background of Mr Hariri’s assassination. The Oneissi Defence proposes a ‘new alternative theory’, under which Mr Abu Adass was a jihadist in the making, who was angry against Mr Hariri’s regime and apparently bears responsibility for the attack on 14 February 2005.

7. The Oneissi Defence fails to show good cause for not seeking the amendment earlier. The Prosecution provided most of the items as part of its disclosure obligations and it had no prior notice of the Oneissi Defence’s new theory.

8. With respect to the expert report, the Oneissi Defence should be directed to seek to amend its witness list to add the author, fulfil its obligations under Rule 161,<sup>9</sup> and tender the report under Rule 155.<sup>10</sup> Further, whether the author of the report qualifies as an expert may need to be tested. At this stage of the trial, the time required to consider expert evidence under Rule 161 would cause a significant delay to the proceedings.<sup>11</sup>

9. The Oneissi Defence replies that the amendments sought are in the interests of justice and that the Trial Chamber authorised the Prosecution to amend its witness and exhibit lists numerous times. The evidence tendered in relation to Mr Abu Adass merely challenges his alleged personality, background and character as portrayed by the Prosecution, which is relevant to demonstrate that the story of him being a naïve character recruited on fallacious pretext cannot be established beyond reasonable doubt.<sup>12</sup>

### *Discussion and decision*

10. The Trial Chamber has consistently held that it may, in the interests of justice, allow a Party to amend its witness and exhibit lists. The evidence to be added must be *prima facie* relevant and probative. The Trial Chamber may consider, among other factors: (i) whether the

---

<sup>9</sup> According to Rule 161, ‘Testimony of expert witnesses’, the full statement of any expert witness to be called by a Party shall be disclosed to the opposing Party and to the participating victims within the time limit prescribed by the Pre-Trial Judge or Trial Chamber. Within thirty days of disclosure of the statement of an expert witness to be called by a Party, or such other time prescribed by the Pre-Trial Judge or the Trial Chamber, the opposing Party shall file a notice indicating whether: (i) it accepts the expert witness statement; (ii) it wishes to cross-examine the expert witness; or (iii) it challenges the qualification of the witness as an expert or the relevance of all or parts of the report and, if so, which parts.

<sup>10</sup> Rule 155 allows written statements and transcripts to be admitted in lieu of oral testimony. The evidence must go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. The Trial Chamber decides, after hearing the Parties, whether to require the witness to appear for cross-examination.

<sup>11</sup> Prosecution response, paras 2, 4-6, 11.

<sup>12</sup> Oneissi Defence reply, paras 3-4, 6.

Party has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.<sup>13</sup>

11. On 7 March 2018, the Oneissi Defence filed its first exhibit list. On 8 March, it filed an updated version—with the addition of new exhibits—and on 7 May it filed a second updated version, together with an application seeking to amend its exhibit list.<sup>14</sup> Counsel for Mr Oneissi now seek a new amendment to their exhibit list, which—if granted—would result in the filing of their fourth exhibit list.

12. The Trial Chamber has carefully reviewed the exhibits proposed for addition to the exhibit list. Most of them—26 out of 28—are *prima facie* relevant and probative, as explained in more detail below. With a few exceptions, they were disclosed by the Prosecution. While claiming that the Oneissi Defence proposes a ‘new alternative theory’, the Prosecution has not argued that adding the exhibits will be burdensome or delay the proceedings, with the exception of the delay related to the re-tendering of one item—the expert report—under Rules 155 and 161. Further, the Trial Chamber has previously admitted into evidence several documents proposed by the Sabra Defence to demonstrate that Mr Abu Adass had an interest in extremist views.<sup>15</sup>

13. The combination of these circumstances satisfies the Trial Chamber that adding the documents it finds *prima facie* relevant and probative to the Oneissi Defence exhibit list will neither delay the proceedings nor prejudice the Prosecution’s preparation. Therefore, while the Oneissi Defence has not shown good cause for not seeking this amendment earlier, the Trial Chamber—having balanced the Defence’s right to present the available evidence with the Prosecution’s rights to have adequate time to prepare for it—is satisfied that it is in the interests of justice to allow the Oneissi Defence to add items 1, 3 to 7, and 9 to 28 of annex A

---

<sup>13</sup> F3106, Decision Allowing the Prosecution to Add to Its Exhibit List a Statement by Mr Andrew Donaldson (Witness PRH230), 28 April 2017, para. 18; Decision Allowing the Oneissi Defence to Amend its Witness and Exhibit Lists and Admitting into Evidence Ten Witness Statements and Material Relied upon in Professor Sporer’s Expert Report, delivered in court on 14 May 2018, transcript of 14 May 2018, pp 5-10. *See also* ICTY, *Prosecutor v. Gotovina*, IT-06-90-T, Decision on Čermak Defence’s Second and Third Motions to Add a Witness to Its Rule 65 *ter* (G) Witness List, 22 September 2009, para. 7.

