

**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:** 12 January 2017

**Original language:** English

**Classification:** Public

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**DECISION ON THE PROSECUTION USING POWERPOINT SLIDES AND A  
CHRONOLOGY AND NARRATIVE OVERVIEW WITH ITS EXPERT MR GARY  
PLATT**

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(Extract from Official Public Transcript of Hearing on 12 January 2017, page 18, line 24 to  
page 28, line 12)

The Trial Chamber, on the 6th of April, 2016, on the Prosecution's application, found that a Prosecution investigator, Mr. Gary Platt, “was qualified under Rule 161 to provide expert opinion evidence with respect to matters connected with (1) the surveillance of criminal networks; and (2) the identification and organization of covert communications networks.” It provided full written reasons for this decision in “Decision Allowing Mr. Gary Platt (Witness PRH147) to Give Expert Opinion Evidence,” filing F2549 of the 13th of April, 2016.

On 28th of July, 2016, the Trial Chamber dismissed an application by counsel acting for the accused Mr. Hussein Hassan Oneissi to certify the decision for interlocutory appeal in “Decision Dismissing Application for Certification to Appeal the Trial Chamber's ‘Decision on the Admission of Mr. Gary Platt (Witness PRH147) as an Expert Witness’ ,” in filing F2674.

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Mr. Platt testified over seven days in April and July 2016, including two days in a voir dire in April 2016 as to his qualifications as an expert and is scheduled to commence the third part of his evidence within the next few days. The Trial Chamber has already received into evidence his expert reports, or had them marked for identification, in Exhibit P795, PowerPoint presentation “Network Analysis Presentation by Gary Platt, PRH147, dated 12th of April 2016” [...] “of 150 slides and Exhibit P796 MFI ‘Network Analysis Report: Red, Green, Blue, and Yellow Phones, prepared by Gary Platt, investigator.’” This is a report of some 225 pages.

In this third coming phase, the Prosecution intends to tender a 458 page report dated 20th of February, 2014, entitled “Communications Evidence Concerning the Assassination of Rafik Hariri: Chronology Report.” It is anticipated that Mr. Platt's evidence in-chief will take at least several weeks of court time to complete.

The Prosecution had been intending to rely upon its software, “Electronic Presentation of Evidence,” or EPE, to lead Mr. Platt through his evidence in-chief. This software permits a party to plot geographical locations, such as suburbs of Beirut or mobile cell towers located in these places, and events such as the time of a call from one mobile telephone to another. The results then are visually displayed and can be displayed in different layers. Without such visual aids, the evidence would be largely incomprehensible.

The Prosecution has now decided also to use PowerPoint slides as visual aids to assist the understanding of Mr. Platt's evidence. A decision has now been made for the EPE to supplement the slides rather than the converse.

Mr. Platt, working with Prosecution counsel, has completed the slides for the first two weeks of Mr. Platt's evidence, but the remainder is “a work in progress.”

Prosecution counsel informed the Trial Chamber in oral submissions on the 11th of January, 2017, that the Prosecution has the slides ready for the first two weeks of Mr. Platt's evidence but needs to continue working on them for the following weeks of his evidence. They would hope to finish this in the week commencing the 30th of January, 2017, when the Trial Chamber will not be sitting, in order to have them ready for the resumption of Mr. Platt's testimony in the week of 6th of February. This, however, requires their continuing to work with Mr. Platt while he is in mid-testimony in examination-in-chief. They, therefore, seek the Trial Chamber's leave to permit this.

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Contact with witnesses after they have commenced their testimony is regulated by Section F, paragraph 17, of the Trial Chamber's "Directions on the Conduct of the Proceedings," issued on 16th of January, 2014, in filing F1326, which provides:

"The Parties and the Legal Representative of Victims must not communicate with a witness after the witness has made the solemn declaration under Rule 150(A) or commenced testifying under Rule 150(B). The Trial Chamber may allow contact, on the application of a Party or the Legal Representative of Victims, in a manner suitably regulated."

Prosecution counsel submitted in their oral arguments that the PowerPoint slides will significantly reduce the time required by Mr. Platt to complete his evidence in-chief. Without the slides, they submitted, the length of his evidence will be increased by a factor of three or four, meaning many more weeks in court. Using the slides will therefore assist the efficient presentation of the case and therefore make the most efficient use of court time.

