



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, Registrar

**Date:** 15 October 2015

**Original language:** English

**Type of document:** Public

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
MUSTAFA AMINE BADREDDINE  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

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**DECISION AUTHORISING THE PROSECUTION TO AMEND ITS  
EXHIBIT LIST**

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**Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron  
& Mr Alexander Milne

**Victims' Legal Representatives:**

Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Salim Jamil Ayyash:**

Mr Eugene O'Sullivan, Mr Emile Aoun &  
Mr Thomas Hannis

**Counsel for Mr Mustafa Amine Badreddine:**

Mr Antoine Korkmaz, Mr Iain Edwards & Mylène  
Dimitri

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothée Le Fraper  
du Hellen & Mr Khalil Jad

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Mr Philippe Laroche

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Mettraux &  
Mr Geoffrey Roberts



## **INTRODUCTION**

1. On 18 August 2015, the Trial Chamber declared Mr Edward Philips (Witness PRH435) is qualified, under Rule 161 of the Special Tribunal's Rules of Procedure and Evidence, as an expert in the field of telecommunications and cell site analysis.<sup>1</sup> The Prosecution requests the Trial Chamber's leave to amend its exhibit list filed under Rule 91 by adding two reports authored by Mr Philips entitled 'Common Mission Phones?', dated 29 June 2015 and 'Mission Phones? 3140023, 3150071 and 3159300', dated 3 May 2015.<sup>2</sup> Counsel for the five Accused did not respond to the motion.

## **SUBMISSIONS AND DISCUSSION**

2. According to the Prosecution, the two proposed reports include Mr Philips's key findings and opinions relating to the operation of three mobile telephone groups, referred to in the consolidated indictment as the 'red', 'blue' and 'green' networks, in the context of the preparations and execution of the assassination of former Lebanese Prime Minister Rafik Hariri, in Beirut on 14 February 2005. The Prosecution argues that it is in the interests of justice to add the two reports—disclosed to the Defence on 15 May 2015 and 1 July 2015—to its exhibit list to assist the Trial Chamber in its assessment of the complex and important evidence of Mr Philips.

3. The Prosecution describes the first report as a 'distillation' of the Mr Philips's previous analysis of the 'red', 'blue' and 'green' networks and submits that it was commissioned to consolidate, simplify and clarify a complex and important area of evidence in the Prosecution case. The second report includes a concise analysis of the behaviour of the 'green' network by reference to the key characteristics of a 'Mission Phone Group'. The Prosecution describes this report as a 'necessary by-product' of the first report.<sup>3</sup> Mr Philips previously provided the Prosecution with several reports on the same subject matters.<sup>4</sup>

4. The Trial Chamber may, in the interests of justice, allow a party to amend its witness and exhibit lists. In doing so it must balance the Prosecution's interest in presenting any available evidence against the rights of an accused person to adequate time and facilities to prepare for trial. The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider,

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<sup>1</sup> Transcript of the hearing on 18 August 2015, pp 3 and 38-39.

<sup>2</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2090, Prosecution Rule 91 Submission for Two Expert Reports from PRH435 on the Operation of Three Phone Groups, 22 July 2015.

<sup>3</sup> Prosecution motion, para. 6.

<sup>4</sup> Prosecution motion, paras 5, 7 and footnote 3.

among other factors, i) whether the Prosecution 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>5</sup>

5. The Trial Chamber reviewed the two Mr Philips's reports that the Prosecution seeks to add to its exhibit list. The reports, which were recently produced, contain no new evidence, and only synthesise and consolidate previous reports—that are already on the Prosecution's exhibit list and were all disclosed—authored by Mr Philips and covering the same subject matters. The Prosecution informed the Defence, on 8 April 2015, it had commissioned Mr Philips to prepare a consolidated report 'to address the nature and function of the three closed user groups in a more succinct, cohesive and comprehensive manner'.<sup>6</sup> Further, the motion is unopposed by any of the counsel for the Accused. The Trial Chamber finds that the two reports are *prima facie* relevant and probative. Adding these reports to the exhibit list will not unduly impact Defence preparations nor cause significant delay. The Trial Chamber is satisfied that it is in the interests of justice to allow the Prosecution to amend its exhibit list.

### **DISPOSITION**

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

**ALLOWS** the Prosecution motion for leave to amend its exhibit list by adding the two reports listed in Annex A of its motion.

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<sup>5</sup> F1484, Decision on Prosecution request on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014, para. 15; F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; F1280, First Decision on the Prosecution request for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; F1228, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

<sup>6</sup> Prosecution motion, para. 7.

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

Leidschendam,  
The Netherlands

15 October 2015

David Re

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Judge David Re, Presiding

Janet Nosworthy.

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Judge Janet Nosworthy

Micheline Braidy

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Judge Micheline Braidy