<sup>14</sup> F3596/A02, Annex B to Defence for Hussein Hassan Oneissi Submission pursuant to the Trial Chamber’s Scheduling Order of 23 February 2018, 7 March 2018 (confidential); F3596/A02, Updated Annex B to Defence for Hussein Hassan Oneissi Submission pursuant to the Trial Chamber’s Scheduling Order of 23 February 2018, 8 March 2018 (confidential); F3650/A06, Annex F to the Defence for Hussein Hassan Oneissi Request for Amendments to the Rule 128 Witness and Exhibit Lists and for the Admission of Documents Used by DHO-001, 7 May 2008 (confidential).

<sup>15</sup> *See, e.g.*, exhibits 5D483, 5D484, 5D485, 5D485.1, 5D485.2, 5D485.3, 5D485.4, 5D485.5, 5D485.6, admitted in Decision of 25 September 2017 (*see* paras 118-123 and disposition).

to the exhibit list, as they are relevant and probative. These are listed in the disposition to this decision.

*Adding an expert report to the exhibit list (item 8 in annex A)*

14. The proposed addition of the expert report to the Oneissi Defence exhibit list would necessarily entail an amendment to its witness list, to add the report's author—which the Oneissi Defence did not seek. The Trial Chamber will not permit the Oneissi Defence to add an additional witness—here, an expert whose report it has had for almost four years, since July 2014—in the closing week of receiving evidence in the trial.

15. The Trial Chamber regrets that the Oneissi Defence did not include the report in its exhibit list—or include the report's author in its witness list—when it elected to present its case in early March 2018. It was only two months later, and without explaining this omission—and after already having twice amended its exhibit list—that it sought to add the report to its exhibit list. This was on the eve of the commencement of the Oneissi Defence case in court—which consisted of only two witnesses—and permitting such a late and unexplained amendment now, which in reality would be to its witness list, will further delay completing the evidence.

16. Item 8 is titled as an 'expert report' and involves technical analysis. Rule 161 sets out a procedural regime for disclosing expert evidence, which includes giving the opposing parties thirty days to file a notice stating whether they accept the evidence, wish to cross-examine the witness or challenge the witness's qualifications or the relevance of the evidence. Here, the Oneissi Defence has attempted to bypass the Rule, first by tendering it under Rule 154, which applies to documents, rather than expert reports and has no internal time deadlines for responses, and second by not adding the report's author to its witness list. The Oneissi Defence has not responded to the Prosecution's criticism of this approach.

17. The Trial Chamber, in an attempt to ascertain whether the Prosecution disputed the relevance or probative value of the report if correctly tendered under Rule 161 asked the Prosecution to inform it of its attitude to the report and its author. The response was in the affirmative.

18. The Oneissi Defence submits that the report concludes that 'the system contains traces of navigation, indicating access to the internet'. Therefore, the report—in combination with receipts for internet subscriptions seized at Mr Abu Adass's home and the downloaded files

found on his computer—demonstrates that the computer was connected to the internet. This assists in challenging the credibility of Prosecution witnesses who stated that Mr Abu Adass did not have internet access.<sup>16</sup>

19. The Prosecution, however, responded that the report did not actually find that the computer had been connected to the internet, and that there is a discrepancy between the translation of the French original of the report and the quote used by the Oneissi Defence, which is not in the report. The report concluded that ‘tracks of navigation on Internet Explorer were found’ on the computer’s hard drive but this is not the result of an analysis of whether the computer was connected to the internet but rather relates to a different request, concerning the search for ‘tracks of internet navigation, emails or instant messaging’. Internet Explorer can access both the internet and internal local files and the report found no ‘tracks of emails or instant messaging’. The relevant material could have been saved or uploaded onto the computer’s hard drive without accessing the internet. Further, the Oneissi Defence also relies on evidence from a witness whose credibility it attempts to challenge through the proposed documentary evidence.<sup>17</sup>

20. The Oneissi Defence replies that the Prosecution submissions are based on a selective or incomplete reading of the report. The report concludes that ‘tracks of internet navigation using Internet Explorer on the system were extracted’,<sup>18</sup> which is relevant to the question of whether Mr Abu Adass’s computer was connected to the internet.<sup>19</sup>

21. Under Rule 149 (C), a Chamber may admit any relevant evidence which it deems to have probative value. Evidence may be relevant and of probative value if it may affect the credibility of a witness.<sup>20</sup> Here, the report may relate to the credibility of Prosecution witnesses and go to prove that Mr Abu Adass’s computer had been connected to the internet. While the expert report is relevant to this issue, it is not probative of it. Given its technical nature, and of the Prosecution’s reasoned objections—which also go to its probative value—the Trial Chamber would require the author to testify to understand whether the report is

---

<sup>16</sup> Oneissi Defence motion, paras 18-21.