In addition to this, the Prosecution also intends to use two documents to aid the Trial Chamber's understanding, and Prosecution counsel submit, of course, Defence counsel, of Mr. Platt's evidence; namely, a "Narrative Overview of Telephone Activity and Events Relevant to the Case for the Prosecution" of 291 pages, which is a day-to-day summary of events relevant to the amended consolidated indictment occurring between 22nd of August, 2004 and 15th to 17th February, 2005, and a 33-page document entitled "Chronology of Relevant Events" over the same time-period.

The Prosecution does not intend to use these documents with Mr. Platt in the sense of referring him to the chronology or narrative documents, but rather to use them as an aide-memoire of relevant events that the parties and Trial Chamber may refer to during the testimony. The Prosecution submitted that the documents are intended to aid and heighten comprehension by the Judges and the parties as well as the expedition of the proceedings themselves.

Defence counsel, acting for the four accused, object to the PowerPoint slides, arguing that they have only recently received the presentation and have had insufficient time to properly review the slides, and furthermore that the slides highlight things that are not in the indictment or pre-trial brief or the Prosecution's opening statement. Furthermore, some titles are argumentative rather than informative. They also object to the Prosecution tendering the chronology and narrative overview, arguing that these documents too are argumentative rather

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than explanatory and are more in the nature of a final trial (closing) brief or submissions rather than being demonstrative evidence.

Defence counsel also objected to the Prosecution continuing to work with Mr. Platt when he was in mid-testimony, but conceded that a mid-way or work-around solution could involve the presence of Defence counsel while the slides were being completed. Some counsel submitted that this was unfair.

The Legal Representative of Victims, on the other hand, pointed out that as Mr. Platt had been qualified as an expert by the Trial Chamber, he would be giving opinion evidence and that the chronology and narrative documents were consistent with this role.

The Trial Chamber has carefully reviewed the relevant documents. The presentation of the Prosecution's telecommunications evidence as it relates to, "One, the surveillance of criminal networks; and two, the identification and organization of covert communications networks" alleged to have planned and carried out Mr. Rafik Hariri's assassination is the most factually complicated part of the case. Interpretation of this evidence falls squarely within Mr. Platt's expertise, and it is imperative that the Trial Chamber and the parties can properly understand the evidence and its context.

The Trial Chamber welcomes the assistance of visual aids to understand the thousands of facts contained in the EPE and Mr. Platt's report and his oral evidence which will take weeks to complete. The Prosecution's intention to use a combination of the EPE, and slides as visual aids to Mr. Platt's expert report, is more than reasonable; in the Trial Chamber's view, it is essential. It makes an efficient use of court time and the Special Tribunal's resources and simplifies the presentation of very complex facts. The application in this respect is therefore granted.

On the issue of prejudice to the Defence by late disclosure of the slides, while the Trial Chamber agrees with the Prosecution's categorization of this as "regrettable," it does not agree that the Defence has been prejudiced to the extent that an adjournment of Mr. Platt's evidence is required.

According to the Prosecution, these slides are simply reflective of existing evidence produced to make it digestible and clear. The Prosecution submits that nothing is new and the Prosecution described these slides as "like a photograph of a descriptive sentence," submitting that they are simply reflective of what is already, in quite some detail, in the narrative and in Mr. Platt's chronology report. Furthermore, there will be quite some time before the Defence

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has to cross-examine Mr. Platt. So, according to Prosecution counsel, if there were any disadvantages, these will be remedied as Defence counsel will have more than enough time to digest what is already in the report disclosed to them almost three years ago.

In the Trial Chamber's view, the slides only draw out points of evidence that the Prosecution wishes to present in court. The slides themselves are not primary evidence but are merely a visual aid to its better comprehension. The content of the slides derive from disclosed evidence and things that are already in evidence. They are also interpretive, as is Mr. Platt's evidence.

The Trial Chamber has held several times, consistent with the established principles of international criminal law procedural law, that the case against an accused is contained in a combination of the indictment as the primary charging document, the pre-trial brief, the Prosecution's opening statement, and the disclosed evidence. Here, the slides emphasize the disclosed or already admitted evidence. The Trial Chamber notes that it was also greatly assisted by the 150 slides in Exhibit P795 which were used during Mr. Platt's testimony in July 2016.