<sup>17</sup> Prosecution response, paras 10-13; Prosecution supplementary submissions, paras 7-10.

<sup>18</sup> Oneissi Defence response to Prosecution supplementary submissions, para. 4; annex A to the Oneissi Defence motion, item 8, p. 17.

<sup>19</sup> Oneissi Defence response to Prosecution supplementary submissions, paras 4-5.

<sup>20</sup> ICTY, *Prosecutor v. Kvočka*, IT-98-30/1-T, Decision on Defence Motion to Introduce Exhibit Evidence, 17 April 2001, p. 3; ICTR, *Prosecutor v. Karemera*, ICTR-98-44-T, Decision on Oral Motions by Edouard Karemera and the Prosecution to Admit Certain Documents into Evidence, 29 May 2008, para. 3; ICTR, *Prosecutor v. Bizimungu*, ICTR-99-50-T, Decision on Justin Mugenzi’s Motion to Admit Transcript Extracts of General Romeo Dallaire’s Evidence in the *Ndindiliyimana* Proceedings, 4 November 2008, para. 20.

probative of Mr Abu Adass's computer's connection to the internet, to assess the weight, if any, it should be given, and, therefore, to understand whether it may affect the credibility of any witness.

22. For these reasons the Trial Chamber would not admit the report into evidence without calling the expert to testify and will not permit the Oneissi Defence to amend its exhibit list to add item 8. Given the advanced stage of the proceedings and that the Oneissi Defence has neither sought to tender the report as that of an expert, nor to call him as one, the Trial Chamber is of the view that the interests of justice do not require it to attempt to hear this evidence at this late stage. Adding the expert's name to the witness list now would only unnecessarily further delay the proceedings.

### THE EVIDENCE

23. For admission into evidence, material tendered 'from the bar table' must be relevant and probative, and its probative value must not be outweighed by the need to ensure a fair trial.<sup>21</sup> Only *prima facie*—rather than definite—reliability, and hence probative value is required at this stage.<sup>22</sup> Probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document or record. The tendering party must also demonstrate with clarity and specificity where and how each document or record fits into its case.<sup>23</sup>

24. The Oneissi Defence submits that the documents are relevant to prove that (a) Mr Abu Adass was a Palestinian refugee suffering from social exclusion in Lebanon; (b) his computer was connected to the internet; (c) he was influenced by the ideologies of violent extremist groups; (d) his religious ideology and that of a relative evolved towards Salafism; and (e) this is not a unique pattern of conduct in the Middle East. The Oneissi Defence argues that while a particular witness may have been able to further establish the documents' relevance and

---

<sup>21</sup> F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015 ('Decision of 6 March 2015'), para. 33; F1781, Corrected Version of "Decision on Prosecution Motion to Admit into Evidence Geographic Documents" of 8 December 2014, 10 December 2014, para. 4.

<sup>22</sup> Decision of 6 March 2015, para. 33; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014 ('Decision of 28 January 2014'), para. 7; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra* F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014 ('Decision of 13 January 2014'), para. 8.

<sup>23</sup> Decision of 6 March 2015, para. 33; Decision of 28 January 2014, para. 7; Decision of 13 January 2014, paras 4-6.



probative value, it was unable to show the documents to this witness as their evidence was admitted in written form rather than in person.<sup>24</sup>

25. According to the Prosecution, the documents are inadmissible for lacking the requisite relevance and probative value.<sup>25</sup>

*(a) Items establishing that Mr Abu Adass was a Palestinian refugee suffering from social exclusion in Lebanon (items 1-3 in annex A)*

#### *Submissions*

26. The Oneissi Defence seeks the admission of (i) a photograph of Mr Abu Adass's identity card, dated 15 April 2002, proving that Mr Abu Adass was a Palestinian registered as a refugee in Lebanon, which was extracted from photographs of items seized from Mr Abu Adass's house by the Lebanese Army (item 1); (ii) a document showing four maps of Palestine entitled 'Disappearing Palestine', which are publicly available on a website (item 2); and (iii) a letter from the Lebanese Ministry of Justice to the Public Notary of Beirut on the interpretation of Lebanese Law 296 of 2001 on the acquisition of real estate rights by foreigners in Lebanon in relation to Palestinians (item 3).<sup>26</sup>

27. The documents are relevant to establish that, as a Palestinian refugee, Mr Abu Adass was stateless and faced discrimination, including in relation to the right to own property in Lebanon. They assist in demonstrating Mr Abu Adass's susceptibility to the ideologies of violent extremist groups and his anger towards Rafik Hariri's regime.<sup>27</sup>

28. The Prosecution responds that the Oneissi Defence's argument is pure speculation. The Oneissi Defence does not provide any foundation to establish a link between the maps or the letter from the Ministry of Justice and Mr Abu Adass. Nothing suggests that the modification of Palestine's borders or the interpretation of Law 296 had any influence on Mr Abu Adass's political views or feelings towards Mr Hariri. None of the three documents can demonstrate that Mr Abu Adass had a propensity to violence as a result of social exclusion.<sup>28</sup>

---

<sup>24</sup> Oneissi Defence motion, para. 10; Oneissi Defence reply, paras 9-10.

<sup>25</sup> Prosecution response, paras 15, 18; Prosecution Further Supplementary Submissions, paras 7-8.

<sup>26</sup> Oneissi Defence motion, paras 12-15; annex A, items 1-3.

<sup>27</sup> Oneissi Defence motion, para. 16.

<sup>28</sup> Prosecution response, paras 8-9.

*Discussion and decision*

29. The Oneissi Defence's submissions relate to the general situation of Palestinian refugees in Lebanon and do not demonstrate Mr Abu Adass's political views or his alleged propensity to violence. The Oneissi Defence has therefore failed to establish the documents' probative value in relation to Mr Abu Adass and, therefore, to its case. The Trial Chamber will, however, admit into evidence Mr Abu Adass's identity card as relevant to his civil status. It will also admit the letter from the Lebanese Ministry of Justice as it provides contextual information, despite the Oneissi Defence's failure to establish any link between this letter and any political view Mr Abu Adass may have had. The identity card was issued by the Lebanese Ministry of Interior, Directorate General of Palestinian Refugees Affairs and the letter bears the stamp of the Director General of the Ministry of Justice. They are *prima facie* reliable, have some probative value and the Trial Chamber will admit them into evidence.

*(b) Items establishing that Mr Abu Adass's computer was connected to the internet (items 4-7 in annex A)*

*Submissions*

30. The Oneissi Defence seeks the admission of four photographs of receipts of payment for internet subscriptions dated between 1 January 2001 and 1 January 2005, extracted from photographs of items seized from Mr Abu Adass's house by the Lebanese Army (items 4-7). In connection with the report on the analysis of Mr Abu Adass's computer's hard disk, the receipts for internet subscription assist in demonstrating that Mr Abu Adass's computer was connected to the internet. This evidence assists in challenging the credibility of Prosecution witnesses, including Mr Ziad Ramadan (Witness PRH103), who stated that Mr Abu Adass did not have internet access. As the Trial Chamber admitted the evidence of those witnesses under Rule 158,<sup>29</sup> this evidence is the only way the Defence can establish their lack of credibility.<sup>30</sup>

31. The Prosecution responds that the receipts lack the necessary relevance and probative value. They contain no information showing that the subscription related to the computer

---

<sup>29</sup> Rule 158 allows the Trial Chamber to receive into evidence a written statement (or any other reliable record) of a person who is, for good reason, unavailable to testify

<sup>30</sup> Oneissi Defence motion, paras 18-21; annex A, items 4-7.

seized and therefore cannot demonstrate that Mr Abu Adass's computer was connected to the internet.<sup>31</sup>

### *Discussion and decision*

32. The photographs of receipts of payment are listed in the Prosecution's inventory of items seized at Mr Abu Adass's residence (exhibit P805). In a decision of 11 April 2016, the Trial Chamber found this list and supporting documents relevant to and probative of the chain of custody of the items seized at Mr Abu Adass's residence.<sup>32</sup> Further, the Prosecution does not challenge the documents' reliability. The receipts are partly handwritten and partly printed or stamped, including the name of the apparent shop or service provider. The documents are *prima facie* reliable.

33. The receipts reference 'internet subscription'<sup>33</sup> and list 'the Taysir family/ Mr' under 'received from'. Mr Taysir Abu Adass was Mr Ahmed Abu Adass's father.<sup>34</sup> The documents are relevant and probative to challenge the credibility of those witnesses who declared that Mr Ahmed Abu Adass did not have internet access. The Trial Chamber, therefore, finds them admissible. They do not necessarily demonstrate that the subscriptions were for the computer seized at Mr Abu Adass's home, but this goes to the weight the Trial Chamber may give them.