Defence counsel have the slides for the next few weeks of evidence, which is commencing, probably on Monday, the 16th of January, 2017, and slides for the remainder of Mr. Platt's testimony in February will be provided to the Defence as they are produced. This should, in the Chamber's view, allow counsel sufficient time to familiarize themselves with the content of the slides that reflect the report and evidence that has been disclosed to them or already admitted.

The Trial Chamber has already admitted into evidence almost all of the Prosecution's cell site evidence, plus its call data records evidence and evidence of the attribution of mobile numbers to the four accused and the former accused, Mr. Mustafa Amine Badreddine. Mr. Platt's report and his oral evidence interprets this existing evidence so far as it relates to his area of expertise. That is, in fact, his role as an expert witness.

The chronology and narrative overview, although arguably in some instances coming close in content to submissions (whether categorized as opening, mid-trial, or closing) in being interpretative rather than strictly "date-based," are also extremely helpful to the Trial Chamber in following the evidence and in giving context to the thousands of facts comprising this part of the Prosecution's evidence. Defence counsel could, of course, present their own chronology of events during the trial, or indeed at the close of the trial.

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The Trial Chamber recognizes that a chronology presented by a party to adversarial proceedings is not a neutral document but rather is intended to confirm and, indeed, bolster its case by making it comprehensible and by putting its own interpretation on matters in issue. It may therefore contain things that could otherwise be viewed as “argumentive,” including descriptions and headings. The Trial Chamber, is, of course, completely mindful of this and will accordingly view these documents in this light.

For these reasons, the Trial Chamber will accept the two documents into evidence as aids to its understanding of the Prosecution case and the evidence. It emphasizes, however, that neither document is itself evidence. The Defence may, of course, at any time bring any matters to the attention of the Trial Chamber, that is in these documents, that are considered to be contentious and may propose alternative explanations or interpretations.

The final matter, therefore, is that of the Prosecution's continuing its work on the slides during Mr. Platt's testimony as it has indeed done since Mr. Platt finished the last part of his evidence in-chief and was then extensively cross-examined on that segment by counsel acting for Mr. Assad Hassan Sabra. This concluded on the 27th of July, 2016.

The Trial Chamber does not believe that the circumstances described by Defence counsel require an adjournment of Mr. Platt's evidence. However, it is attentive to the issues raised by Defence counsel and recognizes that the situation is far from ideal. On one hand, Defence counsel are correct in submitting that the slides should have been prepared in a more timely fashion, something that the Prosecution readily concedes. But on the other hand, the Trial Chamber does not believe that competent Defence counsel, such as those assigned to represent the accused in this case, cannot master the detail in the slides before Mr. Platt testifies. Mr. Platt is an expert witness and Prosecution counsel are bound by various ethical codes, national and the Special Tribunal's. The Trial Chamber is also of the view that an expert witness, even an in-house expert for a party, either the Prosecution or the Defence, for the purposes of mid-testimony contact with counsel is in a category slightly different to that of a lay witness. Although, of course, the Trial Chamber's leave is still required for any mid-testimony contact to occur.

Here the Prosecution assures the Trial Chamber that the continuing contact would relate only to extracting the most relevant information from Mr. Platt's lengthy report, and the EPE, and putting it into slide form. This would be to ensure that only the most relevant information is extracted and presented to the Trial Chamber. Counsel leading Mr. Platt

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through his evidence, and his assistance, has a duty to ensure that this occurs. It is thus only logical that Prosecution counsel should assist Mr. Platt in identifying the most relevant information in his report. Further, Mr. Platt's cross-examination by Defence counsel would commence only after this exercise of preparing the slides for examination-in-chief was complete.

The Trial Chamber, in these circumstances, is prepared to allow Prosecution counsel to continue to work with Mr. Platt to complete the slides, even if he is in mid-testimony in examination-in-chief.

It previously allowed this practice, without objection from Defence counsel, after Mr. Platt completed the second part of his evidence in July. Although, the Trial Chamber recognizes the circumstances were slightly different. This is why Mr. Platt and Prosecution counsel had been working on the slides since then. The Trial Chamber is convinced that allowing this to continue will aid the most efficient presentation of his evidence and hence the Trial Chamber and the Defence and Legal Representative of Victims's understanding of the case. The Prosecution's application in this respect is therefore allowed.

Any further issues relating to the modality of this communication may be brought to the Trial Chamber's attention.

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