*(c) Items establishing Mr Abu Adass's connection to the ideologies of violent extremist groups (items 9-24 in annex A)*

### *Submissions*

34. The Oneissi Defence seeks the admission into evidence of (i) extracts from a book on 'the science of social and political negotiations' (item 9); (ii) photographs of audiotapes (cassettes) by two people the Oneissi Defence alleges are a high-ranking Al Qaeda figure and a Saudi Arabian Sheikh famous for his support of Al Qaeda (items 10 to 12); and (iii) 12 documents contained in files extracted from Mr Abu Adass's computer's hard drive (items 13

---

<sup>31</sup> Prosecution response, para. 10.

<sup>32</sup> F2544, Decision on Prosecution Motion to Add Inventory and Supporting Documents relating to the Searches of the Residence of Ahmed Abu Adass, 11 April 2016, para. 7.

<sup>33</sup> In one of the receipts there is no reference to 'internet subscription', but to 'satellites' services.

<sup>34</sup> See F3614, Decision Partly Granting Seventh Sabra Defence Motion for the Admission of Documents relating to Ahmed Abu Adass – The 'Mohammed' Story, 3 April 2018, paras 61-62; F2722, Decision on Agreements as to Evidence Between Prosecution and Sabra Defence on United Nations Fact-Finding Mission and UNIII Reports, 16 September 2016, table b (2) (iii), listing among the 'facts agreed between the Prosecution and Mr Assad Hassan Sabra', that Mr Abu Adas is the son of Taysir Abu Adas.

to 24). The book and audiotapes were seized from Mr Abu Adass's residence. The Oneissi Defence points to evidence that the items seized, including books, belonged to Mr Abu Adass.<sup>35</sup>

35. The book extracts describe negotiation strategies and 'how to disguise and deceive'. According to the Oneissi Defence, they are relevant to demonstrate that Mr Abu Adass had an interest in learning such techniques and are therefore relevant to Mr Abu Adass's reasons to appear in the video claiming responsibility for the attack.<sup>36</sup>

36. The computer files contain: instructions on how to organise a jihadi group; instructions on a computer program designed to assist 'Mujahidin brothers in encrypting their messages'; portions of four Islamic religious books whose authors the Oneissi Defence describe as ideologues of jihad, jihadi-salafi scholars or leaders of Al Qaeda; eleven extracts of an online magazine, published by the Saudi branch of Al Qaeda, providing 'military and training materials'; and two extracts of an Al Qaeda pamphlet claiming responsibility for certain attacks, including the bombing in Riyadh in September 2003.<sup>37</sup>

37. The audiotapes and computer files are relevant to demonstrate that Mr Abu Adass had an interest in jihad and was susceptible to the ideologies of violent extremist groups. They could assist the Trial Chamber in understanding Mr Abu Adass's reasons for appearing in the video claiming responsibility for the attack, notably the document on the claim of responsibility for the 2003 bombing in Riyadh—given the connections between Mr Rafiki Hariri and Saudi Arabia—and the audiotapes material—in consideration of the connection between the two authors and Al Qaeda.<sup>38</sup>

38. The computer files may also assist the Trial Chamber in understanding why Mr Abu Adass 'had an interest in and access to communication and training tools provided by Al Qaeda, which could have also been used in the context of the preparation of the attack and the claim of responsibility'. Far from being the naïve and innocent victim presented by the Prosecution, Mr Abu Adass was a jihadist in the making, actively seeking the first opportunity to become a martyr. The Oneissi Defence points to the ISF's analysis relating to computer

---

<sup>35</sup> Oneissi Defence motion, para. 25, referring to exhibit 5D474; annex A, items 9-24.

<sup>36</sup> Oneissi Defence motion, paras 24, 26-27. While in several passages, the Oneissi Defence submits that it seeks the admission of the book, it follows from annex A that only five pages of the book are proposed for admission (*see* annex A, item 9).

<sup>37</sup> Oneissi Defence motion, paras 37-39.

<sup>38</sup> Oneissi Defence motion, paras 30, 33, 35-36, 49.

files—in an information brief of 14 February 2005 (exhibit P806)—and its conclusion that Mr Abu Adass ‘believes in [...] “jihadi Salafism”’.<sup>39</sup>

39. According to counsel for Mr Oneissi, Mr Ahmed Abu Adass was the only person in the family, with his sister, who could have used this computer on a regular basis. Further, he was the only person who could have searched, downloaded and saved the relevant files, as his sister was only 13 years old while he worked with computers for a living.<sup>40</sup>

40. The Prosecution responds that the extracts of the book focus on negotiations and do not contain any reference to extremist or violent ideologies or any other element that could explain Mr Abu Adass’s reasons to appear in the video. Further, the five tendered pages of the book do not provide the context of the book in its entirety.<sup>41</sup>

41. The photographs of audiotapes and certain computer files<sup>42</sup> lack relevance and probative value because the application relies principally on purported information about the authors, which is untendered, and it is not of common knowledge. Such untested information cannot be the basis to satisfy the Oneissi Defence’s burden to demonstrate the documents’ admissibility.<sup>43</sup>

42. The computer files also lack relevance and probative value because of (i) the Oneissi Defence’s selective approach in picking them from the entire content of the computer’s hard drive, without the context of the other files or how (and by whom) they were stored and used; (ii) the impermissible reliance upon opinion and analysis of unidentified members of the Lebanese authorities in exhibit P806—which was admitted for the limited purpose of listing the items seized from the Abu Adass family home.<sup>44</sup>

43. The Oneissi Defence replies that it tendered ‘the internet version’ of the book on negotiations only to provide a more readable, ‘clean’ version of its cover page and extracts for the convenience of the Trial Chamber. With regard to item 13, the Oneissi Defence submits that the path file provided is correct and relates to a video file, of which the tendered document is a screenshot. The Oneissi Defence also clarifies—in those instances where the English and Arabic versions of a tendered document differ in annex A to the application, as

---

<sup>39</sup> Oneissi Defence motion, paras 35-36, referring to exhibit P806 (at ERN L0016446).

<sup>40</sup> Oneissi Defence motion, para. 34.

<sup>41</sup> Prosecution response, para. 16.

<sup>42</sup> Items 10-12, 15-19 in annex A.

<sup>43</sup> Prosecution response, para. 19.

<sup>44</sup> Prosecution response, para. 17.

the English version is an extract of the corresponding larger Arabic document—that it is only tendering the extracts. It accordingly identifies the relevant portions in the Arabic versions.<sup>45</sup> The Prosecution initially challenged the reliability of items 9 and 13 but, after a review following the Oneissi Defence clarification, withdrew its opposition.<sup>46</sup>

### *Discussion and decision*

44. The first six items in the Prosecution’s list of the items seized at Mr Abu Adass’s residence refer to the computer found there, including its hard drive (exhibit P805). An ISF information brief of 14 February 2005—exhibit P806—provides, among other things, a list of the content found on the computer. This includes ‘a folder containing a collection of Islamic religious books by imams, religious scholars and jurists in different countries of the world’.<sup>47</sup> Also the book on negotiations and the audiotapes are listed in the inventory of the seized items (exhibit P805).<sup>48</sup>

45. The Prosecution’s list shows the relevant chain of custody and provides the items’ *prima facie* reliability as documents found at the Abu Adass family home. Further, the Prosecution has not challenged the documents’ provenance—including, after review, of items 9 (the internet version of the seized book) and 13 (the instructions for organising a jihadi group). With regard to item 9, however, while the Trial Chamber accepts the Oneissi Defence submission that the tendered version originates from the online version of the same book—which the Prosecution acknowledges—the Prosecution’s inventory of seized items mentions that one sentence in the seized book is encircled.<sup>49</sup> This passage appears to be on one of the tendered pages.<sup>50</sup> In light of this, the Trial Chamber orders the Oneissi Defence to replace the tendered pages 44 to 46 (from the online version of the book) with the corresponding pages in the seized book,<sup>51</sup> as such annotations are potentially relevant to understanding Mr Abu Adass’s interest in the book.

---

<sup>45</sup> In relation to items 15 and 19 to 22.

<sup>46</sup> Oneissi Defence reply, para. 11; Oneissi Defence clarifications, paras 3-4, annex B; Prosecution Further Supplementary Submissions, paras 7-8.

<sup>47</sup> See exhibit P806, at ERN L0016445.

<sup>48</sup> See exhibit P805, items 1817, 2077, 2081 and 2098.

<sup>49</sup> See exhibit P805, item 1817.

<sup>50</sup> Annex A, item 9, page 44. According to exhibit P805, the encircled passage is on page 62 of the seized book. See also Prosecution Further Supplementary Submissions, para. 7.

<sup>51</sup> As the Prosecution notes, the page numbers are different. See Prosecution Further Supplementary Submissions, para. 7.

46. The apparent contention that the extracts from the book on ‘the science of social and political negotiations’ are relevant to and probative of Mr Abu Adass’s connection with ideologies of violent or extremist groups<sup>52</sup> is speculative. The extracts, as proposed, concern negotiation strategies, including setting time limits to offers and giving an opponent a false impression. It is not clear whether the Oneissi Defence intends to argue that Mr Abu Adass deliberately provided false information in the video claiming responsibility for the attack.

47. In adversarial proceedings—like those at the Special Tribunal—the Parties bear the evidentiary onus of establishing the relevance and probative value of any documents they seek to tender into evidence. Pointing to these passages is not sufficient to explain or substantiate the document’s relevance to or probative value of Mr Abu Adass’s reasons to appear in the video. However, as the Oneissi Defence also submits that this document may assist in understanding Mr Abu Adass’s profile, the Trial Chamber exercises its discretion to admit it as probative for this purpose and will determine at a later stage what weight, if any, it may be given.

48. As to the audiotapes, the Oneissi Defence only tenders their photographs, with the titles and authors either handwritten on the audiocassette or printed on the cover. While it relies on the identity of the audiotapes’ speakers or authors in support of the items’ relevance and probative value, the absence of information is relevant to the weight the Trial Chamber could give to them. The Trial Chamber has already admitted into evidence, upon the Sabra Defence’s application, the transcript of a sermon contained in one of the audiocassettes,<sup>53</sup> where the author praised the spirit of jihad and terrorism against the West.<sup>54</sup> The Trial Chamber exercises its discretion to admit the items as relevant to and potentially probative of Mr Abu Adass’s profile. Notably, one complements material already in evidence.

49. As to the documents contained in computer files, the Trial Chamber has received evidence that the computer found at Mr Ahmed Abu Adass’s residence was his.<sup>55</sup> The proposed documents, based on their contents, can be relevant to and probative of Mr Abu Adass’s profile, religious and ideological beliefs, views and motivations for participating in the video claiming responsibility for the attack. Arguments relating to the lack of supporting material on the authors of some of the documents go to the weight they may be given at a later

---

<sup>52</sup> See Oneissi Defence motion, para. 24, p. 7, under the heading ‘Items relevant to establishing [Ahmed Abu Adass] connection with the ideologies of violent extremist groups’.

<sup>53</sup> Item 11 is a photograph of the same audiocassette.

<sup>54</sup> Exhibit 5D488.

<sup>55</sup> Exhibits 5D512, p. 5; P2131, p. 3.

stage. The Trial Chamber has already admitted into evidence, upon the Sabra Defence's application, extracts from Islamic religious books and booklets, audio files and transcripts of Islamic religious sermons or lectures which were seized from Mr Abu Adass's home.<sup>56</sup>

*(d) Items establishing the evolution of the religious ideology of Mr Abu Adass and a relative of him (items 25-26 in annex A)*

#### *Submissions*

50. The Oneissi Defence seeks the admission of a number of photographs of Mr Abu Adass and of a relative. They were extracted from photographs of items collected from Mr Abu Adass's residence and show the evolution of the appearance and clothing of both and therefore, according to the Oneissi Defence, demonstrate the parallel progression of their religious practices towards Salafism over the years. Specifically, Mr Abu Adass went from being clean-shaven with *haram* clothing to wearing a long beard and conservative *abaya*.<sup>57</sup>

51. According to the Prosecution, the claimed progression towards Salafism is neither supported nor established by the described change in appearance and clothing.<sup>58</sup>

#### *Discussion and decision*

52. Item 25 contains six photographs of a relative of Mr Abu Adass. Item 26 consists of five photographs of Mr Abu Adass. In three, he has some slight facial hair, but in none does he have a long beard, as submitted by the Oneissi Defence. However, Mr Abu Adass has a long beard in the photograph on his identity card (item 1), which the Trial Chamber has found admissible. There is no information, in the motion or annex, as to when the different photographs were taken. The Oneissi Defence merely submits that they show Mr Abu Adass at different phases of his life. Nevertheless, the Trial Chamber exercises its discretion to admit all the proposed photographs into evidence, including those related to the other person, as they may be relevant to and probative of Mr Abu Adass's profile. The Trial Chamber will assess the weight it may give to the photographs when considering them in light of the totality of the evidence.

---

<sup>56</sup> Decision of 25 September 2017, paras 118-122; *see, e.g.*, exhibits 5D483, 5D484, 5D485.1, 5D485.2, 5D486, 5D487, 5D488.

<sup>57</sup> Oneissi Defence motion, para. 50; annex A, items 25-26.

<sup>58</sup> Prosecution response, para. 20.



(e) *Items establishing a pattern of conduct in the Middle East (items 27-28 in annex A)*

### *Submissions*

53. The Oneissi Defence seeks the admission of an article and a photograph published by Sky News Arabia, concerning the story of a young Jordanian man who, ‘similarly to’ Mr Abu Adass, switched from ‘normal’ to extremist and eventually went to Iraq where he carried out a suicide attack on behalf of *Daesh*. According to the Oneissi Defence, this document assists in demonstrating that the ‘Ahmad Abu Adass’s story is not unique’ and that his claiming responsibility for the attack was consistent with the ideology he espoused. It contradicts the Prosecution’s allegation that the claim of responsibility was false.<sup>59</sup>

54. The Prosecution responds that the article describes events that do not pertain to Mr Abu Adass. The Oneissi Defence’s arguments is speculative and fallacious as a single specific incident—unrelated to Mr Abu Adass—cannot be the basis to establish a pattern of conduct.<sup>60</sup>

### *Discussion and decision*

55. According to international criminal law, evidence of a consistent pattern of conduct or of a deliberate pattern of conduct is admissible.<sup>61</sup> The proposed evidence does not fall within such a category. Further, the Oneissi Defence does not provide a proper foundation for the relevance and probative value of this material. However, the Trial Chamber will exercise its discretion to admit it as part of the Oneissi Defence challenge to the Prosecution’s allegation on the false claim responsibility and Mr Abu Adass’s part in it.

## **CONFIDENTIALITY**

56. The Parties filed their submissions confidentially.<sup>62</sup> The Trial Chamber reiterates the public nature of these proceedings and orders the Parties to file public redacted versions of their filings or have reclassified as public filing F3682 after contacting the expert.

---

<sup>59</sup> Oneissi Defence motion, para. 51; annex A, items 27-28.

<sup>60</sup> Prosecution response, para. 21.

<sup>61</sup> ICTR, *Nahimana v. The Prosecutor*, ICTR-99-52-A, Judgement, para. 315; ICTY, *Prosecutor v. Popović*, IT-05-88-A, para. 104. *See also* Rule 93 of the ICTY Rules of Procedure and Evidence, providing that evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the ICTY Statute may be admissible in the interests of justice.

<sup>62</sup> With the exception of filings F3683 and F3688. *See* Oneissi Defence motion, para. 53; Prosecution response, para. 22; Oneissi Defence reply, para. 12; Prosecution supplementary submissions, para. 11.

## DISPOSITION

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

**(1) GRANTS**, in part, the Oneissi Defence's application for leave to amend its exhibit list by adding the documents or records listed as items 1, 3 to 7, 9 to 28 of annex A to the application—more precisely identified by the Oneissi Defence, for items 15 and 19 to 22, in filing F3683 (annex B)—namely

- i. a photograph of Mr Ahmed Abu Adass's identity card (item 1);
- ii. a letter from the Lebanese Ministry of Justice on the interpretation of Lebanese Law 296/2001 (item 3);
- iii. four photographs of receipts of payment for internet subscriptions (items 4 to 7);
- iv. extracts from a book on 'the science of social and political negotiations' (item 9);
- v. photographs of audiotapes by two alleged high-ranking Al Qaeda figures or supporters (items 10 to 12);
- vi. 12 documents contained in files extracted from Mr Abu Adass's computer's hard drive (items 13 to 24);
- vii. six photographs of a relative of Mr Abu Adass and five photographs of Mr Abu Adass (items 25 and 26); and
- viii. an article and a photograph published by Sky News Arabia on a Jordanian man who carried out a suicide attack in Iraq on behalf of *Daesh* (items 27 and 28);

**(2) ORDERS** the Oneissi Defence to replace pages 44 to 46 of item 9—an extract from an online version of a book seized at Mr Abu Adass's residence—with the corresponding pages in the seized book, for the reasons in paragraph 45;

**(3) DECLARES** admissible, under Rule 154, the documents or records listed in (1) and (2) above, and decides that it will formally admit them into evidence at the next court sitting;

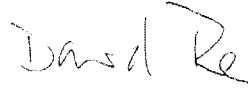
**(4) DENIES** the application to add to the exhibit list, and have admitted into evidence, a document showing maps of Palestine (item 2) and an expert report related to the analysis of Mr Abu Adass's computer's hard disk (item 8);

**(5) ORDERS** the Oneissi Defence to immediately file an updated exhibit list; and

**(6) ORDERS** the Parties to file public redacted versions of their filings, or have them reclassified as public.

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

Leidschendam,  
The Netherlands  
22 June 2018



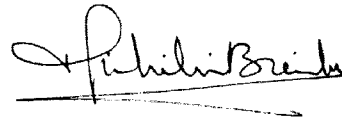
---

Judge David Re, Presiding



---

Judge Janet Nosworthy



---

Judge Micheline Braidy

